

ALLURE EYEWEAR L.L.C.

LIMITED LIABILITY COMPANY AGREEMENT

THIS LIMITED LIABILITY COMPANY AGREEMENT (the "Agreement" or "LLC Agreement") of Allure Eyewear L.L.C. (the "Company"), effective as the 1st day of July, 2003, by and among the Persons listed on Schedule 3.04(a) attached hereto (collectively, the "Members") and the Directors.

WHEREAS, the Members intend that this Agreement shall govern the business and affairs of the Company commencing as of the date hereof and to constitute the "limited liability company agreement" of the Company within the meaning of the Act commencing as of the date hereof.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I – DEFINED TERMS

The following capitalized terms have the respective meanings ascribed to them below:

"AAA" has the meaning set forth in Section 3.07(e)(i).

"Act" means the Delaware Limited Liability Company Act, 6 Del. Code § 18-101 *et seq.*

"Additional Capital Contributions" has the meaning set forth in Section 3.05.

"Adjusted Capital Account" has the meaning set forth in Schedule C attached hereto.

"Adjustment Date" shall mean the date when Capital Contributions are due under Section 3.05 or Section 3.06 or the date that the Member Guaranties of the Guaranteeing Members goes into effect under Section 3.07, as the case may be.

"Affiliate" means, with respect to any specified Person, (i) any Person that directly or indirectly controls, is controlled by, or is under common control with such specified Person, or (ii) any person that is a member of the Immediate Family of the specified Person that is an individual. For the purposes of this definition, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

"Agreement" or "LLC Agreement" has the meaning set forth in the preamble, as such agreement may be amended from time to time.

"Ancillary Documents" means, collectively, the Members Agreement, the Right of First Refusal Agreement, the Employment Agreement, the By-laws and any other agreements and documents executed and delivered in connection herewith or therewith by and among the Company and/or the Members.

“Arbitration Rules” has the meaning set forth in Section 3.07(e)(i).

“Assistant Secretary” has the meaning set forth in Section 4.12 of Schedule A attached hereto.

“Assistant Treasurer” has the meaning set forth in Section 4.13 of Schedule A attached hereto.

“Authorized Common Share Amount” has the meaning set forth in Section 3.01(b).

“Board of Directors” or “Board” means the governing body of the Company designated as such and described in Article VI.

“Business Plan” has the meaning set forth in Section 6.07.

“By-laws” means the by-laws of the Company attached hereto as Schedule A.

“Capital Account” has the meaning set forth in Schedule C attached hereto.

“Capital Contribution” means any contribution by a Member to the capital of the Company.

“Capital Distribution” has the meaning set forth in Section 4.04.

“Carrying Value” has the meaning set forth in Schedule C attached hereto.

“Certificate of Formation” means the Certificate of Formation of the Company filed on April 29, 2003 with the office of the Secretary of State of the State of Delaware, as it may, from time to time, be amended in accordance with the Act.

“Chairman” has the meaning set forth in Section 4.7 of Schedule A attached hereto.

“Chief Financial Officer” has the meaning set forth in Section 4.10 of Schedule A attached hereto.

“Clarke” means Steve Clarke, an individual residing in the State of New Jersey.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Common Share” means any Share issued by the Company as, and designated in the Share Register as, a Common Share.

“Common Share Certificate” means a certificate issued by the Company in the form attached hereto as Exhibit 3.01(c) which evidences the ownership of one or more Common Shares.

“Company” has the meaning set forth in the preamble.

“Company Capital” has the meaning set forth in Schedule C attached hereto.

“Company Sale” means:

(a) a merger or consolidation in which (i) the Company is a constituent party, or (ii) a Company Subsidiary is a constituent party and the Company issues equity interests pursuant to such merger or consolidation, except any such merger or consolidation involving the Company or a Company Subsidiary in which the holders of Common Shares immediately prior to such merger or consolidation continue to hold immediately following such merger or consolidation more than 50% by voting power and economic interest, of the capital stock or equivalent equity securities or interests (as applicable) of (1) the surviving or resulting entity or (2) if the surviving or resulting entity is a wholly-owned subsidiary of another entity immediately following such merger or consolidation, the parent entity of such surviving or resulting entity; or

(b) the sale, in a single transaction or series of related transactions, (i) by the Company of all or substantially all the assets of the Company (except where such sale is to a wholly-owned subsidiary of the Company), or (ii) of more than 50% by voting power and economic interest of the then outstanding Common Shares or equivalent equity securities or interest (as applicable) of the Company.

“Company Subsidiary” means any corporation, partnership, trust, limited liability company or other non-corporate business enterprise in which the Company (or another Company Subsidiary) holds stock or other ownership interests representing (a) more than 50% of the voting power and economic interest of all outstanding stock or ownership interests of such entity or (b) the right to receive more than 50% of the net assets of such entity available for distribution to the holders of outstanding stock or ownership interests upon a liquidation or dissolution of such entity.

“Contract” means any contract, agreement or arrangement, whether written or otherwise.

“Contribution Factor” means (i) a factor of 1.05 with respect to an adjustment due to a Deficiency to make an Additional Capital Contribution pursuant to Section 3.05 or (ii) a factor of 1.00 with respect to an adjustment due to a Deficiency to make a Further Capital Contribution pursuant to Section 3.06, as the case may be.

“Defaulting Member” has the meaning set forth in Section 3.05(c).

“Deficiency” has the meaning set forth in Section 3.05(c).

“Deficiency Contribution” has the meaning set forth in Section 3.05(c).

“DGCL” means the Delaware General Corporation Law, 8 Del. Code § 101 *et seq.*

“Director” means each person designated on Schedule D hereto and executing this Agreement as of the date hereof, and any person who becomes an additional, substitute or replacement Director as permitted by this Agreement, in each such person’s capacity as (and for the period during which such person serves as) a Director of the Company.

“Disinterested Director” has the meaning set forth in Section 6.05(d).

“Dividend” means any distribution of cash or other property made by the Company prior to the dissolution and liquidation of the Company in respect of the Common Shares other than any such distribution made pursuant to Section 4.02.

“EBITDA” means earnings before interest, taxes, depreciation and amortization.

“Employment Agreement” shall mean the Employment Agreement, effective as of July 1, 2003, by and between the Company and Clarke, as such agreement may be amended from time to time.

“Financial Situation” has the meaning set forth in Section 3.06.

“Funded Debt” has the meaning ascribed to such term in the Members Agreement.

“Further Capital Contributions” has the meaning set forth in Section 3.06.

“GAAP” shall mean U.S. generally accepted accounting principles.

“Governmental Authority” means any governmental, administrative or regulatory agency, bureau, department or other body, whether federal, state, local or foreign.

“Guaranteeing Member” has the meaning set forth in Section 3.07(b).

“Guaranty Shortfall” has the meaning set forth in Section 3.07(b).

“Guaranty Values” has the meaning set forth in Section 3.07(d).

“Immediate Family” means (i) with respect to any individual Person, such Person’s ancestors, spouse, issue, spouses of issue, any trustee or trustees, including successor and additional trustees, principally for the benefit of any one or more of such individuals, and any entity or entities all of the beneficial owners of which are such trusts and/or such individuals, but (ii) with respect to a legal representative, the Immediate Family of such individual Person for whom such legal representative was appointed and (iii) with respect to a trustee, the Immediate Family of the individual Person(s) who is (are) the principal beneficiaries of the trust.

“Indemnitee” has the meaning set forth in Section 6.05.

“Initial Bank Financing” has the meaning set forth in Section 6.01(b)(ii).

“Initial Capital Contributions” has the meaning set forth in Section 3.04(a).

“Initial Company Value” has the meaning set forth in (i) Section 3.05(d) with respect to an adjustment due to a Deficiency to make an Additional Capital Contribution pursuant to Section 3.05 or (ii) Section 3.06 with respect to an adjustment due to a Deficiency to make a Further Capital Contribution pursuant to Section 3.06, as the case may be.

“Initial Members” means Rothandberg and Clarke.

“Liquidation” means any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, provided that, unless otherwise provided herein, “Liquidation” shall not include any transaction governed by Section 18-209 of the Act.

“Liquidator” means any Person or Persons (which may include the Board of Directors and/or any one or more Directors and Officers) charged with winding up and/or liquidating the business, affairs and/or assets of the Company in accordance with the provisions hereof, each of which Persons shall be deemed to be a “liquidating trustee” within the meaning of the Act.

“Member” has the meaning set forth in the preamble, and any additional Person which is a holder of record of one or more Common Shares, as reflected in the Share Register, and which has executed this Agreement or a counterpart hereof or another instrument evidencing such Person’s agreement to be bound by the provisions hereof, in each such Person’s capacity as (and for the period during which such Person continues to be) such holder.

“Member Guaranty” has the meaning set forth in Section 3.07(a).

“Members Agreement” means the Members Agreement, effective as of July 1, 2003, between Rothandberg and Clarke, as such agreement may be amended from time to time.

“Membership Interest” means all of a Member’s interest in the Company, including the rights, if any, to receive allocations and distributions, to vote and to consent or approve.

“Net Equity Value” means the total value of the Company’s assets minus the total value of the Company’s liabilities, in each case, determined in accordance with GAAP and as set forth in financial statements approved by the Board.

“Net Profits” and “Net Losses” has the meaning set forth in Schedule C attached hereto.

“Non-Defaulting Member” has the meaning set forth in Section 3.05(c).

“Non-Guaranteeing Member” has the meaning set forth in Section 3.07(b).

“Officers” has the meaning set forth in Section 4.1 of Schedule A attached hereto.

“Permitted Persons” has the meaning set forth in Section 7.01.

“Permitted Transferee” has the meaning set forth in Section 8.01(d).

“Person” means any corporation, limited or general partnership, limited liability company, trust, unincorporated association, any other entity or organization, Governmental Authority, or an individual.

“Pre-Adjustment Value” has the meaning set forth in Section 3.07(d).

“President” has the meaning set forth in Section 4.8 of Schedule A attached hereto.

“Right of First Refusal Agreement” means the Right of First Refusal Agreement, effective as of July 1, 2003, between Rothandberg and Clarke, as such agreement may be amended from time to time.

“Rothandberg” means Rothandberg, Inc., a New York corporation with a mailing address of: 35 Hub Drive, Melville, New York.

“Secretary” has the meaning set forth in Section 4.12 of Schedule A attached hereto.

“Securities Act” means the Securities Act of 1933, as amended.

“Share” means a share of a particular class and/or series, if applicable, of Membership Interest, and any successor security.

“Share Certificate” means a certificate issued by the Company in the form approved by the Board, and which evidences the ownership of one or more Shares.

“Share Register” means a list of Members and their respective holdings of Common Shares, together with all pertinent information relevant to the determination of the Capital Contributions relating to such Common Shares, maintained with the books and records of the Company.

“Terminated Director” has the meaning set forth in Section 6.03(b).

“Transfer” and any grammatical variation thereof shall refer to any sale, exchange, issuance, redemption, assignment, distribution or other transfer, disposition or alienation in any way (whether voluntarily, involuntarily or by operation of law) as to any interest as a Member.

“Treasurer” has the meaning set forth in Section 4.13 of Schedule A attached hereto.

“Vice President” has the meaning set forth in Section 4.11 of Schedule A attached hereto.

ARTICLE II - GENERAL

2.01 Name of the Limited Liability Company. The name of the Company is “Allure Eyewear L.L.C.” The name of the Company may be changed at any time or from time to time with the approval of the Members acting in accordance with the By-laws.

2.02 Registered Office; Agent for Service of Process. The name of the resident agent for service of process for the Company and the address of the registered office of the Company in the State of Delaware shall be as set forth in the Certificate of Formation as in effect at the relevant time. The Board may establish places of business of the Company within and without the State of Delaware, as and when required by the Company’s business and in furtherance of its purposes set forth in Section 2.04 hereof, and may appoint (or cause the appointment of) agents for service of process in all jurisdictions in which the Company shall conduct business. The Company may, with the approval of the Board, change from time to time its resident agent for service of process, or the location of its registered office in the State of Delaware.

2.03 Certain Filings; Organization. Joe H. Paek, as an “authorized person” within the meaning of the Act, has, on or prior to the date hereof, executed, delivered and filed the Certificate of Formation with the office of the Secretary of State of the State of Delaware and, upon such filing, his powers as such “authorized person” have ceased and each Officer is hereby designated as an “authorized person” within the meaning of the Act. The Board of Directors may cause the Company to file such other certificates and documents as may be necessary or appropriate to comply with the Act and any other applicable requirements for the operation of a limited liability company in accordance with the laws of the State of Delaware and any other jurisdictions in which the Company shall conduct business, and to maintain such filings for so long as the Company conducts business therein.

2.04 Purposes; Powers. The Company may engage in any business or activity in which a limited liability company organized under the laws of the State of Delaware may lawfully engage, and shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act (including the borrowing of money and the issuance of guarantees of indebtedness of other Persons).

2.05 Members.

(a) The name and business address of each of the Members shall be set forth in the Share Register.

(b) Additional Members may only be admitted to the Company in accordance with Article VIII.

(c) No Member shall have the right or power to resign, withdraw or retire from the Company (except upon a Transfer of record ownership of all of such Member’s Common Shares in compliance with, and subject to, the provisions of Article VIII).

(d) No Member may be expelled or required to resign, withdraw or retire from the Company (except upon a Transfer of record ownership of all of such Member’s Common Shares in compliance with, and subject to, the provisions of Article VIII).

2.06 No Partnership. The Company is not intended to be a general partnership, limited partnership or joint venture, and no Member or Director shall be considered to be a partner or joint venturer of any other Member or Director, for any purposes other than income tax purposes, and this Agreement shall not be construed to suggest otherwise.

ARTICLE III - CAPITAL STRUCTURE

3.01 Shares Generally.

(a) All Membership Interests in the Company shall be denominated in Shares. Subject to the other provisions of this Agreement (including those governing the Members’ respective rights to receive allocations of Net Profits and Net Losses and distributions of cash or property), each Share shall have the rights, and be subject to the obligations, equivalent to those of each other Share of the same class and/or series, if applicable, hereunder.

(b) The aggregate number of Shares that the Company shall have authority to issue is 2,000,000 shares consisting of 2,000,000 Common Shares (the “Authorized Common Share Amount”).

(c) Each Member’s holdings of Shares shall be evidenced by a Share Certificate in the form of certificate approved by the Board. Each certificate representing Shares will, until the time (i) such Shares have been effectively registered under Section 5 of the Securities Act and disposed of pursuant to an effective registration statement or (ii) such Shares can be freely sold and transferred without restriction under the Securities Act, bear the following legends:

(i) “THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE “ACT”) OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION, AND, UNLESS SO REGISTERED, THEY MAY NOT BE SOLD, OFFERED FOR SALE, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE ACT AND APPLICABLE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION.”;

(ii) “THESE SECURITIES ARE SUBJECT TO THE TERMS AND CONDITIONS OF THE LIMITED LIABILITY COMPANY AGREEMENT OF ALLURE EYEWEAR L.L.C., EFFECTIVE AS OF JULY 1, 2003, AS IT MAY BE AMENDED AND/OR RESTATED THEREAFTER IN ACCORDANCE WITH THE TERMS THEREOF, A COPY OF WHICH MAY BE OBTAINED ON REQUEST WITHOUT CHARGE FROM THE SECRETARY OF ALLURE EYEWEAR L.L.C.”; and

(iii) any legend required by any federal or state securities or “blue sky” laws, regulations or rules to the extent such laws, regulations or rules are applicable to the Shares represented by such certificate, or by any other applicable law.

(d) Except to the extent required otherwise by provisions of the Act or other applicable law which may not be modified or waived by agreement of the parties, (i) all Shares shall be deemed to constitute a single class or group of membership interests, (ii) the Members holding Shares shall not be deemed to constitute a separate class or group of Members, and (iii) all Shares shall vote together as a single class of shares with respect to all matters on which holders of Shares are or may be entitled to vote hereunder or pursuant to the Act or other applicable law or otherwise submitted to a vote of holders of Shares, in each case (A) for the purposes of voting by class or group of Shares or of Members with respect to any matter, and (B) unless otherwise expressly provided elsewhere herein.

(e) In connection with the issuance of any additional Shares in accordance with the provisions of this Agreement, the Share Register shall be amended to reflect the number of such Shares, and any such amendment may be effected by any one or more Officers without any vote, consent, approval or other action of the Board or the Members.

(f) Authority is hereby expressly granted to the Board of Directors to authorize and cause the Company to repurchase Shares from any one or more Members, at any time or from time to time from any funds available to the Company (including proceeds from incurrence of indebtedness), on such terms as are approved by the Board of Directors and agreed to by such Member, with no requirement that, in connection therewith, Shares be repurchased from any other Member. No vote, consent, approval or other action of the Members shall be a prerequisite to any such repurchase of any Shares, the right to any such vote, consent, approval or other action being expressly waived by all present and future Members.

3.02 Common Shares.

(a) Common Shares may be issued by the Company from time to time, and shall have such terms as stated or expressed herein, provided that the aggregate number of Common Shares shall not exceed the Authorized Common Share Amount. Any Common Shares which are purchased or acquired by the Company (i) shall, automatically and with no further action necessary by any Person (including but not limited to any Member), constitute authorized but unissued Common Shares hereunder (rather than treasury shares), unless otherwise determined by the Board of Directors, and (ii) may be reissued except as otherwise provided by law or this Agreement.

(b) The relative rights, powers and duties, including but not limited to voting rights, and the qualifications, limitations and restrictions thereof, of the Common Shares are set forth on Schedule B hereto, and elsewhere in this Agreement.

3.03 [Reserved.]

3.04 Capital Contributions.

(a) On the date hereof, each of the Members is making the Capital Contribution described opposite such Member's name on Schedule 3.04(a) hereto (the "Initial Capital Contributions"), against issuance to such Member of the number of Common Shares specified thereon with respect to such issuance, which issuance shall be reflected in the Share Register.

(b) Any Person (including any Person that is a Member) acquiring one or more Common Shares from the Company after the date hereof shall be deemed to have made a Capital Contribution in the amount (if any) of cash paid and/or the fair market value of any property (including any indebtedness or obligation of such Person) and/or services transferred or otherwise contributed to the Company as consideration for such shares (or otherwise in connection with such acquisition thereof).

(c) Each Member making a Capital Contribution in connection with the issuance to such Member of Common Shares agrees that the costs and expenses incurred prior to the date of this Agreement by or on behalf of the Company and/or the Initial Members in connection with the organization and establishment of the Company and the Company's initial business activities, as determined by the Board of Directors in good faith (including, costs and expenses relating to the real property leases entered into by or for the benefit of the Company and professional services fees incurred in connection with this Agreement and/or the Ancillary

Documents or otherwise by or for the benefit of the Company), may be paid or reimbursed, as appropriate, from the proceeds of the issuance of such Common Shares to such Members.

3.05 Additional Capital Contributions.

(a) The Board of Directors may, in its sole discretion, send written notices to the Members calling for the Members to make additional Capital Contributions (the "Additional Capital Contributions") to be made in the following proportions: 51% by Rothandberg and 49% by Clarke (regardless of any adjustment of such Members' proportionate interests in the Company); provided that, other than Capital Contributions required under Section 3.06, the maximum aggregate amount of Additional Capital Contributions required to be made hereunder for all Members, taken together with all Initial Capital Contributions, shall be \$1,000,000. Each such Additional Capital Contribution in the amounts called for in the notice shall be made by each Member within thirty (30) days following receipt of each such notice from the Board. Except as set forth in subsection (c) hereof, no additional Shares shall be issued upon receipt of any Additional Capital Contribution.

(b) The failure by the Board to make a call for any Additional Capital Contributions at such time as the same is contemplated by the Business Plan shall not relieve the Members from their obligations under this Agreement to make such Additional Capital Contributions when and as the same may be subsequently called for by the Board.

(c) Upon the failure of a Member (a "Defaulting Member") to make its required Additional Capital Contribution required under this Section (the portion thereof not contributed by such Defaulting Member referred to herein as the "Deficiency") within the 30-day period set forth in subsection (a) above, the Company shall give written notice of such failure to the other Member or Members, as applicable (each, a "Non-Defaulting Member"). Each Non-Defaulting Member, may (in addition to, and not in lieu of, any other rights or remedies such Non-Defaulting Member may have hereunder, at law or in equity), in its sole discretion, within five (5) business days of the receipt of the notice from the Company, contribute all or a portion of such Deficiency to the capital of the Company (each, a "Deficiency Contribution"); provided, however, that if the proposed aggregate Deficiency Contributions from all the Non-Defaulting Members, if there are more than one Non-Defaulting Member, are greater than the amount of the Deficiency, then, each of their Deficiency Contributions shall be made in proportion to the number of Shares held by such Non-Defaulting Member and the Company shall return all amounts in excess thereof to the respective Non-Defaulting Members.

(d) Upon the failure of a Defaulting Member to make its required Additional Capital Contribution required under this Section (regardless of whether any Non-Defaulting Member(s) make any Deficiency Contribution), a number of Common Shares shall be issued to each Non-Defaulting Member so that the proportionate number of Common Shares held by such Non-Defaulting Member is equal to an amount (expressed in terms of a percentage) equal to the product determined by multiplying (i) the Contribution Factor by (ii) the quotient determined by dividing:

(X) an amount equal to the sum of (i) the amount of Additional Capital Contribution provided by such Non-Defaulting Member on the Adjustment Date plus (ii)

the product determined by multiplying (A) such Non-Defaulting Member's proportionate amount of Common Shares held immediately prior to the Adjustment Date (expressed in terms of a percentage) by (B) the Initial Company Value (for purposes of this Section 3.05, the term "Initial Company Value" shall mean the lesser of (1) the Net Equity Value as set forth in the most recent financial statements (regardless of whether such recent financial statement is a monthly, quarterly or annual financial statement) approved by the Board or (2) the sum of all Capital Contributions (excluding any Additional Capital Contributions made as of the Adjustment Date) less all returns of capital to Members prior to the Adjustment Date), by:

(Y) an amount equal to the sum of (i) the Initial Company Value and (ii) the sum of all Additional Capital Contributions that were provided by all Members (including the Defaulting Member) on the Adjustment Date;

provided that no adjustment under this Section 3.05 shall be made if such adjustment would result in a decrease in the proportionate ownership of any Non-Defaulting Member.

(e) If Clarke fails to make any of his required Additional Capital Contribution required under this Section 3.05 (regardless of whether any Non-Defaulting Member(s) makes any Deficiency Contribution), then effective as of the Adjustment Date, (i) the covenants set forth in subsections (a) and (b) of Section 6.01 shall terminate and be of no further effect and (ii) Clarke hereby consents to the amendment of this Agreement to delete such sections (provided that the termination of such sections shall be effective regardless of whether this Agreement is so amended).

3.06 Further Contribution Requirements. Except as otherwise provided in this Article III, no Member shall be obligated to make any further Capital Contribution(s) (the "Further Capital Contributions"); provided that, notwithstanding the foregoing, if the then-current Business Plan presented by the President and approved by the Members in accordance with Section 6.01(b) below sets forth certain third party financing(s) and the Company is unable to obtain such third party financing(s), the Members may be required to make Further Capital Contribution(s) (which Capital Contribution(s) may, but is not required to, take the form of a loan(s), such determination of the form thereof to be made by the Board in its sole discretion); provided, further, that if the then-current Business Plan presented by the President and approved by the Members in accordance with Section 6.01(b) below sets forth Further Capital Contribution(s) in addition to the Initial and Additional Capital Contributions, then, notwithstanding anything to the contrary contained herein (including but not limited to Section 6.01), upon the determination of the Board that a Further Capital Contribution(s) is required, the Members shall be obligated to make such Further Capital Contribution(s); and provided, further, that if the Company does not have sufficient cash or available credit to pay its debts and obligations in the ordinary course (in each case, a "Financial Situation"), then, notwithstanding anything to the contrary contained herein (including but not limited to Section 6.01), upon the determination of the Board that a Further Capital Contribution(s) is required to satisfy such debts and obligations, the Members shall be obligated to make such Further Capital Contribution(s). The Board shall send written notices to the Members calling for the Members to make any such Further Capital Contributions and any such Further Capital Contribution in the amounts called for in the notice shall be made by each Member within thirty (30) days following receipt of each such notice from the Board; provided that in the event of a Financial Situation, the Board may set

a shorter period as necessary to pay off the outstanding debts and/or obligations in the ordinary course, which period shall in no event be less than ten (10) days. Notwithstanding the foregoing, solely in the case of Further Capital Contributions required in the event of a Financial Situation, Clarke shall have an additional thirty (30) days beyond such date set by the Board in order to either make his proportionate Further Capital Contribution (or, if applicable, repay all Member(s) advance(s) as discussed below) or be subject to the consequences set forth below for failing to make such Further Capital Contribution, provided that Clarke is in compliance with his good faith obligation to provide financial data and inform the Board as required under the terms of his Employment Agreement and has not failed to timely advise the Board of a Financial Situation of which he had knowledge or notice; and provided, further, that in the event the other Member(s) is/are required to advance Clarke's proportionate share of Further Capital Contributions, Clarke shall either repay each Member, as of the date his Further Capital Contribution is required to be made hereunder (as extended for 30 days, if applicable), the total amount so advanced plus interest accruing as of the date the advance was made by such Member at a rate equal to the Member's then-current borrowing rate or, failing the repayment thereof, be subject to the consequences set forth below for failing to make such Further Capital Contribution. Any and all such Further Capital Contribution(s) shall be made in proportion to the Member's respective holdings of Shares and any failure to make any such Capital Contribution(s) shall be subject to the provisions of subsection (c) and (d) of Section 3.05 (but not subject to subsection (e) of Section 3.05); provided that, for purposes of any such adjustment under this Section 3.06, (i) the Contribution Factor shall be 1.00 and (ii) the term "Initial Company Value" shall mean the lesser of (i) four times (4X) EBITDA for the immediately preceding twelve (12) month period (excluding the portion of the then-current month in which such value is determined) (as set forth on the most recent financial statements approved by the Board) less any and all Funded Debt owed by the Company or (ii) the Net Equity Value of the Company as of the most recent year-end (as set forth on the year-end annual financial statements approved by the Board).

3.07 Guarantees.

(a) In the event that any third party proposed to be engaged by the Company for a business relationship requires a guaranty of the Company's obligations (including but not limited to obligations under third party debt financings, license agreements or vendor-related agreements), all of the Members shall be required to be co-guarantors of such obligations; provided that, in each case, Clarke shall only be required to be a co-guarantor of the portion of such obligations that exceeds the sum of (X) the Net Equity Value as of the most recent financial statements (regardless of whether such recent financial statement is a monthly, quarterly or annual financial statement) approved by the Board and (Y) \$250,000. The Board of Directors shall send written notices to each Member calling for such Member to provide the foregoing guaranty (in each case, the "Member Guaranty") along with documents necessary or required by the third party to evidence such Member Guaranty. Each Member shall provide the Member Guaranty and executed documents to the Company within ten (10) business days following receipt of such notice from the Board.

(b) If any Member fails to properly provide the entire Member Guaranty required pursuant to subsection (a) above in any instance (in each case, a "Non-Guaranteeing Member") (the amount of such deficiency in such Member Guaranty referred to hereinafter as the "Guaranty Shortfall") within the 10-day period set forth in subsection (a) above, and the third

party business relationship is nevertheless achieved without the Non-Guaranteeing Member's guaranty, then upon the date that the Member Guaranties of the Members that properly provided their Member Guaranties pursuant to subsection (a) above (each, a "Guaranteeing Member") goes into effect, a number of Common Shares shall be issued to the Guaranteeing Members in accordance with the procedure set forth in subsection (c) below; provided that no adjustment under subsection (c) below shall be made if such adjustment would result in a decrease in the proportionate ownership of any Guaranteeing Member.

(c) Upon the failure of a Non-Guaranteeing Member to provide its Member Guaranty required under this Section 3.07, a number of Common Shares shall be issued to each Guaranteeing Member so that the proportionate amount of Common Shares held by such Guaranteeing Member is equal to an amount (expressed in terms of a percentage) equal to a quotient determined by dividing:

(X) an amount equal to the sum of (i) the Guaranty Value (as defined in subsection (d) below) provided by such Guaranteeing Member plus (ii) the product determined by multiplying (A) such Guaranteeing Member's proportionate amount of Common Shares held immediately prior to the Adjustment Date (expressed in terms of a percentage) by (B) the Pre-Adjustment Value (as defined in subsection (d) below) by

(Y) the sum of (i) the Pre-Adjustment Value and (ii) the sum of all Guaranty Values for all Member Guaranties provided on the Adjustment Date.

(d) For purposes of this Section 3.07,

(i) if the Adjustment Date is on or before the one (1) year anniversary of the date hereof, then

(A) the "Guaranty Value" for each Member Guaranty shall be equal to one-half (1/2) of the total amount guaranteed by such Member Guaranty; provided that the Guaranty Value for Clarke's Member Guaranty shall be increased by an amount equal to the sum of (X) one-half (1/2) of the Net Equity Value as set forth in the most recent financial statements (regardless of whether such recent financial statement is a monthly, quarterly or annual financial statement) approved by the Board and (Y) \$125,000 (even if Clarke fails to provide any Member Guaranty hereunder); and

(B) the "Pre-Adjustment Value" shall be equal to the Net Equity Value as set forth in the most recent financial statements (regardless of whether such recent financial statement is a monthly, quarterly or annual financial statement) approved by the Board, but

(ii) if the Adjustment Date is after the one (1) year anniversary of the date hereof, then

(A) the "Guaranty Value" of each Member Guaranty shall be the amount agreed upon by the Members for each such Member Guaranty (which determination must take into account that the limitation on Clarke's obligation to guarantee as set forth in subsection (a) above). The Members shall have up to twenty (20) days from the Adjustment

Date to engage in good faith negotiations to agree upon the amounts for all Guaranty Values. If the Members are not able to agree upon all Guaranty Values within such 20-day period, then such dispute(s) shall be resolved through binding arbitration in accordance with subsection (e) below; and

(B) the "Pre-Adjustment Value" shall be equal to the lesser of (i) four times (4X) EBITDA for the immediately preceding twelve (12) month period (excluding the portion of the then-current month in which such value is determined) (as set forth on the most recent financial statements approved by the Board) less any and all Funded Debt owed by the Company or (ii) the Net Equity Value of the Company as of the most recent year-end (as set forth on the year-end annual financial statements approved by the Board).

(e) Dispute Resolution for Guaranty Values.

(i) Within ten (10) days after the expiration of such 20-day period, the Members shall designate in writing a single arbitrator to determine the Guaranty Values; provided, however, that if the Members cannot agree on an arbitrator within such 10-day period, the arbitrator shall be selected by the New York, New York office of the American Arbitration Association (the "AAA") in accordance with the AAA Commercial Arbitration Rules (the "Arbitration Rules"). The arbitrator must be knowledgeable and experienced in risk analysis and appraising the value of companies that are in the same or a substantially similar industry as, and substantially similar in size to, the Company.

(ii) Within fifteen (15) days after the designation of the arbitrator, the arbitrator and the Members shall meet, at which time the Members shall be required to set forth, in writing, the disputed issue or issues and a proposed ruling on the merits of each such issue.

(iii) The arbitrator shall set a date for a hearing, which shall be no later than thirty (30) days after the submission of written proposals pursuant to subsection (ii) above, to discuss each issue(s) identified by the Members. The Members shall have the right to be represented by counsel. Except as provided herein, the arbitration shall be governed by the Arbitration Rules.

(iv) The arbitrator shall use his or her best efforts to rule on all disputed issues within thirty (30) days after the completion of the hearing described in subsection (iii) above. The determination of the arbitrator as to the resolution of all disputes shall be binding and conclusive upon all Members. All rulings of the arbitrator shall be in writing and shall be delivered to the Members.

(v) The arbitrator shall have no authority to award indirect, special, incidental or consequential damages.

(vi) The (A) attorneys' fees of the Members in any arbitration, (B) fees of the arbitrator and (C) costs and expenses of the arbitration shall be allocated between the Members as determined by the arbitrator.

(vii) Any arbitration hereunder shall be conducted in New York, New York.

3.08 Effective Date of Adjustments.

(a) Except as prohibited by law, all adjustments under Sections 3.05, 3.06 or 3.07 shall be effective as of the Adjustment Date.

3.09 No Withdrawal of or Interest on Capital. No interest shall accrue on any Capital Contribution, and no Member shall have the right to withdraw or to be repaid any Capital Contribution or to receive any other payment in respect of its Membership Interest (including any payment contemplated by Section 18-604 of the Act, and this Section 3.06 shall expressly constitute “provision otherwise” for the purposes of Section 18-604 of the Act), except as specifically provided in this Agreement.

ARTICLE IV - DISTRIBUTIONS

4.01 Dividends. Subject to the other provisions of this Agreement:

(a) Dividends shall be paid or otherwise distributed annually to all Persons that are holders of Shares as of the record date for the payment of the relevant Dividend to the extent that (i) all personal and corporate guarantees of the Members relating to the business of the Company have been released; (ii) such distributions would not be in violation of any third party financing agreement to which the Company is a party; and (iii) the Company has working capital in excess of sum of (A) the amount of working capital necessary for the Company’s business as set forth in the Business Plan for the period covered by such Business Plan, as amended and modified from time to time as set forth in the LLC Agreement, and (B) the amount necessary to cover all third party financing and guarantees (including, but not limited to, guarantees under brand license agreements for the next twelve (12) months and Member loans), which excess cash, if any, shall be the aggregate amount of such Dividends to be distributed hereunder in accordance with subsection (b) below; provided that in no event shall distributions be made unless the Company has at least the minimum working capital necessary to satisfy any applicable bank covenants without any guarantees from the Members. The Board of Directors shall determine whether the foregoing conditions have been satisfied promptly after it has approved the year-end annual financial statements of the Company. At the time of approving the payment or other distribution of any Dividend, the Board of Directors shall specify whether such Dividend constitutes a Capital Distribution (and if the Board of Directors does not so specify, such Dividend shall not be deemed to constitute a Capital Distribution).

(b) Any Dividends declared by the Board of Directors as set forth in Section 4.01(a) shall, subject to the other provisions of this Agreement (including for the avoidance of doubt Section 4.04), be paid to holders of Common Shares in proportion to their respective holdings of such Common Shares or as may be otherwise provided herein.

4.02 Tax Distributions. Notwithstanding anything to the contrary in the foregoing provisions of Section 4.01, at least annually on or before March 31 of each fiscal year of the Company commencing after the date hereof during the term of this Agreement, the Company shall distribute to each Member, in cash, an amount equal to the excess, if any, of (A) the product of (i) the cumulative net taxable income or gain of the Company through the last day of the immediately preceding taxable year that was allocated to such Member, and (ii) the highest

combined marginal rate of federal and state income tax (taking into account the deduction of state taxes against federal taxable income) applicable to individuals subject to taxation in the highest tax rate state in which the Company has income tax nexus; over (B) the cumulative amount of distributions previously made to such Member pursuant to this Section 4.02 unless such distribution would jeopardize the viability of the Company. When such distributions are made, in the event the Company has not made quarterly distributions sufficient to avoid the imposition of a penalty, the Company shall make a further distribution in favor of the Members equal to the penalties they actually incur for failure to pay quarterly estimated tax in connection with Company income attributed to the Members. In addition, notwithstanding anything to the foregoing contained herein or in any Ancillary Agreement, in the event that any Member's interests in the Company are bought out during any fiscal year (the "Buy-out Year"), the Company shall make a distribution to such Member equal to the amount of income tax, if any, for which such Member is liable on the earnings for the Buy-out Year that were allocated to such Member but were not actually distributed to such Member, which distribution shall be made prior to the date the Member is required to pay such tax.

4.03 Distribution of Assets in Kind. Except as otherwise expressly provided herein, no Member has any right to require any distribution of any assets of the Company in kind. If any assets of the Company are distributed in kind, such assets shall, unless otherwise expressly provided herein, be distributed on the basis of their fair market value as determined by the Board of Directors. Any Member entitled to any interest in such assets shall, unless otherwise determined by the Board of Directors, receive separate assets of the Company and not an interest as a tenant-in-common or other undivided interest with any other Member.

4.04 Nature of Distributions. Except as otherwise provided herein (but notwithstanding any provisions of Section 4.01(b) to the contrary), any distribution of cash or other property of the Company (i) attributable to (x) any sale or other disposition of all or a portion of the Company's property (including the assets or securities of any one or more entities in which the Company has an equity interest) in a single transaction or a series of related transactions, other than any such sale or disposition in the ordinary course of the Company's business and not material in amount, or (y) the occurrence of a liquidity event with respect to (such as the creation of a public market for) any one or more entities in which the Company has an equity interest, (ii) determined by the Board of Directors to be attributable to a capital transaction, or (iii) specified by the Board of Directors to constitute a Capital Distribution pursuant to Section 4.01(a) (any such distribution, a "Capital Distribution"), shall be made to the Members holding Shares of various classes and series, if applicable, in the order of priority set forth in Section 9.03(b) as if such distribution was a Liquidation. Any distribution made or to be made pursuant to Section 4.02 shall be deemed for all purposes hereunder to be a distribution of profits and not a Capital Distribution.

ARTICLE V - CAPITAL ACCOUNTS; ALLOCATION OF NET PROFITS AND NET LOSSES

5.01 Capital Accounts. For each Member (and each Permitted Transferee (as defined in Section 8.01(d), if any), the Company shall establish and maintain a separate Capital Account as more fully described in Schedule C attached hereto.

5.02 Allocations. The Net Profits and Net Losses of the Company shall be allocated to the Members in accordance with Schedule C attached hereto.

ARTICLE VI - MANAGEMENT

6.01 Management of the Company Generally. The Company shall be managed in accordance with the terms hereof (including, for the avoidance of doubt, the By-laws). Each Director (and only each Director, in such person's capacity as such) is hereby designated as a "manager" of the Company within the meaning of Section 18-101(10) of the Act. The business and affairs of the Company shall be managed by or under the direction of the Company's Board of Directors, which shall have the right, power and authority to exercise all of the powers of the Company except as otherwise provided by law or this Agreement. Decisions or actions relating to the Company that are made or approved by the Board of Directors (or, with respect to matters requiring a vote, consent or other action of the Members hereunder or pursuant to non-waivable provisions of applicable law, by the Members) in accordance with this Agreement shall constitute decisions or actions by the Company and shall be binding on each Member, Director, Officer and employee of the Company. Except as may be expressly provided otherwise elsewhere in this Agreement, no Member (in its capacity as such) shall have any right, power or authority to act for or on behalf of the Company, to do any act that would be binding on the Company, or to incur any expenditures on behalf of the Company.

(a) Headquarters of the Company. Notwithstanding anything to the contrary contained herein, for so long as Clarke is the President of the Company, in the event Clarke proposes to move the headquarters of the Company (whether outside or within the metro New York area (i.e., New York, New Jersey, Connecticut and Pennsylvania)), the other Board members shall not unreasonably withhold their consent; provided that it shall be reasonable to withhold consent if the proposed move would result in material adverse tax consequences to any Member or its Affiliate(s). Materiality of adverse tax consequences shall be measured against factors related to the affected Member, including, but not limited to, net worth and income of the affected Member, and not factors related to the Company. In the event that, subsequent to moving the headquarters of the Company, there are material adverse tax consequences to a Member resulting from the presence of the Company's headquarters in the new location, then in such case, following a request from the affected Member, Clarke shall either consent to relocate the headquarters of the Company, or the affected Member shall exercise its call option pursuant to Section 2.1 of the Members Agreement, except that the purchase price shall be paid to Clarke in accordance with the terms of Section 4.1 (b) (ii), provided that the maturity date of the promissory note shall be eighteen (18) months, rather than three (3) years.

(b) Covenants. Notwithstanding the foregoing and notwithstanding anything to the contrary contained herein, but subject to Section 3.05(e), for so long as Clarke holds more than 35% of the outstanding Common Shares, the following actions shall require the unanimous consent of the Members:

(i) approving any Business Plan or any amendment or modification of the then-current Business Plan that (X) accelerates or puts off the date for any Additional Capital Contribution by more than three (3) months, or (Y) increases or decreases the amount of any Additional Capital Contribution due thereunder by more than ten percent (10%);

(ii) the Company entering into any agreement to obtain any third party financing other than the initial bank financing of the Company provided for in the initial Business Plan (the "Initial Bank Financing"), for which Initial Bank Financing all of the Members shall be deemed to have consented by signing this Agreement;

(iii) requiring any Further Capital Contributions other than the Initial and Additional Capital Contributions (subject to the exceptions set forth in Section 3.06); provided that in the event of a material adverse change in the business of the Company arising out of a Member's failure to follow the budget and Business Plan approved by the Members as provided in the LLC Agreement, then such Member shall be deemed to have provided such Member's consent for purposes of this subsection;

(iv) the Company entering into any agreement or transaction that requires a guarantee from any Member(s) other than the Initial Bank Financing; provided that neither the foregoing nor anything in this Agreement shall require unanimous consent for the Company to provide any company guarantee(s);

(v) the Company accepting a loan from any Member or providing a loan to any Member or employee;

(vi) changing Clarke's job description;

(vii) adopting an incentive plan for the Company's employees involving the issuance of Shares, or issuing any Shares under any such plan;

(viii) moving the headquarters of the Company outside of the metro New York area;

(ix) adopting a compensation plan for the Directors of the Company, or compensating Directors outside of any such plan;

(x) distributing profits beyond the amounts authorized under Section 4.02;

(xi) effecting a merger, dissolution or reorganization of the Company;

(xii) converting the Company to a corporate form; and

(xiii) the approval and/or consummation of a Company Sale;

(xiv) the admission of any additional Member(s) other than pursuant to Sections 8.01(d).

At such time as Clarke ceases to hold at least 35% of the outstanding Common Shares, all of the foregoing actions shall thenceforth require only the consent of the holders of a majority of the outstanding Common Shares.

6.02 By-laws. The Board of Directors is authorized to adopt, amend or repeal any of the By-laws with respect to the subject matter thereof. In the event the Board adopts, amends or repeals any of the By-laws in compliance herewith, the resolution or resolutions of the Board effecting such adoption, amendment or repeal shall, with no need for any further vote, consent, approval or other action by any Member or other Person, constitute an amendment of the By-laws, and a copy of such By-laws as so adopted, amended or repealed shall replace, and be appended as, Schedule A to this Agreement (and such Schedule shall thereafter constitute an integral part of this Agreement for all purposes).

6.03 Directors Bound.

(a) Each person elected to serve as a Director of the Company shall sign this Agreement, or a counterpart hereof or amendment hereto, or other writing pursuant to which such person (i) acknowledges receipt of a copy of this Agreement (including, for the avoidance of doubt, the By-laws) as amended and in effect as of the date of such writing, (ii) agrees that such person is a party to and bound by this Agreement, including the power of attorney set forth below, (iii) agrees to perform the duties of a Director hereunder, and (iv) agrees to execute and deliver such additional agreements, instruments, certificates and documents as may be necessary, appropriate or convenient to reflect the foregoing matters and the election of such person as a Director of the Company.

(b) Upon the death, resignation, removal or expiration of the term of any Director (a "Terminated Director"), (i) such Terminated Director shall have no further authority under this Agreement, (ii) such Terminated Director shall have no further obligations or rights under this Agreement (except for liabilities and rights accruing prior to the date of death, resignation, removal or expiration of such Terminated Director's term, including rights to exculpation and indemnification under Section 6.05 which relate to actions or omissions occurring during such person's service as a Director), and (iii) no writing or instrument shall be required to be executed by the Company or the Terminated Director to reflect such cessation of service, except that the Terminated Director (or such person's legal representative or attorney-in-fact, as provided in the following paragraph) shall execute and deliver any agreement, instrument, certificate or document which may be reasonably required to reflect that the Terminated Director is no longer a Director of the Company.

(c) Each person now or hereafter serving as a Director of the Company, by execution of this Agreement, an amendment hereto, or other writing acknowledging that such person is bound hereby, hereby constitutes and appoints each other person who may from time to time be serving as an Officer, and each of them acting singly, such Director's agent and attorney-in-fact for the purpose of executing and delivering any and all agreements, instruments and other documents as are necessary or appropriate to reflect that such person is no longer a Director of the Company following the death, resignation, removal or expiration of the term of such Director, which power of attorney is hereby agreed and acknowledged to be and irrevocable and shall survive the death, resignation, removal, expiration of the term, bankruptcy or incapacity of any Director until such time as the cessation of such Director's service in such capacity has been reflected by all necessary or appropriate agreements, instruments and other documents.

6.04 Interpretation of Rights and Duties of Members, Directors and Officers. To the fullest extent permitted by the Act and other applicable law, and in all instances solely to the extent not inconsistent with the specific provisions of the Certificate of Formation, the By-laws, and/or this Agreement, as the case may be, it is the intention of the parties that:

(a) The Members in their respective capacities as such shall have the rights, powers, authority, duties and responsibilities (if any) of stockholders of a for-profit stock corporation organized and existing under the DGCL to which provisions of Subchapter XIV of the DGCL, 8 Del. Ch. §§ 341 *ff.*, are not applicable, except that (i) the Members shall not have any of the rights, powers, authority, duties or responsibilities (if any) of such stockholders under Section 203 or Section 262 of the DGCL, (ii) the provisions of Section 154 of the DGCL, the proviso to Section 160(a) of the DGCL (including clauses (1), (2) and (3) of such proviso), the limitations on the payment of dividends set forth in Section 170(a) of the DGCL, and the provisions of Section 173 of the DGCL shall not be applicable to the Company, and (iii) notwithstanding anything to the contrary contained in this Agreement (except as set forth in Section 6.01 of this Agreement), in the DGCL or in the Act, any and all matters requiring the approval or consent of the Members may be approved or consented to by a Member or Members holding a majority of all outstanding Shares.

(b) The Directors in their respective capacities as such shall have the rights, powers, authority, duties and responsibilities of directors of, and the Board of Directors shall act and function as, a board of directors of a for-profit stock corporation organized and existing under the DGCL to which provisions of Subchapter XIV of the DGCL, 8 Del. Ch. §§ 341 *ff.*, are not applicable as such rights, powers, authority, duties and responsibilities are interpreted and defined by decisions of state and federal courts having jurisdiction to interpret and define the same, except that (i) to the maximum extent that reduction or elimination of such duties is permitted by Section 102(b)(7) of the DGCL, such duties shall be so reduced and/or eliminated for the Directors of the Company, (ii) the provisions of Section 7.01 shall, to the maximum extent necessary to give effect thereto, be construed as a “renunciation” of interest or expectancy in, or in being offered an opportunity to participate in, business opportunities presented to the Company contemplated by Section 122(17) of the DGCL, (iii) any act of a Director relating to or affecting an acquisition or a potential acquisition of the Company shall not be subject to a higher level of duty or greater scrutiny than is applied to any other act of a Director, and (iv) any action that may be taken by the Board of Directors may be taken by a duly authorized committee of the Board of Directors. Subject to, but without limiting generality of, the foregoing, (X) all Directors shall, with respect to their actions and conduct in their respective capacities as such, be subject to the fiduciary duties applicable to directors of a for-profit stock corporation organized and existing under the DGCL, (Y) the Board of Directors shall act only collectively, and no Director acting individually in such person’s capacity as such shall have any right, power or authority to bind the Company (except that a Director who is also an Officer may bind the Company in such person’s capacity as an Officer if such person is authorized to do so in such capacity) and (Z) the Board of Directors shall have no right, power or authority to cause the Company to enter into any transaction or to take any other action which would, if the Company were a for-profit stock corporation organized and existing under the DGCL, require a vote or other approval of the stockholders of such corporation.

(c) Those Officers with titles expressly referenced in the DGCL or customarily used in corporations organized under the DGCL, in their respective capacities as such, shall, unless otherwise provided herein or determined by the Board, have the statutory and customary rights, powers, authority, duties and responsibilities of officers with similar titles of a for-profit stock corporation organized and existing under the DGCL. Without limiting the generality of the foregoing, without the approval of the Board of Directors or, to the extent required hereby (including, for the avoidance of doubt, the By-laws) or by non-waivable provisions of applicable law, of the Members, no Officer shall have any right, power or authority to cause the Company to enter into any transaction or to take any other action which would, if the Company were a for-profit stock corporation organized and existing under the DGCL, require a vote or other approval of the board of directors or the stockholders of such corporation. The Members and the Board of Directors hereby delegate to each Officer such rights, powers and authority with respect to the management of the business and affairs of the Company as may be necessary or advisable to effect the provisions of this Section 6.04(c).

6.05 Indemnification and Exculpation. Each person who is or was, or has agreed to become, a Director or Officer of the Company, or is or was serving, or has agreed to serve, at the request of the Company, as a director, officer, manager or trustee of, or in a similar capacity with, a corporation, partnership, another limited liability company, joint venture, trust or other enterprise (including any employee benefit plan) (each such person being referred to hereafter as an “Indemnitee”) shall have no liability to the Company or to any Member or Director for any loss suffered by the Company which arises out of any action or inaction by such Indemnified Person with respect to the Company if such Indemnified Person so acted or omitted to act in accordance with applicable standards of conduct specified in Sections 6.04(b), 6.04(c) and 7.01. In addition, the Company shall, to the fullest extent permitted by law, indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was, or has agreed to become, a director or officer of the Company, or is or was serving, or has agreed to serve, at the request of the Company, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another company, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to hereafter as an “Indemnitee”), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of an Indemnitee in connection with such action, suit or proceeding and any appeal therefrom; **provided** that such Indemnitee must have acted or omitted to act in accordance with applicable standards of conduct specified in Sections 6.04(b), 6.04(c) and 7.01.

(a) As a condition precedent to the Indemnitee’s right to be indemnified, the Indemnitee must notify the Company in writing as soon as practicable of any action, suit, proceeding or investigation involving him or her for which indemnity hereunder will or could be sought. With respect to any action, suit, proceeding or investigation of which the Company is so notified, the Company will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to the Indemnitee.

(b) In the event that the Company does not assume the defense of any action, suit, proceeding or investigation of which the Company receives notice under this Section 6.05, the Company shall pay in advance of the final disposition of such matter any expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal action, suit, proceeding or investigation or any appeal therefrom; provided, however, that the payment of such expenses incurred by an Indemnitee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of the Indemnitee to repay all amounts so advanced in the event that it shall ultimately be determined that the Indemnitee is not entitled to be indemnified by the Company as authorized in this Section 6.05, which undertaking shall be accepted without reference to the financial ability of the Indemnitee to make such repayment; and further provided that no such advancement of expenses shall be made if it is determined that (i) the Indemnitee did not act (A) in good faith and in a manner the Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Company, or (B) in the good faith reliance on the provisions of this Agreement, or (ii) with respect to any criminal action or proceeding, the Indemnitee had reasonable cause to believe his or her conduct was unlawful.

(c) The Company shall not indemnify an Indemnitee seeking indemnification in connection with a proceeding (or part thereof) initiated by such Indemnitee unless the initiation thereof was approved by the Board of Directors. In addition, the Company shall not indemnify an Indemnitee to the extent such Indemnitee is reimbursed from the proceeds of insurance, and in the event the Company makes any indemnification payments to an Indemnitee and such Indemnitee is also reimbursed therefor from the proceeds of insurance, such Indemnitee shall promptly refund such indemnification payments to the Company to the extent of such insurance reimbursement.

(d) All determinations hereunder as to the entitlement of an Indemnitee to indemnification or advancement of expenses shall be made in each instance by (i) a majority (or sole) vote of the Director(s) consisting of person(s) who are not at that time party (or parties) to the action, suit or proceeding in question ("Disinterested Directors"), whether or not a quorum, (ii) a majority vote of a quorum of the outstanding Shares of all classes entitled to vote for Directors, voting as a single class, which quorum shall consist of Member(s) who is (are) not at that time party (or parties) to the action, suit or proceeding in question, (iii) independent legal counsel (who may, to the extent permitted by law, be regular legal counsel to the Company), or (iv) a court of competent jurisdiction.

(e) The indemnification rights provided in this Section 6.05 (i) shall not be deemed exclusive of any other rights to which an Indemnitee may be entitled under any law, agreement or vote of Members or Disinterested Directors or otherwise, and (ii) shall inure to the benefit of the heirs, executors and administrators of the Indemnitees. The Company may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the Company or other persons serving the Company and such rights may be equivalent to, or greater or less than, those set forth in this Section 6.05. Any indemnification to be provided hereunder may be provided although the person to be indemnified is no longer a Director or Officer.

6.06 Incentive Equity Compensation. Without limiting the generality of the other provisions of this Article VI or of the By-laws, in order to advance the interests of the Members by enhancing the Company's ability to attract, retain and motivate persons who make (or are expected to make) important contributions to the Company by providing such persons with equity ownership opportunities and performance-based incentives and thereby better aligning the interests of such persons with those of the Members, the Board of Directors shall have the right, power and authority, with no need for any further vote, consent, approval or other action of any Member, to establish one or more equity compensation plans of the Company providing for the issuance of Common Shares of one or more series, if applicable (or options or other rights to acquire the same) to such persons, on such terms and conditions, and in such amounts (subject to the last sentence of Section 3.02(a)), as the Board of Directors may determine to be necessary or advisable.

6.07 Company Business Plan. The business plan attached hereto as Exhibit 6.07 is hereby approved and adopted as the initial business plan for the Company (as amended from time to time, the "Business Plan").

ARTICLE VII - FREEDOM OF ACTION; NOTICE OF CERTAIN ACTIONS

7.01 General. Subject to Section 7.02, each Director and its Affiliates, and each Member and its Affiliates, and their respective employees, officers, directors, stockholders, members, managers, trustees, general and limited partners, agents and representatives (the Directors, the Members and each such other person being hereinafter referred to, collectively, as the "Permitted Persons") may have other business interests and may engage in any business or trade, profession, employment or activity whatsoever (regardless of whether any such activity competes, directly or indirectly, with the Company's business or activities), for its own account, or in partnership with, or as an employee, officer, director, stockholder, member, manager, trustee, general or limited partner, agent or representative of, any other person, and no Permitted Person shall be required to devote its entire time (business or otherwise), or any particular portion of its time (business or otherwise) to the business of the Company. Without limiting the generality of the foregoing, each Permitted Person (i) may engage in the same or similar activities or lines of business as the Company or develop or market any products or services that compete, directly or indirectly, with those of the Company, (ii) may invest or own any interest in, or develop a business relationship with, any person engaged in the same or similar activities or lines of business as, or otherwise in competition with, the Company and (iii) may do business with any client or customer of the Company. Neither the Company nor any Member nor Director, nor any Affiliate of any thereof, by virtue of this Agreement, shall have any rights in and to any such independent venture or the income or profits derived therefrom, regardless of whether or not such venture was initially presented to a Permitted Person as a direct or indirect result of its relationship with the Company. No Permitted Person shall have any obligation hereunder to present any business opportunity to the Company, even if the opportunity is one that the Company might reasonably have pursued or had the ability or desire to pursue, in each case, if granted the opportunity to do so, and no Permitted Person shall be liable to the Company or any Member (or any Affiliate thereof) for breach of any fiduciary or other duty relating to the Company (whether imposed by applicable law or otherwise), by reason of the fact that the Permitted Person pursues or acquires such business opportunity, directs such business

opportunity to another person or fails to present such business opportunity, or information regarding such business opportunity, to the Company.

7.02 Priority of Agreements. Notwithstanding anything to the contrary set forth in Section 7.01 or elsewhere in this Agreement, the provisions of Section 7.01 shall not supersede, override or otherwise have any effect on (i) the terms of any other agreement between the relevant Permitted Person (and/or any of its Affiliates) and the Company (including but not limited to the Employment Agreement) or (ii) fiduciary or other duties to which the relevant Permitted Person may be subject in another capacity (such as his or her capacity as an Officer, if any).

7.03 Contracts with Members, Directors and Officers. The Company may engage in business with, or enter into one or more agreements, leases, contracts or other arrangements for the furnishing to or by the Company of goods, services, technology or space with, any Member, Director or Officer, or an Affiliate of any Member, Director or Officer, and may pay compensation in connection with such business, goods, services, technology or space, provided in each case the amounts payable thereunder are reasonably comparable to those which would be payable to unaffiliated Persons under similar arrangements, and if the Board of Directors determines in good faith that such amounts are so comparable, such determination shall be final and binding on the Company and each Member, Director and Officer. Without limiting the foregoing, no contract or transaction between the Company and one or more of the Directors or Officers, or between the Company and any other limited liability company, corporation, partnership, association, or other organization in which one or more of the Directors or Officers are directors or officers (or serve in a similar capacity), or have a financial interest, shall be void or voidable solely for this reason, or solely because the Director or Officer is present at or participates in the meeting of the Board of Directors or a committee of the Board of Directors at which the contract or transaction is authorized or solely because any such Director's or Officer's votes are counted for such purpose, if:

(a) The material facts as to the Director's or Officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the Disinterested Directors (or the sole Disinterested Director, if only one), even though the Disinterested Director(s) be less than a quorum;

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

(c) The contract or transaction is fair as to the Company as of the time it is authorized, approved or ratified, by the Board of Directors, a committee of the Board of Directors, or the Members. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

7.04 Notice of Certain Events Relating to the Company. To the extent that any Director becomes aware of any substantial inquiries, approaches or offers relating to a possible sale of all or a controlling interest in the Company or all or substantially all of the Company's assets (a "Company Offer"), such Director shall promptly notify the rest of the Board; provided that a sale of all or a controlling interest in any Member (whether by merger, consolidation, stock sale, asset sale or otherwise) shall not constitute a Company Offer for purposes of this Section.

ARTICLE VIII - TRANSFERS OF SHARES

8.01 General Restrictions on Transfer.

(a) Except as otherwise provided elsewhere in this Agreement, no Member may Transfer all or any part of the Shares held by it to any Person except in compliance with the provisions of this Article VIII, the Members Agreement and the Right of First Refusal Agreement. Any Transfer or attempted Transfer in contravention of the foregoing sentence or any other provision of this Agreement or any provision of the Right of First Refusal Agreement shall be null and void *ab initio* and ineffective to transfer any Shares, or any interest therein, and shall not bind, or be recognized by, or on the books of, the Company, and any Transferee in such transaction shall not be or be treated as or deemed to be a Member (or an assignee within the meaning of Section 18-702 of the Act) for any purpose.

(b) The Company shall not be required to recognize any Transfer of Shares until the instrument conveying such Shares, in form and substance reasonably satisfactory to the Company, has been delivered to the Company at its principal office for recordation on the books of the Company. The Company shall be entitled to treat the record owner of any Shares as the absolute owner thereof in all respects, and shall incur no liability for distributions of cash or other property made in good faith to such owner until such time as the instrument conveying such Shares, in form and substance reasonably satisfactory to the Company, has been received and accepted by the Company and recorded on the books of the Company.

(c) Notwithstanding anything to the contrary contained in this Agreement, no Transfer of Shares by a Member shall be made without prior approval thereof by the Board of Directors if the Company is advised by its counsel that such assignment (i) may not be effected without registration under the Securities Act, (ii) would result in the violation of any applicable state securities laws, (iii) would require the Company to register as an investment company under the Investment Company Act or modify the exemption from such registration upon which the Company has chosen to rely, (iv) would require the Company to register as an investment adviser under state or federal securities laws, (v) would result in a termination of the Company under Section 708 of the Code or (vi) would result in the treatment of the Company as an association taxable as a corporation or as a "publicly-traded limited partnership" for tax purposes.

(d) Permitted Transfers. Notwithstanding subsection (a) above (but subject to all the other terms and conditions hereof (including but not limited to subsections (b) and (c) above and the rest of this Article VIII), any Member may Transfer Shares to such Member's Immediate Family, if an individual, or to an Affiliate, if other than an individual (in each case, a "Permitted Transferee"); provided that each such Transfer shall be subject to Section 8.02 and

any restrictions set forth in any Ancillary Document (excluding the Right of First Refusal Agreement).

8.02 **Agreement to Be Bound.** Notwithstanding anything to the contrary contained in this Agreement, no Member may Transfer any Shares to any a Permitted Transferee unless such Permitted Transferee agrees in writing to be bound by the terms of this Agreement and the Ancillary Documents, if applicable, to the same extent, and in the same manner, as the Member proposing to Transfer such Shares, which writing shall be reasonably satisfactory in form and substance to the Company and shall include the address of such Permitted Transferee to which notices given pursuant to this Agreement may be sent.

8.03 **Additional Members.** Upon any Transfer to a Permitted Transferee, the Permitted Transferee shall be entitled to receive the Dividends and Capital Distributions and allocations of income, gain, loss, deduction, credit or similar items to which the transferring Member would be entitled with respect to such Shares, but shall not be entitled to exercise any of the other rights of a Member with respect to the transferring Member's Shares, including, without limitation, the right to vote, unless and until such Permitted Transferee is admitted to the Company as a Member, pursuant to the affirmative vote of the Members.

8.04 **Share Register.** In connection with any Transfer of Shares made in accordance with this **Article VIII**, the Share Register shall be amended to reflect such Transfer (and, to the extent necessary, the admission of each additional Member (if any) to the Company), and any such amendment may be effected by any one or more Officers without any vote, consent, approval or other action of the Board of Directors or the Members.

ARTICLE IX - DISSOLUTION AND LIQUIDATION

9.01 **Events Causing Dissolution.** The Company shall be dissolved and its affairs wound up solely upon:

(a) Any transaction authorized by or subject to Section 18-209 of the Act as a result of which the Company is not the surviving entity;

(b) Approval of the dissolution of the Company by the Board of Directors and the Members acting in accordance with the By-laws and the provisions of this Agreement;

(c) The time at which there are no Members, unless the Company is continued in accordance with the Act; or

(d) The entry of a decree of judicial dissolution under Section 18-802 of the Act, or the occurrence of any other event which, pursuant to any non-waivable provision of the Act or other applicable law, causes dissolution of the Company.

For the avoidance of doubt, the Company shall not be dissolved upon the death, bankruptcy or dissolution of any Member or the occurrence of any other event that terminates the continued membership of any Member under the Act, and no Member shall have any right or power to cause dissolution of the Company by reason of the occurrence of any such event.

9.02 Procedures on Dissolution. Dissolution of the Company shall be effective on the day on which occurs the event giving rise to the dissolution, but the existence of the Company shall not terminate until the Certificate of Formation shall have been cancelled and the assets of the Company shall have been distributed as provided herein. Notwithstanding the dissolution of the Company, prior to the termination of the existence of the Company, as set forth above, the business of the Company and the affairs of the Members, as such, shall continue to be governed by this Agreement. One or more Persons appointed as “Liquidator” by the Board of Directors shall liquidate the assets of the Company, apply and distribute the proceeds thereof as contemplated by this Agreement and cause the cancellation of the Certificate of Formation.

9.03 Distributions Upon Liquidation.

(a) Upon dissolution of the Company, the Liquidator shall satisfy liabilities owing to creditors, including creating such reserves as may be required by non-waivable provisions of Section 18-804(b) of the Act or as the Liquidator otherwise deems reasonably necessary for any contingent liabilities or obligations of the Company. Said reserves may be paid over by the Liquidator to a bank, to be held in escrow for the purpose of complying with any such provisions of Section 18-804(b) of the Act or paying any such contingent liabilities or obligations and, at the expiration of such period as may be required by non-waivable provisions of Section 18-804(b) of the Act or as the Liquidator may deem advisable, such reserves shall be distributed to the Members or their assigns in the manner set forth in Section 9.03(b).

(b) After satisfying such liabilities (including by and through the creation of reserves), the Liquidator shall cause the remaining net assets of the Company to be distributed to all Members holding Common Shares as of the record date for the making of such liquidating distribution, except to the extent that the right of Common Shares of a particular series, if applicable, to receive distributions pursuant to this Section 9.03(b) is expressly limited or eliminated elsewhere herein, in proportion to their respective holdings of Common Shares or as may be otherwise provided herein.

(c) In the event that any part of such net assets consists of notes or accounts receivable or other noncash assets, the Liquidator may take whatever steps it deems appropriate to convert such assets into cash or into any other form which would facilitate the distribution thereof. If any assets of the Company are to be distributed in kind, such assets shall be distributed on the basis of their fair market value net of any liabilities.

ARTICLE X - CONVERSION TO CORPORATE FORM

10.01 Conversion to Corporate Form. Notwithstanding anything to the contrary set forth in this Agreement, and without any need for consent or approval of any Member, the Board of Directors may, at any time upon not fewer than 30 days’ prior written notice given to each Member, cause the Company to convert into a corporation, by such means (including, without limitation, filing of appropriate certificates of conversion and incorporation; merger or consolidation or other business combination; transfer of all or a part of the Company’s assets; and/or exchange of Shares for the securities of such corporation) as the Board of Directors may reasonably select. The Board of Directors shall provide that upon such conversion, each Share of each class and series, if applicable, shall be exchanged for, or otherwise converted into, a

security of such corporation (i) having voting rights and powers and economic interest (including liquidation and dividend preferences and similar rights, if any, but excluding any rights set forth on Schedule C or otherwise specific to ownership of an interest in an entity treated as a partnership for federal income tax purposes) substantially equivalent in all material respects, to the maximum extent determined by the Board in good faith to be reasonably practicable, to the voting rights and powers and economic interest (including liquidation and dividend preferences and similar rights, but excluding any rights set forth on Schedule C or otherwise specific to ownership of an interest in an entity treated as a partnership for federal income tax purposes) of the Shares of such class and series, if applicable, being so exchanged or otherwise converted and (ii) having such other terms and conditions (including mandatory and optional conversion provisions) as are, in the judgment of the Board of Directors, customarily present in corresponding or similar securities typically used in venture capital transactions.

ARTICLE XI - MISCELLANEOUS PROVISIONS

11.01 Notices. Except for notices of meetings of Directors and Members, notice of which shall be given in the manner provided in the By-laws, any and all notices, requests, demands and other communications made in connection with this Agreement shall be in writing and shall be delivered personally, or sent by certified mail, return receipt requested, or by Federal Express or similar overnight service, prepaid recorded delivery, and shall be deemed to have been duly given when so delivered personally, or, if mailed or sent by overnight courier, upon actual receipt or documented refusal of delivery. In order to be effective, all such notices shall be addressed, if to the Company or any Officer, at the address of the Company's principal office as set forth in the books and records of the Company (with copies to such Officers, employees, agents or representatives of the Company as the Company may designate in writing by notice to the Members and Directors), and if to a Member or Director, at the last address of record on the Company books or, in each case, to such other address for such Person as shall be hereafter specified by a like notice.

11.02 Principles of Interpretation. In this Agreement and each Ancillary Document, unless otherwise provided herein or therein:

- (a) words denoting the singular include the plural and vice versa;
- (b) words denoting a gender include all genders;
- (c) all exhibits, schedules and other attachments to the document in which the reference thereto is contained shall, unless the context otherwise requires, constitute an integral part of such document for all purposes;
- (d) references to a particular part, clause, section, paragraph, article, exhibit, schedule or other attachment shall be a reference to a part, clause, section, paragraph, or article of, or an exhibit, schedule or other attachment to, the document in which the reference is contained;
- (e) a reference to any statute, regulation, proclamation, amendment, ordinance or law includes all statutes, regulations, proclamations, amendments, ordinances or laws varying, consolidating or replacing the same from time to time, and a reference to a statute includes all

regulations, policies, protocols, codes, proclamations and ordinances issued or otherwise applicable under that statute unless, in any such case, otherwise expressly provided in any such statute or in the document in which the reference is contained;

(f) a reference to a particular section, paragraph or other part of a particular statute shall be deemed to be a reference to any other section, paragraph or other part substituted therefor from time to time;

(g) a definition of or reference to any document, instrument or agreement includes an amendment or supplement to, or restatement, replacement, modification or novation of, any such document, instrument or agreement unless otherwise specified in such definition or in the context in which such reference is used;

(h) a reference to any Person includes such Person's successors and permitted assigns in that designated capacity;

(i) any reference to "days" shall mean calendar days unless "business days" are expressly specified (in which case a "business day" shall mean any day, other than a Saturday or a Sunday, on which banking institutions located in New York, New York are required or permitted by law to be open for the transaction of banking business);

(j) if the date as of which any right, option or election is exercisable, or the date on which any notice is required or permitted to be given, or the date upon which any amount is due and payable, is stated to be on a date or day that is not a business day, such right, option or election may be exercised, such notice may be given, and such amount shall be deemed due and payable, on the next succeeding business day with the same effect as if the same was exercised, given or made on such date or day (without, in the case of any such payment, the payment or accrual of any interest or other late payment or charge, provided such payment is made on such next succeeding business day);

(k) words such as "hereunder", "hereto", "hereof" and "herein" and other words of similar import shall, unless the context requires otherwise, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof; and

(l) a reference to "including" means including without limiting the generality of any description preceding such term, and for purposes hereof the rule of *ejusdem generis* shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned.

11.03 Binding Provisions. Subject to the restrictions on Transfers set forth and referenced herein, the covenants and agreements contained herein, and the rights and obligations of the parties hereunder, (i) shall be binding upon, and inure to the benefit of, the parties hereto, their heirs, legal representatives, successors and permitted assigns, and (ii) may not be assigned except in connection with, and to the extent relating to, a Transfer of one or more Shares permitted hereunder.

11.04 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Delaware, including the Act, as interpreted by the courts of the State of Delaware, notwithstanding any rules regarding choice of law to the contrary.

11.05 Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original, and all of which together shall constitute one and the same document. This Agreement may be executed by facsimile signatures.

11.06 Separability of Provisions. Each provision of this Agreement shall be considered separable. To the extent that any provision of this Agreement is prohibited or ineffective under the Act or other applicable law, this Agreement shall be considered amended to the minimum extent possible in order to make the Agreement effective under the Act or such other applicable law (and, if the Act or such other applicable law is subsequently amended or interpreted in such manner as to make effective any provision of this Agreement that was formerly rendered invalid, such provision shall automatically be considered to be valid from the effective date of such amendment or interpretation).

11.07 Section Titles. Article and Section titles are included herein for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

11.08 Amendments. Except as otherwise specifically provided in this Agreement, this Agreement may be amended or modified only upon approval of the Board of Directors and the Members acting in accordance with the By-laws; provided that:

(a) if any provision of this Agreement or any Ancillary Document requires for the approval or consent of, or grants rights to or imposes obligations on, specified Members or Directors (whether one or more), or of a specified number of Members or Directors or of Members holding a specified percentage of the total Shares outstanding and entitled to vote with respect to any matter, or of outstanding Shares of a particular class or series, if applicable, then any amendment effected pursuant to such provision, and any amendment to (or affecting) such provision, shall require the approval or consent of the specified Members or Directors (whether one or more) or of at least such specified number of Members or Directors or of Members holding at least such specified percentage of Shares outstanding and entitled to vote or of outstanding Shares of the relevant class and/or series, as the case may be;

(c) No amendment or repeal of Section 6.05 shall affect or diminish in any way the rights of any Indemnitee to indemnification under the provisions of Section 6.05 with respect to any action, suit, proceeding or investigation arising out of or relating to any actions, transactions or facts occurring prior to the final adoption of such amendment or repeal; and

(d) Notwithstanding any other provision of this Agreement (including the foregoing provisions of this Section 11.08), the Board of Directors may modify the provisions of Schedule C of this Agreement and related defined terms if the Company is advised at any time by its legal counsel that the allocations of Net Profits and Net Losses and similar items provided for in Schedule C are unlikely to be respected for federal income tax purposes, either because of the promulgation and adoption of Treasury Regulations under Code Section 704 or other

developments in applicable law. In making any such amendment, the Board of Directors shall use its reasonable best efforts to effect as little change in the economic and tax arrangements among the Members as it shall determine in its sole discretion to be necessary to provide for allocations of Net Profits and Net Losses and similar items to the Members which it believes will be respected for federal income tax purposes. Any amendments made by the Board of Directors pursuant to this Section 11.08(d) shall be deemed to be made in compliance with and pursuant to the fiduciary obligations of the Directors to the Company and the Members, and no such amendment shall give rise to any claim or cause of action by any Member.

11.09 Third Party Beneficiaries. Except to the extent provided in any separate written agreement between the Company and another Person, the provisions of this Agreement are not intended to be for the benefit of any creditor or other Person (other than a Member or Director in its capacity as such) to whom any debts, liabilities or obligations are owed by (or who otherwise has any claim against) the Company or any of the Members. Moreover, notwithstanding anything contained in this Agreement (but subject to the immediately following sentence), no such creditor or other Person shall obtain any rights under this Agreement or shall, by reason of this Agreement, make any claim in respect of any debt, liability or obligation (or otherwise) against the Company or any Member or Director. Notwithstanding the foregoing, each Indemnitee that is not a party to this Agreement shall be deemed to be an express third party beneficiary of this Agreement for all purposes relating to such Person's indemnification and exculpation rights hereunder.

11.10 Entire Agreement. This Agreement and the Ancillary Documents embody the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter.

11.11 Waiver of Partition. Each Member and Director agrees that irreparable damage would be done to the Company if any Member or Director brought an action in court to partition the assets or properties of the Company. Accordingly, each Member and Director agrees that such Person shall not, either directly or indirectly, take any action to require partition or appraisal of the Company or of any of the assets or properties of the Company, and notwithstanding any provisions of this Agreement to the contrary, each Member and Director (and such Person's successors and assigns) accepts the provisions of the Agreement as such person's sole entitlement on termination, dissolution and/or liquidation of the Company and hereby irrevocably waives any and all right to maintain any action for partition or to compel any sale or other liquidation with respect to such Person's interest, in or with respect to, any assets or properties of the Company.

[Remainder of This Page Intentionally Left Blank]

IN WITNESS THEREOF, the Company, the Members and the Directors have executed this Agreement as of the date first above written.

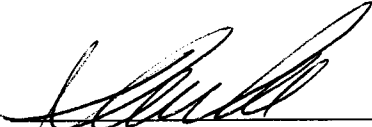
MEMBERS:

ROTHANDBERG, INC.

By: AL Berg

Name: AL Berg

Title: Senior Vice President

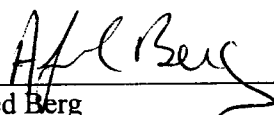


Steve Clarke

Address: 152 KAKECUT RD

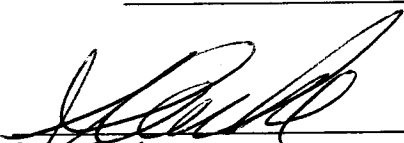
Kinnebu, N.J

DIRECTORS:



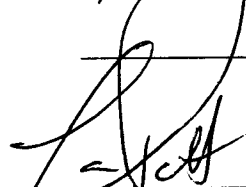
Alfred Berg

Address: 9 Elmhorst Dr.
Old Westbury, N.Y. 11568



Steve Clarke

Address: 152 KAKEOUT RD
Kennebunk, N.J.



Laurence Roth

Address: 14 Foxwood Road
Kings Point, NY 11024

SCHEDULE A

By-laws of the Company

[See attached.]

SCHEDULE A

BY-LAWS

OF

ALLURE EYEWEAR L.L.C.

BY-LAWS
OF
ALLURE EYEWEAR L.L.C.

ARTICLE I
DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings given them in the LLC Agreement.

ARTICLE II
MEMBERS

2.1 **Place of Meetings.** All meetings of Members shall be held at such place as may be designated from time to time by the Board of Directors, the Chairman of the Board or the President or, if not so designated, at the principal office of the Company. The Board of Directors may, in its sole discretion, determine that a meeting shall not be held at any geographical place, but shall instead be held solely by means of remote communication in a manner determined by the Board.

2.2 **Annual Meeting.** Except for the initial Directors designated in the LLC Agreement, unless Directors are elected by written consent of the Members in lieu of an annual meeting, there shall be held an annual meeting of Members for the election of Directors and for the transaction of such other business as may properly be brought before the meeting. Such annual meeting shall be held on a date and at a time designated by the Board of Directors, the Chairman of the Board or the President (which date shall not be a legal holiday in the place where the meeting is to be held). If no annual meeting is held in accordance with the foregoing provisions, a special meeting may be held in lieu of the annual meeting, and any action taken at that special meeting shall have the same effect as if it had been taken at the annual meeting, and in such case all references in these By-laws to the annual meeting of the Members shall be deemed to refer to such special meeting.

2.3 **Special Meetings.** Special meetings of Members for any purpose or purposes may be called at any time by the Board of Directors, the Chairman of the Board or the President. Business transacted at any special meeting of Members shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

2.4 **Notice of Meetings.** Except as otherwise provided by non-waivable provisions of applicable law, written notice of each meeting of Members, whether annual or special, shall be

given not less than 10 nor more than 60 days before the date of the meeting to each Member entitled to vote at such meeting. Without limiting the manner by which notice otherwise may be given to Members, any notice shall be effective if given by a form of electronic transmission consented to (in a manner consistent with the DGCL) by the Member to whom the notice is given. The notices of all meetings shall state the place, if any, date and time of the meeting and the means of remote communications, if any, by which Members and proxy holders may be deemed to be present in person and vote at such meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called. If notice is given by mail, such notice is given when deposited in the United States mail, postage prepaid, directed to the Member at such Member's address as it appears on the records of the Company. If notice is given by electronic transmission, such notice shall be deemed given at the time specified in Section 232 of the DGCL.

2.5 Voting List. The Secretary shall prepare, at least 10 days before every meeting of Members, a complete list of the Members entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each Member and the number (and class and/or series, if applicable) of Shares registered in the name of each Member. Such list shall be open to the examination of any Member, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Company. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any Member who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any Member during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

2.6 Quorum. Except as otherwise provided by non-waivable provisions of applicable law, the Certificate of Formation, the LLC Agreement or these By-laws, the holders of a majority of the Shares outstanding and entitled to vote at the meeting, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum for the transaction of business. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

2.7 Adjournments. Any meeting of Members may be adjourned from time to time to any other time and to any other place, if any, at which a meeting of Members may be held under these By-laws by the Members present or represented at the meeting and entitled to vote, although less than a quorum, or, if no Member is present, by any Officer entitled to preside at or to act as secretary of such meeting. It shall not be necessary to notify any Member of any adjournment of less than 30 days if the time and place, if any, of the adjourned meeting, and the means of remote communication, if any, by which the Members and proxyholders may be

deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which adjournment is taken, unless after the adjournment a new record date is fixed for the adjourned meeting. At the adjourned meeting, the Company may transact any business which might have been transacted at the original meeting.

2.8 Voting and Proxies.

(a) Each Member holding Shares entitled to vote on the relevant matter(s) of record at a meeting shall be entitled to vote at a meeting of Members, or to express consent or dissent to the Company action in writing without a meeting. On any matter presented to the Members for their action or consideration at any meeting of Members (or by written action of Members in lieu of meeting), each holder of outstanding Shares shall, unless otherwise provided in the LLC Agreement, be entitled to one vote for each Share held by such Member.

(b) A Member holding Shares entitled to vote on the relevant matter(s) at a meeting may vote or express consent or dissent in person or may authorize another person or persons to vote or act for such Member by written proxy executed or transmitted in a manner permitted by the DGCL by the Member or such Member's authorized agent and delivered (including by such electronic transmission) to the Secretary of the Company. No such proxy shall be voted or acted upon after three (3) years from the date of its execution, unless the proxy expressly provides for a longer period.

2.9 Action at Meeting. When a quorum is present at any meeting, any matter other than the election of Directors to be voted upon by the Members at such meeting shall be decided by the vote of the holders of Shares having a majority of the votes cast by the holders of all of the Shares present or represented and voting on such matter, except when a different vote is required by non-waivable provisions of applicable law, the Certificate of Formation, the LLC Agreement or these By-Laws. When a quorum is present at any meeting, any election by the Members of Directors shall be determined by a plurality of the votes cast on the election except when a different vote is required by the LLC Agreement.

2.10 Conduct of Meetings.

(a) Chairman of Meeting. Meetings of the Members shall be presided over by the Chairman of the Board, if any, or in the Chairman's absence by the Vice Chairman of the Board, if any, or in the Vice Chairman's absence by the President, or in the President's absence by a Vice President, or in the absence of all of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman chosen by vote of the Members at the meeting. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

(b) Rules, Regulations and Procedures. The Board of Directors may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of the Members

as it shall deem appropriate, including such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of Members and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board of Directors, the chairman of any meeting of Members shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to Members of record of the Company, their duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of Members shall not be required to be held in accordance with the rules of parliamentary procedure.

2.11 Action without Meeting.

(a) Taking of Action by Consent. Any action required or permitted to be taken at any annual or special meeting of Members (including an action to elect one or more Directors) may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the Members holding not less than the minimum aggregate number of Shares outstanding and entitled to vote with respect to such action that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote on such action were present and voted. Prompt notice of the taking of an action without a meeting by less than unanimous written consent shall be given to those Members entitled to vote thereon who have not consented in writing; provided that failure to provide such notice promptly shall not invalidate or otherwise affect the validity of such action.

(b) Electronic Transmission of Consents. A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a Member or proxyholder, or by a person or persons authorized to act for a Member or proxyholder, shall be deemed to be written, signed and dated for the purposes of this Section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the Company can determine (A) that the telegram, cablegram or other electronic transmission was transmitted by the Member or proxyholder or by a person or persons authorized to act for the Member or proxyholder and (B) the date on which such Member or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Company

by delivery to its registered office in the State of Delaware, its principal place of business or an Officer or agent of the Company having custody of the book in which proceedings of meetings of Members are recorded. Delivery made to the Company's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the Company or to an Officer or agent of the Company having custody of the book in which proceedings of meetings of Members are recorded if, to the extent and in the manner provided by resolution of the Board of Directors. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

2.12 Record Date. The Board of Directors may fix in advance a date as a record date for the determination of the Members entitled to notice of or to vote at any meeting of Members or to express consent (or dissent) to Company action without a meeting, or entitled to receive payment of any Dividend or other distribution, or allotment of any rights in respect of any change, conversion or exchange of Shares, or for the purpose of any other lawful action. Such record date shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 10 days after the date of adoption of a record date for a consent without a meeting, nor more than 60 days prior to any other action to which such record date relates.

If no record date is fixed, the record date for determining Members entitled to notice of or to vote at a meeting of Members shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. If no record date is fixed, the record date for determining Members entitled to express consent to Company action without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first consent is properly delivered to the Company. If no record date is fixed, the record date for determining Members for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution(s) relating to such purpose.

A determination of Members of record entitled to notice of or to vote at a meeting of Members shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

2.13 Frequency of Meetings. A meeting (Special or otherwise) shall be held at least quarterly and more frequently in the event of a material adverse change to the Company or any event(s) imminently threatening a material adverse change(s) to the Company during any quarter.

ARTICLE III

DIRECTORS

3.1 General Powers and Duties. The business and affairs of the Company shall be managed by or under the direction of a Board of Directors, which shall have the right, power and authority to exercise all of the powers of the Company, and, except as otherwise expressly provided in these By-laws or in the LLC Agreement, and except as may be otherwise required by non-waivable provisions of the Act or other applicable law, the Members (in their respective capacities as such) shall have no right, power or authority to vote, consent or approve with respect to any Company matter not submitted to such vote, consent or approval by the Board of Directors; provided, however, that the Board of Directors may not, without the approval of the Members (acting in accordance with Article II of these By-laws), take any action which would require approval of the stockholders if the Company were a corporation organized and existing under the DGCL; provided further, however, that any amendment of these By-laws shall be governed solely by the provisions hereof and of the LLC Agreement without reference to the DGCL. The rights and duties of the Directors and the Board shall be subject to Section 6.04(b) of the LLC Agreement. In the event of a vacancy in the Board of Directors, the remaining Directors may exercise the powers of the full Board until the vacancy is filled.

3.2 Number, Election and Qualification. The number of Directors which shall constitute the whole Board of Directors shall, subject to the provisions of the Certificate of Formation and the LLC Agreement, be determined from time to time by resolution of the Members or the Board of Directors, but in no event shall be less than one. The number of Directors may be decreased at any time and from time to time either by the Members or a majority of the Directors then in office, but only to eliminate vacancies existing by reason of the death, resignation, removal or expiration of the term of one or more Directors. Directors shall be elected at the annual meeting of Members by such Members as have the right to vote on such election. Directors need not be Members of the Company.

3.3 Enlargement of the Board. Subject to Section 3.2, the number of Directors may be increased at any time and from time to time by the Members or by a majority of the Directors then in office.

3.4 Tenure. Each Director shall hold office until the next annual meeting of the Members and until a successor is elected in accordance with these By-laws, or until such Director's earlier death, resignation or removal.

3.5 Vacancies. Unless and until filled by the Members, any vacancy in the Board of Directors, however occurring, including a vacancy resulting from an enlargement of the Board, may be filled by vote of a majority of the Directors then in office, although less than a quorum, or by a sole remaining Director. A Director elected to fill a vacancy shall be elected for the unexpired term of such Director's predecessor in office, and a Director chosen to fill a position resulting from an increase in the number of Directors shall hold office until the next annual

meeting of Members and until a successor is elected in accordance with these By-laws, or until such Director's earlier death, resignation or removal.

3.6 Resignation. Any Director may resign by delivering a resignation in writing or by electronic transmission to the Company at its principal office or to the Chairman of the Board, the President or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time or upon the happening of some later event.

3.7 Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and place as shall be determined from time to time by the Board of Directors; provided that any Director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of Members.

3.8 Special Meetings. Special meetings of the Board of Directors may be held at any time and place designated in a call by the Chairman of the Board, the President, two or more Directors, or by one Director in the event that there is only a single Director in office.

3.9 Notice of Special Meetings. Notice of any special meeting of Directors shall be given to each Director by the Secretary or by the Officer or one of the Directors calling the meeting. Notice shall be duly given to each Director (i) by giving notice to such Director in person or by telephone at least 24 hours in advance of the meeting, (ii) by sending an electronic or facsimile notice, or delivering written notice by hand, to such Director's last known business, home or electronic mail address at least 48 hours in advance of the meeting, or (iii) by sending written notice, via first-class mail or reputable overnight courier, to such Director's last known business or home address at least 72 hours in advance of the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

3.10 Meetings by Conference Communications Equipment. Directors or any members of any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or any such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

3.11 Quorum. A majority of the total number of the whole Board of Directors shall constitute a quorum at all meetings of the Board of Directors. In the event one or more of the Directors shall be disqualified to vote at any meeting, then the required quorum shall be reduced by one for each such Director so disqualified; provided, however, that in no case shall less than one-third (1/3) of the number fixed pursuant to Section 3.2 of these By-laws constitute a quorum. In the absence of a quorum at any such meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

3.12 Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, the vote of a majority of those present shall be sufficient to take any action, unless a different vote is specified by law, the Certificate of Formation, the LLC Agreement, or these By-laws.

3.13 Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee of the Board of Directors may be taken without a meeting, if all members of the Board or committee, as the case may be, consent to the action in writing or by electronic transmission, and the written consents and hard copies of the electronic transmissions are filed with the minutes of proceedings of the Board or committee.

3.14 Removal. Except as may be otherwise provided by non-waivable provisions of the Act or other applicable law, any one or more or all of the Directors may be removed, with or without cause, by Members holding a majority of the Shares then issued, outstanding and entitled to vote at an election of Directors, except that the Directors elected by the holders of a particular class or series, if applicable, of Shares may be removed without cause only by vote of Members holding a majority of Shares of such class or series, if applicable.

3.15 Committees. The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more Directors. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member of such committee at any meeting thereof. In the absence or disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors designating it and subject to the non-waivable provisions of the Act, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Company. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the Board of Directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these By-laws for the Board of Directors.

3.16 Compensation of Directors. Directors may be paid such compensation, including equity compensation, for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any Director from serving the Company or any of its parent or subsidiary entities, or any Member or its Affiliates, in any other capacity and receiving compensation for such service. Each Director shall devote such time to the affairs of the Company as may be reasonably necessary for the performance by such Director of his duties hereunder, provided that no

Director shall, solely by reason of such person's service as a Director hereunder, be required to devote full time to such affairs.

ARTICLE IV

OFFICERS

4.1 Titles. The officers of the Company (the "Officers") shall consist of a President, a Treasurer, a Secretary and such other Officers with such other titles as the Board of Directors shall determine, including a Chairman, a Chief Financial Officer, and one or more Vice Presidents, Assistant Treasurers, and Assistant Secretaries. The Board of Directors may appoint such other Officers as it may deem appropriate. The rights and duties of the Officers of the Company shall be as set forth in these By-laws, subject to Section 6.04(c) of the LLC Agreement.

4.2 Election. The President, Treasurer and Secretary shall be elected annually by the Board of Directors at its first meeting following the annual meeting of Members. Other Officers may be appointed by the Board of Directors at such meeting or at any other meeting.

4.3 Qualification. No Officer need be a Member. Any two or more offices may be held by the same person.

4.4 Tenure. Except as otherwise provided by law, by the Certificate of Formation, by the LLC Agreement, or by these By-laws, each Officer shall hold office until such Officer's successor is duly elected under these By-laws, unless a different term is specified in the vote, resolution or action electing or appointing such Officer, or until such Officer's earlier death, resignation or removal.

4.5 Resignation and Removal.

(a) Any Officer may resign by delivering a written resignation to the Company at its principal office or to the President, Secretary or any Director. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time or upon the happening of some later event.

(b) Any Officer may be removed at any time, with or without cause, by vote of a majority of the entire number of Directors then in office (which entire number shall be determined exclusive of any Officer who is the subject of the proposed removal), but such removal shall be without prejudice to the rights of such Officer, if any, under any contract or agreement between such Officer and the Company.

(c) Except as the Board of Directors may otherwise determine, no Officer who resigns or is removed shall have any right to any compensation as an Officer for any period

following such Officer's resignation or removal, or any right to damages on account of such removal, whether such Officer's compensation be by the month or by the year or otherwise, unless such compensation is expressly provided in a duly authorized written agreement with the Company.

4.6 Vacancies. The Board of Directors may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any offices other than those of President, Treasurer and Secretary. Each such successor shall hold office for the unexpired term of such Officer's predecessor and until a successor is duly elected or appointed hereunder, or until such Officer's earlier death, resignation or removal.

4.7 Chairman of the Board. The Board of Directors may appoint a Chairman from among the Directors. If the Board of Directors appoints a Chairman, unless otherwise provided by the Board, the Chairman shall preside at all meetings of the Board and of the Members, and shall perform such other duties and possess such other powers as the Board of Directors may from time to time prescribe.

4.8 President. The President shall, subject to the direction of the Board of Directors, have general charge and supervision of the day-to-day business of the Company. The President shall perform such other duties and possess such other powers as the Board of Directors may from time to time prescribe. Without limiting the foregoing, the President shall be responsible for the following unless otherwise prescribed by the Board of Directors:

(a) Full management responsibility for overall day-to-day operations, including but not limited to, sales, marketing, product development and inventory management.

(b) Preparing, updating and presenting, for the approval of the Board of Directors, a rolling three-year budget on or before November 1st of each year;

(c) Preparing updates, amendments and modifications of the Business Plan for the approval of the Members and the Board of Directors in accordance with the LLC Agreement as appropriate, which Business Plan shall include detailed cash flow analysis; provided that, at a minimum, an updated Business Plan shall be prepared at least annually for the approval of the Members and the Board of Directors; and provided, further, that the foregoing duty is premised upon the President and each of the Members providing their good faith cooperation in providing all necessary information to the other parties to satisfy the requirements hereunder;

(d) Preparing or causing to be prepared monthly financial statements, a copy of which shall be delivered to each Member no later than fifteen (15) days following the end of each month;

(e) Preparing or causing to be prepared quarterly financial statements, a copy of which shall be delivered to each Member no later than forty-five (45) days following the end of each quarter; and

(f) Preparing or causing to be prepared annual financial statements, a copy of which shall be delivered to each Member no later than sixty (60) days following the end of each year;

(g) Inform the Board as soon as he becomes aware of a reasonable likelihood of a need for any Additional or Further Capital Contribution or any other financing that, in each case, is not contemplated in the then-current Business Plan; provided that the foregoing is premised upon the President and each of the Members providing their good faith cooperation in providing all necessary information to the other parties to satisfy the requirements hereunder; and

(h) Inform the Board if the Company is extending terms to its customers beyond the ordinary course or is paying any of its debts or obligations other than in the ordinary course.

4.9 Chief Operating Officer. The Chief Operating Officer shall perform such duties and possess such powers as the Board of Directors may from time to time prescribe.

4.10 Chief Financial Officer. The Chief Financial Officer shall perform such duties and possess such powers as the Board of Directors may from time to time prescribe. In addition, the Chief Financial Officer shall perform such duties and possess such powers as are customarily incident to the office of chief financial officer in a corporation organized under the DGCL, including the duty and power to make all such elections permitted or required by the Code and/or the regulations promulgated thereunder (and any similar such elections permitted or required under state, local or foreign tax laws and/or regulations) as the Chief Financial Officer acting in accordance with the standards of conduct set forth in Section 6.04(c) of the LLC Agreement may deem necessary or advisable, and to assist the President, as required by the Board of Directors or otherwise pursuant to the provisions of the LLC Agreement and these By-laws, in rendering statements of financial transactions and of the financial condition of the Company.

4.11 Vice Presidents. Any Vice President shall perform such duties and possess such powers as the Board of Directors may from time to time prescribe. In the event of the absence, inability or refusal to act of the President, the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors) shall perform the duties of the President and when so performing shall have all the powers of and be subject to all the restrictions upon the President. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board of Directors.

4.12 Secretary and Assistant Secretaries. The Secretary shall perform such duties and shall have such powers as the Board of Directors may from time to time prescribe. In addition, the Secretary shall perform such duties and shall have such powers as are incident to the office of the secretary of a corporation under the DGCL, including without limitation the duty and power to give notices of all meetings of Members and special meetings of the Board of Directors, to

attend all meetings of Members and the Board of Directors and keep a record of the proceedings, to maintain the Share Register and prepare lists of Members and their addresses as required, and to be custodian of the Company records.

Any Assistant Secretary shall perform such duties and shall have such powers as the Board of Directors or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary.

In the absence of the Secretary or any Assistant Secretary at any meeting of Members or Directors, the person presiding at the meeting shall designate a temporary secretary to keep a record of the meeting.

4.13 Treasurer and Assistant Treasurers. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned by the Board of Directors or the Chief Financial Officer. In addition, the Treasurer shall perform such duties and shall have such powers as are incident to the office of the treasurer of a corporation under the DGCL, including without limitation the duty and power to keep and be responsible for all funds and securities of the Company, to deposit funds of the Company in depositories selected in accordance with these By-laws, to disburse such funds as ordered by the Board of Directors, to make proper accounts of such funds, and to render as required by the Board of Directors or the Chief Financial Officer statements of all such transactions and of the financial condition of the Company.

The Assistant Treasurers shall perform such duties and shall have such powers as the Board of Directors, the Chief Financial Officer or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Treasurer.

4.14 Salaries. Officers shall be entitled to such salaries, compensation or reimbursement (if any) as shall be fixed or allowed from time to time by the Board of Directors.

ARTICLE V

GENERAL PROVISIONS

5.1 Books and Records. The Company or a third party designated by the Company shall keep, at the principal office of the Company or in such other location as the Board of Directors or any appropriate Officer may designate, complete and accurate books and records of the Company, maintained in such form and manner as any appropriate Officer may determine. The Company shall make available for examination and copying by any Member, at its reasonable request and at its expense during ordinary business hours, for any purpose reasonably

related to such Member's interest in the Company and in compliance with such other conditions as may be reasonably established by the Board of Directors, only such documents and information as the Board of Directors or, to the extent authority therefor is delegated by the Board to one or more Officer, the appropriate Officer(s) may deem appropriate or advisable. Any request by a Member under this Section 5.1 shall be in writing and shall state the purpose of such request.

5.2 Bank Accounts. The Company may open and maintain one or more accounts with such one or more financial institutions as the Board of Directors or an appropriate Officer may determine to be necessary or advisable. To the extent deemed necessary or advisable by the Board of Directors or any appropriate Officer, the Members shall adopt resolutions more specifically effectuating the foregoing provisions of this Section 5.2. No funds belonging to any Person other than the Company (whether or not a Member) shall in any way be deposited or kept in any such account of the Company or otherwise be commingled with any funds of the Company.

5.3 Fiscal Year. Except as from time to time otherwise designated by the Board of Directors, the fiscal year of the Company shall begin on the first day of January of each year and end on the last day of December in each year.

5.4 Share Certificates. Every holder of Shares shall be entitled to have a Share Certificate, in such form as may be prescribed by the Board of Directors, certifying the number and class of Shares owned by such holder in the Company. Each such Share Certificate shall be signed by, or in the name of the Company by, (i) the Chairman or Vice-Chairman, if any, of the Board of Directors, or the President or a Vice President, and (ii) the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Company. Any or all of the signatures on the Share Certificate may be a facsimile.

Each Share Certificate which are subject to any restriction on transfer pursuant to the LLC Agreement, these By-laws, applicable securities laws or any agreement among any number of Members or among such Members and the Company shall have conspicuously noted on the face or back of the Share Certificate either the full text of the restriction or a statement of the existence of such restriction.

If the Company shall be authorized to issue more than one class of Shares or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of Shares or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of each Share Certificate representing Shares of such class or series of Shares, provided that in lieu of the foregoing requirements there may be set forth on the face or back of each Share Certificate that the Company will furnish without charge to each holder who so requests a copy of the full text of the powers, designations, preferences and

relative, participating, optional or other special rights of each class of Shares or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

5.5 Lost, Stolen or Destroyed Share Certificates. The Company may issue a new Share Certificate in place of any previously issued Share Certificate alleged to have been lost, stolen, or destroyed, upon such terms and conditions as the Board of Directors may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity as the Board of Directors may require for the protection of the Company or any transfer agent or registrar.

5.6 Waiver of Notice. Whenever notice is required to be given by law, by the Certificate of Formation or by these By-laws, a written waiver, signed by the Person entitled to notice, or a waiver by electronic transmission by the Person entitled to notice, whether before, at or after the time stated in such notice, shall be deemed equivalent to notice. Attendance of a Person at a meeting shall constitute a waiver of notice of such meeting, except when the Person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

5.7 Voting of Securities. Except as the Board of Directors may otherwise designate, the President or Chief Financial Officer may waive notice of, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for the Company (with or without power of substitution) at, any meeting of stockholders or shareholders or other securityholders of any other Person, the securities of which may be held by this Company.

5.8 Evidence of Authority. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the Members, Directors, a committee or any Officer or representative of the Company shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

5.9 Binding the Company. Except as the Board of Directors may generally or in any particular case or cases otherwise authorize, and subject to the other provisions of these By-laws, the LLC Agreement and the Certificate of Formation, all deeds, leases, contracts, bonds, notes, checks, drafts or other obligations made, accepted or endorsed by the Company shall be signed by any one or more Officers. Without limitation of any of the powers of any Officer set forth in these By-laws, each Officer is expressly authorized, for, in the name and on behalf of the Company, to cause the Company, with no need for any further consent or other action of any of the Members or of the Board of Directors, to enter into, and to perform its obligations under, the LLC Agreement and each of the Ancillary Documents to which the Company is a party.

5.10 Severability. Any determination that any provision of these By-laws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these By-laws.

5.11 **Pronouns.** All pronouns used in these By-laws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

ARTICLE VI

AMENDMENTS

6.1 **By the Board of Directors.** These By-laws may be altered, amended or repealed or new by-laws may be adopted by the affirmative vote of a majority of the Directors present at any regular or special meeting of the Board of Directors at which a quorum is present.

6.2 **By the Members.** These By-laws may be altered, amended or repealed or new by-laws may be adopted by the affirmative vote of the Members holding a majority of the Shares issued and outstanding and entitled to vote at any regular meeting of Members, or at any special meeting of Members, provided notice of such alteration, amendment, repeal or adoption of new by-laws shall have been stated in the notice of such special meeting.

SCHEDULE B

TERMS OF COMMON SHARES

The following is a statement of the designations and the rights, powers, preferences and privileges of, and the restrictions, qualifications and limitations upon, the Common Shares.

1. **Designation**. Two million (2,000,000) Shares are hereby designated “Common Shares” (the “Common Shares”). The rights, preferences, powers, privileges and restrictions, qualifications and limitations of the Common Shares shall be as set forth in this Schedule B and elsewhere in this Agreement.

2. **Dividends**. Subject to the provisions of Section 4.04 of this Agreement, Common Shares shall be entitled to participate in all Dividends paid or otherwise distributed (or to be paid or otherwise distributed) by the Company pursuant to Section 4.01(b) of this Agreement.

3. **Liquidation Rights**. Common Shares shall be entitled to participate in any distribution, in connection with the dissolution and liquidation of the Company, of the remaining net assets of the Company pursuant to Section 9.03(b) of this Agreement.

4. **Voting Rights**. On any matter presented to the Members for their action or consideration at any meeting of Members (or by written action of Members in lieu of meeting), each holder of outstanding Common Shares shall be entitled to one vote for each such Share held by such Member, except as may be provided otherwise by provisions of this Agreement.

SCHEDULE C

CAPITAL ACCOUNTS; ALLOCATION OF NET PROFITS AND NET LOSSES

1. **Defined Terms.** For purposes of this Schedule C, the following capitalized terms shall have the respective meanings ascribed to them below:

“**Adjusted Capital Account**” means, for each Member, such Member’s Capital Account balance increased by such Member’s share of “minimum gain” and of “partner nonrecourse debt minimum gain” (as determined pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), respectively).

“**Capital Account**” means a separate account maintained for each Member and adjusted in accordance with Treasury Regulations under Section 704 of the Code. To the extent consistent with such Treasury Regulations, the adjustments to such accounts shall include the following:

(i) There shall be credited to each Member’s Capital Account the amount of any cash actually contributed by such Member to the capital of the Company, the fair market value of any other property contributed by such Member to the capital of the Company, the amount of liabilities of the Company assumed by the Member or to which property distributed to the Member was subject and such Member’s share of the Net Profits of the Company and of any items in the nature of income or gain separately allocated to the Members; and there shall be charged against each Member’s Capital Account the amount of all cash distributions to such Member, the fair market value of any other property distributed to such Member by the Company, the amount of liabilities of the Member assumed by the Company or to which property contributed by the Member to the Company was subject and such Member’s share of the Net Losses of the Company and of any items in the nature of losses or deductions separately allocated to the Members.

(ii) If the Company at any time distributes any of its assets in-kind to any Member, the Capital Account of each Member shall be adjusted to account for that Member’s allocable share of the Net Profits, Net Losses or items thereof that would have been realized by the Company had it sold the assets that were distributed at their respective fair market values (taking Code Section 7701(g) into account) immediately prior to their distribution.

(iii) Upon (A) the acquisition of Shares in exchange for a Capital Contribution, or (B) the election of the Company, at any time specified in Treasury Regulation Section 1.704-1(b)(2)(iv)(f), the Capital Account balance of each Member shall be adjusted to the extent provided under such Treasury Regulation to reflect the Member’s allocable share (as determined under this Schedule C) of the items of Net Profits or Net Losses that would be realized by the Company if it sold all of its property at its fair market value (taking Code Section 7701(g) into account) on the day of the event giving rise to the adjustment; provided that, if after such adjustment the Capital Account of each Member does not equal each Member’s share of Company Capital determined as

set forth in Section 2.1(b) of this Schedule C, then each Member's Capital Account shall be adjusted to an amount equal to such share of Company Capital.

(iv) In the event any interest in the Company is Transferred in accordance with the terms of this Agreement, the Transferee shall succeed to the Capital Account of the Transferor to the extent it relates to the Transferred interest.

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

"Carrying Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes; provided, however, that (i) the initial Carrying Value of any asset contributed to the Company shall be adjusted to equal its gross fair market value at the time of its contribution and (ii) the Carrying Values of all assets held by the Company shall be adjusted to equal their respective gross fair market values (taking Code Section 7701(g) into account) upon an adjustment to the Capital Accounts of the Members described in paragraph (iii) of the definition of "Capital Account." The Carrying Value of any asset whose Carrying Value was adjusted pursuant to the preceding sentence thereafter shall be adjusted in accordance with the provisions of Treasury Regulation Section 1.704-1(b)(2)(iv)(g).

"Company Capital" means an amount equal to the sum of all of the Members' Adjusted Capital Account balances determined immediately prior to the allocation to the Members pursuant to Sections 2.1(b) or 2.2(a) of this Schedule C of any Net Profits or Net Losses, increased by the aggregate amount of Net Profits then allocated to the Members pursuant to Section 2.1(b) of this Schedule C or decreased by the aggregate amount of Net Losses then allocated to the Members pursuant to Section 2.2(a) of this Schedule C.

"Net Profits" and "Net Losses" mean the taxable income or loss, as the case may be, as determined in accordance with Code Section 703(a) computed with the following adjustments:

(i) Items of gain, loss, and deduction shall be computed based upon the Carrying Values of the Company's assets (in accordance with Treasury Regulation Sections 1.704-1(b)(2)(iv)(g) and/or 1.704-3(d)) rather than upon the assets' adjusted bases for federal income tax purposes;

(ii) Any tax-exempt income received by the Company shall be included as an item of gross income;

(iii) The amount of any adjustments to the Carrying Values of any assets of the Company pursuant to Code Section 743 shall not be taken into account;

(iv) Any expenditure of the Company described in Code Section 705(a)(2)(B) (including any expenditures treated as being described in Code Section 705(a)(2)(B) pursuant to Treasury Regulations under Code Section 704(b)) shall be treated as a deductible expense;

(v) The amount of income, gain, loss or deduction specially allocated to any Members pursuant to Section 3 of this Schedule C shall not be included in the computation; and

(vi) The amount of any items of Net Profits or Net Losses deemed realized pursuant to paragraphs (ii) and (iii) of the definition of “Capital Account” shall be included in the computation.

2. Basic Allocations.

2.1 Except as provided in Section 3 of this Schedule C (which shall be applied first), Net Profits of the Company for any relevant period shall be allocated among the Members in proportion to their respective holdings of Shares.

2.2 Except as provided in Section 3 of this Schedule C (which shall be applied first), Net Losses of the Company for any relevant period shall be allocated among the Members in proportion to their respective holdings of Shares.

2.3 [Reserved.]

2.4 Allocations of Net Profits and Net Losses provided for in this Section 2 of this Schedule C shall generally be made as of the end of the fiscal year of the Company; provided, however, that allocations of items of Net Profits and Net Losses described in clause (vi) of the definition of “Net Profits” and “Net Losses” shall be made at the time deemed realized as described in the definition of “Capital Account.”

3. Regulatory Allocations. Notwithstanding the provisions of Section 2 of this Schedule C, the following allocations of Net Profits, Net Losses and items thereof shall be made in the following order of priority:

3.1 Items of income or gain (computed with the adjustments contained in paragraphs (i), (ii) and (iii) of the definition of “Net Profits and Net Losses”) for any taxable period shall be allocated to the Members in the manner and to the minimum extent required by the “minimum gain chargeback” provisions of Treasury Regulation Section 1.704-2(f) and Treasury Regulation Section 1.704-2(i)(4).

3.2 All “nonrecourse deductions” (as defined in Treasury Regulation Section 1.704-2(b)(1)) of the Company for any year shall be allocated to the Members in the same manner as Net Profits or Net Losses; provided, however, that nonrecourse deductions attributable to “partner nonrecourse debt” (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be allocated to the Members in accordance with the provisions of Treasury Regulation Section 1.704-2(i)(1).

3.3 Items of income or gain (computed with the adjustments contained in paragraphs (i), (ii) and (iii) of the definition of “Net Profits and Net Losses”) for any taxable period shall be allocated to the Members in the manner and to the extent required by the “qualified income offset” provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

3.4 [Reserved.]

3.5 In the event that items of income, gain, loss or deduction are allocated to one or more Members pursuant to any of Sections 3.1 through 3.3 of this Schedule C (the “Original Allocation”), subsequent items of income, gain, loss or deduction will first be allocated (subject to the provisions of Sections 3.1 through 3.3 of this Schedule C) to the Members in a manner designed to result in each Member having a Capital Account balance equal to what it would have been had the Original Allocation not occurred; provided, however, that no such allocation shall be made pursuant to this Section 3.5 of this Schedule C if (i) the Original Allocation had the effect of offsetting a prior Original Allocation or (ii) the Original Allocation likely (in the opinion of the Company’s accountants) will be offset by another Original Allocation in the future (e.g., an Original Allocation of “nonrecourse deductions” under Section 3.2 of this Schedule C that likely will be offset by a subsequent “minimum gain chargeback” under Section 3.1 of this Schedule C).

3.6 Except as otherwise provided herein or as required by Code Section 704, for tax purposes, all items of income, gain, loss, deduction or credit shall be allocated to the Members in the same manner as are Net Profits and Net Losses; provided, however, that if the Carrying Value of any property of the Company differs from its adjusted basis for tax purposes, then items of income, gain, loss, deduction or credit related to such property for tax purposes shall be allocated among the Members so as to take account of the variation between the adjusted basis of the property for tax purposes and its Carrying Value in the manner provided for under Code Section 704(c) in a manner determined by the Board of Directors.

4. Allocations Upon Transfer or Admission. In the event that a Member acquires Shares either by Transfer from another Member or by acquisition from the Company, the Net Profits, Net Losses, gross income, nonrecourse deductions and items thereof attributable to the Shares so Transferred or acquired shall be allocated among the Members based on a method chosen by the Board of Directors (or, if the Board of Directors so determines, by the Chief Financial Officer), in its sole discretion, which method shall comply with Section 706 of the Code and shall be binding on all Members. For purposes of determining the date on which the acquisition occurs, the Company may make use of any convention allowable under Section 706(d) of the Code.

5. Financial Reports. The Company shall prepare and provide to the Members, or cause to be so prepared and provided, in each case at the Company’s expense, not later than sixty (60) days after the end of each fiscal year of the Company, such information as is necessary to complete federal and state income tax or information returns.

6. Tax Matters Partner. The Board of Directors shall appoint a Member to serve as the “Tax Matters Partner” of the Company under Code Section 6231(a)(7), to manage administrative Tax proceedings conducted at the Company level by the Internal Revenue Service with respect to Company matters. The Tax Matters Partner is specifically directed and authorized to take whatever steps it, in its sole and absolute

discretion, deems necessary or desirable to perfect such designation, including, without limitation, filing any forms or documents with the Internal Revenue Service and taking such other action as may from time to time be required under Treasury Regulations. The Tax Matters Partner shall make any necessary elections and take any other necessary steps required by applicable law for the Company to be treated as a partnership for United States federal, state, and local income Tax purposes. By executing this Agreement, each of the Members hereby consents to any election made by the Tax Matters Partner for the Company to be treated as a partnership for all United States federal, state and local income Tax purposes. If the currently serving "Tax Matters Partner" becomes ineligible under the Code to serve, or refuses to serve, as the "Tax Matters Partner," Board of Directors shall designate another Member consenting thereto to serve as the Tax Matters Partner." The "Tax Matters Partner" is hereby authorized to and shall perform all duties of a "Tax Matters Partner" and shall serve as "Tax Matters Partner" until the sooner of: (i) its resignation; (ii) the designation of its successor; (iii) its removal by the Board of Directors; or (iv) its not being eligible under the Code to serve. The "Tax Matters Partner" shall be reimbursed by the Company for all reasonable expenses actually incurred by the "Tax Matters Partner" in connection with its performance of its duties as such, and the Company shall indemnify and hold harmless the "Tax Matters Partner," to the maximum extent permissible under the Act, from and against any and all losses, claims, liabilities, costs and expenses incurred by the "Tax Matters Partner" in connection with its performance of its duties as such, except insofar as the same may have been incurred by reason of gross negligence or willful misconduct of such "Tax Matters Partner."

SCHEDULE D

List of Initial Directors

1. Alfred Berg
2. Steve Clarke
3. Laurence Roth

EXHIBIT 3.01(c)

Form of Common Share Certificate

EXHIBIT 3.04(a)

Initial Capital Contributions

Name of Member	Initial Capital Contributions	Number of Common Shares To Be Issued Therefor
Rothandberg, Inc.	Cash contribution of \$40,591.84	51,000
Steve Clarke	Agreement to work for the remainder of 2003 as President of the Company in accordance with the Employment Agreement, and foregoing any salary therefor, which the parties agree has a fair market value of \$39,000.	49,000

EXHIBIT 6.07
Initial Business Plan