**OPERATING AGREEMENT OF THE MILAN PROJECT LLC**

THIS OPERATING AGREEMENT (the “Operating Agreement”) is made and entered into effective as of the \_\_ day of \_\_\_\_\_\_, 2022, by the parties who have executed counterparts of this Operating Agreement as indicated on the signature page(s) attached.

**ARTICLE 1**

**DEFINITIONS**

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

“Act.” Shall mean the New Mexico Limited Liability Company Act.

“Affiliate.” With respect to any Person, (i) in the case of an individual, any blood relative of such Person, (ii) any officer, director, trustee, partner, member, manager, employee or holder of ten percent (10%) or more of any class of the voting securities of or equity interest in such Person; (iii) any corporation, partnership, limited liability company, trust or other entity controlling, controlled by or under common control with such Person; or (iv) any officer, director, trustee, partner, member, manager, employee or holder of ten percent (10%) or more of the outstanding voting securities of any corporation, partnership, limited liability company, trust or other entity controlling, controlled by or under common control with such Person.

“Business.” **The Milan Project** is the development of a 500 acre parcel located in Milan, New Mexico. The Company intends to build a community of affordable homes by using a panelized construction process to reduce costs. Phase One includes the purchase of the property; construction of the panelized product factory and the construction of the first 90 affordable homes

“Capital Contribution.” The amount of money and the value of the property that a Member actually contributes or has previously contributed to the Company. Unless the Manager otherwise permits, only cash will be accepted by Manager as a Capital Contribution to the Company. Any capital committed or promised by a Member, but whom has not yet consummated that commitment proven by Manager’s actual confirmed receipt of immediately available US funds by Company, will not be considered a Capital Contribution nor establish a Capital Account.

“Capital Account” Shall mean, with respect to each Member, the account established for each Member pursuant to the Member’s Capital Contribution. Capital Accounts shall be determined and maintained in accordance with the rules of paragraph (b)(2)(iv) of Regulation Section 1.704-1 of the Code.

“Certificate of Formation.” The Certificate of Formation of The Milan Project, LLC as filed with the New Mexico Secretary of State, as the same may be amended from time to time.

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

“Company.” The Milan Project LLC, a New Mexico Limited Liability Company.

“Disability.” The failure or inability of a Manager or Member to devote the business time required to fulfill his obligations under this Operating Agreement for a period in excess of ninety (90) consecutive days.

“Distributable Cash Flow.” The Company shall distribute to the Members and Manager from time to time certain cash (regardless of the source thereof) which is not required for the operation of the Business pursuant to the Company's reasonable need for working capital and “Reserves” as such term is hereinafter defined below. For purposes of this Agreement all Distributable Cash Flow allocated to the Members and Manager shall be allocated pursuant to Section 9.3(a) of this Agreement.

“Entity.” Any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization, or any other legal entity.

“Fiscal Year.” The Company’s fiscal year shall end on December 31st unless otherwise decided by the Manager, in its sole discretion.

“Initial Capital Contribution.” The initial contribution to the capital of the Company made by a Member pursuant to this Operating Agreement.

“Initial Manager.” The Initial Manager shall be High Five Construction, Inc**.** a New Mexico corporation; Initial Manager is also the Sponsor.

“Insolvency of a Member.” The Member filed a voluntary petition or had an involuntary petition filed against him/her under any federal or state bankruptcy or insolvency act or law, or in the event a receiver or trustee is appointed as custodian of such Member’s property, or such Member has failed to pay any judgment against him at least ten (10) days prior to the date on which any of his/her assets may be lawfully sold to satisfy such judgment, or such Member shall suffer an attachment, sequestration or garnishment to be levied against or the assets of such Member.

“Majority Interest.” Ownership Percentages of Members which, taken together, constitute a majority of all Ownership Percentage Interest.

“Member.” Each Person who executes this Operating Agreement or a counterpart thereof as a Member and each of the Persons who may hereafter become Members as provided in this Operating Agreement.

“Membership Interest.” A Member’s entire Interest in the Company including such Member’s Ownership Percentage Interest and the right to vote certain limited affairs of the Company, pursuant to the terms of this Operating Agreement.

“Officer.” One or more individuals appointed by the Manager to whom the Manager delegates specified responsibilities. The Manager may, but shall not be required to, create such offices as they deem appropriate, including, but not limited to, a President, Executive Vice President, Senior Vice Presidents, Vice Presidents, Secretary, Treasurer and a Partnership Representative (as hereinafter defined below) for purposes of Section 6223 of the Internal Revenue Code and the Treasury Regulations promulgated thereunder. The Officers shall have such duties as are assigned to them by the Manager from time to time. All Officers shall serve at the pleasure of the Manager and the Manager may remove any Officer from office without cause and any Officer may resign at any time. The initial appointment of the Company’s Partnership Representative (as hereinafter defined below) to be Rebecca Price who shall also serve as the “tax matters partner” for any and all IRS communications, correspondence and filing on behalf of the Company.

“Operating Agreement.” This Operating Agreement as originally executed and as may be amended and restated from time to time.

“Ownership Percentage Interest.” For each Member, the ownership percentage in the Company, as set forth in Exhibit A.

“Person.” Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such “Person” where the context so permits.

“Profits and Losses.” The Profits and Losses of the Company are the net profits and net losses of the Business as determined by the Company for the purposes of filing federal state income tax returns.

“Property.” The Property is a parcel of approximately 500 acres located in Milan, New Mexico as set forth in Exhibit B.

“Reserves.” Funds set aside and amounts allocated to reserves in amounts determined by the Manager, in its sole discretion, for working, operational capital payment of taxes, insurance, debt service or any and all other costs and expenses incident to the ownership and operation of the Company’s Business.

“Sponsor” High Five Construction, Inc. a New Mexico Corporation, is the Sponsor of this investment and of the offering to prospective members pursuant to the terms of this Operating Agreement.

“Treasury Regulations” or “Regulations.” The federal income tax regulations, including temporary regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

**ARTICLE 2**

**FORMATION OF COMPANY**

Section 2.1 Formation. The Company was formed as a New Mexico limited liability company by the filing of the Certificate of Formation with the Secretary of State of New Mexico in accordance with New Mexico law.

Section 2.2 Name. The name of the Company is The Milan Project LLC.

Section 2.3 Principal Place of Business. The principal place of business of the Company is XXXXXXXXXXXXXXXXXXXX. The Company may locate its places of business and registered office at any other place or places as the Manager may from time to time deem advisable.

Section 2.4 Registered Office and Registered Agent. The Company’s initial registered office shall be at XXXXXXXXXXXXXXXX. The initial registered agent is XXXXXXXXXX. The registered office and registered agent may be changed from time to time by the Manager.

Section 2.5 Term. The term of the Company commenced on the date the Certificate of Formation was filed with the Secretary of State of New Mexico and shall continue until the Company is dissolved and its affairs wound up in accordance with the provisions of this Operating Agreement or the New Mexico law.

**ARTICLE 3**

**BUSINESS OF COMPANY**

The Company will fund the development and sale of single-family residences in and around Milan, New Mexico as decided by the Manager, in Manager’s sole and absolute discretion, and in Manager’s reasonable business judgment and based upon such factors as total investment, particular location dynamics and opportunities, cost per location, market conditions, and other factors now known and unknown.

The Company may enter any other business arrangement or relationship, exercise all rights and powers, and engage in all activities as determined by the Manager in his sole discretion, which a limited liability company may legally exercise. In furtherance thereof, the Company may exercise all powers necessary to or reasonably connected with the Company’s business and may engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

**ARTICLE 4**

**ALLOCATIONS AND DISTRIBUTIONS**

Section 4.1. The Profits and Losses of the Company and all items of Company income, gain, loss, deduction, or credit shall be allocated, for Company book purposes and for tax purposes, to a Member in accordance with the Member’s Ownership Percentage Interest.

Section 4.2. If any Member unexpectedly receives any adjustment, allocation, or distribution described in Reg. sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Company gross income and gain shall be specially allocated to that Member in an amount and manner sufficient to eliminate any deficit balance in the Member’s Capital Account created by such adjustment, allocation, or distribution as quickly as possible. Any special allocation under this Section 4.2 shall be taken into account in computing subsequent allocations of Profits and Losses so that the net amount of allocations of income and loss and all other items shall, to the extent possible, be equal to the net amount that would have been allocated if the unexpected adjustment, allocation, or distribution had not occurred. The provisions of this Section 4.2 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Reg. sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations.

Section4.3. Any unrealized appreciation or unrealized depreciation in the values of Company property distributed in kind to all the Members shall be deemed to be Profits or Losses realized by the Company immediately prior to the distribution of the property and such Profits or Losses shall be allocated to the Members’ Capital Accounts in the same proportions as Profits are allocated under Section 4.1. Any property so distributed shall be treated as a distribution to the Members to the extent of the fair market value of the property less the amount of any liability secured by and related to the property. Nothing contained in this Agreement is intended to treat or cause such distributions to be treated as sales for value. For the purposes of this Section 4.3, “unrealized appreciation” or “unrealized depreciation” shall mean the difference between the fair market value of such property and the Company’s basis for such property.

Section4.4. All Distributable Cash Flow resulting from the normal business operations of the Company and from a Capital Event shall be distributed among the Members and Manager in accordance with Section 9.3 and 9.3(a) at such times as the Manager may elect, in the Manager’s sole and absolute discretion, and based upon the reasonable business judgment principle. The Manager shall determine the necessary amount of Reserves at any given time for Company health and shall also determine what Distributable Cash Flow shall be made to Members in relationship to the Company’s Reserves.

Section 4.5. If the proceeds from a sale or other disposition of a Company asset consist of property other than cash, the value of such property shall be as determined by the Manager, in the Manager’s sole and absolute discretion. Such non-cash proceeds shall then be allocated among all the Members in proportion to their respective Ownership Percentage Interest. If such non-cash proceeds are subsequently reduced to cash, such cash shall be distributed in accordance with Section 4.4.

Section 4.6. Notwithstanding any other provisions of this Agreement to the contrary, when there is a distribution in liquidation of the Company, or when any Membership Interest is liquidated, all items of income and loss first shall be allocated to the Members’ Capital Account under this Article 4, and other credits and deductions to the Members’ Capital Account shall be made before the final distribution is made. The final distribution to the Members shall be made in proportion to their positive Capital Account balances and pursuant to their respective Ownership Percentage Interest.

**ARTICLE 5**

**RIGHTS AND DUTIES OF THE MANAGER**

Section 5.1 Management. The business and affairs of the Company shall be managed solely by its Manager. The Manager shall have full and complete authority, power, and discretion to manage and control the business, affairs, subsidiaries, and properties of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company’s business.

Section 5.2 Number, Tenure, and Qualifications. The Company shall have one Manager. High Five Construction, Inc. is a New Mexico corporation that shall serve as the sole and only Manager. The Manager may be removed for cause only upon the vote of seventy-five percent (75%) of the Members, or if the Manager otherwise resigns. A Manager shall hold office until its successor shall have been elected and qualified or until its earlier disability, resignation, or removal for cause only. Subject to, and conditioned upon, the foregoing, a Manager shall be elected by a vote of seventy-five percent (75%) of the Members.

Section 5.3 Certain Powers of the Manager. Without limiting the generality of Section 5.1 in any way, the Manager shall have power and authority to:

(a) To acquire, on terms, conditions, and structure as may be suitable in the Manager’s sole discretion, property or interests in property from any Person as the Manager may determine. The fact that a Manager or a Member is directly or indirectly affiliated or connected with any such Person shall not prohibit the Manager from dealing with that Person;

(b) To borrow money for the Company from banks, other lending institutions, Managers, Members, or Affiliates of a Manager or Member on such terms as the Manager deems appropriate and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be undertaken or liability incurred by or on behalf of the Company except by the Manager, or by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Manager;

(c) To purchase liability and other insurance to protect the Company’s property and business and the Manager;

(d) To hold real and/or personal property in the name of the Company;

(e) To invest any Company funds temporarily in, by way of example but not limitation, time deposits, short-term governmental obligations, commercial paper or other investments;

(f) To sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan so long as such disposition is not in violation of or a cause of a default under any other agreement or law to which the Company may be bound;

(g) To execute on behalf of the Company all instruments and documents, including, without limitation: checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage, or disposition of the Company’s property, assignments, bills of sale, leases, partnership agreements, operating agreements of other limited liability companies, and any other instruments or documents necessary, in the sole discretion of the Manager, to the business of the Company;

(h) To employ accountants, legal counsel, managing agents, or other experts to perform services for the Company and to compensate them from Company funds;

(i) To enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Manager may approve;

(j) To pay any Manager or any Affiliate thereof reasonable fees for services;

(k) To create offices and designate Officers;

(l) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company’s business.

Unless authorized to do so by the Manager, no attorney-in-fact, employee, or another agent of the Company shall have any power or authority to bind the Company in any way whatsoever, or to pledge its credit or to render it liable for any reason whatsoever. Moreover, no Member shall have any power or authority to bind the Company unless the Member has been authorized by the Manager to act as an agent of the Company in accordance with the previous sentence.

Section 5.4 Liability for Certain Acts. No Manager or Member has guaranteed any liability nor shall any Manager or any Member have any obligation whatsoever to return any of Member’s Capital Contributions once delivered to the Company. Moreover, the Manager shall not have any obligation to pay Distributable Cash Flow pursuant to Company profits in any other manner than that provided for in Section 9.3 and 9.3(a). Notwithstanding the Act, no Manager or Member shall be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member except:

1. Loss or damage resulting from willful misconduct or resulting from an intentional and knowing violation of law, or
2. A transaction for which the Manager received a personal benefit in material violation or material breach of the provisions of the Operating Agreement (hereinafter, a “Cause Act”).

Section 5.5 Business Judgment Rule. The Manager shall be entitled to make reasonable decisions in good faith and in the best interest of the Company and its Members. The Manager shall be able to rely on information, opinions, analysis, reports or statements, written or verbal, including but not limited to legal opinions, financial reports, financial statements or other financial data, sales and marketing statistics, data, and evidence prepared or presented by:

1. Any one or more Members, Managers, Officers or employees of the Company whom the Manager reasonably believes, based upon verifiable and persuasive evidence, to be reliable and competent in the matter presented, and/or
2. Legal counsel, certified public accountants (CPA), financial and investment professionals, fundraisers, technical experts, sales and marketing experts, online sales funnel experts, or all other persons that the Manager reasonably believes valuable, professional, and/or expert competence and counsel, and/or
3. Any entity, person, or committee of trusted advisors, duly vetted, and of which Manager reasonably believes has or will provide good, valuable, and wise counsel to the Business and the Company; such decision based upon verifiable and persuasive evidence of such person’s or entity’s authority, influence, and competence to make such counsel regarding the Business and the Company.

Section 5.5 Manager Has No Exclusive Duty to Company. Any Manager may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Manager or to the income or proceeds derived therefrom. The Manager shall incur no liability to the Company or to any of the Members as a result of engaging in any other business or venture.

Section 5.6 Bank Accounts. The Manager may from time to time open bank accounts in the name of the Company, and the Manager shall be the sole signatory thereon unless the Manager determines otherwise.

Section 5.7 Indemnity of the Manager, Officers, Employees, and Other Agents. To the fullest extent permitted by the Act, the Company shall indemnify each Manager and make advances for expenses to such Manager arising from any loss, cost, expense, damage, claim, or demand, in connection with the Company, the Manager’s status as a Manager of the Company, such Manager’s participation in the management, business and affairs of the Company or such Manager’s activities on behalf of the Company, except to the extent any such loss, cost, expense, damage, claim or demand is a result of a Cause Act of the Manager. To the fullest extent permitted by the Act, the Company shall also indemnify its Officers, employees, and other agents who are not Managers arising from any loss, cost, expense, damage, claim or demand in connection with the Company, any such Person’s participation in the business and affairs of the Company or such Person’s activities on behalf of the Company, except to the extent any such loss, cost, expense, damage, claim or demand is the result of a Cause Act of such Person.

Section 5.8 Resignation. Any Manager of the Company may resign at any time by giving thirty (30) days written notice to the Members of the Company. The resignation of any Manager shall take effect upon the date specified in such notice, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is a Member shall not affect the Manager’s rights as a Member.

Section 5.9 Removal. A Manager may be removed at a special meeting called for that purpose by a vote of 75% of the Members conditioned upon the prior final, non-appealable judgment of a court of competent jurisdiction that such Manager has committed a Cause Act.

Section 5.10 Vacancies. Upon the resignation or removal of the Manager, the Company will dissolve pursuant to Article 14 hereof, unless the Members vote to continue the Company and appoint a replacement Manager, in each case by Majority Vote.

**ARTICLE 6**

**STATUS, RIGHTS AND OBLIGATIONS OF MEMBERS**

Section 6.1 List of Members. Upon written request of any Member, the Company shall provide a list showing the names, addresses, and Ownership Percentage Interest of all Members as indicated in the List of Members attached hereto as Exhibit A, and incorporated herein by this reference.

Section 6.2 Limitation on Liability. No Member will be bound by, or be personally liable for the expenses, liabilities, or obligations of the Company.

Section 6.3 Withdrawals. No Member will be entitled to withdraw any part of his Capital Account or to receive any distributions from the Company except as expressly provided in this Agreement.

Section 6.4 Decisions of the Company. The Members shall have no right to make any decisions with regard to the Company, except as otherwise set forth herein or in the Act. No Member will have the authority, right, or power to require a Cash Flow Distribution, nor a partition of any asset, Intellectual Property, other property, nor to compel the sale or appraisal of any Company asset, or a deceased Member's interest in the Company's assets, notwithstanding any provision of law or Act to the contrary.

**ARTICLE 7**

**EXPENSES**

Section 7.1 Expenses. The Company shall pay or reimburse the Manager, or any Person advancing payment of any expenses, fees, costs, liabilities, and/or obligations relating to the Company’s activities, investments, and Business, including:

1. All fees, costs, expenses, liabilities, and obligations attributable to structuring, organizing, acquiring, managing, operating, holding, valuing, winding up, liquidating, dissolving, and disposing of the investments, including interest and fees on money borrowed by the Company or the Manager on behalf of the Company, registration expenses, and brokerage, finders’, custodial and other fees,
2. Legal, accounting, auditing, administration, custodian, depositary, insurance (including directors and officers and errors and omissions liability insurance), travel, litigation and indemnification costs and expenses, judgments and settlements, consulting, finders’, financing, appraisal, filing, and other fees and expenses (including fees, costs, and expenses associated with the preparation or distribution of the Company’s financial statements, tax returns and Schedules K-1) or any other administrative, regulatory or other Company-related reporting or filing and all fees, costs and expenses associated with establishing, operating and maintaining any online Member portal,
3. All out-of-pocket fees, costs, expenses, liabilities, and obligations incurred by the Company, the Manager, or any other agent of the Manager relating to investment and disposition opportunities for the Company not consummated (including legal, accounting, auditing, insurance, travel, consulting, finders’, financing, appraisal, filing, printing, real estate title, survey and other fees and expenses),
4. All out-of-pocket fees, costs, and expenses incurred by the Company, the Manager, or any other agent of the Manager in connection with any Company-related business conference or meeting with any Member,
5. Any taxes, fees, and other governmental charges levied against the Company,
6. Costs and expenses that are classified as “extraordinary expenses” under the U.S. generally accepted accounting principles,
7. All fees, costs, and expenses incurred in connection with the organization, management, operation and dissolution, liquidation, and final winding up of any subsidiary,
8. Any fees, costs, or expenses of any third-party service provider or Affiliate of the Manager who provides services similar to a third-party service provider.

Section 7.2 Management Fees. The Company will pay the Manager a Management and Administrative fee equal to XXXXX percent (XX%) of the Distributable Cash Flow per month for the life of the Company, to be paid to the Manager monthly (the “Management Fee”). Should Manager be terminated pursuant to Section 5.9, then said Management Fee shall terminate immediately. The Manager or an affiliate may be paid standard real estate brokerage fees or commissions on each residential property sold by the Company.

**ARTICLE 8**

**CONTRIBUTIONS TO THE COMPANY AND CAPITAL LOANS**

Section 8.1 Members’ Capital Contributions. Each Member shall contribute the amount set forth next to such Member’s name on Exhibit A hereto as the Member’s Initial Capital Contribution upon not less than 48 hours’ notice by the Manager.

Section 8.2 Loans to Company. The Company may borrow funds from Members on terms and conditions as determined by the Manager. Repayment of such loans shall be on the terms agreed to by the Member and Company and solely approved by the Manager.

Section 8.3 Additional Capital Contributions. Except as otherwise may be expressly provided herein, the Members shall not be required to make additional capital contributions. The Manager shall have the discretion to request, in writing, additional Capital Contributions from each Member in proportion to their Membership Percentage (“Capital Call”) in the event that the Company has insufficient funds to operate the Business of the Company or to make required payments on any debt of the Company; provided, however, the timing and amount of a Capital Call must be reasonable.

Section 8.4 Election not to participate in optional Capital Call. Should any Member elect not to contribute to the Company pursuant to a Capital Call (hereinafter, a “Non-Participating Member”), then the amount of any Capital Call available to be made by the Non-Participating Member shall be available to all other Members, at such Members’ sole and absolute discretion. Any other Member may, at his, her or its election, make the Capital Call payment on behalf of the Non-Participating Member; provided, however, that any Member who/which intends to make such payment shall first provide written notice of that intention to all other Members (including the Non-Participating Member); and the Non-Participating Member shall have five (5) days to answer and consummate the Capital Call to maintain Members’ Ownership Percentage Interest. If the Non-Participating Member has so affected its cure, no Member will have any further rights under this Section 8.4 with respect to the cured Capital Call. Any Member which makes a payment to the Company on behalf of a Non-Participating Member pursuant to this Section 8.4 (a “Contributing Member”) shall treat the payment as an additional capital contribution to the capital of the Company for the Contributing Member’s own Capital Account, and in such case, the Contributing Member’s and Non-Participating Member’s Ownership Percentage Interest in the Company shall be adjusted in accordance with the formula set forth herein. If more than one Member elects to be a Contributing Member, then all contributing Members shall contribute on a pro-rata basis determined by the ratio of the respective Membership Interest of the Contributing Members. The respective Ownership Percentage Interests of each Contributing Member and the Non-Participating Member shall be adjusted and recalculated in accordance with the following formula and Exhibit A shall be revised accordingly:

Contributing Member: [(Membership Percentage of Contributing Member multiplied by total invested Capital of Company) plus (Amount of Additional Capital Contributed by Contributing Member on behalf of himself/herself/itself and the Non-Participating Member)] divided by [(Total invested Capital of the Company) plus (total Additional Capital Contributions contributed to the Company pursuant to Section 8.3)]

Non-Participating Member: [(Membership Percentage of Non-Participating Member multiplied by total invested Capital of the Company)] divided by [(Total invested Capital of the Company) plus total Additional Capital Contributions contributed to the Company pursuant to Section 8.3)]

Section 8.5 Capital Accounts. The Company shall maintain a separate Capital Account for each Member. For this purpose, the Company may, upon the occurrence of any of the events specified in Regulation §1.704-1(b)(2)(iv)(f), increase or decrease the Capital Accounts in accordance with the rules of such regulation and Regulation §1.704-1(b)(2)(iv)(g) to reflect a revaluation of Company. Items of Company income, gain, loss, expense or deduction for any fiscal period shall be allocated among the Members in such manner that, as of the end of such fiscal period and to the greatest extent possible, the Capital Account of each Company shall be equal to the respective net amount, positive or negative, that would be distributed to such Member from the Company or for which such Member would be liable to the Company under this Agreement, determined as if, on the last day of such fiscal period, the Company were to (a) liquidate the assets of the company for an amount equal to their book value (determined according to the rules of Regulation §1.704-1(b)(2)(iv)) and (b) distribute the proceeds in liquidation in accordance with Section 14.3.

**ARTICLE 9**

**DISTRIBUTIONS TO MEMBERS**

Section 9.1 Distributions. All distributions shall be made to the Members as the Manager may determine in accordance with Article 4; provided, following the dissolution of the Company, distributions shall be made in accordance with Section 14.3 hereof.

Section 9.2 Limitation Upon Distributions. No distribution shall be made to Members if prohibited by law, or by order of a court of competent jurisdiction.

Section 9.3 Distribution of Distributable Cash Flow Attributable to Company’s investments and operations. Members shall receive distributions of Distributable Cash Flow in accordance with the following:

1. XXXX percent (XX%) of all Distributable Cash Flow to the Members as a group, to be allocated and paid to each Member pro-rata pursuant to each Member’s respective Ownership Percentage Interest and XXX percent (XX%) to the Manager; such distributions to be made by Manager, in Manager’s sole and absolute discretion.

Section 9.4 Limitation on Distributions and Re-purchase of Membership Interests Members shall be entitled to receive a return of their invested capital plus an amount equal to twelve percent (12%) per annum calculated from the date that the Company receives title to the Milan property and no more. Once they have received that amount their Membership Interests will have been re-purchased by the Company and their ownership and participation in the Company will cease.

**ARTICLE 10**

**BOOKS AND RECORDS**

Section 10.1 Accounting Period. The Company’s accounting period shall be the Fiscal Year.

Section 10.2 Records and Reports. At the expense of the Company, the Manager shall maintain records and accounts of all operations and expenditures of the Company. The Company shall keep at its principal place of business the following records:

1. A current list of the full name and last known address of each Member and Manager;
2. Copies of records to enable a Member to determine the relative voting rights, if any, of the Members;
3. A copy of the Certificate of Formation of the Company and all amendments thereto;
4. Copies of the Company’s federal, state, and local income tax returns and reports, if any, for the three most recent years;
5. Copies of this Operating Agreement, together with any amendments thereto;
6. Copies of any financial statements of the Company for the three (3) most recent years
7. The books and records shall at all times be maintained at the principal office of the Company and shall be open to the reasonable inspection and examination of the Members, or their duly authorized representatives, during scheduled, mutually convenient, and reasonable business hours.

Section 10.3 Tax Returns. The Manager shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns or pertinent information therefrom shall be furnished to the Members within a reasonable time after the end of the Company’s fiscal year.

**ARTICLE 11**

**TRANSFERABILITY**

Section 11.1 General Prohibition. Except as otherwise permitted by this Agreement, no Member may, directly or indirectly, assign, convey, sell, transfer, liquidate, encumber, pledge, hypothecate or in any way alienate by operation of law or otherwise (collectively, a “Transfer”), all or any part of his Interest unless otherwise specifically permitted by this Agreement or unless approved by the Manager, which consent may be given or withheld in its sole discretion. Any attempted Transfer of all or any portion of an Interest without the necessary consent or as otherwise permitted hereunder shall be null and void and shall have no effect whatsoever.

Section 11.2 Permitted Transfers. A Member shall be free at any time to Transfer all, but not less than all, his/her Membership Interest to any one of that Member’s direct family members. For purposes of this Article, a Member’s “Direct Family Members” shall mean a Member’s spouse, child, by birth or formal adoption, or revocable or irrevocable trusts formed for the primary benefit of the Member himself or such spouse or child. For purposes of this Agreement, a Transfer permitted under this Section 11.2 shall be referred to as a “Permitted Transfer” and the parties of such Permitted Transfer shall be the “Transferor” and “Transferee,” respectively. A Member who elects to engage in a Permitted Transfer shall be responsible for the payment of any and all legal, operating, administrative, or other fees and costs actually incurred by Company in consummating the Transfer to a Direct Family Member.

Section 11.3 Conditions of Transfer and Assignment. A transferee of a Membership Interest shall become a Member only if approved by the Manager and if the following conditions have been satisfied:

(a) the Transferor, his/her legal representative or an authorized agent must have executed a written conveying instrument transferring such Membership Interest pre-approved in a form and substance satisfactory to the Manager, in Manager’s sole and absolute discretion, and thereby approving the transaction;

(b) the Transferee must have executed a written conveying instrument, in form and substance satisfactory to the Manager approving the transaction, thereby assuming any and all of the duties and obligations of the Transferor pursuant to the terms of this Operating Agreement with respect to the transferred Membership Interest; and moreover, to be bound by and subject to all of the terms and conditions of this Operating Agreement;

(c) the Transferor, his/her/its legal representative or authorized agent, and the Transferee must have executed a written agreement, in form and substance satisfactory to the Manager approving this transaction to indemnify and hold harmless both the Company and the Manager from and against any and all claims, loss or liability of any kind or nature arising out of the Permitted Transfer;

(d) the Transferor and transferee, their legal representatives or authorized agents, shall cause to be provided such information as the Manager may reasonably request in order to ascertain whether the transferee is an “Accredited Investor” as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended or modified from time to time. The Manager may approve of such transfer once the Manager is satisfied, in its sole and absolute discretion, that such transferee is an Accredited Investor and otherwise qualifies to participate in the Company’s operations pursuant to the Securities Act of 1933;

(e) the Transferee must have executed such other documents and instruments as the Manager may deem necessary to effect the admission of the Transferee as a Member; and

(f) unless waived by the Manager, the Transferee or the Transferor must have paid the expenses incurred by the Company in connection with the admission of the Transferee to the Company.

Section 11.4 Option Rights.

(a) Option Events. Upon the occurrence of any one of the following situations (hereinafter individually referred to as an “Option Event”), the Interest of the Member who suffers or causes an Option Event (“Leaving Member”) shall be subject to the option to purchase set forth in this Section, unless otherwise determined by the Manager, in Manager’s sole and absolute discretion.

(i) Death. Upon the death of a Member.

(ii) Disability. Upon the Disability of a Member. As used herein, “Disability” shall mean any illness or condition which causes a Member to be unable to perform his/her duties in the manner in which such duties were previously performed by such Member for a continuous period of ninety (90) days or more, the same being determined by a doctor licensed to practice medicine in the state of such Member’s residence.

(iii) Insolvency. Upon the Insolvency of a Member.

(iv) Divorce. If in connection with the dissolution of the marriage of any married Member, the Member enters into a divorce or property settlement agreement, or a court of competent jurisdiction issues an interlocutory decree or other order, the terms of which will transfer or award all or part of the Membership Interest of the Member to the Member’s spouse, whether as a confirmation or a disposition of the spouse’s property rights or otherwise.

(v) Attempted Unpermitted Transfer of Interest. If any Member attempts to transfer his/her Interest in the Company not in accordance with the terms of this Article.

(b) Exercise of Option. Commencing upon the latter of the occurrence of an Option Event or the receipt of written notice from the Leaving Member of the occurrence of an Option Event, the Company shall have the irrevocable option exercisable for thirty (30) days after the receipt of notice of the Option Event and the determination of the Purchase Price pursuant to Section 12.5 below to purchase the Leaving Member’s Membership Interest affected by the Option Event for the Purchase Price determined pursuant to Section 12.5 below. In the event the Company does not exercise its option to purchase, the other Members (“Other Members”) each shall have the right to purchase a pro-rata share of the Leaving Member’s Membership Interest exercisable for thirty (30) days after the date the Company elects (affirmatively or otherwise) not to purchase such Membership Interest. If neither the Company nor the Other Members elect to purchase the entire Membership Interest of the Leaving Member, the remaining Leaving Member’s Interest (“Remaining Interest”) shall be transferred to the Leaving Member’s heirs, administrators, estate, representatives, custodians, trustees, or assigns as provided by law.

Section 11.5 Purchase Price/Company Valuation. Within twenty (20) days after the notice is received of the occurrence of the Option Event, the Leaving Member (or his/her heirs or personal representatives) and the Manager shall establish the fair market value of the Company. If the Manager and Leaving Member cannot agree upon the fair market value of the Company, the Manager shall select an independent appraiser who shall establish the fair market value of the Company within sixty (60) days after his selection. The cost of the appraisal shall be borne by the Leaving Member.

Section 11.6 Payment of Purchase Price. The Purchase Price shall be paid to the Leaving Member by delivering a promissory note, signed by the Company or, as the case may be, the Other Members which shall be due and payable in ninety (90) equal monthly installments of principal and interest, with interest to accrue on the unpaid principal balance of the note at the rate of two percent (2%) per annum. The Company or the Other Members may prepay this note in full at any time without penalty. The closing of the purchase of the Leaving Member’s Membership Interest shall take place within sixty (60) days after the Purchase Price has been established in accordance with this Agreement.

Section 11.7 Failure to deliver Voting Rights/Membership Interest. If a Member or other Person, including but not limited to the heir, administrator, estate, representative, custodian, trustee, or spouse of Leaving Member, becomes obligated to sell, transfer or assign any Membership Interest to the Company or the Other Members under this Operating Agreement (the “Obligated Person”) and fails to deliver such Membership Interest in accordance with the terms of this Operating Agreement, the Company or such Other Members may, in addition to all other remedies it or they may have, tender to the Obligated Person, at the address set forth herein or such place as Obligated Person may be located, the Purchase Price for such Membership Interest as is herein specified and then transfer such Membership Interest on the books and records of the Company to the person or entity entitled hereunder to receive the Membership Interest.

**ARTICLE 12**

**ISSUANCE OF ADDITIONAL MEMBERSHIP INTERESTS**

Any Person approved by the Manager, in Manager’s sole and absolute discretion, may become a Member pursuant to the Company’s issuance and delivery of additional Membership Interest; such Membership Interest directly relating to such Member’s Ownership Percentage Interest. The Manager shall first offer the same terms to all existing Members who shall have the same preferences provided for, and set forth, in Article 8 of this Agreement. Pursuant to the terms of Article 8 above, the Manager shall determine the Ownership Percentage Interest of any newly admitted Member and determine the Ownership Percentage Interest of the previously-existing Members, some of which may be diluted and decreased respectively if such Member chose not to participate in an additional Capital Contribution.

**ARTICLE 13**

**DISSOLUTION AND TERMINATION**

Section 13.1 Dissolution. The Company shall be dissolved upon the occurrence of any of the following events:

(i) by the Vote of 100% of the Members upon a Cause Act of the Manager; or

(ii) the sale of all or substantially all of the Company’s assets and the collection of all proceeds therefrom; or

(iii) there are no Members of the Company; or

(iv) upon the entry of a decree of judicial dissolution by a court of competent jurisdiction.

Section 13.2 Effect of Dissolution. Upon dissolution, the Company shall cease to carry on its business, except as required by law.

Section 13.3 Winding-Up, Liquidation, and Distribution of Assets.

(a) Upon dissolution, an accounting shall be made by the Company’s accountants of the accounts of the Company and of the Company’s assets, liabilities, and operations, from the date of the last previous accounting until the date of dissolution. The Manager shall immediately proceed to wind up the affairs of the Company.

(b) Following the dissolution of the Company (whether pursuant to Section 13.1 or otherwise) and upon liquidation and winding up of the Company, the Manager shall make a final allocation of all items of income, gain, loss, and expense in accordance with Article 8 hereof, and the Company’s liabilities and obligations to its creditors shall be satisfied to the extent required by the Act (whether by payment or the making of reasonable provision for payment) prior to any distributions to the Company. After such payment or reasonable provision for payment of all liabilities and obligations of the Company, the remaining assets, if any, shall be distributed among the Partners pursuant to Article 9.

(c) Upon completion of the winding-up, liquidation, and distribution of the assets, the Company shall be deemed terminated.

Section 13.4 Certificate of Termination. When all debts, liabilities, and obligations have been paid and discharged or adequate provisions have been made therefore and all of the remaining property and assets have been distributed to the Members, a certificate evidencing such termination may (but shall not be required) be executed and filed with the Secretary of State of New Mexico.

Section 13.5 Return of Contribution Nonrecourse to Other Members. Except as provided by law or as expressly provided in this Operating Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of the Member’s Capital Account. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Account of one or more Members, including, without limitation, all or any part of that Capital Account attributable to Capital Contributions, then such Member or Members shall have no recourse against any other Member or the Manager.

**ARTICLE 14**

**MISCELLANEOUS PROVISIONS**

Section 14.1 Compliance with Regulations. The provisions of this Agreement are intended to comply with, and in some cases are required by, Code Section 704(b) and 704(c) and the regulations thereunder. Some of the language in this Operating Agreement is taken directly from or is based on such Regulations. These provisions are intended to be interpreted in such a manner as to comply with such Regulations. The Manager may make any modification to the manner in which the Capital Accounts are computed that the Manager determine is appropriate in order to comply with such Regulations, provided that such modification is not likely to have a material effect on the amount intended to be distributable to any Member upon the dissolution of the Company. The Manager may also make any modification the Manager deems appropriate to comply with such Regulations if unanticipated events might otherwise cause this Agreement to not comply with such Regulations.

Section 14.2 Application of New Mexico Law. This Operating Agreement, and the application or interpretation hereof, shall be governed exclusively by the Act, its terms, and by the laws of the state of New Mexico.

Section 14.3 No Action for Partition. No Member has any right to maintain any action for partition with respect to the property or assets of the Company or the Business.

Section 14.4 Execution of Additional Instruments. Each Member hereby agrees to execute such other additional and further ancillary instruments necessary to effectuate the intent and purpose of this Agreement, including but not limited to, designations, powers of attorney, and any other instrument necessary to comply with applicable laws, rules, or regulations.

Section 14.5 Construction. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

Section 14.6 Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Operating Agreement or any provision hereof.

Section 14.7 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

Section 14.8 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Section 14.9 Exhibits. All exhibits referred to in this Operating Agreement and attached hereto are incorporated herein by this reference.

Section 14.10 Heirs, Successors, and Assigns. Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

Section 14.11 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company or by any Person, not a party hereto.

Section 14.12 Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. Electronic signatures, including .pdf files or other similar methods of digitizing signatures, shall be deemed to be an original for purposes of this Operating Agreement.

Section 14.13 Notices. Any and all notices, offers, demands, or elections required or permitted to be made under this Operating Agreement (“Notices”) shall be in writing, signed by the party giving such Notice, and shall be deemed given and effective (i) when hand-delivered (either in person or by commercial courier), or (ii) on the third (3rd) business day (which term means a day when the United States Postal Service or its legal successor (“Postal Service”) is making regular deliveries of mail on all of its regularly appointed week-day rounds in Milan, New Mexico) following the day (as evidenced by proof of mailing) upon which such notice is deposited, postage prepaid, certified mail, return receipt requested, with the Postal Service, and addressed to the other party at such party’s respective address as set forth on Exhibit “A,” or at such other address as the other party may hereafter designate in writing by Notice.

Section 14.14 Certificate of Non-Foreign Status. In order to comply with § 1445 of the Code And the applicable Treasury Regulations thereunder, in the event of the disposition by the Company of a United States real property interest as defined in the Code and Treasury Regulations, each Member shall provide to the Company an affidavit stating, under penalties of perjury, (i) the Member’s address, (ii) United States taxpayer identification number, and (iii) that the Member is not a foreign person as that term is defined in the Code and Treasury Regulations. Failure by any Member to provide such affidavit by the date of such disposition shall authorize the Manager to withhold ten percent (10%) of each such Member’s distributive share of the amount realized by the Company on the disposition.

Section 14.15 Amendments. Any amendment to this Operating Agreement shall be made in writing and must be approved by the Manager in its sole discretion.

Section 14.16 Invalidity. The invalidity or unenforceability of any particular provision of this Operating Agreement shall not affect the other provisions hereof, and the Operating Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted. If any particular provision herein is construed to be in conflict with the provisions of New Mexico law, the provisions of this Operating Agreement shall control to the fullest extent permitted by applicable law. Any provision found to be invalid or unenforceable shall not affect or invalidate the other provisions hereof, and this Operating Agreement shall be construed in all respects as if such conflicting provision were omitted.

Section 14.17 Dispute Resolution. Any and all Company, Member, or Manager controversy, claim or dispute shall be attempted to be resolved promptly by good-faith negotiation of the disputing parties. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within thirty (30) days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place, virtually or otherwise. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified are pending.

Arbitration. If the parties do not reach an agreed-upon solution within a period of thirty (30) days from the time of informal dispute resolution, then either party may initiate binding arbitration as the sole means to resolve claims. Specifically, all claims arising out of, or relating to, this Operating Agreement, and the parties’ relationship with each other shall be finally settled by binding arbitration administered by a mutually agreed-upon arbitrator or arbitration service, under the applicable commercial arbitration rules then in effect of the American Arbitration Association (or at any time or at any other place or under any other form of arbitration mutually acceptable to the parties so involved).

The arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, or enforceability of this Operating Agreement, including whether a claim is subject to arbitration. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator’s award shall be written, final, conclusive, and binding on the parties and may be entered as a judgment in any court of competent jurisdiction.

Section 14.18 Determination of Matters Not Provided for in This Operating Agreement. The Members shall decide any and all questions arising with respect to the Company and this Operating Agreement which are not specifically or expressly provided for in this Operating Agreement by Majority Member vote.

Section 14.19 Further Assurances. The Members each agree to cooperate and to execute and deliver in a timely fashion any and all additional documents necessary to effectuate the purposes of the Company and this Operating Agreement.

Section 14.20 No Partnership Intended for Non-Tax Purposes. The Members have formed the Company as a Limited Liability Company and expressly disavow any intention to form a partnership under New Mexico’s Limited Partnership Act or the partnership act or laws of any other state. The Members do not intend to be partners one to another or partners as to any third party except for tax purposes. To the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

Section 14.21 Time. Time is of the essence of this Operating Agreement, and to any payments, allocations, and distributions provided for under this Operating Agreement.

Section 14.22 Governing Law and Venue. This Operating Agreement and all disputes arising out of, or in connection with it, and any related documents, including disputes relating to its validity, breach, termination, or nullity shall be governed by and construed in accordance with the internal laws of the State of New Mexico without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of New Mexico. The venue shall be deemed to be Milan, New Mexico.

IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the date and year set forth on the first page herein.

THE SUBSCRIBER:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name of Subscriber

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Description of Entity (if applicable)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Subscriber

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Person Signing on behalf of Subscriber

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title (if applicable)

Address of Subscriber:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**AGREED AND ACCEPTED BY THE COMPANY**:

By: The Milan Project LLC

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Rebecca Price

Title: President

**Exhibit A**

**List of Members**

|  |  |  |  |
| --- | --- | --- | --- |
| Name | Capital Contribution | Address for Note | Percentage of Ownership Interest |
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**Exhibit B**

**Property Description**