

**COMPANY AGREEMENT  
OF 20/20 EXPRESS-LAFAYETTE, LLC**

This Company Agreement (the “*Agreement*”) of 20/20 Express-Lafayette, LLC, a Texas limited liability company (the “*Company*”), was adopted effective as of June 4, 2014, by 20/20 Express, LLC, a Texas limited liability company, the Company’s initial sole Member.

**ARTICLE I  
DEFINITIONS**

1.1 The following terms used in this Company Agreement shall have the following meanings (unless otherwise expressly provided herein):

“*Agreement*” has the meaning set forth in the first paragraph hereof.

“*Capital Account*” means the individual capital account maintained for each Member pursuant to Section 3.3.

“*Certificate of Formation*” means the Certificate of Formation of the Company originally filed with the Secretary of State of Texas, as amended from time to time.

“*Company*” has the meaning set forth in the first paragraph hereof.

“*Distribution*” has the meaning set forth in Section 4.2.

“*Fiscal Year*” means the calendar year, which is the period fixed by the Company as its taxable year for federal income tax purposes.

“*Liquidation*” has the meaning set forth in Section 8.2.

“*Liquidator*” has the meaning set forth in Section 8.2.

“*Managers*” has the meaning set forth in Section 6.1.

“*Member*” means the sole member named in the first paragraph hereof initially, and any Person or Persons thereafter admitted as a substituted or additional Member in accordance with this Company Agreement.

“*Person*” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, or other legally recognized entity, or a government or any political subdivision or agency thereof.

“*TBOC*” means the Texas Business Organizations Code, as amended from time to time (or any corresponding provisions of succeeding law).

**ARTICLE II**  
**ORGANIZATIONAL MATTERS**

2.1 Name and Formation. The name of the Company is 20/20 Express-Lafayette, LLC. The Company was formed under the TBOC, and the rights and liabilities of the Members and Managers will be governed by the TBOC unless this Agreement provides otherwise.

2.2 Principal Office. The principal place of business and mailing address of the Company shall be as set forth in the Certificate of Formation, or at such other place or places as from time to time may be determined by the Member or the Managers.

2.3 Purpose. The purpose of the Company shall be the transaction of any or all lawful business for which limited liability companies may be organized under the TBOC. The Company shall have all powers necessary or desirable to accomplish the aforesaid purpose.

2.4 Qualification and Registration. The Company shall, as soon as practicable, take all action necessary to qualify the Company to do business and to execute all certificates or other documents, and perform all filings and recordings, as are required by the laws of the State of Texas and the other jurisdictions in which the Company does business to the extent the laws of such jurisdictions require the Company to do so.

2.5 Registered Office and Registered Agent. The Company's initial registered office in the State of Texas and the name of its initial registered agent at such address are as set forth in the Certificate of Formation.

**ARTICLE III**  
**CAPITAL CONTRIBUTIONS AND PERCENTAGE INTERESTS**

3.1 Initial Percentage Interest. The initial percentage interest of the Member shall be 100%.

3.2 Additional Capital Contributions. The Member shall not be obligated to make additional capital contributions to the Company beyond its initial capital contribution. Any additional capital contributions shall be made by the Member solely in its discretion.

3.3 Capital Account. The Company may maintain a Capital Account for the Member. The Member's Capital Account shall consist of the Member's Initial Capital Contribution, increased by additional capital contributions and by the Member's share of Company profits and decreased by distributions to the Member and by the Member's share of Company losses. No advance of money to the Company by the Member as provided in Section 3.7 shall be credited to the Capital Account of the Member unless accompanied by evidence that the Member intends the advance to be an additional capital contribution to the Company.

3.4 Contributions Not to be Returned at Any Specified Time. Except as otherwise provided in this Company Agreement, the Member shall not have the right to demand the return of its capital contributions.

3.5 Restrictions Relating to Capital. The Member shall not (i) be entitled to receive interest on its capital contributions, (ii) have the right to partition the Company's property, or (iii) be liable to the Company to restore any deficit balance in its Capital Account.

3.6 Advances and Loans by Member. The Member may lend money to and transact other business with the Company, and the Member shall have the same rights and obligations with respect thereto as a Person who is not a Member of the Company. Loans by the Member to the Company, or guarantees by the Member of Company indebtedness, shall not be considered capital contributions to the Company. Any such advance shall be treated as a debt owing from the Company, payable at such times and with such rate of interest as shall be agreed upon by the Company and the Member, subject to the highest lawful rate at any time in effect during the period of such loan. Undistributed earnings and profits of the Company shall not be considered an advance of money to the Company.

#### **ARTICLE IV** **ALLOCATIONS AND DISTRIBUTIONS**

4.1 Allocations. Except as otherwise required by applicable provisions of tax law, solely for federal income tax purposes and for purposes of certain state tax laws, the Company shall be disregarded as an entity separate from the Member. Each item of Company income, gain, loss, deduction, and credit shall be treated as if realized directly by, and shall be allocated 100% to the Member.

4.2 Distributions. Distributions of cash or other assets shall be made in the amounts and at the times determined by the Managers (each a "***Distribution***"), provided, however, that if there should be more than one Member, any such Distribution will be made pro rata in accordance with each Member's respective membership interests in the Company. Notwithstanding the foregoing, no Distribution shall be made to the extent prohibited by the TBOC, including, without limitation, any Distribution if immediately after making the Distribution the Company's total liabilities would exceed the fair value of the Company's total assets. For purposes of this Section, the terms (i) "***total liabilities***" shall not include (a) liabilities related to a Member's membership interest, or (b) liabilities for which the recourse of creditors is limited to specified property of the Company, and (ii) the term "***total assets***" shall include the fair value of that property subject to a liability for which recourse of creditors is limited to specified property of the Company only to the extent that the fair value of such property exceeds the liability.

#### **ARTICLE V** **ACCOUNTING AND REPORTS**

5.1 Books of Account. The Company shall maintain or cause to be maintained at all times true and proper books, records, reports and accounts in accordance with generally accepted accounting principles consistently applied, in which shall be entered fully and accurately all transactions of the Company, and shall also maintain or cause to be maintained at all times any other documents or records required under Section 101.501 of the TBOC. The Member and the Managers shall have access to the foregoing at all reasonable times. The Company shall keep

vouchers, statements, receipted bills and invoices and all other records in connection with the Company's business.

5.2 Accounting and Reports. The books of account shall be closed promptly after the end of each Fiscal Year. Promptly thereafter, the Company shall make such written reports to the Member as requested by the Member, which may include a balance sheet of the Company as of the end of such year, a statement of income and expenses for such year, a statement of the Member's Capital Account as of the end of such year, and such other statements with respect to the status of the Company and Distribution of the profits and losses therefrom as are considered necessary by the Member to advise the Member properly about its investment in the Company for federal and state income tax reporting purposes.

5.3 Banking. An account or accounts in the name of the Company shall be maintained in such bank or banks as the Managers may from time to time select. All monies and funds of the Company, and all instruments for the payment of money to the Company, shall, when received, be deposited in said bank account or accounts, or prudently invested in marketable securities or other negotiable instruments. All checks, drafts and orders upon said account or accounts shall be signed in the Company name by such Persons and in such manner as the Managers may from time to time determine.

## **ARTICLE VI** **MANAGEMENT AND DUTIES**

### 6.1 The Managers.

(a) Except as provided herein, the full, exclusive and complete discretion in the management and control of the business and affairs of the Company shall be vested in the "**Managers.**" The Managers, who may but need not be Persons other than the Member, shall be considered "managers" as that term is used in the TBOC.

(b) The number of Managers shall be fixed, and the Persons to serve as Managers shall be designated, by the Member from time to time. The Member has currently fixed the number of Managers at one, and the Manager currently designated by the Member is 20/20 Express, LLC. Each Manager shall serve until their incapacity, resignation, or removal. Any Manager may resign by providing not less than five days' written notice to the Company. The Member, in its sole discretion, may remove or replace any Manager at any time.

(c) Each of the Managers shall, individually, have full authority to bind the Company by execution of documents, instruments, agreements, contracts or otherwise to any obligation not inconsistent with the provisions of this Company Agreement.

(d) Notwithstanding anything in this Agreement to the contrary, the Managers shall not have the authority or power to take any of the following actions without the consent of the Member:

- (i) Amend this Agreement;
- (ii) Approve a plan of merger or share exchange of the Company;

- (iii) Sell all or substantially all of the assets of the Company;
- (iv) Admit one or more Persons as additional Members of the Company;
- (v) Fill vacancies in the Managers;
- (vi) Fix the compensation of any Member, Manager, or officer of the Company;
- (vii) Cause the winding up and termination of the Company; or
- (viii) Any other action for which this Agreement or any non-variable provision of the TBOC otherwise requires Member consent.

(e) A majority of the Managers present in person or by proxy constitutes a quorum for the transaction of business at any meeting thereof. An act of a majority of the Managers at a meeting at which a quorum is present shall be the act of the Managers.

(f) Any act required or permitted to be taken at any meeting of the Managers may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the Managers having not fewer than the minimum number of votes that would be necessary to take action at a meeting at which all Managers entitled to vote on the action were present and voted.

6.2 Expenditures by Company. The Company shall pay compensation for accounting, administrative, legal, technical, and management services rendered to the Company. The Managers and the Member shall be entitled to reimbursement by the Company for any expenditures necessarily and reasonably incurred by them on behalf of the Company, which reimbursement shall be made out of the funds of the Company.

6.3 Officers. The Managers may from time to time elect officers of the Company, each of whom shall have the authority and responsibility and serve for the term designated by the Managers. None of the officers shall be deemed a manager as that term is used in the TBOC. Unless otherwise determined by the Managers, each officer shall be deemed an agent of the Company and to have duties comparable to persons holding similar offices with Texas corporations.

## **ARTICLE VII**

### **CHANGES IN MEMBERSHIP OR INTERESTS**

7.1 Transfer of Interests. The Member may, in its own discretion, sell, transfer, assign, give, pledge, or otherwise dispose of or encumber any part or all of its interest in the Company now owned or hereafter acquired, whether voluntarily, by operation of law or otherwise.

7.2 Admission of New Members. New Members may not be admitted to the Company without the prior written consent of, and may be admitted only upon terms approved

by, the Member. Upon admission, new Members shall sign and thereby become subject to an amended version of this Company Agreement approved by the Member and containing provisions in accordance with the TBOC. Subject to any agreements entered into by the Member or the Company with such additional Members, no such additional Member may transfer their interests in the Company without (a) the prior written consent of 20/20 Express, LLC, and (b) compliance with all applicable securities laws. Any additional Member serving as an employee of the Company at the time of their admission as a Member shall, upon termination of their employment with the Company (whether such termination is voluntary or by the Company with or without cause) shall forfeit all interests in the Company, effective immediately upon such termination.

7.3 Withdrawal of Member. The Member may withdraw from the Company at any time by giving written notice of such withdrawal to the Company. Within a reasonable time after such withdrawal, the Member is entitled to receive the fair value of its interest in the Company as of the date of withdrawal.

## **ARTICLE VIII** **TERMINATION OF THE COMPANY**

8.1 Events Requiring Winding Up. The Company's affairs shall be wound up only upon the first to occur of the following:

- (a) The written determination of the Member; or
- (b) The entry of a judicial decree under the TBOC requiring the winding up or dissolution of the Company.

The death, dissolution, winding up, termination, bankruptcy, expulsion, withdrawal or other termination of the continued membership of the last remaining Member shall not constitute an event requiring winding up of the Company.

8.2 Liquidation and Distribution of Liquidation Proceeds. Upon the occurrence of any event requiring winding up of the Company for any reason, a Manager selected by the Managers, or if none is then serving, the Member (as the case may be, the "**Liquidator**"), shall commence to wind up the affairs of the Company and to liquidate its assets ("**Liquidation**"). The Liquidator shall have full power to sell, assign and encumber Company assets. Any property distributed in kind in Liquidation shall be valued and treated as though the property were sold and the cash proceeds were distributed. Upon Liquidation, the assets of the Company shall be used and distributed in the following order:

- (a) To pay or provide for the payment of all debts and liabilities of the Company to creditors, including the Member and the Managers if any of them is a creditor (other than liabilities for Distributions to the Member as a Member), to the extent permitted by law, in satisfaction of liabilities of the Company; and
- (b) To the Member (i) in satisfaction of the Company's obligations for Distributions, (ii) for the return of its capital contributions, and (iii) to account for any remaining amounts.

8.3 Accounting. Within a reasonable time after the date the assets have been distributed in Liquidation, the Liquidator shall cause to be prepared and provided to the Member a statement which shall set forth the assets and the liabilities of the Company as of the date of complete Liquidation.

8.4 Termination. Upon the completion of Liquidation of the Company and the distribution of all Company assets, the Liquidator or a Manager shall file a Certificate of Termination with the Secretary of State of Texas, and upon such filing, the Company shall terminate.

## **ARTICLE IX** **LIABILITY AND INDEMNIFICATION**

9.1 Liability. No Member or Manager shall be personally liable for any debt, obligation, or liability of the Company, including any of the foregoing issued under a judgment, decree, or order of a court, and whether arising in tort, contract, or otherwise solely by reason of being a Member or Manager.

9.2 Exculpation. No Member or Manager shall be liable to the Company or any other Member for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Person by this Agreement, unless it is finally adjudicated that such loss, damage or claim was incurred by reason of such Person's gross negligence, willful misconduct or breach of contract.

9.3 Indemnification. Each Manager shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Person by reason of any act or omission performed or omitted by such Person in good faith on behalf of the Company, to the fullest extent that would be permitted by Chapter 8 of the TBOC were such Manager instead a director of a Texas corporation, unless it is finally adjudicated that such loss, damage or claim was incurred by reason of such Person's gross negligence, willful misconduct or breach of contract; provided, however, that any indemnity under this Section shall be provided out of and to the extent of Company assets only, and no Member shall have any personal liability on account thereof. The indemnification provided by this Section shall continue as to a Person who has ceased to serve in the capacity by reason of which the Person was indemnified under this Section with respect to matters arising during the period the Person served in such capacity, and shall inure to the benefit of the heirs, executors, and administrators of such a Person.

9.4 Advancement of Expenses. Expenses (including legal fees) incurred by a Manager in defending any claim, demand, action, suit or proceeding (including court costs and attorneys' fees) shall, from time to time, to the fullest extent that would be permitted by Chapter 8 of the TBOC were such Manager instead a director of a Texas corporation, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Person to repay such amount if it shall be determined that the Person is not entitled to be indemnified as authorized in Section 9.3 hereof. Notwithstanding any other provision of this Article, the Company may pay or reimburse expenses incurred by a Manager in connection with his appearance as a witness or

other participation in a proceeding at a time when the Manager is not named a defendant or respondent in the proceeding.

9.5 Insurance. The Company may purchase and maintain insurance on behalf of Members, Managers, officers, agents, and employees against any liability that may be asserted against or expenses that may be incurred by any such Person in connection with the activities of the Company, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement.

9.6 Applicability to Strict Liability or Negligence. **THE PROVISIONS IN THIS ARTICLE IX SHALL BE ENFORCEABLE REGARDLESS OF WHETHER THE LIABILITY IS BASED ON PAST, PRESENT OR FUTURE ACTS, CLAIMS OR LEGAL REQUIREMENTS, AND REGARDLESS OF WHETHER ANY PERSON (INCLUDING THE PERSON FROM WHOM INDEMNIFICATION IS SOUGHT) ALLEGES OR PROVES THE SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF THE PERSON SEEKING INDEMNIFICATION, OR THE SOLE OR CONCURRENT STRICT LIABILITY IMPOSED ON THE PERSON SEEKING THE BENEFIT OF THE PROVISIONS IN THIS ARTICLE IX.**

9.7 Effect of Amendment. No amendment, modification, or repeal of this Article or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Member, Manager, or officer to be indemnified by the Company, nor the obligation of the Company to indemnify any such Person, under and in accordance with the provisions of the Article as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

## **ARTICLE X MISCELLANEOUS PROVISIONS**

10.1 Amendments. This Company Agreement may be amended, modified, supplemented or canceled only in writing and with the approval of the Member.

10.2 Company Property. All property, whether real, personal or mixed, tangible or intangible, and wherever located, contributed by the Member to the Company or acquired by the Company shall be the property of the Company. All files, documents, and records shall be the property of the Company and shall remain in the possession of the Company.

10.3 Successors. This Company Agreement and all the terms and provisions hereof shall be binding upon and shall inure to the benefit of the Member and its legal representatives, heirs, successors and assigns, except as expressly herein otherwise provided.

10.4 Governing Law. This Company Agreement shall be governed, construed and enforced in conformity with the laws of the State of Texas.



10.5 Notices. All notices, offers, or other communications required or permitted to be given pursuant to this Company Agreement shall be in writing and shall be considered as properly given or made, if mailed, five business days after mailing from within the United States by first class United States mail, postage prepaid, return receipt requested, or if by personal delivery, when delivered in person to the address of the recipient's principal place of business.

10.6 Execution. This Company Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. An email, facsimile or similar transmission by a Person or reproduction of a writing that was signed by the Person shall be regarded as signed by the Person for the purposes of this Company Agreement.

10.7 Entire Agreement. This Company Agreement contains the entire understanding of the Members and supersedes any prior understandings respecting the within subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Company Agreement which are not fully expressed herein.

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IN WITNESS WHEREOF, the undersigned Member has signed and adopted this Company Agreement as of the date first above written.

**MEMBER:**

20/20 EXPRESS, LLC

By: \_\_\_\_\_  
Jonathan Herskovitz, President