

Below is the Order of the Court.



**Christopher M. Alston**  
**U.S. Bankruptcy Judge**

(Dated as of Entered on Docket date above)

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

JAMES AND JANET WILLETT,  
DEBTOR

Bankruptcy Case No. 15-17182-CMA

ORDER CONFIRMING PLAN AND  
APPROVING ADEQUACY OF THE  
DISCLOSURE STATEMENT

THIS MATTER came before the Court by and through the Debtors' attorneys of record, Vortman & Feinstein; the Debtors, James Willett and Janet Willett, having filed a Combined Disclosure Statement and Plan of Reorganization on or about May 2, 2016 (Docket No. 72); and a Combined Disclosure Statement and Amended Plan of Reorganization dated May 25, 2016 (Docket No. 96), a copy of which is attached hereto ("Amended Plan"); and the Court having reviewed the files and records herein, including the Ballot Analysis and a Pre-Confirmation Report having been filed as required under LR 3020-1 filed on June 1, 2016 (Docket No. 110); and objections to the adequacy of the

ORDER  
Page 1 of 3

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Seattle WA 98101  
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Fax: (206) 386-5355

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1 Disclosure Statement and to plan confirmation having been resolved or withdrawn; the  
2 court FINDS as follows:

3 1. The Disclosure Statement filed on May 27, 2016 (Docket No. 96) be and is  
4 hereby approved as providing adequate information under Section 1125 of the Bankruptcy  
5 Code ("Code").

6 2. The Amended Plan complies with the applicable provisions of the Bankruptcy  
7 Code; and the Debtors complied with the applicable provisions in submitting and soliciting  
8 acceptances for the Plan under Section 1125 of the Code.

9 3. The Amended Plan was submitted in good faith;

10 4. The Amended Plan has been accepted by a class of creditors who are  
11 impaired under the Plan;

12 5. The Debtors have made the disclosures required under Section 1123,  
13 1125, and 1129 of the Code; and

14 6. The Debtors may seek a discharge under Section 1141 of the Code upon  
15 completion of payments under the Plan to all classes of general unsecured creditors  
16 herein;

17 Now, therefore, it is hereby:

18 **ORDERED, ADJUDGED AND DECREED:**

19 1. That the Debtors' Amended Plan attached hereto with Exhibits be and  
20 hereby is confirmed<sup>1</sup>.

21 2. Upon the effective date of the Plan and the commencement of making the  
22 distributions and payments called for under the Plan, the Debtors may submit a request for  
23 an order administrative closing of this case.

24 \_\_\_\_\_  
<sup>1</sup> This Plan modifies the Footnote in the originally filed First Amended Plan on page 12, as referenced in the  
Debtors' Preconfirmation Report regarding the claim of Surna Inc.

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1           3.       The reorganized Debtors shall be responsible for timely payment of quarterly  
2 fees incurred pursuant to 28 U.S.C. § 1930(a)(6). After confirmation, the reorganized  
3 Debtors shall file with the United States Trustee, quarterly financial report for each quarter,  
4 or portion thereof, that the case remains open. The quarterly financial report shall include  
5 a statement of disbursements made during the course of the quarter, whether or not  
6 pursuant to the Plan.

7           5. Upon completion of the payments required under the Plan as to all classes of  
8 unsecured creditors, the Debtors may file with the Court and serve copies on the US  
9 Trustee and on all creditors having allowed claims under the Amended Plan, a Motion and  
10 proposed Order of Discharge and Declaration of Completion containing the required  
11 elements and seeking findings under §1141(d)(5)(A) or (B), and reopen this matter without  
12 filing fee for entry of an Order granting the Debtors a discharge.

13                   /// END OF ORDER ///

14 Presented by

15 /s/ Larry B Feinstein

16 \_\_\_\_\_  
17 Larry B. Feinstein WSBA # 6074  
18 Attorney for Debtors

19 Approved for Entry, Notice Waived:

20 /s/ Aimee S. Willig

21 \_\_\_\_\_  
22 Aimee S. Willig, WSBA 22859  
23 Attorney for Unsecured Creditor's Committee

24 ORDER

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United States Bankruptcy Court  
Western District of Washington

In re James and Janet Willett  
Debtor

Case No. 15-17182-CMA

Individual Case under Chapter 11

**JAMES AND JANET WILLETT'S COMBINED DISCLOSURE STATEMENT**  
**AND AMENDED PLAN OF REORGANIZATION**  
**DATED MAY 25, 2016**

I. INTRODUCTION

This is the combined disclosure statement and Amended Plan of Reorganization (the "Plan") in the individual chapter 11 case of James and Janet Willett (the "Debtors"). This document contains information about the Debtors and provides adequate information regarding the debtors' Plan of Reorganization so that you may vote in favor thereof. ***Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.***

The proposed distributions under the Plan are discussed at pages 5-11 of this document. General unsecured creditors are classified in Class 4, and will receive a distribution of 60 % of their allowed claims.

A. Purpose of This Document

This Disclosure Statement and Plan describes:

- The Debtors and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the "Court") will consider when deciding whether to confirm the Plan,
- Why the Proponent believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read this document and the supporting materials carefully. If confirmed, the Plan will establish your rights.

Disclosure Statement and Plan of Reorganization  
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Below is the Order of the Court.

**B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. *Time and Place of the Hearing to Finally Approve This Disclosure Statement and Confirm the Plan*

The hearing at which the Court will determine whether to finally approve this Disclosure Statement and confirm the Plan will take place on June 3, 2016, at 9:30 a.m., in Courtroom 7206, at the US Courthouse, 700 Stewart Street, Seattle, WA 98101, before Judge Christopher Alston.

2. *Deadline for Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, you will be given an opportunity to vote. See section IV.A. below for a discussion of voting eligibility requirements. Your ballot must be received by 5 p.m. on May 27, 2016.

3. *Deadline for Objecting to the Adequacy of Disclosure and Confirmation of the Plan*

Objections to this Disclosure Statement or to the confirmation of the Plan must be filed with the Court and served upon the debtors' counsel by 5 p.m. on May 27, 2016.

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact Larry B. Feinstein, 520 Pike Street, Suite 2250, Seattle, WA 98101.

**C. Disclaimer**

***The Court has conditionally approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted.***

## II. BACKGROUND

### A. Description and History of the Debtors' Business

The Debtors are married couple. Both husband and wife are retired, but are active in investing in various businesses and real estate ventures. He is a principal of Yakima Compost Company and The Yakima Company, Inc., and he is involved in various business partnerships, including Agrisoft, LLC.

### B. Events Leading to Chapter 11 Filing

This bankruptcy filing arose out of a dispute over fees that Gallagher & Kennedy ("G&K") charged Mr. Willett's company, The Yakima Company, Inc. ("Yakima"), for representation during a prolonged breach of contract case in Arizona, *County of La Paz v. Yakima Compost Company, Inc., et al.*, No. CV 2003-0119 (La Paz County Superior Court). The litigation lasted nearly a decade. G&K initially represented Yakima on an hourly fee basis but Yakima eventually built up such a large accounts receivable debt that both parties agreed to change to a contingency fee agreement.

The dispute arose between Yakima and G&K over the percentage of the contingency. Yakima prevailed in trial and was paid in full early 2011. G&K withheld the agreed upon percentage and distributed the remainder to Yakima. Some months later, G&K claimed that they had undercharged Yakima and overpaid by \$500,000. G&K filed suit against the Debtor and Yakima in the U.S. District Court for the District of Arizona, case number 2:12-cv-00373-DGC, to compel a binding arbitration. Yakima responded with a lawsuit alleging G&K had actually overpaid themselves some \$2 million dollars in fees. The dispute simmered for several years until finally going to binding mediation in 2015 where a panel of judges ruled in G&K's favor and ordered Yakima to repay G&K the \$500,000 overpayment plus \$65,000 in interest. G&K sought to collect the entire from James and Janet Willett since James Willett was the majority stockholder in Yakima and who signed the original fee agreement.

Since the distribution of funds at the conclusion of the *County of La Paz v. Yakima Compost Company, Inc., et al.* in 2011, a combination of unfortunate and unforeseeable events and poor investment choices have conspired to render the Debtors incapable of paying the G&K judgment without a Plan of Reorganization. In addition to G&K, the remaining debts of the Debtors arose from personal guarantees made by Willett for another former business, Agrisoft, LLC. The business was purchased by Kind Agrisoft, LLC in 2015. In summary, Willett invested \$1,000,000 in the Pacific West Real Estate Opportunity fund in 2012. Further, he spent approximately \$250,000 in special educational programs for his son in 2013 and 2014. He invested and lost approximately \$1.4 million in the stock market from 2012-2015. Finally, he loaned out approximately \$300,000 to friends which was not unrecoverable. Both James and Janet Willett are retired.

Below is the Order of the Court.

**C. Significant Events During the Bankruptcy Case**

- James and Janet Willett filed these Chapter 11 proceedings on December 8, 2015.
- Larry B. Feinstein of Vortman & Feinstein was retained as counsel for the Debtors pursuant to an Order entered on January 7, 2016 (Docket #12).
- Aimee S. Willig of Bush Strout & Kornfeld, LLP, was hired to represent the Official Unsecured Creditors' Committee. The Committee is comprised of:
  - Creditor 1 and Chairperson: Lindsy Weber for Gallagher & Kennedy
  - Creditor 2: Albert Hummel
  - Creditor 3: Payteller, LLC
- The Debtors intends to retain Thomas Leland of Holland & Knight as special counsel. Pre-petition, the firm handled certain legal matters for his former company, Agrisoft Development, LLC. Post-petition, there are some miscellaneous issues left to be resolved regarding Agrisoft and it would benefit the estate to have Mr. Leland represent them in those affairs. The Application is set for hearing on May 6, 2016.
- The Debtor intends to retain Julie Billett as realtor for the estate to sell their home pursuant to this Plan of Reorganization.
- The Debtors entered into a Stipulation dated March 17, 2016, with the Official Unsecured Creditors' Committee to segregate distributions from the Pacific West Real Estate Opportunity Fund, with the allowance of a small stipend for living expenses. These funds will remain in a segregated, interest bearing account for the benefit of the estate's unsecured creditors, to be paid pursuant to the Plan of Reorganization.

**D. Projected Recovery of Avoidable Transfers**

The Debtors has not yet completed its investigation with regard to prepetition transactions. If you received a payment or other transfer within 90 days of the bankruptcy, or other transfer avoidable under the Code, the Debtors may seek to avoid such transfer.

**E. Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtors reserve the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article V of the Plan.

**F. Current and Historical Financial Conditions**

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The identity and values of the estate's assets are listed in Exhibit A. The Debtors' three years of historical income information as filed with the Court, is set forth in Exhibit B.

**III. THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

**A. What is the Purpose of the Plan of Reorganization?**

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan. This Section, Article III, is and shall constitute the Debtors' Plan of Reorganization.

**B. Unclassified Claims**

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has *not* placed the following claims in any class:

**1. *Administrative Expenses***

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor's estimated administrative expenses, and their proposed treatment under the Plan:



Below is the Order of the Court.

<u>Type</u>	<u>Estimated Amount Owed</u>	<u>Proposed Treatment</u>
Expenses Arising in the Ordinary Course of Business After the Petition Date		Paid in full on the effective date of the Plan, or according to terms of obligation if later
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date		Paid in full on the effective date of the Plan, or according to terms of obligation if later
Professional Fees for General Counsel, as approved by the Court, and for Counsel for the Creditors Committee.	\$15,000 est. for general bankruptcy counsel. Counsel has received \$4,500 for prepetition services, \$1717 for the filing fee, and \$4,745 is being held in trust as retainer. Creditors Committee counsel has a pending fee request for about \$23,000. Additional fees will be paid upon allowance by further order of the Court.	Paid in full on the effective date of the Plan, or according to separate written agreement, or according to court order if such fees have not been approved by the Court on the effective date of the Plan, from funds on hand in a blocked segregated account set up per Court order. [Current balance in account is about \$70,000 which is sufficient to pay administrative expenses, and make a distribution under the provisions of Class 4(C) below.
Professional Fee for Special Counsel, as approved by the Court.	Debtor and his partners are jointly obligated to pay special counsel's fees, pursuant to a separate agreement subject to a partnership accounting. These will be paid in full as allowed by the	Paid in full on the effective date of the Plan, or according to separate written agreement, or according to court order if such fees have not been approved by the Court on the effective date of the Plan. The Debtor is jointly obligated with Charles Ramsey II and Buck Fowler for these fees. This includes the post petition administrative fees of Holland and Knight.

Below is the Order of the Court.

<u>Type</u>	<u>Estimated Amount Owed</u>	<u>Proposed Treatment</u>
	Court after notice and hearing.	
Clerk's Office Fees		Paid in full on the effective date of the Plan
Other administrative expenses		Paid in full on the effective date of the Plan or according to separate written agreement
Office of the U.S. Trustee Fees	\$325.00	Paid in full on the effective date of the Plan

2. *Priority Tax Claims*

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

**Below is the Order of the Court.**

There are no § 507(a)(8) priority tax claims against the Debtor.

**C. Classes of Claims**

The following are the classes, and the proposed treatment that they will receive under this Plan:

1. *Classes of Secured Claims*

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be classified as a general unsecured claim.

The following chart lists all classes containing Debtor's secured prepetition claims and their proposed treatment under the Plan:

Below is the Order of the Court.

<u>Class #</u>	<u>Description</u>	<u>Insider? (Yes or No)</u>	<u>Impairment</u>	<u>Treatment</u>
1	<p><i>Secured claim of:</i> Name = U.S. Bank (current servicer: Nationstar Mortgage)</p> <p>Collateral description = 23603 77th Ave SE, Woodinville, WA 98072</p> <p>Allowed Secured Amount = \$1,306,170.21</p>	No	Not Impaired	See Stipulation attached hereto as Exhibit <u>F</u> for <i>Treatment of Claim</i> , which is incorporated herein and made a part hereof.

2. *Classes of Priority Unsecured Claims*

Certain priority claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

There are no claims under §§ 507(a)(1), (4), (5), (6), and (a)(7) of the Code.

**Below is the Order of the Court.**

**3. Classes of General Unsecured Claims**

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code.

**Class 2: Gallagher & Kennedy**

The Debtor and Gallagher & Kennedy agree to satisfaction of the outstanding debt for an allowed claim of \$585,000, to be paid on the following terms:

1. Payment of that claim will be at the rate of \$7,000/month until the settlement amount is reached (approximately 7 years).
2. A default on the payments in ¶1 shall not rise unless the debtor does not pay: (a) a minimum of at least \$3,500 month, and (b) a total payment of \$21,000 over any calendar quarter. For example, if the Debtor pays a minimum of \$3,500 on month, but then "catches up" the balance due within any quarter, such that G & K receives \$21,000 that quarter, no default will be caused by said situation.
3. Interest shall be at 4.5%; but that if the Debtors are timely on their payments, including the situation arising under ¶2 above, and the principal balance is paid down by 50% to \$292,500, then interest will be reduced thereafter to 3.5% on the remaining obligation due.
4. To the extent that any recovery is received from another source (i.e.: Buck Fowler), the amounts actually received from another source shall be credited to the obligations under this Plan. This will reduce the length of time for the monthly payments owed by the Willetts. Any outside recovery would not reduce the monthly/quarterly/annual required payments unless and until the outstanding obligation is paid in full.
5. The Gallagher & Kennedy Class 2 Claim shall additionally be paid pursuant to the Additional Provisions Applicable to All Unsecured Claims set forth below.

This Class is impaired.

**Class 3: Scott D. Jackson and Albert Hummel**

The Debtors propose to pay the above creditors a total of \$200,000 pursuant to a global settlement among and between Scott Jackson; Albert Hummel; KindManage, LLC (d/b/a Kind Financial); Kind Agrisoft, LLC; Surna, LLC; Agrisoft Development Group, LLC; Charles Ramsey II; and Jim Willett:

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1. Agrisoft Development Group, Charles Ramsey II, and the Debtors will pay \$20,000 within 5 days of the Effective Date of this Plan of Reorganization. Should the Debtors fail to have funds available to make his contribution (60%) to this payment, the codebtors (Agrisoft Development Group and Charles Ramsey) are jointly and severally liable for this obligation and they will be responsible for making this payment should the Debtors be unable to meet this obligation. Amounts paid by the codebtors will be offset pursuant to their partnership accounting against monies advanced by the Debtors in the past, and by agreement amongst the partnership members.
2. Payment of the remaining \$180,000 will be made directly by Kind Agrisoft, LLC as and when those funds become available and payable pursuant to the negotiated settlement in the Colorado litigation. The Debtors shall have no direct liability for this remaining \$180,000, and make no personal guarantee of the remaining \$180,000, but payments shall be made by Kind Agrisoft, LLC, from monies owed to Agrisoft Development Group and a third party, Forbeez Capital, Inc., under the original Asset Purchase Agreement. The Debtors will assign to Jackson and Hummel any rights they have in the first \$180,000 owed to Agrisoft by Kind Agrisoft, but retains rights to any amounts over/after the first \$180,000.
3. Within 5 days of the Effective Date of this Plan of Reorganization, Jackson and Hummel will move to dismiss the litigation pending in the Colorado State District Court under case no. 2015CV031596. No Attorney Fees shall be awarded in that litigation, with each party bearing their own costs and fees.
4. For purposes of this Plan of Reorganization, the Debtors shall receive a discharge of any amounts owing to Jackson and Hummel once the initial \$20,000.00 has been paid, as there is no time limit regarding when the remaining \$180,000 must be paid, only that if Agrisoft turns a profit, the Debtors have assigned Jackson and Hummel any rights they would have had to the first \$180,000.
5. The Class 3 Claim shall additionally be paid pursuant to the Additional Provisions Applicable to All Unsecured Claims set forth below.

This Class is impaired.

**Class 4: General Unsecured Creditors**

This class includes, but not limited to, the following unsecured claims of:

- Holland & Knight, LLP, with an allowed claim in the amount of \$45,889.07

**Below is the Order of the Court.**

- Payteller Compliance, LLC, with an allowed claim in the amount of \$80,000.00
- Polsinelli, LLC, with an allowed claim in the amount of \$137,000.00
- Winkanda, LLC, with an allowed claim in the amount of \$100,000.00
- Surna Inc., with an allowed claim in the amount of \$110,000.00

Total Amount of Allowed Claims = \$472,889.07

1. The Debtors propose to pay the above general unsecured creditors over 10 years at no interest, in an amount equal to 60% of their allowed claim (\$283,733.44). This is without prejudice to said creditors seeking payment from various co-obligors to these same creditors, and that if the co-obligors make any payments to pay or satisfy any or all of these claims, then the Debtors shall make further payments/reimbursements to said co-obligors up to 60% of the amounts so paid. Payments shall be distributed pro rata, totaling not more than \$2,364.45 per month combined (for a total quarterly payment due of \$7,093.35. There will be no penalty for pre-payment. For example, if the Debtor, in its discretion and if funds are available, pays \$10,000 in the first quarter of the year, the excess funds will be credited against the second quarter's obligation, such that it will then only owe an obligation of \$4,186.70 for that quarter. If the Debtors are able to pay the full amount due under this Plan of Reorganization, (upon motion, notice, and hearing) they may request that the Court issue their discharge prior to the end of the 10-year term.

2. Payments due under Class 4 shall be computed quarterly, such that the due date for creditor payments will be March 31st, June 30th, September 30th, and December 31st. A default will occur only if the Debtors fail to pay the quarterly total by the end of that quarter. Unless otherwise specified herein, the quarterly payment will be equal to three monthly payments:

- Holland & Knight, LLP = \$229.45 monthly or \$688.34 quarterly
  - Total Payout over 120 months = \$27,533.44
- Payteller Compliance, LLC = \$400.00 monthly or \$1,200.00 quarterly
  - Total Payout over 120 months = \$48,000.00
- Polsinelli, LLC = \$685.00 monthly or \$2,055.00 quarterly
  - Total Payout over 120 months = \$82,200.00
- Winkanda, LLC = \$500.00 monthly or \$1,500.00 quarterly
  - Total Payout over 120 months = \$60,000.00
- Surna Inc.<sup>1</sup> = \$550.00 monthly or \$1,650.00 quarterly

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<sup>1</sup> Surna, Inc. has filed a proof of claim in this matter for \$110,000.00 (Claim #3). The Debtor states that this debt is being paid by KindManage, LLC (d/b/a Kind Financial) pursuant to the sale of Agrisoft, LLC. Surna asserts the payments are in default and therefore is entitled to be paid on its guarantee under this Plan. To

**Below is the Order of the Court.**

- Total Payout over 120 months = \$66,000

3. Class 4 Claims shall additionally be paid pursuant to the Additional Provisions Applicable to All Unsecured Claims set forth below.

This Class is Impaired.

**Additional Provisions Applicable to All Unsecured Claims**

In addition to the above-stated specific Class treatment, the following provisions additionally apply to Classes 2, 3 and 4:

1. To the extent that there are funds available in the segregated account number ending 0888 at Charles Schwab which the Debtors have represented in Monthly Financial Reports filed with the Court that they opened on March 23, 2016 pursuant to Order of the Court for the deposit of funds from the Pacific West Real Estate Opportunity Fund (“PacWest”) distributions, after payment of the Debtors’ budgeted living expenses and costs of administrations, then those funds shall be distributed pro rata to all of the general unsecured creditors in Classes 2, 3, and 4. These payments shall be credited towards the Allowed claim amounts set forth in this Plan. It is estimated that after pending fee requests by the attorney for the Creditor’s Committee and setting aside \$10,000 for further administrative costs and the Debtors’ June budget, that there will be approximately \$32,000 that will be distributed to the creditors pro rata on the effective date of the Plan.

2. The source of payment to creditors under this Plan is proceeds of the Debtors non-exempt prepetition assets, which include but are not limited to the Debtors’ interest in PacWest (“Proceeds”). The Debtors do not consider any further PacWest proceeds now held, or hereafter received, to be exempt because the Debtors have already spent their claimed exempt amount of \$20,744.00 on a postpetition basis. After the Debtors’ payment of Administrative Expenses, the Debtors shall only be authorized to use a maximum of \$260,000 of Proceeds on an annualized basis (including 2016) for (i) monthly Class 2 and Class 4 Plan payments (\$7,000 and \$2,335 respectively); and (ii) monthly living expenses which the Debtors anticipate will generally include the following:

Insurance auto/home	\$ 500
Insurance health	\$ 1530
Utilities other	\$ 200
Utilities PUD	\$ 210

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the extent that the default is cured or the debt is paid in full, then the Debtor’s liability shall be reduced or satisfied accordingly.



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Frontier	\$ 220
TMobile	\$ 175
ADT	\$ 30
Medications/medical	\$ 600
Food, personal care, housekeeping	\$ 900
Clothing, laundry, cleaning	\$ 300
Auto, gas, tolls	\$ 275
Business expenses, travel	\$ 800
Rent and dues	\$ 3,200
20% taxes (IRS)	\$ 5,400

Until the Debtors' discharge is granted by the Court due to completion of the payments under the Plan, to the extent the Debtors' receive, or would have an immediate right to receive other than due to the Debtors' action or inaction for purposes of delaying or deferring the payment, Proceeds in any calendar year (including 2016) in excess of \$260,000, from sources including, but not limited to, distributions from PacWest, Agrisoft, Development Group, LLC, Canna Security, the promissory notes listed on Schedule B, or any other non-exempt prepetition source ("Excess Proceeds"), then no later than January 30 of the year immediately following such calendar year, the Debtors shall cause distribution of Excess Proceeds on a pro rata basis towards the payments to be made under this Plan to the Class 2, 3, and 4 creditors. Until the Debtors' discharge is granted by the Court due to completion of the payments under the Plan, and regardless of whether the above-captioned bankruptcy case is administratively closed, no later than the 15<sup>th</sup> day following each quarter (commencing the Third Quarter 2016, with the 15<sup>th</sup> day following being October 15, 2016), the Debtors shall:

(A) prepare and execute a sworn Declaration under penalty of perjury ("Sworn Statement") certifying the Proceeds received during the previous quarter and attaching copies of:

- (1) any or all distribution checks received during such previous quarter;
- (2) distribution vouchers and/or correspondence from any such source (such as Agrisoft, Pac West, Canna Security, etc.); and
- (3) confirming deposit slips for such payments; and

(B) mail by first class delivery and email (where email address is known) the Sworn Declarations to each unsecured creditor in Class 2, 3, and 4.

**D. Means of Implementing the Plan**

**1. Source of Payments**

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Page 14 of 21

Vortman & Feinstein  
520 Pike Street, Suite 2250  
Seattle, WA 98101  
Phone: 206-223-9595  
Fax: 206-386-5355

2197 20161 ae262c03g7.002

**Below is the Order of the Court.**

Payments and distributions under the Plan will be funded by income and distributions received from the Debtor's investments and their retirement incomes. Where indicated above, the Debtors' obligations are shared among several co-debtors who are not in bankruptcy and who are making payments on those debts from their separate funds, which will be subject to a partnership accounting at a later date by agreement of all parties.

**E. Risk Factors**

Barring death or serious disability of the Debtors, funding of the Plan will be dependent on the success of the Debtor's investments. The Debtors believe that their current investments are sound and will be sufficient to reorganize the Debtors' estate as described herein.

**F. Executory Contracts and Unexpired Leases**

The Plan lists all executory contracts and unexpired leases that the Debtor will assume under the Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any. It also lists how the Debtor will cure and compensate the other party to such contract or lease for any such defaults.

If you object to the assumption of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

The Debtors hereby agree to assume all executory contracts and unexpired leases. Consult your adviser or attorney for more specific information about particular contracts or leases.

**G. Tax Consequences of Plan**

***Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, and/or Advisors.***

There are no anticipated tax consequences of the Plan for creditors. However, should the home sell pursuant to the Plan of Reorganization, the sale will be exempt from the Real Estate Excise Tax pursuant to WAC 458-61A-207.

//// End of Plan /////

**IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

**Below is the Order of the Court.**

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

**A. Who May Vote or Object**

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that classes 2, 3, and 4 are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes 1 and 5 are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.

**1. What Is an Allowed Claim**

Only a creditor with an allowed claim has the right to vote on the Plan. Generally, a claim is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim, unless an objection has been filed to such proof of claim. When a claim is not allowed, the creditor or equity interest holder holding the claim cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

***The deadline for filing a proof of claim in this case was March 31, 2016.***

**2. What Is an Impaired Claim or Impaired Equity Interest?**

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

**3. Who is *Not* Entitled to Vote**

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The holders of the following five types of claims and equity interests are *not* entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

***Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan [and to the Adequacy of the Disclosure Statement].***

**4. *Who Can Vote in More Than One Class***

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

**B. *Votes Necessary to Confirm the Plan***

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cram down” on non-accepting classes, as discussed later in Section [B.2.].

**1. *Votes Necessary for a Class to Accept the Plan***

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

**2. *Treatment of Nonaccepting Classes***

**Below is the Order of the Court.**

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not “discriminate unfairly,” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan.

***You should consult your own attorney if a cramdown confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.***

**C. Liquidation Analysis**

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as Exhibit C. The Unsecured Creditors Committee does not agree with the Debtors’ Liquidation Analysis for several reasons, including but not limited to, no foundation for assumed values, improper deduction of exempt amounts already spent, omission of post-petition assets which are property of the estate. The Debtors agree that all creditors reserve all rights to contest the values of the assets of the estate in a liquidation; such reservation of rights shall apply in any matter, motion or proceeding, including any matter, motion or proceeding related to the Debtors’ request for a discharge under Bankruptcy Code section 1141.

**D. Feasibility**

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan. 1. *Ability to Initially Fund Plan*

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date.

**2. *Ability to Make Future Plan Payments and Operate Without Further Reorganization***

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments. Because nearly all of the Debtors’

**Below is the Order of the Court.**

obligations are shared among several partners, a monthly operating budget such as is normally provided is not practical in this case. The Debtors receive periodic distributions from the PacWest Real Estate Fund and from Kind Agrisoft, LLC pursuant to the Asset Purchase Agreement. The Kind Agrisoft, LLC Asset Purchase Agreement is attached as Exhibit D and the PacWest Real Estate Opportunity Fund, LLC's operating agreement is attached as Exhibit E.

***You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.***

**V. EFFECT OF CONFIRMATION OF PLAN**

**A. DISCHARGE OF DEBTOR**

Discharge. Confirmation of the Plan does not discharge any debt provided for in the Plan until the court grants a discharge on completion of all payments under the Plan to the general unsecured Class, or as otherwise provided in § 1141(d)(5) of the Code. Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

**B. Modification of Plan**

Upon entry of an Order of the Court following notice and hearing, the Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan.

Upon request of the Debtor, the United States trustee, or the holder of an allowed unsecured claim, the Plan may be modified at any time after confirmation of the Plan but before the completion of payments under the Plan, to (1) increase or reduce the amount of payments under the Plan on claims of a particular class, (2) extend or reduce the time period for such payments, or (3) alter the amount of distribution to a creditor whose claim is provided for by the Plan to the extent necessary to take account of any payment of the claim made other than under the Plan.

**C. Final Decree**

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

**VI. OTHER PLAN PROVISIONS**

Disclosure Statement and Plan of Reorganization  
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Vortman & Feinstein  
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Fax: 206-386-5355

**Below is the Order of the Court.**

1. All administrative expenses shall be paid on the effective date of the Plan, or as otherwise agreed by the parties.
2. The Debtor shall act as its/her own disbursing agent for payments under the Plan.
3. On the effective date of the Plan, all property of the Debtors estate will vest in the reorganized Debtor pursuant to 11 U.S.C. §1141(b), free and clear of all claims and interests, except that the lien of secured creditors shall be retained until all required payments to the creditors under the Plan are completed.
4. Creditors may not take any actions (including, without limitation, lawsuits or other legal actions, levies, attachments, or garnishments) to enforce or collect either pre-confirmation obligations or obligations due under the Plan, so long as the Debtor is not in default under the Plan. Provided that the Debtor does not default under the Plan, creditors shall be prohibited from taking any enforcement or collection actions or any kind against the Debtor.
5. Unless otherwise specified, the following default provisions apply to all creditors:
  - a. Payments due under this plan shall be computed quarterly, such that the due date for creditor payments will be March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup>. A default will occur only if the Debtors fail to pay the quarterly total by the end of that quarter. Unless otherwise specified herein, the quarterly payment will be equal to three monthly payments.
  - b. In the event of default, the creditor occasioning said default shall give the Debtors 30 days' notice and opportunity to cure. If said default is not cured within said period, the creditor shall be entitled to relief from the stay under this Plan without further court order, and may enforce any state or federal collection rights that may exist.
  - c. Secured creditors whose loans are restructured under this Plan shall treat said loans as current and treat said obligations as an ongoing amortizing obligation.
6. Debtor reserves the right to seek confirmation of the Plan notwithstanding the rejection of the Plan by one or more classes of creditors, pursuant to 11 U.S.C. §1129(b).
7. The Bankruptcy Court retains jurisdiction until all Plan payments have been made.
8. Any notices, requests, and demands required or permitted to be provided under the Plan, in order to be effective, shall be in writing (including, without express or

**Below is the Order of the Court.**

implied limitation, by facsimile transmission and email), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made within actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

James and Janet Willett  
c/o Larry B. Feinstein  
520 Pike Street, Suite 2250  
Seattle WA 98101

Phone: (206) 223-9595  
Fax: (206) 386-5355  
Email: feinstein1947@gmail.com

9. The rights and obligations of any entity named or referred to in this Plan will be binding upon and will inure to the benefit of the successors and assigns of such entity.
10. In the event a dispute arises as to the interpretation post-confirmation of this Plan or the payment terms therein, the Bankruptcy Court shall retain jurisdiction even if the case has been closed administratively, until such time a discharge and final decree has been entered.

Respectfully Submitted,

/s/ James Willett

James Willett, Debtor  
Attorney for Debtors

/s/ Janet Willett

Janet Willett, Co-Debtor

/s/ Larry B. Feinstein

Larry Feinstein, WSBA #6074



**Below is the Order of the Court.**

**EXHIBITS**

Disclosure Statement Exhibits  
Page 1 of 43

Vortman & Feinstein  
520 Pike Street, Suite 2250  
Seattle, WA 98101  
Phone: 206-223-9595  
Fax: 206-386-5355

**Below is the Order of the Court.**

**Exhibit A Identity and Value of Material Assets of Debtor**

Disclosure Statement Exhibits  
Page 2 of 43

Vortman & Feinstein  
520 Pike Street, Suite 2250  
Seattle, WA 98101  
Phone: 206-223-9595  
Fax: 206-386-5355

Below is the Order of the Court.

**Fill in this information to identify your case and this filing:**

Debtor 1 James M. Willett  
First Name Middle Name Last Name

Debtor 2 Janet E. Willett  
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: WESTERN DISTRICT OF WASHINGTON

Case number 15-17182-CMA

Check if this is an amended filing

**Official Form 106A/B  
 Schedule A/B: Property**

12/15

In each category, separately list and describe items. List an asset only once. If an asset fits in more than one category, list the asset in the category where you think it fits best. Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

**Part 1: Describe Each Residence, Building, Land, or Other Real Estate You Own or Have an Interest In**

1. Do you own or have any legal or equitable interest in any residence, building, land, or similar property?

- No. Go to Part 2.
- Yes. Where is the property?

1.1

23603 77th Ave SE  
Street address, if available, or other description

Woodinville WA 98072-0000  
City State ZIP Code

Snohomish  
County

**What is the property?** Check all that apply

- Single-family home
- Duplex or multi-unit building
- Condominium or cooperative
- Manufactured or mobile home
- Land
- Investment property
- Timeshare
- Other \_\_\_\_\_

**Who has an interest in the property?** Check one

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule D: Creditors Who Have Claims Secured by Property*.

Current value of the entire property? \$981,144.00  
 Current value of the portion you own? \$981,144.00

Describe the nature of your ownership interest (such as fee simple, tenancy by the entireties, or a life estate), if known.

**Fee simple**

Check if this is community property (see instructions)

Other information you wish to add about this item, such as local property identification number:

2. Add the dollar value of the portion you own for all of your entries from Part 1, including any entries for pages you have attached for Part 1. Write that number here.....=>

\$981,144.00

**Part 2: Describe Your Vehicles**

Do you own, lease, or have legal or equitable interest in any vehicles, whether they are registered or not? Include any vehicles you own that someone else drives. If you lease a vehicle, also report it on *Schedule G: Executory Contracts and Unexpired Leases*.

**Below is the Order of the Court.**

Debtor 1 **James M. Willett**  
 Debtor 2 **Janet E. Willett**

Case number (if known) **15-17182-CMA**

**3. Cars, vans, trucks, tractors, sport utility vehicles, motorcycles**

- No  
 Yes

3.1 Make: **Honda**  
 Model: **CRV**  
 Year: **2009**  
 Approximate mileage: \_\_\_\_\_  
 Other information:

- Who has an interest in the property?** Check one
- Debtor 1 only  
 Debtor 2 only  
 Debtor 1 and Debtor 2 only  
 At least one of the debtors and another

**Check if this is community property**  
 (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule D: Creditors Who Have Claims Secured by Property.*

<b>Current value of the entire property?</b>	<b>Current value of the portion you own?</b>
<u>\$6,000.00</u>	<u>\$6,000.00</u>

3.2 Make: **Lexus**  
 Model: **460**  
 Year: **2011**  
 Approximate mileage: \_\_\_\_\_  
 Other information:

- Who has an interest in the property?** Check one
- Debtor 1 only  
 Debtor 2 only  
 Debtor 1 and Debtor 2 only  
 At least one of the debtors and another

**Check if this is community property**  
 (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule D: Creditors Who Have Claims Secured by Property.*

<b>Current value of the entire property?</b>	<b>Current value of the portion you own?</b>
<u>\$26,000.00</u>	<u>\$26,000.00</u>

3.3 Make: **Lexus**  
 Model: **350**  
 Year: **2012**  
 Approximate mileage: \_\_\_\_\_  
 Other information:

2012 Lexus 350

- Who has an interest in the property?** Check one
- Debtor 1 only  
 Debtor 2 only  
 Debtor 1 and Debtor 2 only  
 At least one of the debtors and another

**Check if this is community property**  
 (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule D: Creditors Who Have Claims Secured by Property.*

<b>Current value of the entire property?</b>	<b>Current value of the portion you own?</b>
<u>\$21,000.00</u>	<u>\$21,000.00</u>

**4. Watercraft, aircraft, motor homes, ATVs and other recreational vehicles, other vehicles, and accessories**

*Examples: Boats, trailers, motors, personal watercraft, fishing vessels, snowmobiles, motorcycle accessories*

- No  
 Yes

4.1 Make: **Chris Craft Boat**  
 Model: \_\_\_\_\_  
 Year: **2011**  
 Other information:

- Who has an interest in the property?** Check one
- Debtor 1 only  
 Debtor 2 only  
 Debtor 1 and Debtor 2 only  
 At least one of the debtors and another

**Check if this is community property**  
 (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule D: Creditors Who Have Claims Secured by Property.*

<b>Current value of the entire property?</b>	<b>Current value of the portion you own?</b>
<u>\$31,000.00</u>	<u>\$31,000.00</u>

**5 Add the dollar value of the portion you own for all of your entries from Part 2, including any entries for pages you have attached for Part 2. Write that number here.....=>**

\$84,000.00

**Part 3: Describe Your Personal and Household Items**

**Do you own or have any legal or equitable interest in any of the following items?**

**Current value of the portion you own?**  
 Do not deduct secured claims or exemptions.

Below is the Order of the Court.

Debtor 1 **James M. Willett**  
Debtor 2 **Janet E. Willett**

Case number (if known) **15-17182-CMA**

**6. Household goods and furnishings**

Examples: Major appliances, furniture, linens, china, kitchenware

- No
- Yes. Describe.....

**Household Goods and Furnishings**  
**Location: 23603 77th Ave SE, Woodinville WA 98072**

**\$15,000.00**

**7. Electronics**

Examples: Televisions and radios; audio, video, stereo, and digital equipment; computers, printers, scanners; music collections; electronic devices including cell phones, cameras, media players, games

- No
- Yes. Describe.....

**8. Collectibles of value**

Examples: Antiques and figurines; paintings, prints, or other artwork; books, pictures, or other art objects; stamp, coin, or baseball card collections; other collections, memorabilia, collectibles

- No
- Yes. Describe.....

**Misc. Books, Pictures, Art, etc.**

**\$1,000.00**

**9. Equipment for sports and hobbies**

Examples: Sports, photographic, exercise, and other hobby equipment; bicycles, pool tables, golf clubs, skis; canoes and kayaks; carpentry tools; musical instruments

- No
- Yes. Describe.....

**Sports, Photographic, and other Hobby Equipment**

**\$500.00**

**10. Firearms**

Examples: Pistols, rifles, shotguns, ammunition, and related equipment

- No
- Yes. Describe.....

**11. Clothes**

Examples: Everyday clothes, furs, leather coats, designer wear, shoes, accessories

- No
- Yes. Describe.....

**Clothing**

**\$1,500.00**

**12. Jewelry**

Examples: Everyday jewelry, costume jewelry, engagement rings, wedding rings, heirloom jewelry, watches, gems, gold, silver

- No
- Yes. Describe.....

**Jewelry**

**\$1,500.00**

**13. Non-farm animals**

Examples: Dogs, cats, birds, horses

- No
- Yes. Describe.....

**14. Any other personal and household items you did not already list, including any health aids you did not list**

- No
- Yes. Give specific information.....

**Below is the Order of the Court.**

Debtor 1 **James M. Willett**  
 Debtor 2 **Janet E. Willett**

Case number (if known) **15-17182-CMA**

15. Add the dollar value of all of your entries from Part 3, including any entries for pages you have attached for Part 3. Write that number here .....

<b>\$19,500.00</b>
--------------------

**Part 4: Describe Your Financial Assets**

Do you own or have any legal or equitable interest in any of the following?

**Current value of the portion you own?**  
 Do not deduct secured claims or exemptions.

**16. Cash**

*Examples:* Money you have in your wallet, in your home, in a safe deposit box, and on hand when you file your petition

- No  
 Yes.....

**Cash on Hand** \$2,000.00

**17. Deposits of money**

*Examples:* Checking, savings, or other financial accounts; certificates of deposit; shares in credit unions, brokerage houses, and other similar institutions. If you have multiple accounts with the same institution, list each.

- No  
 Yes.....

Institution name:

17.1. BECU \$2,000.00

17.2. Charles Schwab Cash & Money Market Account \$200.00

**18. Bonds, mutual funds, or publicly traded stocks**

*Examples:* Bond funds, investment accounts with brokerage firms, money market accounts

- No  
 Yes..... Institution or issuer name:

**19. Non-publicly traded stock and interests in incorporated and unincorporated businesses, including an interest in an LLC, partnership, and joint venture**

- No  
 Yes. Give specific information about them.....

Name of entity:

% of ownership:

Misc. Equities with Charles Schwab, valued as of September 3, 2015 % \$6.00

Canna Security America 428,835 shares % Unknown

Yakima Compost Company Inc.  
 Location: 23603 77th Ave SE, Woodinville WA 98072 60 % Unknown

Yakima Company Inc.  
 Location: 23603 77th Ave SE, Woodinville WA 98072 60 % Unknown

Pac. West Real Estate Opportunity Fund (See #42 below) 3 % \$0.00

Below is the Order of the Court.

Debtor 1 James M. Willett
Debtor 2 Janet E. Willett

Case number (if known) 15-17182-CMA

Agrisoft, LLC (See #42 below)

0 %

\$0.00

20. Government and corporate bonds and other negotiable and non-negotiable instruments

Negotiable instruments include personal checks, cashiers' checks, promissory notes, and money orders. Non-negotiable instruments are those you cannot transfer to someone by signing or delivering them.

- No
Yes. Give specific information about them
Issuer name:

21. Retirement or pension accounts

Examples: Interests in IRA, ERISA, Keogh, 401(k), 403(b), thrift savings accounts, or other pension or profit-sharing plans

- No
Yes. List each account separately.
Type of account: Institution name:

WA State Teacher's Retirement Systems

\$82,773.76

22. Security deposits and prepayments

Your share of all unused deposits you have made so that you may continue service or use from a company. Examples: Agreements with landlords, prepaid rent, public utilities (electric, gas, water), telecommunications companies, or others

- No
Yes. Institution name or individual:

23. Annuities (A contract for a periodic payment of money to you, either for life or for a number of years)

- No
Yes. Issuer name and description.

24. Interests in an education IRA, in an account in a qualified ABLE program, or under a qualified state tuition program.

- 26 U.S.C. §§ 530(b)(1), 529A(b), and 529(b)(1).
No
Yes. Institution name and description. Separately file the records of any interests. 11 U.S.C. § 521(c):

25. Trusts, equitable or future interests in property (other than anything listed in line 1), and rights or powers exercisable for your benefit

- No
Yes. Give specific information about them...

26. Patents, copyrights, trademarks, trade secrets, and other intellectual property

- Examples: Internet domain names, websites, proceeds from royalties and licensing agreements
No
Yes. Give specific information about them...

27. Licenses, franchises, and other general intangibles

- Examples: Building permits, exclusive licenses, cooperative association holdings, liquor licenses, professional licenses
No
Yes. Give specific information about them...

Money or property owed to you?

Current value of the portion you own? Do not deduct secured claims or exemptions.

28. Tax refunds owed to you

- No
Yes. Give specific information about them, including whether you already filed the returns and the tax years.....

29. Family support

- Examples: Past due or lump sum alimony, spousal support, child support, maintenance, divorce settlement, property settlement
No
Yes. Give specific information.....

Below is the Order of the Court.

Debtor 1 James M. Willett
Debtor 2 Janet E. Willett

Case number (if known) 15-17182-CMA

30. Other amounts someone owes you

Examples: Unpaid wages, disability insurance payments, disability benefits, sick pay, vacation pay, workers' compensation, Social Security benefits; unpaid loans you made to someone else

- No
Yes. Give specific information..

Promissory Note from Matt Cook
Whereabouts unknown

\$45,900.00

Promissory note from Charles Ramsey
1919 NW 82nd Terrace, Kansas City, MO 64151

\$80,000.00

Promissory note from Buck Fowler, Seattle, WA

\$200,000.00

31. Interests in insurance policies

Examples: Health, disability, or life insurance; health savings account (HSA); credit, homeowner's, or renter's insurance

- No
Yes. Name the insurance company of each policy and list its value.

Company name: Beneficiary: Surrender or refund value:

32. Any interest in property that is due you from someone who has died

If you are the beneficiary of a living trust, expect proceeds from a life insurance policy, or are currently entitled to receive property because someone has died.

- No
Yes. Give specific information..

33. Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment

Examples: Accidents, employment disputes, insurance claims, or rights to sue

- No
Yes. Describe each claim.....

34. Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims

- No
Yes. Describe each claim.....

35. Any financial assets you did not already list

- No
Yes. Give specific information..

36. Add the dollar value of all of your entries from Part 4, including any entries for pages you have attached for Part 4. Write that number here.....

\$412,879.76

Part 5: Describe Any Business-Related Property You Own or Have an Interest In. List any real estate in Part 1.

37. Do you own or have any legal or equitable interest in any business-related property?

- No. Go to Part 6.
Yes. Go to line 38.

Current value of the portion you own? Do not deduct secured claims or exemptions.

38. Accounts receivable or commissions you already earned

- No
Yes. Describe.....



Below is the Order of the Court.

Debtor 1 James M. Willett
Debtor 2 Janet E. Willett

Case number (if known) 15-17182-CMA

39. Office equipment, furnishings, and supplies

Examples: Business-related computers, software, modems, printers, copiers, fax machines, rugs, telephones, desks, chairs, electronic devices

- No
Yes. Describe.....

40. Machinery, fixtures, equipment, supplies you use in business, and tools of your trade

- No
Yes. Describe.....

41. Inventory

- No
Yes. Describe.....

42. Interests in partnerships or joint ventures

- No
Yes. Give specific information about them.....

Table with 3 columns: Name of entity, % of ownership, and value. Row 1: Pacific West Real Estate Opportunity Fund Non Transferability Clause; can't be sold or liquidated, 3%, \$815,000.00

Table with 3 columns: Name of entity, % of ownership, and value. Row 1: Agrisoft LLC. This company was sold, and debtor held 60% interest; in the sale, new company agreed to pay the Debtor 3% of the profits, if any, from new company for 6 years beginning in September 2016. New company has no revenues at this time. 60%, \$0.00

43. Customer lists, mailing lists, or other compilations

- No
Do your lists include personally identifiable information (as defined in 11 U.S.C. § 101(41A))?
No
Yes. Describe.....

44. Any business-related property you did not already list

- No
Yes. Give specific information.....

45. Add the dollar value of all of your entries from Part 5, including any entries for pages you have attached for Part 5. Write that number here.....

\$815,000.00

Part 6: Describe Any Farm- and Commercial Fishing-Related Property You Own or Have an Interest In. If you own or have an interest in farmland, list it in Part 1.

46. Do you own or have any legal or equitable interest in any farm- or commercial fishing-related property?

- No. Go to Part 7.
Yes. Go to line 47.

Part 7: Describe All Property You Own or Have an Interest in That You Did Not List Above

**Below is the Order of the Court.**

Debtor 1 **James M. Willett**  
 Debtor 2 **Janet E. Willett**

Case number (if known) **15-17182-CMA**

53. Do you have other property of any kind you did not already list?  
*Examples: Season tickets, country club membership*

- No  
 Yes. Give specific information.....

54. Add the dollar value of all of your entries from Part 7. Write that number here .....

<b>\$0.00</b>
---------------

**Part 8:** List the Totals of Each Part of this Form

55. Part 1: Total real estate, line 2 .....		<b>\$981,144.00</b>	
56. Part 2: Total vehicles, line 5	<u>\$84,000.00</u>		
57. Part 3: Total personal and household items, line 15	<u>\$19,500.00</u>		
58. Part 4: Total financial assets, line 36	<u>\$412,879.76</u>		
59. Part 5: Total business-related property, line 45	<u>\$815,000.00</u>		
60. Part 6: Total farm- and fishing-related property, line 52	<u>\$0.00</u>		
61. Part 7: Total other property not listed, line 54	+ <u>\$0.00</u>		
62. Total personal property. Add lines 56 through 61...	<u>\$1,331,379.76</u>	Copy personal property total <u>\$1,331,379.76</u>	
63. Total of all property on Schedule A/B. Add line 55 + line 62		<table border="1"><tr><td><b>\$2,312,523.76</b></td></tr></table>	<b>\$2,312,523.76</b>
<b>\$2,312,523.76</b>			

**Below is the Order of the Court.**

**Exhibit B** Prepetition Financial Statements

Disclosure Statement Exhibits  
Page 11 of 43

Vortman & Feinstein  
520 Pike Street, Suite 2250  
Seattle, WA 98101  
Phone: 206-223-9595  
Fax: 206-386-5355

**Below is the Order of the Court.**

<b>Fill in this information to identify your case:</b>	
Debtor 1	<u>James M. Willett</u>
Debtor 2 (Spouse, if filing)	<u>Janet E. Willett</u>
United States Bankruptcy Court for the:	<u>WESTERN DISTRICT OF WASHINGTON</u>
Case number (If known)	<u>15-17182-CMA</u>

Check if this is:

- An amended filing
- A supplement showing postpetition chapter 13 income as of the following date:

MM / DD / YYYY

**Official Form 106I**

**Schedule I: Your Income**

12/15

Be as complete and accurate as possible. If two married people are filing together (Debtor 1 and Debtor 2), both are equally responsible for supplying correct information. If you are married and not filing jointly, and your spouse is living with you, include information about your spouse. If you are separated and your spouse is not filing with you, do not include information about your spouse. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

**Part 1: Describe Employment**

**1. Fill in your employment information.**

If you have more than one job, attach a separate page with information about additional employers.

Include part-time, seasonal, or self-employed work.

Occupation may include student or homemaker, if it applies.

**Employment status**

**Occupation**

**Employer's name**

**Employer's address**

**How long employed there?**

**Debtor 1**

- Employed
- Not employed

Retired

**Debtor 2 or non-filing spouse**

- Employed
- Not employed

Retired

**Part 2: Give Details About Monthly Income**

Estimate monthly income as of the date you file this form. If you have nothing to report for any line, write \$0 in the space. Include your non-filing spouse unless you are separated.

If you or your non-filing spouse have more than one employer, combine the information for all employers for that person on the lines below. If you need more space, attach a separate sheet to this form.

	<u>For Debtor 1</u>	<u>For Debtor 2 or non-filing spouse</u>
2. <b>List monthly gross wages, salary, and commissions</b> (before all payroll deductions). If not paid monthly, calculate what the monthly wage would be.	\$ <u>0.00</u>	\$ <u>0.00</u>
3. <b>Estimate and list monthly overtime pay.</b>	+\$ <u>0.00</u>	+\$ <u>0.00</u>
4. <b>Calculate gross income.</b> Add line 2 + line 3.	\$ <u>0.00</u>	\$ <u>0.00</u>

**Below is the Order of the Court.**

Debtor 1 **James M. Willett**  
 Debtor 2 **Janet E. Willett**

Case number (if known) **15-17182-CMA**

		For Debtor 1	For Debtor 2 or non-filing spouse
<b>Copy line 4 here</b> .....	4.	\$ <u>0.00</u>	\$ <u>0.00</u>
<b>5. List all payroll deductions:</b>			
5a. <b>Tax, Medicare, and Social Security deductions</b>	5a.	\$ <u>0.00</u>	\$ <u>0.00</u>
5b. <b>Mandatory contributions for retirement plans</b>	5b.	\$ <u>0.00</u>	\$ <u>0.00</u>
5c. <b>Voluntary contributions for retirement plans</b>	5c.	\$ <u>0.00</u>	\$ <u>0.00</u>
5d. <b>Required repayments of retirement fund loans</b>	5d.	\$ <u>0.00</u>	\$ <u>0.00</u>
5e. <b>Insurance</b>	5e.	\$ <u>0.00</u>	\$ <u>0.00</u>
5f. <b>Domestic support obligations</b>	5f.	\$ <u>0.00</u>	\$ <u>0.00</u>
5g. <b>Union dues</b>	5g.	\$ <u>0.00</u>	\$ <u>0.00</u>
5h. <b>Other deductions.</b> Specify: _____	5h.+	\$ <u>0.00</u>	\$ <u>0.00</u>
<b>6. Add the payroll deductions.</b> Add lines 5a+5b+5c+5d+5e+5f+5g+5h.	6.	\$ <u>0.00</u>	\$ <u>0.00</u>
<b>7. Calculate total monthly take-home pay.</b> Subtract line 6 from line 4.	7.	\$ <u>0.00</u>	\$ <u>0.00</u>
<b>8. List all other income regularly received:</b>			
8a. <b>Net income from rental property and from operating a business, profession, or farm</b> Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.	8a.	\$ <u>0.00</u>	\$ <u>0.00</u>
8b. <b>Interest and dividends</b>	8b.	\$ <u>0.00</u>	\$ <u>0.00</u>
8c. <b>Family support payments that you, a non-filing spouse, or a dependent regularly receive</b> Include alimony, spousal support, child support, maintenance, divorce settlement, and property settlement.	8c.	\$ <u>0.00</u>	\$ <u>0.00</u>
8d. <b>Unemployment compensation</b>	8d.	\$ <u>0.00</u>	\$ <u>0.00</u>
8e. <b>Social Security</b>	8e.	\$ <u>0.00</u>	\$ <u>0.00</u>
8f. <b>Other government assistance that you regularly receive</b> Include cash assistance and the value (if known) of any non-cash assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies. Specify: _____	8f.	\$ <u>0.00</u>	\$ <u>0.00</u>
8g. <b>Pension or retirement income</b>	8g.	\$ <u>22,957.00</u>	\$ <u>0.00</u>
8h. <b>Other monthly income.</b> Specify: _____	8h.+	\$ <u>0.00</u>	\$ <u>0.00</u>
<b>9. Add all other income.</b> Add lines 8a+8b+8c+8d+8e+8f+8g+8h.	9.	\$ <u>22,957.00</u>	\$ <u>0.00</u>
<b>10. Calculate monthly income.</b> Add line 7 + line 9. Add the entries in line 10 for Debtor 1 and Debtor 2 or non-filing spouse.	10.	\$ <u>22,957.00</u>	+ \$ <u>0.00</u> = \$ <u>22,957.00</u>
<b>11. State all other regular contributions to the expenses that you list in Schedule J.</b> Include contributions from an unmarried partner, members of your household, your dependents, your roommates, and other friends or relatives. Do not include any amounts already included in lines 2-10 or amounts that are not available to pay expenses listed in Schedule J. Specify: _____	11.	+\$ <u>0.00</u>	
<b>12. Add the amount in the last column of line 10 to the amount in line 11.</b> The result is the combined monthly income. Write that amount on the <i>Summary of Schedules</i> and <i>Statistical Summary of Certain Liabilities and Related Data</i> , if it applies	12.	\$ <u>22,957.00</u>	
<b>Combined monthly income</b>			
<b>13. Do you expect an increase or decrease within the year after you file this form?</b>			
<input checked="" type="checkbox"/> No.			
<input type="checkbox"/> Yes. Explain:	Debtors takes withdrawals from their retirement accounts as needed: August 2015: \$9,782 / July 2015: \$23,000 / June: \$3000 / May 2015: \$3000 / April 2015: \$95,958 / March 2015: \$3000 / 6 month average = \$22,957. However, the last 6 months was unusually high; over past 2 years, the average was about \$40,000 and not \$80,000.		

**Below is the Order of the Court.**

<b>Fill in this information to identify your case:</b>	
Debtor 1	<u>James M. Willett</u>
Debtor 2 (Spouse, if filing)	<u>Janet E. Willett</u>
United States Bankruptcy Court for the:	<u>WESTERN DISTRICT OF WASHINGTON</u>
Case number (if known)	<u>15-17182-CMA</u>

Check if this is:

- An amended filing
- A supplement showing postpetition chapter 13 expenses as of the following date:

\_\_\_\_\_  
MM / DD / YYYY

**Official Form 106J**  
**Schedule J: Your Expenses**

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach another sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

**Part 1: Describe Your Household**

1. Is this a joint case?

- No. Go to line 2.
- Yes. Does Debtor 2 live in a separate household?
  - No
  - Yes. Debtor 2 must file Official Form 106J-2, *Expenses for Separate Household of Debtor 2*.

2. Do you have dependents?  No

Do not list Debtor 1 and Debtor 2.  
  
Do not state the dependents names.

Yes. Fill out this information for each dependent.....

**Dependent's relationship to Debtor 1 or Debtor 2**

**Dependent's age**

**Does dependent live with you?**

Son

19

No  
 Yes

Son

20

No  
 Yes  
 No  
 Yes  
 No  
 Yes

3. Do your expenses include expenses of people other than yourself and your dependents?  No  Yes

**Part 2: Estimate Your Ongoing Monthly Expenses**

Estimate your expenses as of your bankruptcy filing date unless you are using this form as a supplement in a Chapter 13 case to report expenses as of a date after the bankruptcy is filed. If this is a supplemental *Schedule J*, check the box at the top of the form and fill in the applicable date.

Include expenses paid for with non-cash government assistance if you know the value of such assistance and have included it on *Schedule I: Your Income* (Official Form 106I.)

**Your expenses**

4. The rental or home ownership expenses for your residence. Include first mortgage payments and any rent for the ground or lot.

4. \$ 5,136.00

If not included in line 4:

4a. Real estate taxes

4a. \$ 824.00

4b. Property, homeowner's, or renter's insurance

4b. \$ 0.00

4c. Home maintenance, repair, and upkeep expenses

4c. \$ 500.00

4d. Homeowner's association or condominium dues

4d. \$ 0.00

5. Additional mortgage payments for your residence, such as home equity loans

5. \$ 0.00

**Below is the Order of the Court.**

Debtor 1 **James M. Willett**  
 Debtor 2 **Janet E. Willett**

Case number (if known) **15-17182-CMA**

<b>6. Utilities:</b>		
6a. Electricity, heat, natural gas	6a. \$	<u>700.00</u>
6b. Water, sewer, garbage collection	6b. \$	<u>40.00</u>
6c. Telephone, cell phone, Internet, satellite, and cable services	6c. \$	<u>650.00</u>
6d. Other. Specify: _____	6d. \$	<u>0.00</u>
<b>7. Food and housekeeping supplies</b>	7. \$	<u>1,000.00</u>
<b>8. Childcare and children's education costs</b>	8. \$	<u>7,100.00</u>
<b>9. Clothing, laundry, and dry cleaning</b>	9. \$	<u>20.00</u>
<b>10. Personal care products and services</b>	10. \$	<u>40.00</u>
<b>11. Medical and dental expenses</b>	11. \$	<u>200.00</u>
<b>12. Transportation.</b> Include gas, maintenance, bus or train fare. Do not include car payments.	12. \$	<u>250.00</u>
<b>13. Entertainment, clubs, recreation, newspapers, magazines, and books</b>	13. \$	<u>500.00</u>
<b>14. Charitable contributions and religious donations</b>	14. \$	<u>50.00</u>
<b>15. Insurance.</b> Do not include insurance deducted from your pay or included in lines 4 or 20.		
15a. Life insurance	15a. \$	<u>0.00</u>
15b. Health insurance	15b. \$	<u>2,000.00</u>
15c. Vehicle insurance	15c. \$	<u>750.00</u>
15d. Other insurance. Specify: _____	15d. \$	<u>0.00</u>
<b>16. Taxes.</b> Do not include taxes deducted from your pay or included in lines 4 or 20. Specify: _____	16. \$	<u>0.00</u>
<b>17. Installment or lease payments:</b>		
17a. Car payments for Vehicle 1	17a. \$	<u>0.00</u>
17b. Car payments for Vehicle 2	17b. \$	<u>0.00</u>
17c. Other. Specify: _____	17c. \$	<u>0.00</u>
17d. Other. Specify: _____	17d. \$	<u>0.00</u>
<b>18. Your payments of alimony, maintenance, and support that you did not report as deducted from your pay on line 5, Schedule I, Your Income (Official Form 106I).</b>	18. \$	<u>0.00</u>
<b>19. Other payments you make to support others who do not live with you.</b> Specify: _____	19. \$	<u>0.00</u>
<b>20. Other real property expenses not included in lines 4 or 5 of this form or on Schedule I: Your Income.</b>		
20a. Mortgages on other property	20a. \$	<u>0.00</u>
20b. Real estate taxes	20b. \$	<u>0.00</u>
20c. Property, homeowner's, or renter's insurance	20c. \$	<u>0.00</u>
20d. Maintenance, repair, and upkeep expenses	20d. \$	<u>0.00</u>
20e. Homeowner's association or condominium dues	20e. \$	<u>0.00</u>
<b>21. Other:</b> Specify: _____	21. +\$	<u>0.00</u>
<b>22. Calculate your monthly expenses</b>		
22a. Add lines 4 through 21.	\$	<u>19,760.00</u>
22b. Copy line 22 (monthly expenses for Debtor 2), if any, from Official Form 106J-2	\$	
22c. Add line 22a and 22b. The result is your monthly expenses.	\$	<u>19,760.00</u>
<b>23. Calculate your monthly net income.</b>		
23a. Copy line 12 (your combined monthly income) from Schedule I.	23a. \$	<u>22,957.00</u>
23b. Copy your monthly expenses from line 22c above.	23b. -\$	<u>19,760.00</u>
23c. Subtract your monthly expenses from your monthly income. The result is your monthly net income.	23c. \$	<u>3,197.00</u>
<b>24. Do you expect an increase or decrease in your expenses within the year after you file this form?</b> For example, do you expect to finish paying for your car loan within the year or do you expect your mortgage payment to increase or decrease because of a modification to the terms of your mortgage?		
<input checked="" type="checkbox"/> No.		
<input type="checkbox"/> Yes.	Explain here: _____	

		Wages	Distribution from Pac. West	Total
2015				
	December			\$ -
	November			\$ -
	October		\$ 48,037.00	\$ 48,037.00
	September			\$ -
	August	\$ 1,929.00	\$ 116,782.00	\$ 118,711.00
	July	\$ 1,929.00	\$ 32,708.00	\$ 34,637.00
	June	\$ 1,948.00		\$ 1,948.00
	May	\$ 1,947.00		\$ 1,947.00
	April	\$ 1,948.00	\$ 92,958.00	\$ 94,906.00
	March	\$ 1,947.00		\$ 1,947.00
	February	\$ 1,956.00		\$ 1,956.00
	January	\$ 1,947.00		\$ 1,947.00
	Annual Total	\$ 15,551.00	\$ 290,485.00	\$ 306,036.00
2014				
	December	\$ 1,952.00		\$ 1,952.00
	November	\$ 2,057.00		\$ 2,057.00
	October	\$ 2,056.00		\$ 2,056.00
	September	\$ 2,141.00		\$ 2,141.00
	August	\$ 2,025.00		\$ 2,025.00
	July	\$ 1,929.00		\$ 1,929.00
	June	\$ 2,025.00		\$ 2,025.00
	May	\$ 2,025.00	\$ 12,125.00	\$ 14,150.00
	April	\$ 2,025.00		\$ 2,025.00
	March	\$ 2,025.00	\$ 83,333.00	\$ 85,358.00
	February	\$ 2,025.00		\$ 2,025.00
	January	\$ 2,025.00		\$ 2,025.00
	Annual Total	\$ 24,310.00	\$ 95,458.00	\$ 119,768.00
2013				
	December	\$ 2,337.00		\$ 2,337.00
	November	\$ 2,337.00	\$ 158,333.00	\$ 160,670.00
	October	\$ 2,337.00		\$ 2,337.00
	September	\$ 2,337.00		\$ 2,337.00
	August	\$ 2,337.00		\$ 2,337.00
	July	\$ 2,337.00		\$ 2,337.00
	June	\$ 2,337.00		\$ 2,337.00
	May	\$ 2,337.00		\$ 2,337.00
	April	\$ 2,337.00		\$ 2,337.00
	March	\$ 2,337.00		\$ 2,337.00
	February	\$ 2,337.00		\$ 2,337.00
	January	\$ 2,337.00		\$ 2,337.00
	Annual Total	\$ 28,044.00	\$ 158,333.00	\$ 186,377.00



Below is the Order of the Court.

**Exhibit C – Liquidation Analysis**  
*Plan Proponent's Estimated Liquidation Value of Assets*

Assets

a. 23603 77 <sup>th</sup> Ave SE, Woodinville, WA	\$981,144.00
Less Secured Creditor's Recovery	(\$1,278,944.74)
Liquidation Value	<b>\$0.00</b>
b. Honda CRV	<b>\$6,000.00</b>
c. Lexus 460	\$26,000.00
Less Debtor's Exemption	(\$3,675.00)
Liquidation Value	<b>\$22,325.00</b>
d. Lexus 350	\$21,000.00
Less Debtor's Exemption	(\$3,675.00)
Liquidation Value	<b>\$17,325.00</b>
e. Chris Craft Boat	<b>\$31,000.00</b>
f. Household Goods	\$15,000.00
Less Debtor's Exemption	\$15,000.00
Liquidation Value	<b>\$0.00</b>
g. Collectibles (books, art, etc.)	\$1,000.00
Less Debtor's Exemption	(\$1,000.00)
Liquidation Value	<b>\$0.00</b>
h. Sports, photographic, and hobby equipment	\$500.00
Less Debtor's Exemption	(\$500.00)
Liquidation Value	<b>\$0.00</b>
i. Clothing	\$1,500.00
Less Debtor's Exemption	(\$1,500.00)
Liquidation Value	<b>\$0.00</b>
j. Jewelry	\$1,500.00
Less Debtor's Exemption	(\$1,500.00)
Liquidation Value	<b>\$0.00</b>
k. Cash	\$2,000.00
Less Debtor's Exemption	(\$2,000.00)
Liquidation Value	<b>\$0.00</b>

**Below is the Order of the Court.**

l. Bank Accounts	\$2,200.00
Less Debtor's Exemption	(\$2,200.00)
Liquidation Value	<b>\$0.00</b>
m. Misc. Equities and Investments in businesses	\$6.00
Less Debtor's Exemption	(\$6.00)
Liquidation Value	<b>\$0.00</b>
n. Interest in Canna Security America	Unknown
o. Retirement Accounts	\$82,773.76
Less Debtor's Exemption	(\$82,773.76)
Liquidation Value	<b>\$0.00</b>
p. Outstanding Promissory Notes (A/R) to Matt Cook, Charles Ramsey, and Buck Fowler – Uncollectable – Face value = \$325,900	<b>\$0.00</b>
q. Pacific West Real Estate Opportunity Fund	\$550,000.00
Less Debtor's Exemption	(\$20,744.00)
Liquidation Value	<b>\$529,256.00</b>
<i>Total Assets at Liquidation Value</i>	<b>\$605,906.00</b>
Less Chapter 7 trustee fees and expenses for house	(\$72,102.92)
Less Chapter 7 trustee fees and expenses for other personal property	(\$31,947.90)
Less Chapter 11 administrative expenses	(\$21,325.00)
(1) Balance for unsecured claims	\$480,530.18
(2) Total dollar amount of unsecured claims	\$1,317,462.19
<i>Percentage of Claims Which Unsecured Creditors Would Receive Or Retain in a Chapter 7 Liquidation:</i>	36.5% [Divide (1) by (2)]
<i>Percentage of Claims Which Unsecured Creditors Will Receive or Retain under the Plan:</i>	60%

**Below is the Order of the Court.**

**Exhibit D – Asset Purchase Agreement between Agrisoft Development Group, LLC;  
Forbeez Capital, Inc.; Jim Willett; and Kind Agrisoft, LLC.**

Disclosure Statement Exhibits  
Page 19 of 43

Vortman & Feinstein  
520 Pike Street, Suite 2250  
Seattle, WA 98101  
Phone: 206-223-9595  
Fax: 206-386-5355

ASSET PURCHASE AGREEMENT  
BY AND AMONG  
AGRISOFT DEVELOPMENT GROUP, LLC,  
FORBEEZ CAPITAL, INC.  
JIM WILLETT  
AND  
KIND AGRISOFT, LLC  
Dated as of June \_\_, 2015

Below is the Order of the Court.

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**Below is the Order of the Court.**

**EXHIBITS**

Exhibit A	Bill of Sale
Exhibit B	Assignment and Assumption Agreement
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**SCHEDULES**

Schedule R.1	Description of Business
Schedule 1.2(q)	Additional Purchased Assets
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**EXECUTION VERSION**

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this "**Agreement**"), is dated as of June 1, 2015 (the "**Effective Date**"), and is entered into by and among Agrisoft Development Group, LLC, a South Dakota limited liability company ("**Seller**"), Forbeez Capital, Inc., a Washington corporation ("**Forbeez**"), Jim Willett, an individual residing in the State of Washington ("**Willett**"), and Kind Agrisoft, LLC, a Delaware limited liability company ("**Buyer**"). Seller, Forbeez, and Willett are also sometimes each referred to herein individually as a "**Seller Party**" and collectively as, the "**Seller Parties**." Seller Parties and Buyer are also sometimes each referred to herein individually as, a "**Party**" and collectively as, the "**Parties**."

**WITNESSETH:**

WHEREAS, Seller operates a business which utilizes biometrically authenticated relational database to ensure regulatory compliance for operators and distributors of medical and recreational cannabis businesses, as further described in Schedule R.1 (the "**Business**"); and

WHEREAS, Seller desires to sell, transfer and assign to Buyer, and Buyer desires to acquire and assume from Seller, the Purchased Assets (defined below) and Assumed Liabilities (defined below) as more specifically provided herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the Parties hereby agree as follows:

**ARTICLE I.**

**PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES**

Section 1.1 **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Bill of Sale (defined below).

Section 1.2 **Purchase and Sale of Assets.** On the terms and subject to the conditions set forth in this Agreement, at the Closing (defined below), Buyer shall purchase, acquire and accept the Purchased Assets from Seller, and Seller shall sell, transfer, assign, convey and deliver the Purchased Assets to Buyer. "**Purchased Assets**" shall mean all of Seller's right, title and interest in, to and under the following assets of Seller (but excluding Excluded Assets (defined below)) as of the Closing related to the Business: (a) all Accounts Receivable of Seller; (b) all deposits (including, without limitation, all customer deposits and security deposits for rent, electricity, telephone or otherwise) of Seller; (c) all Furniture and Equipment (including all equipment, approvals and systems necessary to operate Seller's Business); (d) all cash, cash equivalents, bank deposits and similar cash items of Seller; (e) all Intellectual Property; (f) all Purchased Contracts; (g) all of Seller's Documents, including, but not limited to: Documents relating to Accounts Receivable, Products (as defined below), services, marketing, advertising, promotional materials, Intellectual Property and all files, customer lists, files and documents (including credit information), supplier lists, records, literature and correspondence, wherever located, excluding any Documents exclusively related to any Excluded Assets; (h) all Permits used by Seller in the Business, to the extent transferable; (i) all supplies owned by Seller and used in connection with the Business; (j) to the extent transferable, all insurance policies or rights to proceeds thereof relating to the Purchased Assets (other than any directors and officers or

fiduciary insurance policy, each of which shall be an Excluded Asset; (k) all rights of Seller under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with Employees (defined below) and agents of Seller or with third parties to the extent relating to the Business or the Purchased Assets (or any portion thereof); (l) all rights of Seller under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors if and to the extent that such rights are assignable by operation of law and relating to Products sold, or services provided, to Seller or to the extent affecting any Purchased Assets other than any warranties, representations and guarantees pertaining exclusively to any Excluded Assets; (m) all goodwill and other intangible assets associated with the Business, including customer and supplier lists and the goodwill associated with the Intellectual Property owned by Seller; (n) all Prepaids; (o) any rights, claims or causes of action of Seller against third parties relating to assets, properties, Business or operations of Seller arising out of events occurring on or prior to the Closing Date; (p) to the extent transferable, all Tax credits of Seller; (q) the assets set forth on Schedule 1.2(g); (r) telephone numbers used in connection with the Business; and (s) all ownership interests in other entities, including a one-third (1/3) ownership interest in L2B, L.L.C. ("LTB").

Section 1.3 **Excluded Assets.** Nothing herein contained shall be deemed to sell, transfer, assign or convey the Excluded Assets to Buyer, and Seller shall retain all right, title and interest to, in and under the Excluded Assets. "Excluded Assets" shall mean each of the following assets: (a) all Contracts (defined below) other than Purchased Contracts; (b) any (i) books and records that Seller is required by law to retain or that Seller determines are necessary or advisable to retain including, without limitation, Tax returns, financial statements, and corporate or other entity filings; provided, however, that Buyer shall have, to the extent allowed by applicable law, the right to make copies of any portions of such retained books and records that relate to the Business or any of the Purchased Assets; (ii) minute books, stock or membership interest records and corporate seals; and (iii) Documents relating to proposals to acquire the Business by persons other than Buyer; (c) all of Seller's rights under this Agreement and the Transaction Documents (defined below) executed in connection with the Transactions (defined below) provided for hereby and thereby; and (d) the Excluded Assets set forth on Schedule 1.3(d) **Excluded Liabilities; Assumption of Liabilities.**

(a) Buyer will not assume or have any responsibility, however, with respect to any Liability (defined below) of Seller not included within the definition of Assumed Liabilities (defined below), including, without limitation: (i) Taxes, of any kind or nature (x) imposed on Seller for any period or (y) related to the Business or the Purchased Assets for all Tax periods (or portions thereof) ending on or prior to the Closing; (ii) liabilities, obligations or debts, whether known or unknown, direct or indirect, absolute or contingent, accrued or unaccrued, liquidated or unliquidated or due or to become due (the "Liabilities"), relating to the Excluded Assets; (iii) Liabilities of Seller under this Agreement; (iv) all Liabilities arising under any Purchased Contract (and all Liabilities for any breach, act or omission under any Purchased Contract) arising prior to the Closing; (v) trade payables arising prior to the Closing; (vi) all Liabilities and indebtedness, including any indebtedness for borrowed money, owed by Seller to any person; (vii) any wages, bonuses, vacation pay, sick time, pension payments, overtime pay, change of control payments, severance pay and any other termination or severance obligations and any other compensation or obligation which may be due by statute, contract or law relating to the employment in respect of the Business (the "Employee Obligations") to any individual, whether

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or not actively at work as of the date hereof who is or was employed by Seller in connection with the Business (each, an "Employee") arising out of such Employee's employment by Seller prior to the Closing; (viii) any claim, demand, action, cause of action, damage, loss, cost, Liability or expense, including legal costs, made or brought by any Employee, including, but not limited to, any claim made pursuant to any applicable laws relating to employment standards, occupational health and safety, labor relations, workers compensation, pay equity, employment equity, the Americans with Disabilities Act, the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Family and Medical Leave Act or the Fair Labor Standards Act or any other federal, state or local, statutory or decisional law regarding employment discrimination (the "Employee Claims") of any Employee arising out of such Employee's employment by Seller prior to the Closing; (ix) any Liabilities under the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any similar state law related thereto (the "WARN Act"); (x) any Liabilities relating to any Action (defined below) pending or threatened against any Seller Parties; and (xi) all other Liabilities for which Buyer does not expressly assume (collectively, the "Excluded Liabilities").

(b) On and subject to the terms and conditions of this Agreement, Buyer shall assume and become responsible for all of the Assumed Liabilities at the Closing. Buyer's assumption of the Assumed Liabilities shall in no way expand the rights or remedies of third parties against Buyer as compared to the rights and remedies which such parties would have had against Seller Parties had this Agreement not been consummated. From and after the Closing Date, Buyer shall pay, perform and discharge, as and when due or as may otherwise be agreed between Buyer and the obligee, all of the Assumed Liabilities. The "Assumed Liabilities" are specifically as follows: (i) all Liabilities of Seller set forth on Schedule 1.4(b); (ii) all Liabilities under the Purchased Contracts arising after the Closing; and (iii) the Surma Liability (defined below) as further set forth in Section 1.5 below.

Section 1.5 **Surma Liability.** Buyer acknowledges that Seller is indebted to Surma, Inc. ("Surma") in the amount of \$260,000 plus accrued and unpaid interest (the "Surma Liability"). Buyer further acknowledges that Surma has a lien on certain of Seller's assets which are a part of the Purchased Assets. Buyer will assume responsibility for resolving and satisfying the Surma Liability, which, if resolved in a manner satisfactory to Buyer, shall be treated as an Assumed Liability. Any resolution of the Surma Liability shall include a release by Surma of its lien on Seller's assets which are a part of the Purchased Assets, unless Buyer, in its sole and absolute discretion, agrees to a continuation of Surma's lien on such Purchased Assets following the Closing. Seller acknowledges that Buyer has no obligation whatsoever to agree to assume and resolve the Surma Liability in a manner which is not acceptable to Buyer in its sole and absolute discretion. Should Buyer not be able to so assume and resolve the Surma Liability prior to the Closing, it will be a failure of one of the conditions precedent to Buyer's or Seller's obligation to close.

Section 1.6 **Further Assurances.** From time to time following the Closing, Seller and Buyer shall execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to assure fully to Buyer and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and

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privileges intended to be conveyed to Buyer under this Agreement and the Transaction Documents and to assure fully to Seller and their respective successors and assigns, the assumption of the Assumed Liabilities intended to be assumed by Buyer under this Agreement and the Transaction Documents contemplated hereby, and to otherwise make effective the Transactions contemplated hereby and thereby (the "Transactions").

## ARTICLE II. CONSIDERATION

### Section 2.1 **Purchase Price; Assumed Liabilities**

(a) The purchase price for the Purchased Assets (the "Purchase Price") shall be determined as follows: commencing July 1, 2016 and ending on June 30, 2022 (such six (6) year period being referred to as, the "Earn Out Period"), Buyer will pay to Seller an amount equal to five percent (5%) of Buyer's quarterly total amount of income received by Buyer or any of Buyer's majority-owned subsidiaries from any source, without subtracting any costs or expenses except for the amount of sales tax collected by the Buyer at the time of sale and then actually paid to the state or local taxing authority (the "Royalty") derived from or attributable to: (A) the operation by Buyer or any of Buyer's majority-owned subsidiaries of the Business; and (B) any sale (other than pursuant to a Change of Control (defined below)) or license by Buyer or Buyer's majority-owned subsidiaries of any product or software relating to the Business existing on, or developed after, the Closing Date, that utilizes, or is derived from, any of the Purchased Assets. During the Earn Out Period, Royalty payments will be made by Buyer to Seller quarterly, in arrears, within thirty (30) days after the end of each calendar quarter during the Earn Out Period in which a Royalty is earned. Royalty payments will be accompanied by a written Royalty report (the "Royalty Report") setting forth Buyer's calculation of the Royalty payment amount. For avoidance of doubt, and by way of example only, if Buyer sells a product for \$95 and Buyer collects sales tax on such sale in the amount of \$5, so that Buyer collects \$100 in total with respect to such sale, then the Royalty shall be \$4.75 (five percent (5%) of \$95). Should there be a Change of Control of Buyer prior to the end of the Earn Out Period, at the closing of any such Change of Control, Buyer, in lieu of its remaining payment obligations pursuant to this Section 2.1, shall pay to Seller a lump sum payment equal to the Royalty payable for the last full calendar quarter of the Earn Out Period prior to the closing of such sale of Buyer, multiplied by four (4), and multiplied again by the number of years (including fractions thereof) between the date of closing of the Change of Control transaction and the last day of the Earn Out Period. Seller acknowledges that Buyer shall have sole discretion over all matters relating to the Business after the Closing, and shall not have any duty to take any action with respect to the Business, other than the duty not to take action in bad faith with the intention of avoiding payment of, or reducing the amount of, the Royalty.

(b) For purposes of this Agreement, "Change of Control" means the occurrence of any one of the following events: (A) all or substantially all of the assets or business of Buyer are disposed of pursuant to a merger, consolidation, sale or other transaction (unless the voting members of the Buyer, immediately prior to such merger, consolidation or other transaction beneficially own directly or indirectly, in substantially the same proportions as they owned the voting power of Buyer, all of the voting power or other ownership interest of the entity or entities, if any, that succeed to the business of Buyer); or (B) Buyer combines with

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another company and immediately after such combination the voting members of Buyer immediately prior to the combination do not hold, directly or indirectly, more than fifty percent (50%) of the voting power of the combined company. Notwithstanding the foregoing, a financing transaction (i.e., a transaction in which the Buyer raises equity or debt financing but does not distribute a material portion of such funds to its then members) pursuant to which less than fifty percent (50%) of the voting power of the Buyer is transferred to a third party shall not constitute a Change in Control.

### Section 2.2 **Audit Rights; Dispute Process.**

(a) Buyer shall keep complete and accurate records of the calculations of all Royalties owed to Seller. During the Earn Out Period, Buyer shall make all such records relating to the Royalties calculations reasonably available for inspection and audit by an independent accounting firm engaged by Seller (the "Seller Accounting Firm") at Seller's cost, not more than twice annually, and during normal business hours upon ten (10) business days' written prior notice by Seller to Buyer. Buyer shall have no obligation to continue to maintain the indicated records, and Seller shall have no right to further audit or inspect such records, beyond the date which is two (2) years following the date that a written Royalty Report pertaining to such records was provided to Seller as described in Section 2.1 above. The Seller Accounting Firm shall be obligated to maintain the confidentiality of any financial information provided to it by Buyer and may only advise Seller Parties if it concurs with or disagrees with any Royalty Reports and the nature of any disagreement.

(b) If Seller or Seller Accounting Firm disagrees with any Royalty Report, then Seller shall have sixty (60) days after Buyer's delivery of the applicable Royalty Report (the "Response Period"), to deliver written notice to Buyer of such disagreement (a "Dispute Notice"). The Dispute Notice shall state the basis for the objection. If Seller timely delivers a Dispute Notice to Buyer, Seller and Buyer shall promptly attempt to resolve such dispute or disagreement in good faith. If Seller and Buyer are unable to resolve such dispute or disagreement within fifteen (15) days after receipt by Buyer of the Dispute Notice, either of Seller or Buyer may submit such dispute or disagreement for final determination to a mutually acceptable and nationally recognized independent accounting firm other than the Seller Accounting Firm (such firm, the "Earn Out Firm") to resolve the remaining disputed items (the "Remaining Disputed Items"). The Earn Out Firm shall act as an arbitrator to determine and resolve only the Remaining Disputed Items based on the presentations by Seller, Buyer and their respective representatives and in accordance with the terms of this Agreement. The Earn Out Firm shall make its determination regarding the Remaining Disputed Items within thirty (30) business days after the date upon which Seller or Buyer submits the dispute or disagreement to the Earn Out Firm, and in that undertaking shall not be required to follow any particular procedure but shall proceed in a manner designed to achieve a speedy and economic resolution of the dispute. The Earn Out Firm shall set forth its determination, which shall be final, binding and conclusive on all Parties in a written statement delivered to Seller and Buyer, stating its reason therefor. The Earn Out Firm shall be instructed to render its decision in accordance with the terms hereof. Each of Buyer and Seller agrees to execute, if requested by the Earn Out Firm, an engagement letter containing reasonable and customary terms. Buyer and Seller shall each pay their own costs and expenses incurred under this Section 2.2(b), other than the cost of the

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Earn Out Firm. The costs and expenses of the Earn Out Firm incurred pursuant to this Section 2.2(b) will be allocated equally between Buyer and Seller.

### ARTICLE III. CLOSING

Section 3.1 **Closing Date.** Subject to the satisfaction or waiver of the conditions set forth in Section 7, the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article I hereof (the "Closing") will take place on the Closing Date, with the Parties exchanging signature pages to the Transaction Documents via email delivery on the date thereof. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date," and the Closing shall be deemed effective for tax, accounting and other purposes at 11:59 pm (Kansas City, Missouri time) on the Closing Date. Deliveries by Seller. At the Closing, Seller shall deliver the following to Buyer:

- (a) a bill of sale in substantially the form attached as Exhibit A hereto (the "Bill of Sale"), duly executed by Seller;
- (b) an assignment and assumption agreement in substantially the form attached as Exhibit B hereto (the "Assignment and Assumption Agreement"), duly executed by Seller;
- (c) duly executed assignments of the U.S. patent and trademark registrations and applications included in the Intellectual Property, in a form suitable for recording in the U.S. patent and trademark office, and general assignments of all other Intellectual Property, all in form and substance satisfactory to Buyer in its sole discretion;
- (d) an assignment of the lease (the "Lease Assignment") for the real property located at 1201 NW Briarcliff Parkway, Second Floor, Kansas City, Missouri 64116 (the "Property"), duly executed by Seller and Regus Management Group, LLC, the landlord of the Property;
- (e) restricted unit grant agreements and signature pages to Buyer's Amended and Restated Operating Agreement executed by Charles Ramsey ("Ramsey");
- (f) an employment agreement by and between Buyer and Ramsey, executed by Ramsey;
- (g) a General Release in substantially the form of Exhibit C attached hereto (the "Release"), executed by Buck Fowler, an individual residing in the State of Washington ("Fowler"), Willett, Forbecz, and Ramsey, releasing Buyer and Seller from any and all claims except for obligations arising from this Agreement or any of the other agreements being executed at Closing;
- (h) evidence satisfactory to Buyer that all liens on the Purchased Assets have been terminated;
- (i) the Consents (defined below);

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(j) a certificate in form and substance satisfactory to Buyer certifying the accuracy of Seller Parties' representations and warranties set forth in this Agreement as of the Closing Date;

(k) A certificate of an officer of Seller in respect of (i) each of its officers who are authorized to execute and deliver this Agreement and the Transaction Documents to which it is a party, and (ii) resolutions of the members of Seller entitled to vote upon the Transactions, authorizing the execution, delivery and performance of this Agreement and the Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby;

(l) A Certificate of Good Standing of Seller, issued by the Secretary of State of the State of South Dakota, as of a date no more than ten (10) days prior to the Closing Date; and

(m) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Buyer, as may be necessary to convey the Purchased Assets to Buyer (including, without limitation, those documents necessary for Seller to convey its ownership interests in LTB to Buyer).

Section 3.3 **Deliveries by Buyer.** At the Closing, Buyer shall deliver the following to Seller:

- (a) the Assignment and Assumption Agreement, duly executed by Buyer;
- (b) the Lease Assignment, duly executed by Buyer;
- (c) the agreements listed in Section 3.2(a) and Section 3.2(f), duly executed by Buyer;
- (d) evidence of the release of Seller by Surna from the Surna Liability;
- (e) a certificate in form and substance satisfactory to Seller Parties certifying the accuracy of Buyer's representations and warranties set forth in this Agreement as of the Closing Date; and
- (f) A certificate of the manager of Buyer in respect of (i) each of its members or managers who are authorized to execute and deliver this Agreement and the Transaction Documents to which Buyer is a party, and (ii) resolutions of the manager and members of Buyer entitled to vote upon the Transactions, authorizing the execution, delivery and performance of this Agreement and the Transaction Documents to which it is a party and the consummation of the Transactions contemplated hereby and thereby;
- (g) A Certificate of Good Standing of Buyer, issued by the Secretary of State of the State of Delaware (Division of Corporations), as of a date no more than ten (10) days prior to the Closing Date; and

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(h) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Seller, as may be necessary to convey the Purchased Assets to Buyer and for Buyer to assume the Assumed Liabilities.

### ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF SELLER PARTIES

Seller Parties, jointly and severally, hereby represent and warrant to Buyer that:

Section 4.1 **Organization and Qualification of Seller.** Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of South Dakota and has full limited liability company power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted. Schedule 4.1 sets forth each jurisdiction in which Seller is licensed or qualified to do business, and Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Business as currently conducted makes such licensing or qualification necessary.

Section 4.2 **Authorization of Agreement.** Each Seller Party has all limited liability company or individual, as the case may be, power, authority and legal capacity to execute and deliver this Agreement and each Seller Party has all requisite limited liability company or individual, as the case may be, power, authority and legal capacity to execute and deliver each of the Bill of Sale, Assignment and Assumption Agreement, the Release, the Lease Assignment, and any and all documents or certificates incident thereto or contemplated hereby (each, a "Transaction Document") and collectively, the "Transaction Documents") to which such Seller Party is a party, to perform its obligations hereunder and thereunder and to consummate the Transactions contemplated hereby and thereby; and (b) this Agreement and each of the Transaction Documents to which each Seller Party is a party have been duly and validly executed and delivered by each such Seller Party and (assuming the due authorization, execution and delivery by the other Parties hereto and thereto) this Agreement constitutes, and each of the Transaction Documents to which each such Seller Party is a party when so executed and delivered will constitute, legal, valid and binding obligations of Seller, enforceable against the applicable Seller Party in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, arrangement, moratorium, and other similar state or federal debt relief laws in effect from time to time and to general principles of equity.

Section 4.3 **No Conflicts, Consents.** The execution, delivery and performance by Seller Parties of this Agreement and the other Transaction Documents to which each such Seller Party is a party, and the consummation of the Transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the Articles of Organization, operating agreement or other organizational documents of Seller; (b) conflict with or result in a violation or breach of any provision of any law or order of any governmental or regulatory body, department, agency, commission, instrumentality, authority, court or arbitrator (each, a "Government Body") applicable to Seller Parties, the Business or the Purchased Assets; (c) except as set forth in Schedule 4.3, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would

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constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel, any Contract or Permit to which Seller Parties are a party or by which Seller Parties or the Business is bound or to which any of the Purchased Assets are subject (all such matters listed on Schedule 4.3, the "Consents"); (d) result in the creation or imposition of any lien on the Purchased Assets; or (e) adversely affect Seller's ownership rights in LTB or the rights of Buyer as successor to Seller's ownership rights in LTB. No consent, approval, Permit, order, declaration or filing with, or notice to, any Governmental Body is required by or with respect to Seller Parties in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the Transactions contemplated hereby and thereby.

Section 4.4 **Financial Statements.** Complete copies of the unaudited financial statements consisting of the balance sheet of the Business as of December 31, 2014, and the related statements of income and retained earnings, members' equity and cash flow for the year then ended (the "Annual Financial Statements"), and unaudited financial statements consisting of the balance sheet of the Business as of March 31, 2015, and the related statements of income and retained earnings, members' equity and cash flow for the three-month period then ended (the "Interim Financial Statements") and together with the Annual Financial Statements, (the "Financial Statements") have been delivered to Buyer. The Financial Statements are based on the books and records of the Business, and fairly present in all material respects the financial condition of the Business as of the respective dates they were prepared and the results of the operations of the Business for the periods indicated.

Section 4.5 **Undisclosed Liabilities.** Except as set forth on Schedule 4.5, Seller has no liabilities.

Section 4.6 **Title to Purchased Assets.** Seller has good title to the Purchased Assets and, at the Closing, Buyer shall acquire good title in, to and under all of such Purchased Assets, in each case free and clear of all liens. The Purchased Assets include all of the properties and assets as currently used to operate, in all material respects, the Business in the ordinary course of business and as currently proposed to be conducted by Buyer following the Closing.

Section 4.7 **Real Property.** Seller does not own any real property. Except for the Property, Seller does not have any interest in real property as a lessee or lessor.

Section 4.8 **Tangible Personal Property.** Schedule 4.8 sets forth all leases of personal property ("Personal Property Leases") relating to personal property used by Seller or to which Seller is a party or by which the properties or assets of Seller are bound, in each case relating to the Business. Seller has a valid and enforceable leasehold interest under each Personal Property Lease under which it is a lessee.

Section 4.9 **Intellectual Property.**

(a) Seller owns, licenses or otherwise possesses legally enforceable rights to use all Intellectual Property currently used in the Business or as the Business is proposed to be conducted and such Intellectual Property constitutes all of the Intellectual Property necessary for the Business of Seller as currently conducted and as it is intended to be conducted in the future.

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Schedule 4.9(a) contains a true, correct and complete list of (i) all Intellectual Property that are owned, used or licensed by Seller, (ii) the registration number, date of registration and jurisdiction of registration thereof, (iii) the name of the registered owner and, if different, the user or users thereof and (iv) any applications for any of the foregoing.

(b) Seller has provided to Buyer (i) all material documents, if any, relative to patents and patent applications and all registered and unregistered trademarks, trade names and service marks, registered and unregistered copyrights, domain name registrations and maskworks owned by Seller and included in the Intellectual Property, including the jurisdictions in which each such Intellectual Property right has been issued or registered or in which any application for such issuance and registration has been filed, (ii) all material licenses, sublicenses and other agreements as to which Seller is a party and pursuant to which any person is authorized to use any Intellectual Property, and (iii) all material licenses, sublicenses and other agreements as to which Seller is a party and pursuant to which Seller is authorized to use any third party patents, trademarks or copyrights, including software, or any other third party Intellectual Property ("Third Party Intellectual Property Rights") which are or are presently expected to be incorporated in, or are or expected to form a part of any existing or proposed products developed, manufactured, produced, marketed or sold by Seller in connection with the Business (the "Products"), or which are or are presently expected to be utilized in the development, modification or support of any existing or proposed Product of the Business.

(c) To the actual knowledge of Willitt, Fowler, and Ramsey (the "Knowledge of Seller"), there is no unauthorized use, disclosure, infringement or misappropriation of any Intellectual Property, any Trade Secret material to any Seller Party or any Third Party Intellectual Property Right to the extent licensed by or through Seller, by any third party. No Seller Party, nor, to the Knowledge of Seller, any employee of Seller, have entered into any agreement to indemnify any other person against any charge of infringement of any Intellectual Property, other than indemnification provisions arising in the ordinary course of business, such as those in purchase orders, invoices or similar sales-related documents.

(d) To the Knowledge of Seller, Seller is not, nor will it be as a result of the consummation of the Transactions contemplated by this Agreement or the Transaction Documents to which it is a party or the performance of its obligations under this Agreement or such Transaction Documents, in breach of any license, sublicense or other agreement currently used in, or material to, the Intellectual Property or Third Party Intellectual Property Rights.

(e) To the Knowledge of Seller, all patents, registered trademarks, service marks and copyrights held by Seller are validly issued and presently subsisting. Seller (i) has not been subjected to any suit, action or proceeding which involves a material claim of infringement of any patents, trademarks, service marks, copyrights or violation of any trade secret or other proprietary or Intellectual Property right of any third party, and (ii) has not brought any action, suit or proceeding for infringement of Intellectual Property or breach of any license or agreement involving Intellectual Property against any third party. To the Knowledge of Seller, the manufacture, marketing, licensing or sale of the Products and services of the Business as currently conducted and proposed to be conducted does not infringe any patent, trademark, service mark, copyright, Trade Secret or other proprietary right of any third party.

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(f) Seller has taken steps which it believes to be sufficient to protect and preserve the confidentiality of all material Intellectual Property not otherwise protected by patents, or patent applications or copyright. All use, disclosure or appropriation by Seller of such material Intellectual Property owned by Seller by or to a third party has been pursuant to written agreements between Seller and such third party. All use, disclosure or appropriation of such material Intellectual Property not owned by Seller has been pursuant to binding agreements between Seller and the owner of such Intellectual Property, or is otherwise lawful.

(g) Seller's Intellectual Property is currently in compliance with all applicable legal requirements and no such Intellectual Property has been or is now involved in any proceeding challenging or seeking to invalidate or narrow such Intellectual Property, including, without limitation, an interference, reissue, reexamination or opposition proceeding or any proceeding under the American Invents Act.

(h) Seller is not in breach of, or default under, any term of any license or sublicense with respect to any of its Intellectual Property and to the Knowledge of Seller, no other party to such license or sublicense is in breach thereof or default thereunder, and such license is valid and enforceable.

(i) Each current and former Employee, consultant and officer of Seller has executed an agreement with Seller regarding confidentiality and proprietary information (the "Confidential Information Agreements") in the form set forth in Schedule 4.9(i). To the Knowledge of Seller, no current or former Employee has excluded works or inventions from his or her assignment of inventions pursuant to such Employee's Confidential Information Agreement. Each current and former Employee has executed a non-competition and non-solicitation agreement. Seller is not aware that any of its Employees is in violation of any agreement covered by this Section 4.9(i).

Section 4.10 **Material Contracts.** Schedule 4.10 sets forth a complete list of contracts that are material or necessary for the Business as conducted and contemplated to be conducted as of the Closing Date, including any contract that is material to or necessary for the use or other exploitation of the Purchased Assets (the "Material Contracts"). Each Material Contract is valid and binding on Seller in accordance with its terms and to the Knowledge of Seller is in full force and effect. None of Seller or, to the Knowledge of Seller, any other party thereto, is in breach of or default under (or to the Knowledge of Seller, is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Material Contract. To the Knowledge of Seller, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer. There are no material disputes pending or, to the Knowledge of Seller, threatened under any Material Contract. Financial Advisors. No person has acted, directly or indirectly, as a broker, finder or financial advisor for Seller in connection with the Transactions contemplated by this Agreement or the Transaction Documents, and no such person is entitled to any fee or commission or like payment from Seller in respect thereof.

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Section 4.12 **Litigation.** Except as set forth in Schedule 4.12, there is no claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity (each, an "Action"), in progress, pending or, to the Knowledge of Seller, threatened against or relating to Seller or the Business or any judgment, decree, injunction, deficiency, rule or order of any Governmental Body outstanding against Seller or related to the Business. Seller Parties have provided Buyer with copies of any and all pleadings related to any Action. No pending or threatened Action will adversely affect the ability of Seller to sell, transfer and assign the Purchase Assets to Buyer, to enter into the Transaction Documents, or to consummate the Transactions.

Section 4.13 **Compliance with Laws.** Seller has conducted and is presently conducting the Business in material compliance with all applicable laws.

Section 4.14 **Permits.** Schedule 4.14 sets forth a complete list of Permits used by Seller in the Business. Seller is in material compliance with the material terms of all such Permits, and all such Permits are valid and in full force and effect, and no proceeding is pending or, to the Knowledge of Seller, threatened, the object of which is to revoke, limit or otherwise affect any such Permit.

Section 4.15 **Product Liability.** To the Knowledge of Seller, Seller does not have any Liability arising out of any injury to individuals or property as a result of any services provided, or as a result of the ownership, possession or use of any Product manufactured, sold, leased or delivered, by Seller in connection with or related to the Business and Seller is not aware of the basis for any such Liability.

Section 4.16 **Inventory.** Seller has no inventory.

Section 4.17 **Accounts Receivable.** The Accounts Receivable included in the Purchased Assets (a) have arisen from bona fide transactions entered into by Seller involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; and (b) constitute only valid claims of Seller that, to the Knowledge of Seller, are not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice. Seller has not accelerated the collection of Accounts Receivable from its historic practices and has not discontinued any Accounts Receivable from early payment.

Section 4.18 **Customers and Suppliers.** Seller Parties have not received any notice, and have no reason to believe, that any of the material customers of the Business have ceased, or intend to cease after the Closing, to use the goods or services of the Business or to otherwise terminate or materially reduce its relationship with the Business. Seller Parties have not received any notice, and have no reason to believe, that any of the material suppliers to the Business have ceased, or intend to cease, to supply goods or services to the Business or to otherwise terminate or materially reduce its relationship with the Business.

Section 4.19 **Contracts.** The Purchased Contracts include all Contracts material to the ownership and/or operation of the Business. Seller has not, and, to the Knowledge of Seller, no

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other party to any Purchased Contract has, commenced any Action against any of the parties to any Purchased Contract or given or received any written notice of any default or violation under any Purchased Contract that has not been withdrawn or dismissed. Each Purchased Contract is a valid and binding agreement of Seller. To the Knowledge of Seller, each Purchased Contract is in full force and effect in accordance with its terms.

Section 4.20 **Taxes.** Seller has paid all Taxes. Seller is not a party to or bound by any Tax sharing, Tax indemnity or Tax allocation agreement or other similar arrangement.

Section 4.21 **Environmental and Safety Laws.** (a) Seller is and has been in material compliance with all law, regulations, or other applicable requirements relating to (i) releases or threatened releases of Hazardous Substances (defined below); (ii) pollution or protection of employee health or safety, public health or environment; or (iii) the manufacture, handling, transport, use, treatment, storage or disposal of Hazardous Substances ("Environmental Laws"); (b) to the Knowledge of Seller, there has been no release or threatened release of any pollutant, contaminant or toxic or hazardous material, substance or waste, or petroleum or any fraction thereof (each a "Hazardous Substance") on, upon, into or from the Property; (c) to the Knowledge of Seller, there have been no Hazardous Substances generated by Seller that have been disposed of or come to rest at any site that has been included in any published U.S. federal, state or local "superfund" site list or any other similar list of hazardous or toxic waste sites published by any governmental authority in the United States; and (d) to the Knowledge of Seller there are no underground storage tanks located on, no polychlorinated biphenyls ("PCBs") or PCB-containing equipment used or stored on, and no hazardous waste as defined by the Resource Conservation and Recovery Act, as amended, stored on the Property, except for the storage of hazardous waste in compliance with Environmental Laws. Seller has made available to Buyer true and complete copies of all material environmental records, reports, notifications, certificates of need, permits, pending permit applications, correspondence, engineering studies, and environmental studies or assessments applicable to the Seller or the Business. **Suma Liability.** Except for the Suma Liability, Seller has no further Liabilities or obligations to Suma.

Section 4.23 **Customer Contracts.** Schedule 4.23 contains a description of the material terms of the Company's standard form of its agreement with its customers and describes any material modification to such terms on a customer by customer basis. Included is a description by customer of any obligation of the Company to provide its services for any period without charge or at a reduced charge.

Section 4.24 **Disclosures.** No representation or warranty of Seller Parties in this Agreement, no statement in the Schedules and no other information, document or certificate furnished by Seller to Buyer in connection with this Agreement and the transactions contemplated hereby contains any untrue statement of fact or omits to state a material fact necessary to make the statements herein or therein, in light of the circumstances in which they were made, not misleading.

## ARTICLE V. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller that:

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Section 5.1 **Organization and Good Standing.** Buyer is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Delaware and has full limited liability company power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as currently conducted.

Section 5.2 **Authorization of Agreement.** Buyer has full limited liability company power and authority to execute and deliver this Agreement and each other Transaction Document to which Buyer is a party, and to consummate the Transactions contemplated hereby and thereby. The execution, delivery and performance by Buyer of this Agreement and each of the Transaction Documents to which Buyer is a party have been duly authorized by all necessary action on behalf of Buyer. This Agreement and each Transaction Document to which Buyer is a party have been duly executed and delivered by Buyer, and (assuming the due authorization, execution and delivery by the other Parties hereto and thereto) this Agreement constitutes, and each of the Transaction Documents to which Buyer is a party when so executed and delivered will constitute, legal, valid and binding obligations of Buyer, enforceable against Buyer, in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, arrangement, moratorium, and other similar state or federal debt relief laws in effect from time to time and to general principles of equity.

Section 5.3 **No Conflicts; Consents.** The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which Buyer is a party, and the consummation of the Transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the Articles of Organization, operating agreement or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any law or order of any Government Body applicable to Buyer; and (c) except as set forth in Schedule 5.3, require the consent, notice or other action by any Person. No consent, approval, Permit, order, declaration or filing with, or notice to, any Governmental Body is required by or with respect to Buyer in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the Transactions contemplated hereby and thereby.

Section 5.4 **Financial Advisors.** No person has acted, directly or indirectly, as a broker, finder or financial advisor for Buyer in connection with the Transactions contemplated by this Agreement or the Transaction Documents, and no such person is entitled to any fee or commission or like payment from Buyer in respect thereof.

#### ARTICLE VI. COVENANTS

Section 6.1 **Preservation of Records.** Seller and Buyer agree that each of them shall preserve and keep the books and records held by it relating to the pre-Closing Business for a period of three (3) years from the Closing Date and shall make such books and records available to the other Party (and permit such other Party to make extracts and copies of such books and records at its own expense) as may be reasonably required by such Party. In the event either Party wishes to destroy such records during such three (3) year period, such Party shall first give twenty (20) days' prior written notice to the other and such other Party shall have the right at its option and expense, within that twenty (20) day period, to take possession of the records.

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Section 6.2 **Publicity; Confidentiality.** From and after the Effective Date and up until the Closing Date, Seller Parties and Buyer shall not issue any press release or public announcement concerning this Agreement, the Transaction Documents or the Transactions contemplated hereby and thereby without obtaining the prior written approval of the other Parties. Notwithstanding the foregoing, nothing contained herein shall prohibit either Party from disclosing information relating to this Agreement or the Transaction Documents to their respective attorneys, accountants, advisers, agents, employees, investors, investor affiliates, lenders, bankers, customers and strategic partners.

Section 6.3 **Bulk Sales Laws.** The Parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer; it being understood that any Liabilities arising out of the failure of Seller to comply with the requirements and provisions of any bulk sales, bulk transfer or similar laws of any jurisdiction shall be treated as Excluded Liabilities.

Section 6.4 **Conduct of Business.** From the Effective Date up through and including the Closing Date, the Seller shall: (i) maintain its limited liability company existence in good standing; (ii) conduct the Business consistent with the past customs and practices; (iii) use its commercially reasonable efforts to maintain and preserve intact in all material respects its business organization and the goodwill of its business relationships and to retain the services of its present key employees; (iv) comply in all material respects with all applicable laws; (v) maintain its insurance coverages; (vi) pay all Taxes, charges and assessments when due; (vii) maintain all accounts payable and other current liabilities in the ordinary course of business; (viii) maintain its property and assets in good operating condition in accordance with industry standards; and (ix) maintain all existing Permits.

Section 6.5 **Non-Solicitation.** To the fullest extent permitted under applicable law, commencing as of the Closing Date and ending on the last day of the Earn-Out Period (the "**Restricted Period**"), Seller Parties each covenant and agree that they shall not, directly or indirectly: (a) solicit or induce (or assist in, or participate in, or encourage the solicitation of) any Service Provider (defined below) which is an individual to leave the active employment or consultancy of Buyer for purposes of accepting employment or a consultancy with any other employer, firm or company; (b) solicit or induce (or assist in, or participate in, or encourage the solicitation of) any Service Provider to stop providing (or to materially alter) services provided to Buyer or to provide the same or similar services for any third party in competition with Buyer; (c) hire any Service Provider to work for or on behalf of any third party; (d) induce or attempt to induce or solicit or attempt to solicit any customer, investor, financing source or strategic partner of Buyer as of the Closing Date to cease doing business with Buyer or otherwise move their business elsewhere; or (e) interfere or attempt to interfere with the business relationships between any customer of Seller as of the Closing Date and Buyer, either for Seller Parties' own purposes or on behalf of any other person or business entity in competition in any manner whatsoever with the principal business activities of Buyer as of the Closing Date in or about the United States or any market in which Buyer operates and/or plans to operate as of the Closing Date. Notwithstanding the foregoing provisions of this Section 6.5, Seller Parties shall not be prohibited from directly or indirectly hiring or engaging any Service Provider if such Service Provider is terminated by Buyer or responds to a general solicitation for employment or

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engagement not directed at such Service Provider. For purposes of this Section 6.5, "**Service Provider**" shall mean any employee or contractor of Buyer following the Closing Date. Notwithstanding the foregoing, Seller covenants and agrees to reasonably assist Buyer in the transition of all employees of Seller that Buyer seeks to employ following the Closing Date.

Section 6.6 **Non-Competition.** Seller Parties hereby acknowledge that following the Closing, each Seller Party will be familiar with Buyer's trade secrets and with other Confidential Information (defined below) of Buyer, and further acknowledge and agree that Buyer would be irreparably damaged if Seller Parties were to directly or indirectly compete with the Business. Seller Parties further acknowledge and agree that the covenants and agreements set forth in this Section 6.6 are accompanied by good and sufficient consideration for Seller Parties and are a material inducement to Buyer to enter into this Agreement and to perform its obligations hereunder. Therefore, each Seller Party agrees, in further consideration of the amounts to be paid hereunder for the Purchased Assets, that to the fullest extent permitted under applicable law, during the Restricted Period, each Seller Party shall not directly or indirectly own any interest in, manage, control, participate in (whether as an owner, member, shareholder, officer, director, manager, employee, partner, agent, representative or otherwise), consult with, render services for, or in any other manner engage anywhere in the United States or America in any business engaged directly or indirectly in a business which is the same as or similar to the Business; provided that nothing herein shall prohibit any Seller Party from being a passive owner of not more than five percent (5%) of the outstanding stock of any class of a corporation which is publicly traded so long as such Seller Party does not have any active participation in the business of such corporation. Each Seller Party acknowledges that the Business has been conducted or is presently proposed to be conducted throughout the United States of America and that the geographic restrictions and time periods, as well as all other restrictions and covenants contained in this Section 6.6 are reasonable and necessary, and supported by good and valuable consideration, to protect the goodwill of Buyer following the Closing.

Section 6.7 **Litigation Covenants.** Each Seller Party expressly covenants and agrees not to serve during the Restricted Period as a voluntary "expert witness" or in any similar voluntary capacity (e.g. and without limitation, as a consultant or advisor) in any Action (other than any Action initiated or brought by a Seller Party) to which Buyer is a party or has an interest in, without the prior written consent of Buyer. In addition, during the Restricted Period, each Seller Party agrees to provide reasonable assistance, at Buyer's expense, to Buyer in connection with any Action relating to the Purchased Assets for the time period prior to the Closing Date, including, but not limited to, meetings with representatives and counsel of Buyer and giving testimony in any Action involving Buyer. Furthermore, each Seller Party agrees not to affirmatively encourage or assist any person or entity in any Action (other than any Action initiated or brought by a Seller Party) against Buyer or its officers, owners, members, directors, managers, employees and agents in any manner during the Restricted Period.

Section 6.8 **Confidential Information.** The Parties acknowledge and agree that Seller Parties have had access to and become acquainted with Trade Secrets and other proprietary and confidential information pertaining to the Business and Buyer (including relating to the business of LTB), including lists of clients and prospective clients, computer programs, business plans, manuals, formulae, processes, methods, compositions, designs, inventions and strategies, prices, and other similar confidential or proprietary materials or information respecting Buyer or its

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clients' business affairs. In addition, Seller Parties have had access to and become acquainted with confidential information of a personal nature of certain of Buyer's owners, employees, managers, members, agents, employees and partners. The Parties agree that such proprietary and confidential business information concerning the Business and Buyer and its owners, employees, managers, agents, employees and partners as set forth above and any other information concerning the Business or Buyer reasonably understood to be confidential constitutes "Confidential Information" whether or not developed by Seller Parties. Each Seller Party agrees not to use, disclose, disseminate or publish such Confidential Information in any manner without the prior written consent of Buyer except as set forth herein. Any such unauthorized disclosure shall entitle Buyer to all the remedies available under this Agreement and the right to a preliminary and permanent injunction, without the obligation to post a bond or any similar undertaking.

Section 6.9 **Acknowledgement with Respect to Restrictive Covenants.** Each Seller Party hereby further acknowledges and agrees that the restrictive covenants contained in this Article VI are reasonable as to duration, terms and geographical area and that they protect the legitimate interests of Buyer and impose no undue hardship on Seller Parties, and are not injurious to the public. Seller Parties further agree that the duration (time period) associated with the restrictive covenants in this Article VI will be tolled during any period of noncompliance. Further, in the event that any of the restrictions and limitations contained in this Article VI are deemed to exceed the time, geographic or other limitations permitted by Delaware law, the Parties agree that a court of competent jurisdiction shall revise or otherwise "blue-pencil" any offending provisions so as to bring this Article VI within the maximum time, geographical or other limitations permitted by Delaware law.

Section 6.10 **Change of Control.** Buyer expressly covenants and agrees that during the period commencing on the Closing Date and ending on the twenty-four (24) month anniversary of the Closing Date, Buyer shall not enter into a Change of Control transaction without the express prior written consent of Seller Parties.

Section 6.11 **Name Change.** Promptly (but, in any event, no later than five (5) business days) after the Closing Date, Seller will (i) cease use of the name "Agrisoft Development Group, LLC" and any derivatives thereof, and (ii) execute and file all the instruments, agreements, and documents with the applicable Government Body in the State of South Dakota and elsewhere, if applicable, as necessary or appropriate for Seller, Owners, and their respective affiliates to abandon all uses of the name "Agrisoft Development Group, LLC" and any derivatives thereof.

Section 6.12 **Payroll.** Prior to the Closing, Buyer will fund Seller's payroll in the amount of \$ \_\_\_\_\_ by transferring such amount into Seller's bank account. Seller covenants and agrees that Seller will use such funds solely for the purposes of making Seller's June 12, 2015 payroll and for no other purpose.

#### ARTICLE VII. CONDITIONS TO CLOSING

Section 7.1 **Conditions Precedent to Obligations of Buyer to Close.** The obligations of Buyer to purchase the Purchased Assets, pay the Purchase Price therefor and to otherwise

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consummate the transactions contemplated hereby are subject to the fulfillment or satisfaction, prior to Closing, of each of the following conditions, any of which Buyer may at its election and without prejudice waive in writing at or prior to Closing:

- (a) The representations and warranties of Seller Parties contained herein shall be true and correct as of the Closing Date.
- (b) Seller Parties must have performed and complied with all of the covenants and agreements in this Agreement to be performed prior to or at the Closing.
- (c) Seller shall have delivered to Buyer all items required to be delivered pursuant to Section 3.2 of this Agreement.
- (d) There shall not be any pending or threatened Action in effect preventing consummation of any of the transactions contemplated by this Agreement or seeking damages or to restrain, prevent, change or delay the consummation of any of the transactions contemplated by this Agreement.
- (e) There shall not have been state of facts, change, event, effect or occurrence (when taken together with all other states of fact, changes, events, effects or occurrences) that is or would be reasonably likely to be materially adverse to the financial condition, results of operations, prospects, properties, assets or liabilities (including contingent liabilities) of Seller taken as a whole.
- (f) Seller shall have received all third party and governmental consents necessary for the consummation of the transactions contemplated by this Agreement.
- (g) The Ramsey shall have entered into a restricted unit grant agreement and Buyer's Amended and Restated Operating Agreement simultaneously with the Closing.
- (h) Ramsey and Buyer shall have entered into an employment agreement.
- (i) Buyer shall have reviewed and approved to Buyer's sole and complete satisfaction, and in Buyer's sole discretion, all disclosures and disclosure schedules provided to Buyer by Seller Parties.
- (j) The Suma liability shall have been resolved to Buyer's satisfaction in Buyer's sole and absolute discretion.

Section 7.2 Conditions Precedent to Obligations of Seller Parties to Close. Seller Parties' obligation to consummate the transactions contemplated hereby are subject to the fulfillment or satisfaction, prior to Closing, of each of the following conditions, any of which Seller Parties may at their election and without prejudice waive in writing at or prior to Closing:

- (a) The representations and warranties of Buyer contained herein shall be true and correct as of the Closing Date.

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- (b) Buyer must have performed and complied with all of its covenants and agreements in this Agreement to be performed prior to or at the Closing.
- (c) Seller shall have been released from the Suma Liability.
- (d) There shall not be any pending or threatened Action in effect preventing consummation of any of the transactions contemplated by this Agreement or seeking damages or to restrain, prevent, change or delay the consummation of any of the transactions contemplated by this Agreement.
- (e) Buyer shall have delivered to Seller Parties all items required to be delivered pursuant to Section 3.2 of this Agreement.

### ARTICLE VIII. INDEMNIFICATION

Section 8.1 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties of the Parties contained herein shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months from the Closing Date, provided that, the representations and warranties in Section 4.1, Section 4.2, Section 4.6, Section 4.20, Section 4.21, Section 5.1 and Section 5.2 shall survive indefinitely. All covenants and agreements of the Parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from a Party to the other Parties prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

Section 8.2 Indemnification By Seller Parties. Each of Seller Parties (the "Seller Indemnifying Parties") shall, jointly and severally, indemnify and defend each of Buyer and Buyer's affiliates and each of their respective directors, officers, employees, members, managers, consultants, financial advisors, counsel, accountants and other agents (collectively, the "Buyer Indemnified Parties") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers ("Losses") incurred or sustained by, or imposed upon, the Buyer Indemnified Parties based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Seller Parties contained in this Agreement, the Transaction Documents or in any agreement, document, certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by any Seller Party pursuant to this Agreement, the Transaction Documents or any

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agreement, document, certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement;

- (c) all Employee Claims, including Liabilities under any employee benefit plans or arrangements of any nature, employment agreements, payroll practices, the Employee Retirement Income Security Act of 1974, as amended, the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, the Code (defined below), collective bargaining agreements, the WARN Act or any employee health and safety laws or employment practices laws;
- (d) all Liabilities for Taxes of any kind or nature (including, without limitation, payroll taxes) related to the Business or the Purchased Assets for all Tax periods (or portions thereof) ending on or prior to the Closing Date including all penalties and interest;
- (e) any Excluded Asset or any Excluded Liability;
- (f) any claim resulting from the purchase challenging the validity of the sale, transfer, assignment, conveyance or delivery of the Purchased Assets to Buyer; or
- (g) any claim based upon, resulting from or arising out of the Business, operations, properties, assets or obligations of Seller or any of its affiliates (other than the Assumed Liabilities) conducted, existing or arising on or prior to the Closing Date.

Section 8.3 Indemnification By Buyer. Buyer shall indemnify and defend each of Seller Parties and Seller Parties' affiliates and each of their respective directors, officers, employees, members, managers, consultants, financial advisors, counsel, accountants and other agents (collectively, the "Seller Indemnified Parties") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses, incurred or sustained by, or imposed upon, the Seller Indemnified Parties based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement, the Transaction Documents or in any agreement, document, certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by any Buyer pursuant to this Agreement, the Transaction Documents or any agreement, document, certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement;
- (c) any Assumed Liability;
- (d) any claim based upon, resulting from or arising out of the Business, operations, properties, assets or obligations of Buyer or any of its affiliates (other than the Excluded Liabilities) conducted, existing or arising after the Closing Date which relate to periods following the Closing Date and which do not relate to actions or failures to act prior to the Closing Date.

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Section 8.4 Indemnification Procedures. If any Buyer Indemnified Party or Seller Indemnified Party (each of Buyer Indemnified Party or Seller Indemnified Party, an "Indemnified Party" and collectively, the "Indemnified Parties") receives notice of the assertion or commencement of any Action made or brought against such Indemnified Party with respect to which Buyer or a Seller Indemnifying Parties (each of Buyer and Seller Indemnifying Parties, an "Indemnifying Party" and collectively, the "Indemnifying Parties") are obligated to provide indemnification under this Agreement, the Indemnified Party shall give the applicable Indemnifying Party written notice thereof within thirty (30) days of receipt of such notice. Such notice by the Indemnified Party shall describe the claim in reasonable detail. If the Indemnifying Parties are the Seller Parties, then the Seller Parties shall have the right to participate in, or by giving written notice to the Buyer Indemnified Party, to assume the defense of any claim at the Seller Parties expense and by Seller Parties' own counsel, and the Buyer Indemnified Parties shall cooperate in good faith in such defense. The Buyer Indemnified Party shall have the right to participate in the defense of any claim with counsel selected by it subject to the Seller Parties' right to control the defense thereof. Should the Buyer Indemnified Party elect to participate in the defense of a claim the defense of which is being controlled by the Seller Parties, then the fees and disbursements of the Buyer Indemnified Party's counsel shall be at the expense of the Buyer Indemnified Party, provided, that if in the reasonable opinion of counsel to the Buyer Indemnified Party, (a) there are legal defenses available to the Buyer Indemnified Party that are different from or additional to those available to Seller Parties; (b) there exists a conflict of interest between Seller Parties and the Buyer Indemnified Party that cannot be waived; (c) an adverse outcome would have a material adverse impact on the Business or such claim is otherwise material to the Business; or (d) such claim seeks an injunction or other equitable relief against the Buyer Indemnified Party, the Buyer Indemnified Party shall have the right to control the defense of any such claim and Seller Parties shall be liable for the reasonable fees and expenses of counsel to the Buyer Indemnified Party, including counsel in each jurisdiction for which the Buyer Indemnified Party determines counsel is required. If the Seller Parties elect not to compromise or defend such claim, fail to promptly notify the Buyer Indemnified Party in writing of their election to defend as provided in this Agreement, or fail to diligently prosecute the defense of such claim, the Buyer Indemnified Party may pay, compromise, defend such claim at Seller Parties expense using counsel chosen by Buyer Indemnified Parties and may seek indemnification for any and all Losses based upon, arising from or relating to such claim. Notwithstanding any other provision of this Agreement, the Seller Parties shall not enter into settlement of any claim without the prior written consent of the Buyer Indemnified Party.

Section 8.5 Payments. If a Loss is adjudicated to be payable by an Indemnifying Party pursuant to this Article VIII, or if an Indemnifying Party otherwise agrees in writing to payment of a Loss, such Indemnifying Party shall satisfy such payment obligations within five (5) business days of such final, non-appealable adjudication or written agreement by wire transfer of immediately available funds to the applicable Indemnified Party. While any claim or indemnification is pending, Buyer shall have the right to withhold Royalty payments until final determination of any indemnifiable matter, and to offset any unpaid losses against Royalty Payments owing to Seller.

Section 8.6 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for tax purposes, unless otherwise required by law.

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ARTICLE IX.  
TAX MATTERS

Section 9.1 Transfer Taxes. Seller shall be responsible for all recording, transfer or similar fees or Taxes or governmental charges (including any interest, fine, penalty, additions to Tax or additional amount thereon) payable in connection with Seller's transfer of the Purchased Assets to Buyer pursuant to this Agreement (the "Transfer Taxes"). Purchase Price Allocation Within sixty (60) days after the Closing Date, Buyer and Seller will agree to a certificate of allocation detailing the allocation of the Purchase Price and Assumed Liabilities among the Purchased Assets. Buyer and Seller will treat Seller's transfer of the Purchased Assets to Buyer as an exchange governed by Section 1001 and Section 1060 of the Internal Revenue Code of 1986, as amended (the "Code") and, in accordance with such treatment, will each file an Internal Revenue Service Form 8594 "Asset Acquisition Statement Under Section 1.1060-1" at the times and in the manner as required by Treasury Regulation 1.1060-1 consistent with the certificate of allocation. The certificate of allocation will be conclusive and binding on the Parties for all purposes, including reporting and disclosure requirements under the Code and any foreign, state, or local Tax authority, except as provided by a change in applicable Tax law or the good faith resolution of a Tax contest.

ARTICLE X.  
MISCELLANEOUS

Section 10.1 Expenses. Each of Seller Parties and Buyer shall bear their own fees, costs and expenses incurred in connection with the negotiation and execution of this Agreement, the Transaction Documents and each other agreement, document and instrument contemplated by this Agreement, the Transaction Documents and the consummation of the Transactions contemplated hereby and thereby.

Section 10.2 Submission to Jurisdiction, Consent to Service of Process.

(a) The Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the state and federal courts located in Wilmington, Delaware, and any appellate court thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inremovment forum for the maintenance of such dispute. Each of the Parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the Parties hereto hereby consents to process being served by any Party to this Agreement in any Action by delivery of a copy thereof in accordance with the provisions of Section 10.6.

Section 10.3 Waiver of Right to Trial by Jury. To the fullest extent permitted by law, each Party to this Agreement waives any right to trial by jury in any Action regarding this Agreement or any provision hereof.

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Below is the Order of the Court.

Section 10.4 Entire Agreement, Amendments and Waivers. This Agreement (including the Schedules and Exhibits hereto) represents the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof and supercedes all prior agreements and understandings, both written and oral, including, without limitation, that certain Binding Letter of Intent, dated on or about May 7, 2015, by and between Buyer's parent company, Kindmanage LLC, and Seller Parties. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by all Parties. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

Section 10.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and performed in the State of Delaware, without regard to its conflict of law principles.

Section 10.6 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given (a) when delivered personally by hand (with written confirmation of receipt); (b) when sent by facsimile (with written confirmation of transmission) or electronic mail (and no notice of failure of delivery was received within a reasonable time after such message was sent) or (c) one day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses, facsimile numbers and e-mail addresses (or to such other address, facsimile number or e-mail address as a Party may have specified by notice given to the other Party pursuant to this provision).

If to Seller, to:  
Agrisoft Development Group, LLC  
2300 Main Street, Suite 900  
Kansas City, MO 64108  
Attention: Jim Willett  
Telephone: (425) 483-8079  
Email: [yakimaco@gmail.com](mailto:yakimaco@gmail.com)

with a copy to:  
Polsinelli PC  
900 West 48<sup>th</sup> Place, Suite 900  
Kansas City, MO 64112  
Attention: Quentin Jennings, Esq.  
Telephone: (816) 360-4168  
Fax: (816) 817-0163  
Email: [qjennings@polsinelli.com](mailto:qjennings@polsinelli.com)

If to Forbeez, to:  
Forbeez Capital, Inc.  
Attention: Buck Fowler  
5350 30<sup>th</sup> Avenue  
Seattle, WA 98107

If to Willett, to:  
Mr. Jim Willett  
23603 77<sup>th</sup> Avenue SE  
Woodinville, WA 98072  
Telephone: (425) 483-8079

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Telephone: (806) 790-9300  
Email: [bfowler@wpmarina.com](mailto:bfowler@wpmarina.com)

Email: [yakimaco@gmail.com](mailto:yakimaco@gmail.com)

If to Buyer, to:

with a copy to:

Kind Agrisoft, LLC  
1680 Vine Street, Suite 706  
Los Angeles, CA 90028  
Attention: David Dinenberg  
Telephone: (323) 870-8300  
Email: [david@kind.financial](mailto:david@kind.financial)

Venable LLP  
505 Montgomery Street, Suite 1400  
San Francisco, CA 94111  
Attention: Arthur Cirulnick, Esq.  
Telephone: (415) 653-3706  
Fax: (415) 653-3755  
Email: [acirulnick@venable.com](mailto:acirulnick@venable.com)

Each Party entitled to notice may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving all other Parties notices in the manner herein set forth.

Section 10.7 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 10.8 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legatees, personal representatives, successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any person or entity not a party to this Agreement except as provided below. No assignment of this Agreement or of any rights or obligations hereunder may be made by any Seller Party, on the one hand, or Buyer, on the other hand (by operation of law or otherwise), without the prior written consent of the other Parties hereto and any attempted assignment without the required consents shall be void; provided however, that Buyer may, without consent of the Seller Parties, assign its rights, interest and obligations hereunder to one or more third party designee so long as such designee is reasonably qualified to, and agrees in writing to, assume Buyer's obligations hereunder.

Section 10.9 Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

Section 10.10 Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this

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Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

Section 10.11 Drafting. The Parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

Section 10.12 Counterparts. This Agreement may be executed in counterparts (including by facsimile or electronic mail), each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

[Signature Pages Follow]

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

**SELLER PARTIES:**

Agrisoft Development Group, LLC,  
a South Dakota limited liability company

By: [Signature]  
Name: Charles R. Ramsey  
Title: CEO

Forbeez Capital, Inc.,  
a Washington corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Jim Willett

**BUYER:**

Kind Agrisoft, LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
David Dinenberg, Manager

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

**Below is the Order of the Court.**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

**SELLER PARTIES:**

Agrisoft Development Group, LLC,  
a South Dakota limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Forbeez Capital, Inc.,  
a Washington corporation

By: [Signature]  
Name: Buck W Fowler  
Title: MANAGING MEMBER

Jim Willett

**BUYER:**

Kind Agrisoft, LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
David Dinenberg, Manager

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

Document Filing ID: F014804-0805-4332-0803-FF0EDFA3E7C  
2. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only the name (do not print name of debtor) in this box as Amendment  
If this is an Amendment authorized by a DEBTOR, check here  and provide name of DEBTOR, check here

OR	INDIVIDUAL'S SIGNATURE	FIRST PERSONAL NAME	PERSONAL SIGNATURE	DATE

12345678901234567890

FILED OFFICE COPY - UCC FINANCING STATEMENT AMENDMENT (Form UCC3) (Rev. 04/2011)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

**SELLER PARTIES:**

Agrisoft Development Group, LLC, a  
South Dakota limited liability company

By: [Signature]  
Name: Charles R. Ramsey II  
Title: CEO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Forbeez Capital, Inc., a  
Washington corporation

By: [Signature]  
Name: Buck Fowler  
Title: Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: [Signature]  
Name: Jim Willett  
Title: \_\_\_\_\_

**BUYER:**

Kind Agrisoft, LLC a Delaware  
limited liability company

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

**SELLER PARTIES:**

Agrisoft Development Group, LLC,  
a South Dakota limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Forbeez Capital, Inc.,  
a Washington corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Jim Willett

**BUYER:**

Kind Agrisoft, LLC  
a Delaware limited liability company

By: [Signature]  
David Dinenberg, Manager

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

**Below is the Order of the Court.**

**Exhibit E – Pacific West Real Estate Opportunity Fund, LLC  
Operating Agreement**

Disclosure Statement Exhibits  
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Vortman & Feinstein  
520 Pike Street, Suite 2250  
Seattle, WA 98101  
Phone: 206-223-9595  
Fax: 206-386-5355

Below is the Order of the Court.

**PACIFIC WEST REAL ESTATE OPPORTUNITY FUND, LLC**  
A Delaware limited liability company

PWL REO, LLC, Manager  
403 Madison Avenue N, Suite 230  
Bainbridge Island, WA 98110  
(206) 780-3944

**OPERATING AGREEMENT**

Dated as of June 15, 2011  
(Corrected August 23, 2011)

THE INTERESTS ISSUED PURSUANT TO THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES OR "BLUE SKY" LAWS OF ANY STATE OR OTHER JURISDICTION, AND MAY NOT BE SOLD OR TRANSFERRED UNLESS THEY ARE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY OTHER APPLICABLE SECURITIES OR "BLUE SKY" LAWS, OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE. SUCH INTERESTS ARE SUBJECT TO THE RESTRICTIONS ON TRANSFER SET FORTH IN THIS AGREEMENT.

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OPERATING AGREEMENT  
 OF  
 PACIFIC WEST REAL ESTATE OPPORTUNITY FUND, LLC

THIS OPERATING AGREEMENT (this "Agreement") is made as of June 15, 2011, by and among PWL REO, LLC, a Delaware limited liability company as Manager, PACWEST HOLDINGS, LLC – SERIES H1 and STEVER AND COMPANY, LLC, as Members and such other Persons who may become Members by executing Subscription Agreements or other appropriate documents which are accepted by the Company, as Members, of PACIFIC WEST REAL ESTATE OPPORTUNITY FUND, LLC, a Delaware limited liability company. Capitalized but undefined terms used in this Agreement shall have the meanings given such terms in Exhibit "A" attached to this Agreement.

ARTICLE I

FORMATION, NAME, PURPOSES, DEFINITIONS

1.1 **Formation.** The Company has been formed as a Delaware limited liability company by the filing of a certificate of formation (the "Certificate") under and pursuant to the Act with the Office of the Secretary of State of Delaware for the purposes and on the terms and conditions set forth in this Agreement. Pacwest Holdings, LLC – Series H1 and Stever and Company, LLC, shall each be admitted as the initial Members (the "Initial Members") as of June 15, 2011 (the "Initial Closing Date") without any Capital Contribution, at which time the Company shall be formed. The Members' rights and liabilities shall be as provided in the Act, except as otherwise expressly provided herein. In the event of any inconsistency between the provisions of this Agreement and any non-mandatory provisions of the Act, the provisions of this Agreement shall govern. Without the consent or approval of any Member, the Certificate may be restated by the Manager as provided in the Act or amended by the Manager to change the address of the registered office of the Company in Delaware or the name and address of its registered agent in Delaware or to make corrections required by the Act. The Manager shall deliver a copy of the Certificate and any amendment thereto to any Member who so requests.

1.2 **Intent.** It is the intent of the Members that the Company shall always be operated in a manner consistent with its treatment as a "partnership" for federal and state income tax purposes. It also is the intent of the Members that the Company not be operated or treated as a "partnership" for purposes of Section 303 of the federal Bankruptcy Code. No Member shall take any action inconsistent with the express intent of the parties.

1.3 **Name.** The name of this Company shall be:

PACIFIC WEST REAL ESTATE OPPORTUNITY FUND, LLC

1.4 **Place of Business.** The principal place of business of the Company shall be at 403 Madison Avenue N, Suite 230, Bainbridge Island, WA 98110, or such other place as the Manager shall determine in its sole discretion.

1.5 **Purpose.** The purpose of the Company shall be to engage in the following activities:

(a) To acquire, own, hold for investment, develop, entitle, operate, improve, maintain, refinance, manage, lease, exchange, sell, and dispose of real estate investment properties (directly or indirectly through Property Companies), including without limitation distressed real estate investment properties;

(b) To acquire and dispose of real estate mortgages (directly or indirectly through Property Companies), including without limitation distressed real estate mortgages and including with the intent to restructure or foreclose upon such mortgages to gain control of the underlying real estate;

(c) To engage in such other activities related or incidental thereto, and to exercise all other powers which may be legally exercised by limited liability companies under the Act and necessary to, reasonably connected with, or convenient to the conduct, promotion, or attainment of the business or purposes of the Company or the protection or benefit of the Company and its assets, including without limitation making hard money loans or other similar extensions of credit.

(d) Except as otherwise provided in this Agreement, without the consent of a Majority-In-Interest of the Members, the Company shall not engage in any other activity or business, and no Member acting in its capacity as a Member shall have any authority to obligate the Company or any other Member, or to hold itself out as a Member of the Company, with respect to any transaction or activity whatsoever other than those entered into or carried out within the scope and business purpose of the Company as provided in Section 1.5(a)-(c) above.

1.6 **Term.** This Company shall commence upon the filing of its Certificate and shall continue until such time as it shall be terminated under the provisions of Article X.

1.7 **Members.** The name and address of each of the initial Members of this Company are set forth on Schedule I hereto, as the same shall be amended from time to time to update the information set forth therein. The Manager may update Schedule I (without the consent of, or notice to, any Members) from time to time to reflect any permitted change in ownership of interests, including any permitted change as a result of any Transfer or issuance of interests. Names, addresses, and ownership interests of all Members of the Company shall be maintained by the Manager. Benefit plans (as defined by the Employee Retirement Income Security Act of 1974, as amended, "ERISA"); may become Members of the Company, provided however, that at all times benefit plans cannot own, in the aggregate, twenty five percent (25%) or more of the total value of the interests then outstanding.

1.8 **Admission of a Member.** Subscribers shall be admitted as Members of the Company on the first day of the calendar month following the month in which the Manager accepts the subscriber's subscription. The Manager shall take such other action as the Manager deems necessary or appropriate promptly after receipt of Capital Contributions to the Company to reflect the admission of Persons to the Company as Members, but such action shall not be effective until the first day of the following month.

1.9 **Registered Office and Agent for Service of Process.** The registered office of the Company in the State of Delaware shall be Capital Services Inc., 615 South Dupont Highway, Dover, DE 19901-4517. The name and business address of the agent for service of process pursuant to the Act for the Company is Capital Services Inc., Attn: Agent; 615 South Dupont Highway, Dover, DE 19901-4517; Telephone: (800)345-4647, or such other Person as the Manager shall appoint from time to time.

1.10 **Company Party to Agreement.** The Company is a party to this Agreement. The Manager of the Company shall sign this Agreement on behalf of the Company.

1.11 **Manager Party to Agreement.** The Manager is a party to this Agreement and is a beneficiary of and subject to its terms and conditions, as such terms and conditions apply to the Manager.

ARTICLE II

CAPITALIZATION OF THE COMPANY

2.1 **Capital Contributions.** The Capital Contributions of each Member shall be set forth on such Member's Subscription Agreement, and shall be maintained in the records of the Company. Each Member is required to contribute to the Company the full amount of his, her, or its Capital Contribution upon the execution of this Operating Agreement. All Capital Contributions are to be paid in cash or other immediate funds, property (the fair value of which has been established with the Manager), or services. The Minimum Capital Contribution by a Member is \$100,000, subject to waiver by the Manager, in its sole discretion. The Company may issue and sell in the Offering a minimum of \$3,000,000 ("Minimum Offering") and a maximum of \$30,000,000, ("Maximum Offering"). The Manager may, at its discretion, and with notice to all Members, increase the Maximum Offering by up to an additional \$70,000,000 to a new maximum Offering amount of up to \$100,000,000.

2.2 **Capital Contributions in General.** Except as otherwise expressly provided for in this Agreement: (a) no part of the Capital Contributions of any Member may be withdrawn; and (b) no Member shall be entitled to demand or to receive property other than cash in return for its Capital Contributions to the Company.

2.3 **Capital Accounts.**

(a) **Debits and Credits.** A separate Capital Account shall be maintained for each Member in accordance with the applicable provisions of the Treasury Regulations:

(i) Each Member's Capital Account shall be credited with such Member's Capital Contributions, such Member's distributive share of Profits allocated to such Member in accordance with the provisions of this Agreement, any items in the nature of income or gain that are specially allocated pursuant to Section 3.4, and the amount of any Company liabilities that are assumed by such Member or that are secured by any Company property distributed to such Member.

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(ii) Each Member's Capital Account shall be debited by the amount of cash distributed to such Member in accordance with this Agreement, the gross asset value of any other Company property distributed to the Member pursuant to any provision of this Agreement, the Member's distributive share of Losses and tax credits allocated in accordance with this Agreement, any items in the nature of expenses or losses that are specially allocated pursuant to Section 3.4, and the amount of any liabilities of the Member that are assumed by this Company or that are secured by any property contributed by the Member to the Company.

(iii) 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.

(iv) In the event the gross asset values of the Company assets are adjusted pursuant to this Agreement, the Capital Accounts of all Members shall be adjusted simultaneously to reflect the aggregate net adjustment, as if the Company had recognized gain or loss equal to the amount of such aggregate net adjustment and the resulting gain or loss had been allocated among the Members in accordance with this Agreement.

(b) Interpretation and Changes. The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with the Code and applicable Treasury Regulations and shall be interpreted and applied in a manner consistent with them. In the event the Manager shall determine, after consultation with Company counsel, that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are allocated or computed, in order to comply with such applicable Federal law, the Manager shall make such modification without the consent of any other Member, provided the Manager determines in good faith that such modification will not increase the liability of any Member to third parties. In addition, the Manager will communicate any such change to Members promptly.

(c) Deficit Capital Account. The following adjustments shall be made to any Member's Capital Account which shows a deficit balance, as of the end of the Taxable Year:

(i) credit to such Capital Account any amount which such Member is obligated to restore under Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations, as well as any addition thereto pursuant to the next to last sentence of Section 1.701-2(g)(1) and (j)(5) of the Treasury Regulations, after taking into account thereunder any changes during such year in partnership minimum gain (as determined in accordance with Section 1.704-2(d) of the Treasury Regulations) and the minimum gain attributable to any partner nonrecourse debt (as determined under Section 1.704-2 (j)(3) of the Treasury Regulations); and

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(ii) Next, subject to Section 3.1(d), to such Member in accordance with Unreturned Capital Contributions.

(b) After allocations of items of Loss pursuant to Section 3.1(a)(i), items of Profit tentatively apportioned to such Member shall be allocated as follows:

(i) First, between such Member and the Manager as necessary to offset in reverse order of priority all previously unoffset items of Losses allocated to such Member and, if any, to the Manager (in respect of items of Loss tentatively apportioned to such Member) pursuant to Section 3.1(a)(ii); thereafter

(ii) Second, to each Category A, Category B or Category C Member, in proportion to his or her respective Unreturned Capital Contributions, until each Category A, Category B or Category C Member has received Profits equal to ten percent (10%) simple non-compounded interest on their Unreturned Capital Contribution (calculated from the date of admission for Members' Initial Capital Contributions and from the date of deposit of any Members' Additional Capital Contribution and the date of any distribution pursuant to Section 4.1(a) above); thereafter

(iii) Third, 100% to the Manager until the Manager has received profit allocations equal to one-third (1/3) of the aggregate amount allocated to Members under Subsection 3.1(b)(ii) above less any prior allocations pursuant to this Section 3.1(b)(iii); thereafter

(iv) Fourth, to the extent that a Category A, Category B or Category C Member has not received a 15% IRR (determined as if all current allocations of Profit to such Member pursuant to this Section 3.1(a)(iv) were distributed to such Member immediately prior to the time of determination): (x) first, so as to cause that portion of the aggregate unoffset allocations of such tentatively apportioned Profit that is allocated to such Member pursuant to this Section 3.1(b)(iv) and Section 3.1(b)(v) to not exceed 70% in the case of Category A Members, 75% in the case of Category B Members and 80% percent in the case of Category C Members of such aggregate unoffset allocations of such tentatively apportioned Profit; and (y) then:

(x) With respect to each Category A Member, 70% to the Member and 30% to the Manager;

(y) With respect to each Category B Member, 75% to the Member and 25% to the Manager; and

(z) With respect to each Category C Member, 80% to the Member and 20% to the Manager.

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(ii) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

This definition of Deficit Capital Account is intended to comply with the provision of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and 1.704-2, and will be interpreted consistently with those provisions.

### 2.4 Capital Structure.

(a) Subject to the terms of this Agreement, the Company is authorized to issue Membership Interests in the Company designated as "Interests." The purchase price per Interest shall be equal to twenty-five thousand U.S. dollars (\$25,000) (the "Interest Purchase Price"). Unless the Manager determines to accept lesser amounts in its sole discretion, the minimum Capital Contribution by any single Member shall be equal to at least one hundred thousand U.S. dollars (\$100,000). The total number of Interests which the Company shall have authority to issue is four thousand (4,000). The relative rights, powers, preferences, duties, liabilities, and obligations of holders of the Interests shall be as set forth herein.

(b) The Company is authorized to issue Interests (or fractional Interests) to any Person that is an Accredited Investor at the Interest Purchase Price or fractional price thereof, as applicable. The number of Interests issued to Members shall be listed in the records of the Company maintained by the Manager, which shall be amended from time to time by the Manager as required to reflect issuances of Interests to new Members; changes in the number of Interests held by Members; and to reflect the addition, cessation, or withdrawal of Members. The number of Interests held by each Member shall not be affected by (i) any issuance by the Company of Interests to other Members or (ii) change in the Capital Account of such Member (other than such changes to reflect additional Capital Contributions made by such Member in exchange for new Interests).

## ARTICLE III

### PROFITS, LOSSES, DISTRIBUTIONS, AND TAX CREDITS

3.1 Allocation of Profits and Losses. Except as otherwise provided in this Section 3.1, the items of Profits or Losses of the Company shall be tentatively apportioned among the Category A Members, Category B Members and Category C Members and the Manager in accordance with Capital Contributions, and then items of tentatively apportioned Profit and Loss for each Category A, Category B or Category C Member shall be reallocated as follows:

(a) Items of Loss tentatively apportioned to such Member shall be allocated as follows:

(i) First, between such Member and the Manager as necessary to offset in reverse order of priority all previously unoffset items of Profit allocated to such Member and to the Manager (in respect of items of Profit tentatively apportioned to such Member) pursuant to Section 3.1(b); and

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(v) Fifth, for each Member that has received a 15% or more IRR (determined as if all current allocations of Profit to such Member pursuant to this Section 3.1(b)(v) were distributed to such Member immediately prior to the time of determination);

(x) With respect to each Category A Member, 65% to the Member and 35% to the Manager;

(y) With respect to each Category B Member, 70% to the Member and 30% to the Manager; and

(z) With respect to each Category C Member, 75% to the Member and 25% to the Manager.

(c) Tax Credits. Tax credits will be allocated to the Members in proportion to the Members' Capital Contributions as indicated on the Company records from time to time.

(d) Tax Allocations. The tax allocation of profits and losses to the Members shall not exceed the allocations permitted under Subchapter K of the Code, as determined by the Manager, whose determination shall be binding.

(e) Excess Losses Otherwise Allocable to a Category A, Category B or Category C Member. To the extent that an item of Losses otherwise allocable to a Category A, Category B, or Category C Member under Section 3.1(a) would create a negative balance in the Capital Account of such Category A, Category B, or Category C Member (or increase the amount by which such Capital Account balance is negative), the item shall not be allocated to such Category A, Category B, or Category C Member but shall instead be specially allocated as follows:

(i) First, to the Category A, Category B, or Category C Member Members as a group, to the extent possible in proportion to their respective Capital Contributions, until the Capital Account balance of each Category A, Category B, or Category C Member has been reduced to (but not less than) zero; and

(ii) Next, to the Manager. To the extent that there have been special allocations of Loss away from a Category A, Category B, or Category C Member under this Section 3.1(e) that have not subsequently been reversed pursuant to this sentence or Section 3.1(f), the next available items of Profits otherwise allocable to such Category A, Category B, or Category C Member pursuant to Section 3.1(a) shall be specially allocated to the Members to whom such items of Loss had been specially allocated under this Section 3.1(e) so as to first offset in reverse order such special allocations of Loss.

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(f) **Reallocation of Certain Losses.** To the extent that: (i) Losses which otherwise would have been allocated to a Category A, Category B, or Category C Member under this Section 3.1 were allocated to one or more other Members under Section 3.1(e) in consequence of such Category A, Category B, or Category C Member's Capital Account balance having been equal to, reduced to or less than zero; (ii) such allocation has not been reversed pursuant to the subsequent operation of Section 3.1(e) or this Section 3.1(f); and (iii) the Category A, Category B, or Category C Member thereafter returns a distributed amount pursuant to this Agreement or applicable law or otherwise makes a contribution to the capital of the Company, the Capital Accounts of the Members shall be adjusted in connection with such return or contribution (to the extent of the value thereof) to effect a reallocation of such Losses to the Category A, Category B, or Category C Member.

3.2 **Recapture Items.** Notwithstanding any other provision of this Agreement, in the event that any tax credit or deduction generated by Company activities must be recaptured under the applicable tax laws, such recapture shall be allocated among the same Members and in the same proportion as the original credit or deduction giving rise to the recapture.

3.3 **Allocation in the Event of Transfer.** Upon the Transfer of an Interest (other than by bequest or pledge), there shall be allocated to each Person who held such Interest during such year the product of: (a) the Profits and Losses allocable to such Interest for such year, and (b) a fraction, the numerator of which is the number of days such Person held such Interest during such year and the denominator of which is the total number of days in such Fiscal Year.

### 3.4 **Special Allocations and Distributions.**

(a) **Qualified Income Offset.** In the event any Member, in such capacity, unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4) (regarding depletion deductions), 1.704-1(b)(2)(ii)(d)(5) (regarding certain mandatory allocations under Treasury Regulations regarding family partnerships, the so-called varying interest rules, or certain in-kind distributions), or 1.704-1(b)(2)(ii)(d)(6) (regarding certain distributions, to the extent they exceed certain expected offsetting increases in a Member's Capital Account), items of Company income and gain shall be specially allocated to such Members in an amount and a manner sufficient to eliminate, as quickly as possible, the deficit balances in the Member's Capital Account created by such adjustments, allocations, or distributions. Any special allocations of items of income or gain pursuant to this Subsection (a) shall be taken into account in computing subsequent allocations of Profits pursuant to this Article, so that the net amount of any items so allocated to each Member pursuant to this Article shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to this Article as if such unexpected adjustments, allocations, or distributions had not occurred.

(b) **Section 704(c) Allocations.** In accordance with Section 704(c) of the Code and the applicable Treasury Regulations issued thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company, shall,

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Participation, but shall not be required to be repaid, at any time, to the Company. The Manager's Profit Participation Tax Liability shall be determined by reference to the Profits and Losses and other items of income and deduction (as computed for tax purposes in the reasonable discretion of the Manager), if any, allocated to the Manager and assuming a tax rate equal to the maximum federal income tax rates applicable to individuals, with such rate determined by taking into account any federal deduction for State taxes, and without consideration of the effect of any deductions, offsets or credits available to the Manager (or its direct or indirect partners or members) from other sources, and shall be appropriately adjusted to take into account the different tax rates that may be in effect for different types of income or different taxable years, as well as any items of tax deduction or loss constituting part of the allocation of Profits or Losses attributable if the Manager reasonably believes that it (or its direct or indirect partners or members) may not be permitted to apply such items of deduction or loss to reduce its (or their) taxable income by reason of Section 470 of the Code or otherwise.

(f) **Clawback.** Upon liquidation of the Company, the Manager shall be required to repay to the Company an amount equal to any Profit Participation paid to the Manager (other than Profit Participation Tax Distributions) to the extent the Non-Manager Members do not receive distributions of Distributable Cash and Capital Proceeds equal to the sum of (i) the Preferred Return and (ii) their Unreturned Capital Contributions (the amount of any such shortfall, the "Clawback Amount"). If the Manager is required to re-contribute distributions of the Profit Participation pursuant to the foregoing, the Manager will be allocated Loss or items of gross deduction (as permitted by Treasury Regulations under the Code) to the extent of the Clawback Amount.

3.5 **Interest on Return of Capital Contributions.** No Member shall be entitled to interest on the Member's Capital Contribution or to the return of the Member's Capital Contribution, except as otherwise specifically provided for herein.

3.6 **Returns and Other Elections.** 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 and pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's Fiscal Year, which shall be the calendar year. All elections permitted to be made by the Company under federal or state laws shall be made by the Manager in its sole discretion.

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solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial gross asset value. In the event the gross asset value of any Company property is adjusted pursuant to this Agreement, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take into account any variation between the adjusted basis of such asset for federal income tax purposes and its gross asset value in the same manner as under Section 704(c) of the Code and the Treasury Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Manager in any manner that reasonably reflects the purpose of this Agreement. Allocations made pursuant to this Subsection (b) are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

(c) **Other Allocations.** The Manager shall make such other special allocations as are required in order to comply with any mandatory provision of the applicable Treasury Regulations or to reflect a Member's economic interest in this Company determined with reference to such Member's right to receive distributions from this Company and such Member's obligation to pay its expenses and liabilities. Without limitation, an example of such allocation shall include the reallocation of losses between Members, in order to avoid a result (in absence of such reallocation), of one or more Members' Capital Accounts having a positive balance, while one or more Members' Capital Accounts have a negative balance.

(d) **Acknowledgment.** The Members are aware of the income tax consequences of the allocations made by this Article and each Member agrees to be bound by the provisions of this Article in reporting such Member's share of Company income and loss for income tax purposes.

(e) **Tax Distribution.** Notwithstanding anything to the contrary above, if, for any Fiscal Year other than the Fiscal Year in which the Company liquidates, the distributions of Profit Participation distributed to the Manager, if any, plus any Profit Participation previously distributed to the Manager in previous years, would be insufficient to pay the Manager's federal, state and local income taxes on the net, combined Profit or Losses and other items of income and deduction (as computed for tax purposes) allocated to the Manager (the "Profit Participation Tax Liability"), then, to the extent the Company has sufficient cash on hand to do so (with this Section 3.4 being applied before the other distribution provisions of this Agreement), the Company shall distribute to the Manager, on or about April 1 of the following year, the amount of cash needed to pay such Profit Participation Tax Liability (a "Profit Participation Tax Distribution") after taking into consideration the Profit Participation previously distributed to the Manager. With respect to any taxable year, the Manager may also in its discretion cause the Company to make Profit Participation Tax Distributions so as to permit its direct and indirect owners to make payments of estimated taxes to the extent such obligations may exceed distributions of Profit Participation. Any Profit Participation Tax Distribution to the Manager shall reduce future distributions of Profit

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## ARTICLE IV

### DISTRIBUTIONS

4.1 **Distributions of Cash.** The Manager may make periodic distributions of Distributable Cash. Distributions to the Members shall be made at such times as determined by the Manager in its sole discretion. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed pursuant to this Section. Unless otherwise agreed to by the unanimous consent of all Members, distributions of Distributable Cash will be made as follows:

(a) First, Members shall receive an amount equal to their Preferred Return, and Distribution shall be made to all Members in proportion to their Percentage Interests, until the Members have received Distributions that, in total, equal a 10% simple, uncompounded annual return calculated on the total Capital Contributions made to the Company (calculated from the date of admission for Members' Initial Capital Contributions and the date of deposit as to any Additional Capital Contributions and until repayment or partial repayment of the Capital Contribution, including as provided in subsection (b) below); thereafter

(b) Second, to all Members in proportion to their Percentage Interests, until all Members have received distributions equal to their total Capital Contributions; thereafter

(c) Third, to the Manager until the Manager has received total distributions of Distributable Cash equal to one-third (1/3) of the total amount of Preferred Return Distributions made to all Members under Subsection 3.7(a) above; thereafter

(d) Fourth, Distributable Cash shall be distributed to Members and the Manager based on Percentage Interests but with certain Members receiving a higher or greater distribution based upon the amount of their Capital Contribution. There shall be three (3) groups or categories: (A) Members having total Capital Contributions of less than \$1,000,000; (B) Members having total Capital Contributions of \$1,000,000 or more, but less than \$5,000,000; and (C) Members having total Capital Contributions of \$5,000,000 or more. Distributable Cash shall be divided: (1) for Category A above, 70% to the Members and 30% to the Manager; (2) for Category B above, 75% to the Members and 25% to the Manager; and (3) for Category C above, 80% to the Members and 20% to the Manager. Distributable cash under this subsection (d) shall be divided between the three categories based upon Percentage Interests. By way of example, if the Members in Category A contributed 40% of the Capital, then 70% of 40% of the distributions shall be made to them and 30% of 40% should be made to the Manager. By way of example, if Members in Category B contributed 10% of Capital, then they should receive 75% of 10% of the distribution and the Manager should receive 25% of 10% of the distribution. By way of example, if Members in Category C contributed 50% of the Capital Contributions, then they should receive 80% of 50% of the distribution and the Manager shall receive 20% of the 50%. Distributions subject to this paragraph shall continue until Members have received an IRR of 15%.

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(e) Fifth, all remaining profit allocations shall be divided, pro rata based on total capital, into three categories according to total Member Capital Contributions made: (Category A) Members having total Capital Contributions of less than \$1,000,000; (Category B) Members having total Capital Contributions of \$1,000,000 or more, but less than \$5,000,000; and (Category C) Members having total Capital Contributions of \$5,000,000 or more. Profits shall be allocated: (1) For category A above, 65% to the Members and 35% to the Manager; (2) For category B above, 70% to the Members and 30% to the Manager; and (3) For category C above, 75% to the Members and 25% to the Manager.

(f) Distributions prior to the termination of the Company will be in cash. Upon termination of the Company, distributions not normally permitted, including in-kind distributions, may be made if reasonably approved by a Majority-In-Interest of the Members. The value of any property distributed in-kind shall be its Fair Market Value, as determined by the Manager.

*The intent is, first, the Members receive a 10% simple non-compounded preferred return on their outstanding Capital Contributions; second, all outstanding Capital Contributions are returned; third, the Manager receives a preferred return makeup; and fourth, all remaining cash distributions are made in accordance within subsection 4.1(d) and 4.1(e) based on categories.*

### 4.2 Distribution Incidentals.

(a) Cash Distributions. After payments of loans made by Members, including accrued interest and expenses, and after establishing such Reserves as the Manager deems appropriate to meet the obligations and working capital needs of the Company, the remaining portion, if any, of the Company's cash shall be distributed from time to time as the Manager deems proper. Such proceeds shall be paid as provided in Sections 3.4(e) and 4.1.

(b) Effect of Defaults. If any Member has caused a Non-Monetary Default to occur, no amount shall be distributed to such Defaulting Member until the Non-Monetary Default has been cured. If any Member has caused a Monetary Default to occur, any distribution to such Defaulting Member shall be subject to the right of offset in favor of the Company, subject to the rights of Contributing Members under any other provisions of this Agreement.

(c) Excess Distributions. If for any reason during a given Fiscal Year any Member receives distributions in excess of the amount to which it should have been entitled pursuant to the terms of this Agreement, then such excess distributions shall be returned to the Company and distributed to the Member entitled to such excess amount. The amounts to be distributed pursuant to paragraph 4.2 below are to be determined on a Fiscal Year basis and any amounts distributed on a more frequent basis are for convenience only and are not controlling as to the total amounts to be distributed to a Member for any Fiscal Year.

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5.6 No Right to Demand Distribution. No Member has a right to demand a distribution. No Member has a right to receive any return of his, her, or its Capital Contribution in property other than cash. Specifically, no Member may demand a distribution of any portion of any real or personal property.

5.7 No Right to Partition. Each Member waives his, her, or its right to maintain any action for partition with respect to any of the property of the Company. No Member may call upon a court to divide or distribute the property of the Company.

## ARTICLE VI

### MEETINGS OF MEMBERS

6.1 Annual and Regular Meetings. An annual meeting of the Members shall be held on the second Tuesday in April in each year beginning in 2012. No other regular meetings of the Members are required to be held. Unless otherwise proscribed by statute or the Act, an annual meeting of the Members may be called by (1) any Manager, or (2) any Member or Members holding at least twenty percent (20%) of the total Interests, for the election of the Manager and any other purpose or purposes, to be noticed and called in the same manner as a special meeting under Section 6.2 below. At any meeting of the Members, an individual appointed by the Manager shall preside at the meeting and shall act as secretary of the meeting. The Manager shall cause minutes of the meeting to be prepared and placed in the minute books of the Company.

6.2 Special Meetings. The Manager, or Members representing more than twenty percent (20%) of the outstanding Interests for any matters on which the Members may vote, may call a special meeting of the Company. If Members representing more than twenty percent (20%) of the outstanding Interests for any matters on which the Members may vote present to the Manager a statement requesting a Company meeting, or the Manager calls the meeting, the Manager shall fix a date for a meeting and shall (within ten (10) days after receipt of a statement, if applicable) give personal or mailed notice or notice by any other means of written communication, addressed to each Member at the respective address of the Member appearing on the books of the Company or given to the Company for the purpose of notice, not less than fifteen (15) or more than sixty (60) days before the date of the meeting, to all Members of the date, place, and time of the meeting and the purpose for which it has been called. Only business within the purpose described in the notice for such meeting may be conducted at such meeting.

6.3 Place of Meetings. All meetings shall be held in metropolitan Seattle, Washington, or at such places as the Manager reasonably determines. Members may participate in and hold such meeting by means of telephone conference or similar communications equipment by means of which all Persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

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(d) Record Date. The record date for the purpose of receiving cash distributions from the Company shall be the date determined as set forth in Section 6.6. If no such determination has been made, the record date shall be the date on which the distribution is mailed.

4.3 Limitation on Distributions. The power of the Manager to make distributions may not be used by a Manager in its position as a Member to satisfy its personal needs or those of its creditors, nor shall its powers be used to satisfy the needs of any other Member if making a distribution would be contrary to the interests of the Company and the other Members. No distribution shall be declared and paid unless, after the distribution is made, the assets of the Company are in excess of all liabilities of the Company, except liabilities to Members on account of their contributions.

## ARTICLE V

### RIGHTS AND OBLIGATIONS OF MEMBERS

5.1 Limitation of Liability. Except as otherwise provided by law or in this Agreement, a Member shall not be personally liable, in any manner, for any debt, obligation, or liability of the Company solely by being a Member, and in any event, each Member's liability for the debts and obligations of the Company shall be limited to its Capital Contribution.

5.2 Approval of Bulk Sale of All Assets. The Members shall have the right, by the affirmative vote of a Majority-In-Interest of the Members, to approve the sale, exchange or other disposition of all, or substantially all, of the Company's assets which is to occur as part of a single transaction or plan. Notwithstanding anything herein to the contrary, no sale, exchange, or other disposition of all, or substantially all, of the Company's assets which is to occur as part of a single transaction or plan, may occur without approval of the Manager, which approval may be withheld in its sole discretion.

5.3 Priority and Return of Capital. No Member shall have priority over any other Member holding Interests, either as to the return of Capital Contributions or as to Profits, Losses or distributions; provided that this Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

5.4 Limitation of Authority. Except as otherwise permitted by this Agreement, no Member (except one who may also be a Manager, and then only in its capacity as Manager within the scope of its authority hereunder) shall transact any business for the Company or shall have any authority or right to act for or bind the Company.

5.5 Removal of Members. Upon the redemption, either involuntary or voluntary, of the entire Interests of all classes held by a Member, or upon the Transfer of the entire Interests of all classes held by a Member, he, she, or it shall no longer be considered a Member or included in the definition of the word "Member" as that term may appear herein, for any purpose whatsoever including, but not limited to, the right to notice, vote, or consent as Member, to participate in or receive any subsequent income, gains, or losses of the Company, make any further contribution to the Capital of the Company, receive any cash distributions from the Company, or receive notices or information from the Company.

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6.4 Notice of Meetings. Except as provided in Section 6.5, written notice stating the place, day and hour for which the meeting is called shall be delivered not less than fifteen (15) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the party calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two calendar days after being deposited in the United States mail, addressed to the Member at the Member's address as it appears on the books of the Company, with postage thereon prepaid. If transmitted by facsimile, such notice shall be deemed to be delivered on the date of such facsimile transmission to the telephone number for the Member which has been supplied by such Member to the Company and identified as such Member's facsimile number.

6.5 Meeting of All Members. If all of the Members shall meet at any time and place, either within or outside of the State of Delaware, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

6.6 Record Date for Meetings and Distributions. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

6.7 Quorum. A Majority-In-Interest of the Members, represented in person or by proxy, shall constitute a quorum at any meeting of Members.

6.8 Manner of Acting. If a quorum is present, the affirmative vote of a Majority-In-Interest of the Members present shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, by the Certificate, or by this Operating Agreement.

6.9 Proxies. At all meetings of Members a Member may vote in person or by proxy executed in writing by the Member or a duly authorized representative of such Member and delivered to the Manager before or at the time of the meeting. A proxy shall be revocable unless it is stated to be irrevocable.

6.10 Action by Members Without a Meeting. Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, delivered to each Member entitled to vote, executed by a Majority-In-Interest or such other number of Members required for such action, and delivered to the Manager for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when Members holding the requisite number of Interests entitled to vote have signed the consents, unless the consents specify a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

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6.11 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by any Person entitled to act on behalf of the Member which is entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

6.12 Lost Members. In circumstances where a vote of the Members is required and one or more Members cannot be located after legal notice under this Agreement is sent and a good faith effort to find the Member(s) based on all information available to the Manager is made, the Manager may vote for the Member(s) or appoint another Person to vote for the Member(s) with the understanding that the Person casting the vote for the absent Member(s) shall act prudently and in good faith in light of the information reasonably available; provided that any expenses incurred in connection with the foregoing shall be borne by the Company and not the Manager unless otherwise determined by the Manager in its sole discretion.

### ARTICLE VII

#### RIGHTS AND DUTIES OF MANAGER

7.1 Management. The day-to-day business and affairs of the Company shall be managed exclusively by its Manager. The Manager shall direct, manage, and control the business of the Company and shall have full and complete authority, power, and discretion to make any and all decisions and to do any and all things which the Manager shall deem to be reasonably required to accomplish the business and objectives of the Company. In addition to the powers now or hereafter granted a manager of a limited liability company under the Act and applicable law or which are granted to the Manager under any other provision of this Agreement, the Manager, subject to the consent rights in this Agreement, shall have full power and authority to do all things deemed necessary or desirable by it to conduct the business of the Company, to exercise all powers set forth in this Article VII and to effectuate the purposes set forth in Section 1.5. Any contract, agreement, instrument, note, certificate, consent or other document to which the Company is a party and which is duly authorized by the Manager may be signed by the Manager or an authorized officer of the Company or the Manager, and no other signatures shall be required or authorized. The Manager may delegate any of its management responsibilities to another Person (including any of its Affiliates) in its sole discretion. Except where the approval of the Members is expressly required by non-waivable provisions of the Act, the Manager shall have full and complete authority, power, and discretion to direct, manage, and control the business, affairs and properties of the Company. If there is more than one Manager, the Managers shall act by consensus, and, in the event of a tie vote of the Manager on any matter, a Member selected by the Managers shall have a tie-breaking vote. No Member other than a Manager shall have the authority to act for or bind the Company.

7.2 Number, Tenure, and Qualifications. PWL REO, LLC, a Delaware limited liability company, shall be the Manager of the Company unless and until PWL REO, LLC resigns or is removed pursuant to the terms of this Agreement. In the event of the removal of PWL REO, LLC as Manager, the following provisions will apply: The number of Managers of the Company and their respective terms shall be fixed from time to time by the affirmative vote of at least a Majority-In-Interest of the Members. Each Manager shall hold office for the term for

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(k) To make an assignment for the benefit of creditors of the Company, file a voluntary petition in bankruptcy or appoint a receiver for the Company, provided such action has been approved in advance in writing by a Majority-In-Interest of the Members;

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

(m) Employ, supervise, and coordinate on behalf of the Company, all personnel;

(n) Review, negotiate, approve, and pay all bills, invoices, and expenses properly incurred by and on behalf of the Company;

(o) Develop and improve the Company's property;

(p) Defend, compromise, and settle claims against the Company;

(q) Except as otherwise restricted in this Agreement, to make all decisions regarding distributions including, but not limited to, deciding when and if distributions shall be made, determining the amounts and record date and authorizing the payments thereof to Members of record;

(r) To borrow money for the Company from banks, other lending institutions, the Members, or Affiliates of the Members 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; or to loan the Company funds at an interest rate equal to ten percent (10%) simple non-compounded interest. No debt or other obligation shall be contracted or liability incurred by or on behalf of the Company except by the Manager. Notwithstanding the foregoing, (i) the Manager may not borrow any money or make any Encumbrance unless it is to the benefit of the Company, (ii) the Manager may not cause any cross-collateralization with non-Company assets; and (iii) the leveraging of any Company assets must be in accordance with Section 7.18.

(s) To substitute in its stead as Manager any entity which has, by merger, consolidation or otherwise, acquired substantially all of the Manager's assets or shares and continued its business, except that, as a Member, the Manager shall be subject to the terms and conditions of Article VIII of this Agreement;

(t) To perform all other acts as may be necessary or appropriate, in the sole judgment of the Manager, to the conduct of the Company's business.

7.4 Acting by Power of Attorney. A Manager may act by a duly authorized attorney-in-fact. Unless authorized to do so by this Agreement or by a Manager, no Member, agent, or employee of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose.

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which it is elected and until its successor shall have been elected and qualified, unless earlier removed under Section 7.10. Managers need not be residents of the State of Delaware or Members of the Company.

7.3 Certain Powers of Manager. Without limiting the generality of Section 7.1, each Manager shall have power and authority, on behalf of the Company:

(a) To acquire, finance, refinance or Dispose of Eligible Investments;

(b) To do all things on behalf of the Company which such Manager shall deem necessary or appropriate in dealing with the business of the Company and any of its Affiliates;

(c) To issue or redeem Interests pursuant to and in accordance with the terms of this Agreement;

(d) To restructure a payment plan with borrowers relative to any note(s) acquired by the Company;

(e) To purchase liability and other insurance, including, without limitation, life insurance on the Manager's employees, and to protect the Company's property and business;

(f) To hold and own any Company real and/or personal properties in the name of the Company and to construct improvements thereon; to acquire, lease, or sublease real or personal property to or from any Person including the Manager and any Affiliate, as the Manager may determine. The fact that a Member is directly or indirectly affiliated or connected with any such Person shall not prohibit the Manager from dealing with that Person;

(g) To make all investment decisions and to invest any Company funds (by way of example but not limitation) in Eligible Investments, time deposits, governmental obligations, various securities including shares in mutual funds, or other investments;

(h) 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; margin agreements and collateral assignments; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments; bills of sale; leases; partnership agreements; and any other instruments or documents necessary, in the opinion of the Manager, to the business of the Company;

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

(j) To act as "tax matters partner" pursuant to Section 6221 of the Code;

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7.5 Investment Period. Prior to the end of the Investment Period (January 31, 2013), the Company may invest in Eligible Investments. During the Investment Period, the Manager may issue Interests in exchange for contribution by unaffiliated parties of a property or properties, but in no event will Interests be issued in excess of the Maximum Offering or beyond the Investment Period. The valuation of any Interests issued after closing of the Offering will be determined by the Manager in its sole discretion, but in no event will the value be less than \$25,000 per Interest.

7.6 Co-Investments. The Company may co-invest with third parties, Affiliates of the Company, or the Manager or its Affiliates ("Co-Invest Parties"): (i) in an effort to diversify the Company's portfolio of investment Properties; or (ii) in instances where the Manager reasonably determines that the Company lacks the capital to independently acquire an interest in a proposed investment property, provided such co-investment is made (a) within one hundred twenty (120) days before or after the Co-Invest Party's investment in such property, (b) at the same price (plus a pro rata share of interest, fees and costs, as calculated from the date of acquisition of such property), and (c) such that the Company and the Co-Invest Part(ies) will receive distributions from the co-investment according to their proportionate capital contributions in such co-investment. If such co-investment is made, Co-Invest Parties may charge fees and/or receive expense reimbursements as provided for in their respective operating agreements or equivalent governing documents (which may differ from the terms of this Agreement).

7.7 Manager Has No Exclusive Duty to Company; Other Investments. The Manager shall not be required to manage the Company as its sole and exclusive function, and it may have other business interests and may engage in other activities in addition to those relating to the Company, including those in competition with the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of the Manager or to the income or proceeds derived therefrom. No Manager shall be obligated to present any particular investment opportunity to the Company even if such opportunity is of a character which, if presented to the Company, could be taken by the Company and any Manager shall have the right to take for its own account (individually or as a trustee) or to recommend to others any such particular investment opportunity. Nothing herein shall prevent the Company from employing any entity in which the Manager may have an interest as a partner, shareholder, officer, director, or otherwise.

7.8 Bank Accounts and Investment Accounts. The Manager may from time to time open bank accounts in the name of the Company, and each Manager shall be a sole signatory thereon, unless the Manager determines otherwise. The Manager may from time to time open investment accounts with NASD broker-dealers, mutual funds, and other investment companies or financial institutions in the name of the Company, and a Manager shall be the sole signatory thereon, unless the Manager determines otherwise. The Manager may, for the protection of the Company, deposit some or all of the Company assets with an independent custodian of sufficient financial strength and/or covered by insurance to provide a reasonable expectation of security, and require that all investments of the Company be processed on a deposit-versus-payment basis with the custodian.

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7.9 **Liability and Indemnity of the Manager.** The Manager will not have any liability to the Company for a mistake or error of judgment or for any act or omission believed to be within the scope of authority conferred on it by the Operating Agreement unless such mistake, error of judgment, or act or omission was made, performed or omitted by such Manager fraudulently or constituted gross negligence, willful misconduct, or breach of fiduciary duty. The Manager shall be indemnified, defended, and held harmless by the Company to the fullest extent permitted by Delaware law.

The parties intend that the provisions of the indemnification provided in this Section 7.9 apply even if such provisions have the effect of exculpating the indemnitee from legal responsibility for the consequences of such person's negligence, fault, or other conduct not constituting actual or intentional fraud, gross negligence or willful misconduct or breach of fiduciary duty.

### 7.10 Removal.

(a) **Replacement by Member Vote.** The Manager may be removed as Manager only upon the occurrence of a Bad Act with respect to such Manager and the subsequent vote, within 120 days after the final court or arbitrator order, judgment, decree or decision with respect to such Bad Act, of a Supermajority in Interest to remove the Manager as a result of such Bad Act. Such removal shall take effect immediately upon written notice of such vote delivered to the Manager. The removal of the Manager hereby shall have no effect on or alter any Interest of the Manager.

(b) **Manager Bankruptcy.** In the event of Bankruptcy by a Manager, a Majority-In-Interest of the Non-Defaulting Members may elect another Person to serve as a new Manager.

(c) **Dissolution, Death or Incapacity of Manager.** In the event of the dissolution, death or mental incapacity of a Manager, a Majority-In-Interest of the Non-Defaulting Members may elect a new Manager for the Company.

7.11 **Vacancies.** Any vacancy occurring for any reason in the office of Manager of the Company which is filled by the affirmative vote of a Majority-In-Interest of Members shall cause the Manager so elected to serve according to the terms of this Agreement.

7.12 **Authority.** No Person dealing with a Manager shall be required to determine the Manager's authority to make any undertaking on behalf of the Company, or to determine any fact or circumstance bearing upon the existence of its authority, other than to rely upon a statement signed by the Manager, thereto authorized, as to:

(a) the identity of any Manager or Member heretof;

(b) the existence or non-existence of any fact or facts which constitute a condition precedent to acts by a Manager or which are in any other manner germane to the affairs of the Company;

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7.14 **Records.** The Manager shall keep or cause to be kept at the principal office of the Company books and records of the Company, supporting documentation of the transactions with respect to the conduct of the Company's business, and the minutes of meetings of the Members. The books and records of account of the Company shall be maintained in accordance with generally accepted methods of accounting determined by the Manager, subject to Code Section 704, including without limitation, subsection (b) thereof, and the Treasury Regulations promulgated thereunder. The books and records shall include, but not be limited to: (i) information regarding the state of the business and financial condition of the Company; (ii) a copy of the Certificate, this Agreement and all amendments thereto; (iii) a ledger showing the names, addresses, date of admissions and Capital Contributions of Members; and (iv) the Company's federal, state, and local tax returns for the Company's six (6) most recent tax years.

7.15 **Annual Outside Accounting Review.** At the expense of the Company, the Manager shall sub-contract with Clothier & Head or another public accounting firm of comparable size and repute on a yearly basis to perform an agreed-upon procedures engagement to (1) confirm the year-end amounts held in the Company's cash and cash equivalents accounts, and (2) verify that expenses were reported as to amount, were to the benefit of the Company, were customary, and were properly documented, via sampling of payments in excess of \$5,000 in the previous calendar year to any single vendor, or other sampling methodology to be agreed upon by the Manager in advance. A copy of the accountant's results shall be delivered (by mail or otherwise) to each Member of the Company annually, after the agreed-upon procedures engagement is completed.

7.16 **Inspection.** During normal business hours upon reasonable prior notice (subject in each case to any portion of such books that may otherwise be kept confidential with respect to any Member as provided in this Agreement), Members and their designated representative shall have the right to inspect (i) a copy of the Certificate and this Agreement and all amendments thereto; and (ii) the Company's federal, state, and local tax returns for the Company's six (6) most recent tax years, and Members and their authorized representatives shall have the right to make copies thereof or to request the Manager to make copies thereof and send such copies to the requesting Member at the requesting Member's expense; and (iii) the Company's accounting records.

7.17 **Confidentiality.** Each Member agrees that such Member will maintain the confidentiality of information that is non-public information furnished by the Manager and the Company to such Member (including information regarding any entity in which the Members or Affiliates of the Company hold, or contemplate acquiring, any interest) in accordance with such procedures as it applies generally to information of this kind (including procedures relating to information sharing with Affiliates of the Company or each Member), except as otherwise required by governmental regulatory agencies (including tax authorities in connection with an audit or similar examination of such Member), self-regulating bodies, law, legal process, or litigation in which such Member is a defendant or plaintiff, or to representatives and advisors of such Member who need to know the information and who are informed of the confidential nature of the information.

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(c) the Persons who are authorized to execute and deliver any instrument or document of the Company; or

(d) any act or failure to act by the Company or as to any other matter whatsoever involving the Company or any Member.

7.13 **Manager Compensation.** In addition to its participation in distributions under Articles III and IV above, the Manager or Affiliates will receive additional compensation described below.

(a) **Organization and Offering Cost Recovery.** The Manager or its Affiliates shall be reimbursed by the Company for costs incurred in connection with raising capital, organizing, forming and marketing the Company and the Manager (collectively, "Organization and Offering Cost") in an amount up to 1.5% of the total Capital Contributions raised in the Offering. Without limiting the foregoing, Organization and Offering Cost will include accounting, legal, consulting, printing, postage, shipping, travel, meetings, conferences, organizational dues and other expenses associated with raising capital, organizing, forming and marketing the Company and the Manager and the sale of Interests in the Offering, including drafting of the Private Placement Memorandum, this Agreement and all documents relating to the organization of the Manager. Total reimbursement of these expenses shall be the least of (a) actual expenses, (b) 1.5% of the total Capital Contributions, and (c) \$300,000.

(b) **Management Fee.** For the year 2011, the Manager shall receive a Management Fee of 925% of total Capital Contributions. Beginning in 2012, the Manager shall receive a quarterly Management Fee equal to 0.4625% of total Unreturned Capital Contributions of all Members. The Management Fee shall be paid quarterly in arrears based upon the average total amount of Unreturned Capital Contributions during that quarter. The first quarterly Management Fee shall be paid to the Manager on April 1, 2012. Each Member shall be required to bear its pro rata share of the Management Fee from the Initial Closing Date regardless of when such Member is admitted to the Company.

(c) **No Real Estate Commissions.** The Manager shall not receive real estate commissions in connection with the acquisition or sale of property. Commissions may be paid only to non-affiliated parties.

(d) **Reimbursement for Expenses.** The Manager shall be reimbursed for the actual costs incurred by the Manager for bona fide Company Operating Expenses.

(e) **Other Compensation.** Any other compensation of the Managers of the Company (which, for the avoidance of doubt, shall not include any amounts distributable to the Managers under Article IV) may be fixed from time to time by a Majority-In-Interest of the Members and no Manager shall be prevented from receiving such compensation by reason of the fact that it is also a Member of the Company.

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### 7.18 Loans.

(a) **General.** The Members acknowledge that, to conduct its business authorized herein, the Company may require additional funds to cover expenses of management, the day-to-day operations, ordinary business expenses, losses and/or pay Company obligations. Any Member or Manager (or its Affiliate) may make secured or unsecured loans to or for the benefit of the Company or any of its Properties on terms and conditions approved by the Manager. Any such loan shall bear interest and have such other terms at such competitive market rates as the Manager shall approve.

(b) **Treatment of Loans.** The amount of any loan from a Member or Manager shall not be treated as a Capital Contribution, but shall be a debt due from the Company repayable out of Company funds. Member loans shall be fully repaid (principal and interest) prior to any distributions pursuant to Articles III and IV above. Such loans shall earn interest at per annum rate of ten percent (10%) simple non-compounded interest.

(c) **Leverage Limitations.** Subject to the following limitations, the Company may leverage Eligible Investments or other assets using debt secured by such property, so long as the amount of indebtedness encumbering stable income producing Eligible Investments or other assets may not exceed the greater of sixty percent (60%) of the purchase price or the appraised value of such Eligible Investment or other asset.

## ARTICLE VIII

### RESTRICTIONS ON TRANSFERABILITY

8.1 **Restrictions on Transfer of Interests.** No Member shall have any right to retire or withdraw voluntarily from the Company. No Member shall have the right to Transfer an Interest or to voluntarily commit an act that constitutes a Withdrawal Event. In addition, no Member shall have any rights under Section 18-604 of the Act. With certain exceptions noted in Section 8.2 below, no Member may Transfer any of his, her, or its Interest in the Company without first obtaining the approval of the Manager, which the Manager may withhold in its sole discretion with or without reason, and creating no liability. No Transfer will be made unless the assignee of the Interest has agreed to be bound by the provisions of this Operating Agreement prior to any Transfer being made. No Member may Transfer any of his, her, or its Interest in the Company except in strict accordance with the Securities Act and other applicable Law. Any voluntary act of a Member that constitutes that Member's withdrawal from the Company shall constitute a material breach of this Agreement, and the Company shall be entitled to collect damages for such breaches. Such damages shall offset any cash or other property otherwise distributable to such Member by the Company. The admission of a transferee of an Interest as a Member shall not affect the dissolution of the Company.

8.2 **Permitted Transfers.** A Transfer of any Interest or any portion thereof may be made only under any of the following circumstances:

(a) The Manager has consented to such Transfer (which consent may be withheld in its sole discretion for any reason or no reason whatsoever); or

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(b) The Transfer is made to the estate, personal representative, executor, heirs, or devisees of a deceased Member; or

(c) The Transfer is made to a Member's living trust.

(d) Any Member may, without the consent of the other Members, Transfer his, her, or its Interest in the Company to any entity controlled by, controlling, or under common control with such transferring Member. For purposes of this Section 8.2, control shall mean the power to direct at least eighty percent (80%) of the voting power within a transferring Member; or

(e) Any Member may gift any of his or her Interests of the Company to children or other descendants, but not spouses, without the consent of all of the Members.

(f) Upon dissolution of a Member's marriage, the named Member has the option to purchase any Interest or part thereof which his or her spouse may be deemed to hold in the Company.

**8.3 Status of Unapproved Transferees.** Without the consent of the Manager in accord with Section 8.2 above, no transferee of an Interest in the Company may succeed to all of the rights of a Member. Any such transferee would be only an assignee in adverse possession entitled to only receive the distributions to which the assignor Member would have been entitled, and entitled to any tax benefits and liable for any tax payments, other liabilities or obligations to the Company which would have accrued to the assignor Member. Such an assignee has no right to vote or exercise any discretion with respect to the affairs of the Company.

**8.4 Special Provision Respecting Transfer of an Interest Upon Bankruptcy of a Member.** If the Manager does not agree to permit the trustee (or other legal representative) of the bankrupt Member to become a substituted Member hereunder, the Company and each of the remaining Members shall have the right and option for thirty (30) days from receiving written notice from the Manager of such event to purchase all, but not less than all, of such Person's pro rata share (based on Percentage Interests) of the Interest of such bankrupt Member. The Company and each Member may exercise its option to purchase by delivering written notice to such effect to the Manager prior to the expiration of such thirty (30) day period. The failure of the Company or any Member to exercise its option to purchase within such thirty (30) day period shall be deemed to be an election by the Company or such Member not to purchase its pro rata share of the Interest. Any portion of the Interest otherwise allocable to the Company or a Member who declines to purchase its pro portion of the Interest may be purchased by the Company and the other Members pro rata in accordance with their respective Percentage Interests. The total purchase price for such bankrupt Member's entire Interest in the Company shall be computed by taking: (i) the Fair Market Value of the assets of the Company, less (ii) the total liabilities of the Company as of the valuation date, multiplied times (iii) the Percentage Interest of the bankrupt Member; less (iv) the amount of any obligations owed by the bankrupt Member to the Company.

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(d) If not sooner paid in full, the unpaid principal plus accrued interest shall be paid in full upon the winding up of the Company's business and affairs. In the event of default in the payment of principal or interest pursuant to the provisions hereof, the party entitled to payment, at its option shall have the right to declare the unpaid balance of principal and accrued interest immediately due and payable.

(e) The deferred balance of such purchase price plus such accrued interest shall be secured by a security interest in the transferring Member's Interest.

**8.7 Termination of the Company for Tax Purposes.** Notwithstanding anything to the contrary contained in any other provision of this Agreement, the sale or exchange of all or any part of an Interest in the capital and/or the Profits of the Company may not be made (and will be null and void) if the interest sought to be sold or exchanged, when added to all other Interests in the Company's Capital and/or Profits transferred within the twelve (12) consecutive month period ending on the date of such proposed sale or exchange, would cause the termination of the Company for federal income tax purposes.

**8.8 Restraining Order.** If any Member shall at any time Transfer or attempt to Transfer all or any part of its Interest in violation of the provisions of this Agreement, then any other Member, in addition to all other available rights and remedies, shall be entitled to a decree or order restraining and enjoining such Transfer.

### ARTICLE IX

#### ADDITIONAL MEMBERS

After the formation of the Company and completion of the Offering, any Person acceptable to the Manager may become a Member of this Company for such consideration as the Manager, with the approval of a Majority-In-Interest of the Members, shall determine. No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Manager may, at the time an Additional Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, income and expense deductions to an Additional Member for that portion of the Company's tax year in which an Additional Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Treasury Regulations promulgated thereunder.

### ARTICLE X

#### DISSOLUTION AND TERMINATION

**10.1 Dissolution.** The Company shall be dissolved upon the first to occur of any of the following events:

(a) The complete disposition of all Company assets;

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**8.5 Requirements for Transferee Becoming a Substituted Member.** No transferee shall become a "Substituted Member" in the Company unless all of the following conditions are satisfied:

(a) The Manager shall have consented to such substitution or such substitution is otherwise in accordance with Section 8.1 and 8.2 hereof;

(b) The Person to whom the Transfer is to be made shall have assumed any and all of the obligations and will execute any and all necessary documents to effect the Transfer under this Agreement with respect to the Interest to which the Transfer relates;

(c) All expenses (including legal fees) incurred in connection with the Transfer shall have been paid by or for the account of the Person to whom the Transfer is to be made; the Company will bear no expenses; and

(d) All agreements, certificates and all other documents shall have been executed and filed and all other acts shall have been performed which the Members deem necessary to make the Person to whom the Transfer is to be made a substituted Member in the Company, to preserve the status of the Company, and to comply with all applicable governmental statutes, rules and regulations, and requirements, if any, of Company creditors.

(e) A transfer fee (in an amount not less than \$1,000) sufficient to cover all reasonable expenses connected with such substitution shall have been paid to the Company.

**8.6 Settlement and Purchase Price in Case of Bankruptcy.** The settlement for the purchase of the Interest pursuant to Section 8.4 hereof shall be held thirty (30) days from the exercise of any option relating to such settlement at 10:00 a.m. Pacific time at the principal office of the Manager or at such other date, time, and place as shall be agreed upon by the parties to the settlement. The purchase price of the bankrupt Member's Interest may, at the purchaser's option, be payable either in cash or on a deferred basis, as follows:

(a) A down payment of ten percent (10%) of the purchase price shall be payable at the settlement;

(b) The balance of the purchase price shall be paid in six (6) equal annual principal installments, the first installment to be due one (1) year following the settlement date and subsequent annual principal payments shall be due on the same day of each successive year thereafter.

(c) Interest on the deferred balance of the purchase price shall bear interest at the Prime Rate less one percent (1%) from the settlement date until paid in full (adjusted monthly on the 1<sup>st</sup> day of each month). Accrued interest shall be payable at the same time as installments of principal.

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(b) January 31, 2020; provided however, that the Manager shall have the discretion to extend the term for a single one (1) year extension period if the Manager determines in its sole discretion that it is advisable or necessary in order to maximize the value of the Company's investments;

(c) A vote of at least seventy-five percent (75%) of the Percentage Interests of the Members to dissolve;

(d) The appointment of a receiver, trustee, or liquidator of the assets of the Company, or the attachment, execution, or other judicial seizure of all or a portion of the assets of the Company, unless such seizure is discharged within thirty (30) days thereafter; or

(e) Upon the entry of a decree of dissolution by a court of proper jurisdiction.

**10.2 Effect of Filing of Dissolving Statement.** Upon the dissolution of the Company, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until a certificate of cancellation has been filed with the Office of the Secretary of State of Delaware or until a decree dissolving the Company has been entered by a court of competent jurisdiction.

#### 10.3 Winding Up, Liquidation, and Distribution of Assets.

(a) Upon dissolution, an accounting shall be made by the Manager 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 proceed diligently to wind up the affairs of the Company, liquidate its assets in an orderly manner and make final distributions as provided herein and in the Act.

(b) If the Company is dissolved and its affairs are to be wound up, the Manager shall (1) sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Manager may determine to distribute any assets to the Members in kind), (2) allocate any profit or loss resulting from such sales to the Members' Capital Accounts in accordance with Article III hereof, (3) discharge all liabilities of the Company (other than liabilities to Members), including all costs relating to the dissolution, winding up, and liquidation and distribution of assets, (4) establish such Reserves as may be reasonably necessary to provide for contingent liabilities of the Company, (5) discharge any liabilities of the Company to the Members other than on account of their interests in Company capital or profits, and (6) distribute the remaining assets according to the provisions of Section 4.1(a) of this Agreement.

(c) Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a negative Capital Account balance (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member

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shall have no obligation to make any contribution to the capital of the Company, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

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

(e) The Manager shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

(f) To the extent that Members shall be required to return funds to the Company pursuant to the Act, no Member shall have any claim against any other Member for the return of any funds so returned.

10.4 Certificate of Cancellation. When all debts, liabilities, and obligations have been paid and discharged, or adequate provisions have been made therefor, and all of the remaining property and assets have been distributed to the Members, a certificate of cancellation shall be executed and filed with the Office of the Secretary of State of Delaware.

10.5 Compensation and Reimbursement. The Manager or other Member acting as liquidator of the Company's assets shall be entitled to reimbursement for out-of-pocket expenses incurred in connection with the winding up and liquidation of the Company. Such reimbursement shall be paid as an expense of the Company after all debts to third parties have been repaid or adequately provided for but before any repayment of loans or advances by the Members.

10.6 Return of Contribution Non-Recourse to Other Members. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company properly remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash or other property contribution of one or more Members, such Member or Members shall have no recourse against any other Member.

### ARTICLE XI

#### NO PARTITION

Each Member hereby waives any right to partition or the right to take any other action which might otherwise be available to such Member for the purpose of severing its relationship with the Company or its interest in the assets and properties held by the Company from the interest of the other Members until the dissolution of the Company. Each Member specifically agrees not to institute any action therefor and each Member agrees that this Article XI may be pled as a bar to the maintenance of any such action. A violation of this provision shall entitle the non-violating Members to collect, from the Member violating this provision, the actual attorney's fees, costs, and other damages those non-violating Members and the Company incur in connection therewith.

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### ARTICLE XIII

#### INDEMNIFICATION

13.1 Indemnification of Managers. Except as provided in this Agreement and subject to the provisions of this Section, no Manager shall be liable to the Company or to any other Member(s) for any liability, loss, cost, damage, attorney's fees, or other expenses which shall or may be incurred as a result of or in connection with any act or actions performed or taken by the Manager or by virtue of any omission of the Manager in the capacity as Manager on behalf of the Company, and the Company shall defend, indemnify, and hold the Manager harmless as a condition precedent to recovery. Such indemnity shall not extend to gross negligence, fraudulent acts or willful misconduct on the part of the Manager. Any amounts paid by the Company pursuant to the provisions of this paragraph shall be deemed to be a Company expense and shall be paid before determining profit participation.

13.2 Member Indemnification. Each Member shall indemnify, defend, and hold harmless the other Members to the fullest extent allowed by Delaware law, from and against any and all claims, demands, losses, damages, liabilities, suits and other proceedings, judgments and awards, costs and expenses (including but not limited to reasonable attorney's fees) arising directly or indirectly out of any breach of the covenants contained herein, by such Member, its Affiliates, officers, agents or employees.

13.3 No Liability for Investment Tax Credits or Capital Gains. Anything herein to the contrary notwithstanding, no Member shall have any liability to the Company or any other Member by reason of failure to qualify for investment tax credits or long term capital gains.

### ARTICLE XIV

#### GENERAL

14.1 Notices. All notices, requests or consents under this Agreement shall be (a) in writing, (b) delivered to the recipient in person, by courier or mail or by facsimile, telegram, email, or similar transmission, (c) if to a Member, delivered to such Member at the applicable address shown on such Member's signature page for this Agreement, as maybe updated in the Company records from time to time, or such other address as that Member may specify by notice to the Manager, and (d) effective (i) on delivery, if personally delivered, (ii) upon the sending party's confirmation of transmission, if sent by facsimile transmission or email, (iii) one business day after depositing such notice with a courier, or (iv) three (3) business days after the mailing of such notice by first class U.S. mail or by certified or registered mail. Whenever any notice is required to be given by applicable law, the Certificate or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Any Member may alter the address to which communications are to be sent by giving notice of such change of address to the Manager in conformity with the provisions of this Section.

14.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

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### ARTICLE XII

#### POWER OF ATTORNEY

12.1 Attorney in Fact. Each Member grants to the Manager a special power of attorney irrevocably making, constituting, and appointing the Manager as the Member's attorney in fact, with power and authority to act in his, her, or its name and on his, her, or its behalf to execute, acknowledge, and swear to in the execution, acknowledgment and filing of documents which includes, by way of illustration but not of limitation, the following:

(a) The Certificate, this Agreement, and any amendment to the Certificate or this Agreement which, under the laws of the State of Delaware or the laws of any other state, is required or permitted to be filed or which the Manager elect to file;

(b) Any other instrument or document required to be filed by the Company under the laws of any state, or by any governmental agency, or which the Manager elect to file;

(c) Any instrument or document that may be required to effect the continuation of the Company, the admission of an Additional Member, or the dissolution and termination of the Company (provided that the continuation, admission or dissolution and termination are in accordance with the terms of the Agreement), or to reflect any reduction in amount of the Member's Capital Contributions or reduction in the Member's Capital Account; and

(d) Any tax election to be made by the Members with respect to the Company, including an election to be treated as a Company.

12.2 Special Provisions. The special power of attorney being granted by each Member (a) is a special power of attorney coupled with an interest, (b) is irrevocable, (c) survives the death or incapacity of the granting Member, (d) survives any Transfer of Interest, and (e) is limited to the matters set forth in Section 7.3 of this Agreement.

12.3 Signatures. A Manager may exercise the special power of attorney on behalf of each Member by a facsimile signature or by the actual signature of the Manager acting as an attorney in fact for all of the Members.

12.4 Survival Upon Assignment. The special power of attorney will survive the delivery of any assignment by a Member of the whole or any portion of the Member's interest in the Company, except that where the Assignee thereof has been admitted to the Company as a Member, this power of attorney survives the delivery of such assignment for the sole purpose of enabling the Manager to execute, acknowledge and file any instrument necessary to effect such substitution.

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14.3 Controlling Law. This Agreement, and the application or interpretation of this Agreement, shall be governed exclusively by its terms and by the internal laws of the State of Delaware, without regard to principles of conflict of laws. The rights and liabilities of the Manager and the Members shall be determined pursuant to the Act and this Agreement. To the extent that the rights or obligations of any Member or Manager are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

14.4 Provisions Severable. If any provision of this Agreement shall be or shall become illegal or unenforceable in whole or in part, for any reason, the remaining provisions shall not be affected thereby but shall be deemed valid, binding and enforceable to the greatest extent permitted by law.

14.5 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.

14.6 Severability. If any provision of this Operating Agreement or the application thereof to any Person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

14.7 Indulgences Not Waivers. Neither the failure nor any delay on the part of any party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of any other right, remedy, power, or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power, or privilege with respect to any subsequent occurrence.

14.8 Execution in Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any Persons to be signatory hereto may execute this Agreement by signing any such counterpart.

14.9 Amendment. Any provision of this Agreement may be amended only with the consent of the Manager and a vote of not less than a Majority-In-Interest of the Members; provided, however, that any provision that requires approval of a Supermajority in Interest may be amended only with the consent of the Manager and a vote of at least a Supermajority in Interest.

14.10 Attorney's Fees. If any party institutes a suit or other proceeding against any other party in any way connected with this Agreement or its enforcement, the prevailing party to any such action shall be entitled to recover from the other party reasonable attorney's fees (not to exceed the actual attorney's fees incurred), witness fees, expenses, and court costs in connection with said suit or proceeding at both trial and appellate levels, regardless of whether any such action or proceeding is prosecuted to judgment.

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14.11 **Number of Days.** In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays, and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or recognized United States holiday, then the final day shall be deemed to be the next date which is not a Saturday, Sunday, or holiday.

14.12 **Captions.** Captions are not intended to convey any meaning or be a part of this Agreement but are merely used for assistance in identifying paragraphs.

14.13 **Execution of Additional Instruments.** Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules, or regulations.

14.14 **Construction and Gender.** Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders and vice versa; and the word "Person" or "party" shall include a corporation, firm, partnership, proprietorship, or other form of association.

14.15 **Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

### 14.16 **Dispute Resolution.**

(a) **Negotiated Resolution.** If any dispute (the "Dispute") arises (i) out of or relating to this Agreement or any alleged breach of this Agreement; (ii) with respect to any of the transactions or events contemplated by this Agreement; (iii) with respect to any indemnity provisions or obligations of this Agreement; and/or (iv) between or among any parties with respect to any approval, consent, request, instruction, order, determination, vote, decision, direction, demand, obligation, communication, or similar action or conduct required or permitted to be given to or by any party under this Agreement (whether as the Manager or Member), then any Person that is a party to such Dispute may, at its election, in its sole and absolute discretion, and as its sole remedy for such Dispute, trigger the provisions of this Section 14.16(a) by so notifying in writing (the "Dispute Notice") each other Person that is a party to such Dispute (such notifying party and such other party(ies), collectively, the "Dispute Parties" and, individually, a "Dispute Party") and any Manager that is not a Dispute Party. If any party gives a Dispute Notice pursuant to this Section 14.16(a), then the Dispute Parties shall meet at least twice within the thirty one (31) calendar day period commencing with the date of the giving of the Dispute Notice and in good faith shall attempt to resolve such Dispute.

(b) **Mediation.** If such Dispute is not resolved or settled by the Dispute Parties through a negotiated resolution pursuant to Section 14.16(a), then the Dispute Parties shall submit such Dispute to non-binding mediation before a retired judge of a Federal District Court or Washington Superior, Appellate, or Supreme Court, or some similarly qualified, mutually agreeable individual. The Dispute Parties shall bear the

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question in nature), which written proposal to accept. If any Dispute Party fails to appear at any properly noticed arbitration proceeding, the Arbitrator may enter an award against such Dispute Party notwithstanding such failure to appear. Notwithstanding anything to the contrary in this Section 14.16(c), any Dispute Party with new material information discovered or uncovered pursuant to the discovery process in the preceding Section 14.16 (c)(ii) may (only upon the prior written consent of the Arbitrator) amend such Dispute Party's written proposal for resolution (within fourteen (14) days after the end of such discovery process) in light of such newly discovered material information. Each Dispute Party shall have ten (10) days to respond to such motion, and the Arbitrator shall deliver an order granting or denying such motion within the following ten (10) day period.

(v) **Costs and Expenses.** Each Dispute Party shall bear its own costs of any arbitration under this Agreement (including without limitation legal fees, the cost of the record or transcripts of such arbitration, if any, and administrative fees), or an equal share of such fees and costs that are not specific to such Dispute Party. The non-prevailing Dispute Party shall be liable for the fees and costs of the prevailing Dispute Party(ies). Nothing in this Section 14.16(c) shall be deemed to supersede any indemnity rights that a Dispute Party has under this Agreement.

(vi) **Deadline for Arbitrator.** Each Dispute Party shall instruct the Arbitrator to render his or her decision no later than, and each Dispute Party shall use its good faith efforts to cause the Arbitrator's decision to be issued on or before, seventy (70) calendar days after the selection of the Arbitrator.

(vii) **Judicial Relief.** Notwithstanding anything to the contrary in this Section 14.16, any Dispute Party may seek specific performance or any provisional remedy available at law or in equity in any state or federal court in Seattle, Washington without compromising the right and obligation, subject to Section 14.16 (a) and (b) to arbitrate ultimately and finally all Disputes.

14.17 **Venue.** This Agreement is made in Seattle, Washington. Subject to Section 14.16, the parties acknowledge that venue for any litigation under or with respect to this Agreement shall be in Seattle, Washington. Subject to Section 14.16, (a) each party hereby waives any right to file any action with any court outside of Seattle, Washington, and (b) with respect to any action filed with a court in Seattle, Washington, each party hereby waives any right to seek to change venue.

14.18 **Jurisdiction.** Subject to the provisions of Section 14.16, each party hereby consents to the exclusive jurisdiction of the state and federal courts sitting in Washington in any action on a claim arising out of, under, or in connection with this Agreement or the transactions contemplated by this Agreement, provided such claim is not required to be arbitrated pursuant to Section 14.16 and, subject to Section 14.17. Each party further agrees that personal jurisdiction over such party may be effected by service of process by registered or certified mail addressed as provided in Section 14.1, and that when so made shall be as if served upon such party personally within the State of Washington.

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costs of such mediation equally. Such mediator must be selected by the Dispute Parties on or before fourteen (14) calendar days after the end of such thirty one (31) calendar day negotiated resolution, as outlined in Section 14.16(a), following the Dispute Notice, and such mediation must be concluded within thirty one (31) calendar days after the selection of such mediator. If either of such deadlines is not met, then the provisions of Section 14.16(c) shall apply.

(c) **Arbitration.** If the Dispute Parties fail to select a mediator within such fourteen (14) calendar day period, or if the Dispute is not resolved within such thirty-one (31) calendar day "mediation" period pursuant to Section 14.16(b), then, upon written request (the "Arbitration Notice") by any Dispute Party (given within twenty (20) calendar days after either of such "mediation" deadlines is not met), the Dispute shall be submitted to the Judicial Arbitration and Mediation Services ("JAMS") and settled by binding, final arbitration before one impartial arbitrator (the "Arbitrator"), conducted in accordance with JAMS' then current rules and procedures relevant to such Dispute, as modified by this Agreement.

(i) **Location.** Such arbitration shall be conducted in Seattle, Washington (or any other location that is mutually agreed upon by the Dispute Parties, each in their sole and absolute discretion).

(ii) **Selection of Arbitrator.** The Dispute Parties shall immediately, but no later than ten (10) calendar days after the giving of the Arbitration Notice, jointly select the Arbitrator. If the Dispute Parties do not agree on the Arbitrator within such ten (10) calendar day period, then any Dispute Party may request JAMS to furnish immediately a list of five (5) available candidates experienced in real estate partnership and LLC matters. Within seven (7) calendar days after receipt by the Dispute Parties of such list, each Dispute Party shall designate in writing to JAMS not more than two (2) names to be eliminated from such list. If four names are so eliminated from such list, then the Arbitrator shall be the sole name remaining on such list. If more than one (1) name remains after such eliminations, then the selection of the Arbitrator shall be randomly made from the remaining names.

(iii) **Discovery and Depositions.** The Arbitrator shall, in his or her reasonable discretion, allow for reasonable discovery requests including without limitation production of relevant documents and depositions.

(iv) **Methods for Dispute Resolution.** Each Dispute Party shall, within twenty one (21) calendar days after the giving of the Arbitration Notice, submit to each other Dispute Party and to the Arbitrator its respective written proposal for resolution of the Dispute. If only one Dispute Party makes such submission within such twenty-one (21) calendar day period, then such timely submission shall become the binding, final determination by the Arbitrator. If more than one written proposal is so submitted in a timely manner, then the Arbitrator shall determine, as the sole question of such arbitration (even if it is strictly a business

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14.19 **Other Activities.** It is specifically understood and agreed between the Members that their interests in Company extend only to and are limited to the rights and obligations under this Agreement, and nothing herein shall be construed to constitute any Member the agent or partner of any other Member for purposes beyond this Company, nor in any manner to limit the Members in the carrying on of their respective businesses or activities other than the activities included within the scope of the Company.

14.20 **Good Faith and Fair Dealing.** In connection with the formation, operation and winding-up of the Company, each Member shall act in good faith toward the Company and the other Members and shall deal fairly with them.

14.21 **Competition.** Each Member hereby acknowledges that the scope and purpose of this Company pertains solely to the Eligible Investments. Each Member expressly recognizes that the Manager, the Members, and/or their partners, principals, officers, directors, members, employees, or Affiliates are or may be active in other business ventures or real estate investment, including those in competition with the Company. Nothing in this Agreement may be construed so as to grant any right, privilege, or option to any Member to participate in any manner in any other limited liability company, corporation, partnership, limited partnership, venture, or other association or investment in which the Manager or any other Member, or their partners, officers, directors, members, employees, or Affiliates may participate. Each of the Members expressly waives the doctrine of Corporate Opportunity or similar legal theories and consents to investment by the Manager or any other Member, or their partners, officers, directors, members, employees, or Affiliates in any other investment opportunity.

14.22 **No Registration.** Each Member severally, and not jointly, acknowledges and understands that no registration statement relating to any Interests has been or is to be filed with the SEC under the Securities Act, or pursuant to the securities laws of any state.

14.23 **Compliance with Anti-Money Laundering Requirements.** Notwithstanding any other provision of this Agreement to the contrary, the Manager, in its own name and on behalf of the Company, shall be authorized without the consent of anyone, including any other Member, to take such action as it determines in its sole discretion to be necessary or advisable to comply with any anti-money laundering or anti-terrorist laws, rules, regulations, directives, or special measures.

14.24 **Statutes.** Any reference in this Agreement to any statute, law, ordinance, code, or regulation, or any section or provision thereof, shall be deemed to include any future amendments thereto and any similar provisions of law that may hereafter replace or be substituted for such provision, whether or not designated by the same title or number.

14.25 **Legal Representation.** The Manager has retained Perkins Coie LLP ("PC") to prepare this Agreement and the Private Placement Memorandum (and all related documents). Each Member is advised that it is entitled to be represented by counsel of its choice with respect to becoming a Member in the Company, and each Member or potential Member should seek advice from its own counsel in regard to its investment in the Company and execution and

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adoption of this Agreement. Each Member acknowledges that it has sought advice from its own separate legal counsel in this regard or has chosen not to do so. Each Member acknowledges that PC has not undertaken any and has no duty or obligation of any kind to any Member, in connection with this Agreement or any other documents contemplated by this Agreement.

14.26 Attached Schedules. The defined terms of this Agreement are set forth in the attached Exhibit A.

14.27 Spousal Consent.

(a) Each Member who is married represents and warrants on behalf of himself or herself that he or she has caused his or her spouse to execute and deliver to the Company a Spousal Consent in the form attached hereto. Each Member represents and warrants that if such Member has not delivered (or caused to be delivered) an executed Spousal Consent, he or she is not married or, if such Member is married, no Person has or will have a marital or community property interest in such Member's Units. If such Member gets married after the date hereof or such Member's Units otherwise become subject to marital or community property interest, such Member shall promptly (and in any event within thirty (30) days) cause his or her spouse to execute and deliver to the Company a Spousal Consent in the form of attached hereto.

(b) If the Company or any Member incurs losses, damages or expenses in connection with any procedural or substantive claims or demands made by any spouse or former spouse and the individual making such claims or demands has not executed and delivered a Spousal Consent pursuant to Section 14.27(a), the Member in respect of whom such claims or demands arise shall promptly and fully reimburse the Company and any such other Members for all such losses, damages and expenses.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.

**MANAGER AND MEMBER:**

PWL REO, a Delaware limited liability company

By: \_\_\_\_\_, Member

**Initial Members**

\_\_\_\_\_  
Pacvest Holdings, LLC – Series E1  
\_\_\_\_\_  
Stevcr and Company, LLC

Additional Signature Pages of Members shall be attached by the Manager

**PACIFIC WEST REAL ESTATE OPPORTUNITY FUND, LLC  
OPERATING AGREEMENT**

**EXHIBIT A: DEFINED TERMS**

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

(a) "Act" shall mean the Delaware Limited Liability Company Act, presently codified at Delaware Code, Title 6, Chapter 18, and any successor statute, as amended from time to time.

(b) "Accredited Investor" shall mean within the meaning of Rule 501 of Regulation D ("Regulation D") promulgated by the SEC under the Securities Act.

(c) "Additional Capital Contributions" shall mean any Capital Contributions to the Company by a Member or Manager in excess of Initial Capital Contributions.

(d) "Additional Member" shall mean any Person who is admitted to the Company pursuant to Article IX this Operating Agreement.

(e) "Affiliate" means, with respect to any Person, (i) any Person directly or indirectly controlling, controlled by, or under common control with such Person, (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting interest of such Person, (iii) any officer, director, or general partner of such Person, or (iv) any Person who is an officer, director, general partner, trustee, or holder of ten percent (10%) or more of the voting interest of any Person described in clauses (i) through (iii) of this sentence. For purposes of this definition, the term "controls," "is controlled by," or "is under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through the ownership of voting securities, by contract or otherwise.

(f) "Agreement" shall mean this written Operating Agreement, as amended, modified, or supplemented from time to time. No other document or oral agreement among the Members shall be treated as part of or superseding this Agreement unless it is reduced to writing and it has been signed by all of the Members.

(g) "Article" means an article under this Agreement.

(h) "Bad Act" means the committing of an act or an omission by any Person that is determined by a final court or arbitrator order, judgment, decree, or decision to be gross negligence, fraud, or willful misconduct.

(i) "Bankruptcy" shall mean as to a Member, the happening of any of the following:

(i) The making by such Member of an assignment for the benefit of creditors.

(ii) The filing by such Member of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing such Member's inability to pay such Member's debts as they become due;

(iii) The entry of an order, judgment or decree by any court of competent jurisdiction adjudicating such Member to be bankrupt or insolvent;

(iv) The filing by such Member of a petition or answer seeking for such Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation;

(v) The filing by such Member of an answer or other pleading admitting the material allegation of or such Member's consenting to, or defaulting in answering a bankruptcy petition filed against such Member in any bankruptcy proceeding;

(vi) The filing by such Member of an application or other pleading or such Member otherwise seeking, consenting to or acquiescing in the appointment of a trustee, receiver, or liquidator of such Member or of all or any substantial part of such Member's properties;

(vii) The commencement of any proceeding against such Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation which has not been dismissed for any consecutive period of one hundred twenty (120) days; or

(viii) The appointment without the consent or acquiescence of such Member of a trustee, receiver of liquidation of such Member or of all or any substantial part of such Member's properties without such appointment being vacated or stayed within ninety (90) days or within ninety (90) days after the expiration of any such stay.

(j) "Capital Account" shall mean the account established and maintained for each Member in accordance with this Agreement and applicable Treasury Regulations.

(k) "Capital Contribution" shall mean any contribution to the capital of the Company in cash, property or services by a Member, whenever made.

(l) "Capital Proceeds" shall mean (i) the aggregate consideration realized by the Company upon any Capital Transaction, excluding any accrued and unpaid interest, less (ii) the payment of any Company Operating Expenses or other liabilities reasonably allocated thereto and less (iii) any reasonable Reserves for the payment of Company Operating Expenses or other obligations anticipated to be allocated thereto and paid therewith.

(m) "Capital Transaction" shall mean the Disposition, financing, or refinancing of an Eligible Investment owned directly or indirectly by the Company.

(n) "Category A Member" means a Member having total Capital Contributions of less than \$1,000,000, other than the Manager.



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(o) "Category B Member" means a Member having total Capital Contributions of \$1,000,000 or more, but less than \$5,000,000, other than the Manager.

(p) "Category C Member" means a Member having total Capital Contributions of \$5,000,000 or more, other than the Manager.

(q) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

(r) "Company" shall refer to Pacific West Real Estate Opportunity Fund, LLC, a Delaware limited liability company.

(s) "Company Operating Expenses" shall mean all costs, expenses, liabilities and obligations of the Company related to the operation of the Company, including, but not limited to expenses of any proposed or consummated public or private offering; travel costs, fees, and other out-of-pocket expenses directly related to the investigation, origination, and monitoring of investment opportunities (whether or not consummated); the acquisition, ownership, operation, servicing, administering, financing, or sale of Eligible Investments; fees of accountants, auditors, appraisers, consultants engineers, and legal counsel; expenses of annual meetings, insurance, litigation expenses, expenses of Member meetings, directors' and officers' and other insurance; litigation expenses; expenses associated with the preparation and distribution of reports and tax return information to Members; the Management Fee; all other ordinary expenses of a nature similar to those described above that are related to the business of the Company; and any extraordinary expenses, including filing and related fees and expenses incurred in connection with Securities and Exchange Commission compliance activities.

(t) "Contributing Member" shall mean any Member who desires to pay an amount due to cure a default of a Defaulting Member.

(u) "Defaulting Member" shall mean any Member who has caused a Monetary Default or a Non-Monetary Default which remains uncured under this Agreement. All other Members are Non-Defaulting Members.

(v) "Dispose, Disposing or Disposition" shall mean, with respect to any asset (including, specifically, but without limitation, interests or any portion thereof), a Transfer, of such asset, whether such disposition be voluntary, involuntary or by operation of law (and whether in a single transaction or a series of related transactions), including the following: (a) in the case of an asset owned by a Person: (i) a merger or consolidation of such Person in which such Person is not the surviving Person; or (ii) a distribution of such asset in connection with the dissolution, liquidation, winding up or termination of such Person (unless, in the case of dissolution, such Person's business is continued without the commencement of liquidation or winding-up); and (b) a disposition in connection with, or in lieu of, a foreclosure of an Encumbrance; provided, however, that any pledge or hypothecation of Interests shall be excluded hereunder and shall not be deemed to be a Disposition of Interests.

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according to that Member's Capital Contributions, which interest may be expressed as a Percentage Interest.

(dd) "Investment Period" shall mean the period beginning on the formation of the Company and ending January 31, 2013.

(ee) "IRR" shall mean, in respect of a Member, a financial test that is met or satisfied when such Member has received aggregate distributions from the Company the net present value of which is not negative, assuming an annual discount rate of 15 percent. Solely for purposes of calculating the net present value in order to determine whether the IRR has been met, the following rules shall apply:

(a) Daily cash flows shall be determined in the following manner:

(i) Negative cash flows shall be deemed to include all Capital Contributions of such Member;

(ii) Positive cash flows shall be deemed to include all distributions made by the Company to such Member; and

(iii) Each day on which a cash flow is not deemed to occur pursuant to subclauses (i) and (ii) above shall be deemed to have a cash flow of zero.

(b) The daily discount rate (r) shall be determined using the following formula:

$$r = ((1 + DR)^{(1/365 \cdot 25)} - 1)$$

where:

DR = the annual discount rate specified in the first sentence of this definition of IRR, expressed in decimal notation.

(c) The net present value of the daily cash flows shall be determined using the following formula:

$$\sum_{i=0}^D \frac{X_i}{(1+r)^i}$$

where:

$X_i$  = cash flow on day i;

r = the daily discount rate;

i = the count of days in which such Member has been a Member of the Company, where the day of such Member's

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(w) "Distributable Cash" means all cash, revenues, and funds received from Company operations or from sale of the Company's business, less the sum of the following to the extent paid or set aside by the Manager:

(i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders;

(ii) all cash expenditures incurred incident to the normal operation of the Company's business; and

(iii) such cash Reserves as the Manager deems reasonably necessary to the proper operation of the Company's business.

(x) "Eligible Investments" shall mean: (i) non-performing first priority mortgages secured by real property that meets the definition of an Eligible Investment under clauses (ii) or (iii) hereof; (ii) raw to partially improved vacant land suitable for residential or commercial use; (iii) existing commercial sites; and (iv) an ancillary investment in finished residential lots, performing mortgages, or non-performing mortgages that are not first priority, by investing in pooled asset sales or portfolios wherein the majority of the value of such pooled assets or portfolios lies in an asset that meets the definition of an Eligible Investment under clauses (ii) or (iii) hereof. Eligible Investments of the Company may be acquired directly by the Company or may be made in conjunction with a third party, with such Eligible Investments structured as joint ventures, preferred equity, interim first mortgage loans, or the acquisition of debt or equity interests in entities owning or acquiring the foregoing or rights with respect thereto, or options or other rights with respect thereto, in each case as determined in the sole and absolute discretion of the Manager.

(y) "Encumber" or "Encumbrance" shall have the following meanings: "To Encumber" shall mean to pledge, hypothecate, or otherwise secure any type of debt or obligation with Interests, whether incurred voluntarily or involuntarily. An "Encumbrance" is any type of security or surety interest created by such Encumbering.

(z) "Fair Market Value" shall mean, with respect to any asset or property, the fair market value thereof as determined in good faith by the Manager and agreed to by a Majority-In-Interest. If a Majority-In-Interest of the Members cannot agree upon a "Fair Market Value" the Manager of the Members shall select a qualified independent third-party to appraise the assets and properly to determine the Fair Market Value, which determination shall be binding on the Members.

(aa) "Fiscal Year" means the Company's fiscal year, which shall be the calendar year.

(bb) "Initial Capital Contribution" shall mean the amount (exclusive of Additional Capital Contributions) which the Members actually pay as their first Capital Contributions to the Company.

(cc) "Interest" shall mean the ownership interest of a Member in the Company representing such Member's rights, powers and privileges as specified in this Agreement

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admission has  $i = 0$ , the day after such Member's admission has  $i = 1$ , and so forth; and

D = date as of which the net present value is being calculated.

(ff) "Losses" shall mean, for each Fiscal Year, the losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year under the method of accounting selected by the Company and as reported, separately or in the aggregate, as appropriate, on the Company's informational tax return filed for federal income tax purposes, plus any expenditures described in Section 705(a)(2)(B) of the Code.

(gg) "Majority-In-Interest" shall mean Members owning a simple majority of the Percentage Interests in the Company.

(hh) "Management Fee" shall mean the management fee payable to the Manager pursuant to Section 7.13(b).

(ii) "Manager" shall mean PWL REO, LLC or any other Person that becomes a manager pursuant to this Agreement.

(jj) "Member" shall mean each of the parties who execute a counterpart of this Operating Agreement as a Member and each of the parties who may hereafter become Additional or Substituted Members. To the extent a Manager has purchased Interests in the Company, it will have all the rights of a Member with respect to such Interests, and the term "Member" as used herein shall include a Manager to the extent it has purchased Interests in the Company.

(kk) "Minimum Capital Contribution" shall mean an amount equal to one hundred thousand U.S. dollars (\$100,000.00), unless otherwise approved by the Manager.

(ll) "Monetary Default" shall mean the failure of a Member to pay when due any Additional Capital Contribution or other sum required to be paid under this Agreement.

(mm) "Non-Monetary Default" shall mean the failure of a Member to cure any default under this Agreement (other than a Monetary Default, for which there is no curative period) within thirty (30) days after delivery of a written notice of default from another Member or the Manager, which notice shall set forth in detail the nature of the alleged default; provided that if curative performance cannot reasonably be completed within such thirty (30) day period, said period will be extended, provided that curative performance was begun within a reasonable time, not to exceed ten (10) days, after the delivery of the notice of default, and is diligently pursued thereafter. Without intending to limit the generality of the foregoing, the following are included within the definition of a Non-Monetary Default:

(i) Attempted dissolution of the Company by any Member other than pursuant to the provisions of this Agreement;

(ii) Attempted partitioning of the assets of the Company;

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**Below is the Order of the Court.**

- (iii) "Withdrawal as a Member without the consent of the Manager and a Majority-In-Interest of the other Members;
- (iv) Attempted or actual assignment or Transfer of an Interest other than pursuant to the provisions of this Agreement.
- (nn) "Offering" means the offer and potential sale of from \$3,000,000 to \$30,000,000 (which the Manager may increase up to \$100,000,000 of Interests to Accredited Investors) which shall extend until December 31, 2011 or such later date that is designated by the Manager in a writing delivered to each Member.
- (oo) "Organization and Offering Cost" shall mean the costs incurred in connection with raising capital, organizing, forming, and marketing the Company.
- (pp) "Percentage Interest" shall be the percentage interest of each Member in this Company as set forth in the records of the Company which shall be the basis for allocating profits, losses, and tax credits, if any, of the Company to the Members for individual tax treatment, as well as allocating cash expenses and needs of the Company.
- (qq) "Person" shall mean any individual or any legal entity, and their respective heirs, executors, administrators, legal representatives, successors, and assigns.
- (rr) "Preferred Return" shall mean a simple non-compounded return of ten percent (10%) per annum on the Unreturned Capital Contributions, calculated for the period beginning on the date on which each Member is admitted as defined in Section 1.8 of the Agreement for their Initial Capital Contributions and the date of deposit for any Additional Capital Contributions, and ending on the date immediately preceding the date on which an amount equal to such Unreturned Capital Contributions are distributed.
- (ss) "Prime Rate" shall mean the rate of interest, as of the first business day of each month, designated in the Wall Street Journal as the "prime rate," the rate of interest charged by banks in the United States to their largest and most credit-worthy commercial borrowers for unsecured loans maturing in ninety (90) days, but in no event in excess of the highest legal rate in Delaware.
- (tt) "Private Placement Memorandum" shall mean the confidential private placement memorandum of the Company, dated June 15, 2011, as it may be supplemented from time to time.
- (uu) "Profit" shall mean, with respect to any Fiscal Year, the net profit realized by the Company computed in accordance with such accounting method as is used by the Company for Federal income tax purposes, which shall initially be the cash method.
- (vv) "Profit Participation" shall mean the amounts payable to the Manager under Sections 3.7(c) and 3.7(d) of the Agreement.

- (ww) "Purchaser" shall mean any Person purchasing Interests pursuant to a Subscription Agreement.
- (xx) "Reserves" shall mean, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed sufficient by the Manager for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.
- (yy) "SEC" shall mean the Securities and Exchange Commission of the United States of America.
- (zz) "Section" without reference to another instrument or body of law, means a Section under this Agreement.
- (aaa) "Securities Act" shall mean the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder. All references herein to sections of the Securities Act shall include any corresponding provision or provisions of succeeding Law.
- (bbb) "Subscription Agreement" shall mean, with respect to each Purchaser of Interests, the Subscription Agreement between the Company and the Purchaser whereby the Purchaser subscribed to purchase Interests.
- (ccc) "Supermajority in Interest" shall mean at any determination date, Members who collectively hold greater than seventy-five percent (75%) of the total Percentage Interests in the Company held by all Members.
- (ddd) "Taxable Year" means the taxable year of the Company under the Code.
- (eee) "Transfer" shall mean to sell, assign, exchange, transfer, convey, give, donate, pledge, deposit, alienate, bequeath, devise or otherwise dispose of or Encumber to any Person other than the Company, irrespective of whether any of the foregoing is effected voluntarily, by operation of law or otherwise, or whether *inter vivos* or upon death.
- (fff) "Treasury Regulations" shall mean the Regulations issued by the Department of the Treasury under the Code.
- (ggg) "Unreturned Capital Contribution" shall mean with respect to each Member, the excess of (a) all Capital Contributions and deemed Capital Contributions made by such Member to the Company pursuant to this Agreement over (b) all distributions of Distributable Cash, Capital Proceeds and other Company assets to such Member as a return of such Member's Capital Contributions pursuant to Article III hereof.
- (hhh) "Withdrawal Event" shall mean the withdrawal, resignation or retirement of a Member from the Company. Such terms shall not include any Transfer of Interest (which are governed by Article VIII), even though the Member making a Transfer, as the case may be, may cease to be a Member as a result thereof.

**PACIFIC WEST REAL ESTATE OPPORTUNITY FUND, LLC  
OPERATING AGREEMENT**

**EXHIBIT B: SPOUSAL CONSENT**

I am the spouse of a Member of Pacific West Real Estate Opportunity Fund, L.L.C. a Delaware limited liability company (the "Company"). I acknowledge that I have read the Operating Agreement of the Company dated as of June 15, 2011 (as amended, modified or supplemented from time to time in accordance with its terms, the "Operating Agreement"), and I consent to all of the terms and conditions therein and agree to be bound by all of its provisions. I acknowledge that I am not a Member of the Company, and I agree that my spouse shall have exclusive authority over, and may act alone with respect to, the management, control, and disposition of his or her interest in the Company, or its underlying assets, without the requirement of any prior written notice to me, which I hereby waive, as though it were part his or her separate estate; provided, however, that this shall in no way be construed as a presumption as to, or otherwise affect, the actual character of my spouse's interest in the Company. I have been informed of my right to obtain independent legal counsel concerning the Operating Agreement and the rights and obligations provided for in the Operating Agreement, and by execution of this consent, acknowledge having either obtained such independent counsel or having waived the same.

PRINTED NAME: \_\_\_\_\_  
SIGNATURE: \_\_\_\_\_  
DATE: \_\_\_\_\_

**PACIFIC WEST REAL ESTATE OPPORTUNITY FUND, LLC  
OPERATING AGREEMENT**

**SCHEDULE 1**

The following Schedule sets forth the names and addresses, Capital Contributions, and Percentage Interests of the initial Members and the Manager of the Company.

<u>Member Name and Address</u>	<u>Capital Contribution</u>	<u>Percentage Interest</u>
PWL REO, L.L.C, Manager 403 Madison Avenue N, Suite 230 Bainbridge Island, WA 98110	\$9,000	90%
Stever and Company 403 Madison Avenue N, Suite 230 Bainbridge Island, WA 98110	\$1,000	10%

Below is the Order of the Court.

PACIFIC WEST REAL ESTATE OPPORTUNITY FUND, LLC  
OPERATING AGREEMENT  
Member Signature Page

By executing this signature page, the undersigned, wishing to become a Member in PACIFIC WEST REAL ESTATE OPPORTUNITY FUND, LLC, a Delaware limited liability company (the "Company"), in accordance with the Operating Agreement of the Company (as amended, modified or supplemented from time to time in accordance with its terms, the "Operating Agreement"), agrees to be bound by the terms and provisions of the Operating Agreement. The undersigned executes the Operating Agreement and authorizes this Member Signature Page to be attached to the Operating Agreement.

Member is (check one):

- An Individual OR  Joint OR  Community Property with a primary legal residence in the State of \_\_\_\_\_
- A Corporation with a principal place of business in the State of \_\_\_\_\_
- A Limited Liability Company or Limited Partnership with a principal place of business in the State of \_\_\_\_\_
- A General Partnership with a principal place of business in the State of \_\_\_\_\_
- Other (specify) \_\_\_\_\_

<b>INITIAL CAPITAL CONTRIBUTION</b>	\$ _____
-------------------------------------	----------

EXACT LEGAL NAME(S) OF MEMBER(S) UNDER WHICH THE INVESTMENT IS TO BE HELD: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TITLE: \_\_\_\_\_  
*(Complete only if printed name of Member above is different than name of person signing document.)*

SIGNATURE(S): \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_ Date: \_\_\_\_\_

**Below is the Order of the Court.**

**Plan Exhibit F**

**Stipulation for Treatment of US Bank, Class 1**

Below is the Order of the Court.

1 JESSE A. P. BAKER (SBN 36077)  
2 ALDRIDGE PITE, LLP  
3 9311SE 36<sup>th</sup> Street #100  
4 Mercer Island, WA 98040  
5 Telephone: (425) 644-6471

Hon. Christopher Alston  
CHAPTER: 11  
Hearing: June 3, 2016 @ 9:30am

6 Mailing Address:  
7 4375 Jutland Drive, Suite 200  
8 P.O. Box 17933  
9 San Diego, CA 92177-0933  
10 Telephone: (206) 232-2558  
11 Facsimile: (206) 232-2655  
12 E-mail: j baker@aldridgepite.com

13 Attorneys for Secured Creditor: U.S. Bank National Association, as trustee for Structured Adjustable  
14 Rate Mortgage Loan Trust, Mortgage Pass Through Certificates, Series 2007 10

15 **UNITED STATES BANKRUPTCY COURT**  
16 **WESTERN DISTRICT OF WASHINGTON -SEATTLE DIVISION**

17 In re  
18 JAMES M. WILLETT and JANET E.  
19 WILLETT  
20 Debtors

Case No. 15-17182-CMA

Chapter 11

**STIPULATION RE: TREATMENT OF  
CREDITOR'S CLAIM FOR DEBTORS'  
CHAPTER 11 PLAN**

**Class 1**

**Subject Property**  
**23603 77th Ave SE**  
**Woodinville, Washington 98072**

21  
22 **RECITALS:**

23 This Stipulation Re: Treatment of Creditor's Claim for Debtors' Chapter 11 Plan  
24 ("**Stipulation**") is entered into by and between Secured Creditor, U.S. Bank National Association, as  
25 trustee for Structured Adjustable Rate Mortgage Loan Trust, Mortgage Pass Through Certificates,  
26 Series 2007 10; Nationstar Mortgage LLC, as servicer ("**Creditor**") and Debtors, James M. and  
27 Janet E. Willett ("**Debtors**"), by and through their respective attorneys of record.  
28

**Below is the Order of the Court.**

1 The property which is the subject of this matter is commonly known as 23603 77th Ave SE,  
2 Woodinville, Washington 98072 (“**Subject Property**”), which is more fully described in the Deed  
3 of Trust attached hereto as Exhibit B and incorporated herein by this reference.

4 The Loan is evidenced by a promissory note dated June 7, 2007, executed by Debtor, Janet  
5 Willett to American Home Mortgage (“**Lender**”) in the principal sum of \$1,000,000.00 (the  
6 “**Note**”). A copy of the Note is attached hereto as **Exhibit A** and incorporated herein by reference.

7 The Note is secured by a 1<sup>st</sup> Deed of Trust (the “**Deed of Trust**”) granting Lender a security  
8 interest in the Subject Property, which is more fully described in the Deed of Trust. The Deed of  
9 Trust was duly recorded on or about June 13, 2007, in the official records of Snohomish County  
10 Recorder's office, State of Washington. A copy of the Deed of Trust is attached hereto as **Exhibit B**  
11 and incorporated herein by reference. The Note and Deed of Trust may be referred to collectively  
12 herein as the “**Loan**.”

13 Subsequently, all of Lender’s beneficial interest in the Loan was assigned and transferred to  
14 Creditor. The Note is endorsed in blank. A copy of the assignment of Deed of Trust is attached  
15 hereto as **Exhibit C** and incorporated herein by this reference.

16 On or about December 8, 2015, Debtors filed a voluntary petition for relief under Chapter 11  
17 of the Bankruptcy Code, and were assigned Case No. 15-17182-CMA.

18 According to Debtors’ Bankruptcy Petition and Schedules on file in this matter, the Subject  
19 Property has been identified as Debtors’ principal residence. *See, Docket Number 1.*<sup>1</sup>

20 On May 2, 2016, Debtors filed their Combined Chapter 11 Disclosure Statement and Plan of  
21 Reorganization, dated May 2, 2016 (“**Plan**”). *See, Docket Number 72.* Debtors’ Plan identifies  
22 Creditor’s Claim as a Class 1 Unimpaired Secured Claim. *Id.* Per the Plan, Debtors intend to sell  
23 the Subject Property with a listing price of \$1,398,000.00, which should pay Creditor’s claim in  
24 full; however, to the extent any such offer not pay Creditor’s claim in full, Creditor’s consent would  
25 be required for any such sale. *Id.* Debtors believe the Subject Property could be sold in 180 days,

26 <sup>1</sup> Pursuant to Rules 201(b) and 201(d) of the Federal Rules of Evidence, which are made applicable to this proceeding by  
27 Rule 9017 of Federal Rules of Bankruptcy Procedure, Creditor requests that the court take judicial notice of the  
28 documents and pleadings that are on file and part of the record in the instant case. The information contained in Debtor’s  
Petition and Schedules is signed under penalty of perjury and is admissible as an admission of Debtor pursuant to Federal  
Rules of Evidence, Rule 801(d).

**Below is the Order of the Court.**

1 but if no offer is received within that 180 days or Creditor does not consent to a proposed short sale,  
2 the Debtors will stipulate to relief from stay so Creditor may proceed to exercise its rights under the  
3 Loan documents and state law. *Id.* Debtors do not intend to make monthly payments to Creditor  
4 during the 180 day period they are seeking to market and/or sell the Subject Property.

5 On or about May 10, 2016, Debtors filed a Motion to Sell the Subject Property (“**Motion to**  
6 **Sell**”) to Vanessa Loland (“**Buyer**”) for a proposed sale price of \$1,398,000.00. *See, Docket*  
7 *Number 90.* The hearing on Debtors’ Motion to Sell is set for June 3, 2016 at 9:30am in the above  
8 entitled Court.

9 In order to help resolve the anticipated Objection Creditor has to Debtors’ Plan, particularly  
10 if the anticipated sale pursuant to Debtors’ Motion to Sell to the current Buyer is not completed or  
11 consummated, and give the Debtors a reasonable time to find another qualified buyer and complete a  
12 sale of the Subject Property that pays Creditor in full, the parties have agreed to this Stipulation for  
13 purposes of treatment of Creditor’s claim for Debtors’ Chapter 11 Plan.

14 **THE PARTIES HEREBY STIPULATE AS FOLLOWS:**

15 1. Creditor’s claim (is successors and/or assigns), secured by the Subject Property and  
16 Debtors’ principal residence, is subject to the anti-modification provisions of 11 U.S.C. §1123(b)(5)  
17 and shall be fully secured, paid in full and Debtors’ Plan shall not alter or modify the legal,  
18 equitable, and contractual rights under the Loan (“**Secured Claim**”). Creditor’s Secured Claim shall  
19 be impaired pursuant to 11 U.S.C. §1124 solely to the extent as set forth herein.

20 2. **Sale Period:** The parties agree in the event the current sale to the Buyer as noted in  
21 Debtors’ Motion to Sell [*Docket Number 90*] is not completed or consummated for any reason,  
22 Debtors shall have until August 1, 2016 to “complete a sale” of the Subject Property to a subsequent  
23 buyer subject to and in accordance with the terms and conditions of this Stipulation. For purpose of  
24 this Stipulation, “**complete a sale**” shall mean the Debtors have an executed purchase contract for  
25 the Subject Property with a bona fide, qualified third party buyer, a funded escrow that has closed on  
26 or before August 1, 2016, and Creditor has received proceeds sufficient to pay the full and total  
27 outstanding balance owed on the Loan at the close of escrow.

28 In the event Debtors have failed to “complete a sale” of the Subject Property by the time

**Below is the Order of the Court.**

1 specified herein, Debtors agree to fully vacate the Subject Property, including all possessions,  
2 secured the Subject Property and leave the same in good condition without damage or waste.

3 **3. Termination of Automatic Stay; Foreclosure:**

4 3.1 The parties agree that upon entry of the Order Confirming Debtors' Chapter  
5 11 Plan, the Automatic Stay of 11 U.S.C. §362 shall immediately terminate as it  
6 applies to Creditor and the enforcement by Creditor of all of its rights in the  
7 Subject Property under the Loan, and applicable state law without further notice,  
8 order, or proceeding of this Court. The parties further agree and stipulate that  
9 upon termination of the Automatic Stay as set forth herein, the 14-day stay  
10 provided by Bankruptcy Rule 4001(a)(3), if applicable, is waived.

11 3.2 Notwithstanding the foregoing 3.1, Creditor agrees that it will not take any  
12 foreclosure action with respect to the Subject Property prior to August 1, 2016.  
13 After August 1, 2016; however, Creditor is authorized to take any and all action  
14 necessary and proper to commence foreclosure of its security interest in the  
15 Subject Property under the terms of the Loan, and pursuant to applicable state  
16 law to obtain complete possession of the Subject Property, including, but not  
17 limited to any unlawful detainer proceedings, without further notice, order, or  
18 proceeding of this Court.

19 3.3 Creditor reserves the right to extend or postpone any scheduled foreclosure of  
20 the Subject Property provided the following conditions are met: 1) Creditor  
21 provides written consent to said extension at least 5 business days prior to  
22 August 1, 2016; 2) at the time of said extension, the Subject Property is under  
23 contract with a bona fide, independent third party purchaser with sufficient  
24 financial qualifications to "complete the sale" of the Subject Property as required  
25 herein; 3) escrow is funded; and 4) escrow must close no later than 30 calendar  
26 days from the date of such extension, unless Creditor expressly agrees to a longer  
27 period in writing.

28 3.4 Further, under no circumstances shall any extension or postponement of any



**Below is the Order of the Court.**

1 scheduled foreclosure of the Subject Property pursuant to paragraph 3.3 above be  
2 construed to extend or postpone the termination of the Automatic Stay as to  
3 Creditor as discussed herein.

4 4. **Sale Price and Creditor Rights; Buyer Qualifications.** Creditor's claim shall be  
5 paid in full, directly from escrow, from the proceeds of the sale as a first position secured creditor in  
6 accordance with the terms and conditions of this Stipulation and any payoff demand provided by  
7 Creditor or its counsel at the time of any closing of escrow. It is Debtors' responsibility to ensure  
8 the sale price for the Subject Property is sufficient to satisfy Creditor's claim in full and to request a  
9 written payoff demand indicating the total outstanding balance owed on Creditor's claim through the  
10 anticipated close of escrow and necessary payment instructions. Creditor's lien shall remain an  
11 encumbrance on the Subject Property until Creditor's claim is paid in full. Creditor's lien shall  
12 immediately attach to the sale proceeds with the same force and effect, and in the same priority,  
13 validity and scope as Creditor's lien. Creditor reserves the right to require an updated payoff  
14 demand prior to any close of escrow to ensure its claim is paid in full.

15 Creditor's claim secured by the Subject Property, including, but not limited to those amounts  
16 as noted in any payoff demand shall be undisputed. If Debtors dispute any amounts set forth in any  
17 payoff demand provided by Creditor, then Debtors shall be required to notify Creditor's counsel in  
18 writing at least 48 hours prior to any close of escrow and identify what amounts are in dispute.  
19 Further, Debtors shall immediately release to Creditor any and all funds not alleged to be disputed,  
20 and hold and reserve in escrow in a blocked, interest bearing account, the amount disputed, along  
21 with the remaining excess sale proceeds over and above Creditor's payoff demand (collectively,  
22 "**Disputed Amount**") for any attorneys' fees and costs anticipated to be incurred by Creditor to  
23 resolve the Disputed Amount. Creditor's lien shall immediately attach to the net sale proceeds with  
24 the same force and effect, and in the same priority, validity and scope as Creditor's lien. The release  
25 of any Disputed Amount maybe pursuant to written stipulation between the parties submitted to  
26 escrow without further order of this Court, or pursuant to Order of the Court after notice and hearing.  
27 Further, Creditor's claim shall not be surcharged in any way with the costs of the sale or any other  
28 administrative claims, costs or expenses in connection with the sale.

**Below is the Order of the Court.**

1 At least 48 hours prior to any scheduled closing of escrow, Creditor's counsel must be  
2 provided with a copy of the final estimated HUD-1 Settlement/Closing Statement for review and  
3 approval prior to the closing of escrow. If the sale is delayed and/or rescinded for any reason,  
4 Creditor's counsel (and any parties identified in the demand) must be notified immediately in  
5 writing. Further, Creditor's claim will continue to accrue interest at its per diem rate, and any fees  
6 and costs per the Loan and/or as stated in any payoff demand provided until its claim is paid in full.  
7 Creditor's counsel is authorized to obtain a copy of the final HUD-1 Statement/Closing Statement  
8 prior to and upon "completion of the sale" upon request.

9 Creditor always retains its right to credit bid in the full amount of its claim at any sale of the  
10 Subject Property to ensure compliance with this Stipulation and the restrictions set forth herein and  
11 nothing in this Stipulation shall be construed to modify or limit Creditor's rights under 11 U.S.C. §§  
12 363(b), (f) or (k), or 1129(b)(2)(A)(ii).

13 Notwithstanding the foregoing, in the event Debtors cannot "complete a sale" of the Subject  
14 Property prior to August 1, 2016 in an amount sufficient to pay Creditor's claim in full, Debtors and  
15 Creditor (and/or its servicing agent) may discuss a short sale of the Subject Property subsequent to  
16 entering into this Stipulation; however, nothing in this Stipulation shall be construed to require or  
17 obligate Creditor (and/or its servicer) in any way to discuss, enter into, agree to enter into, offer or  
18 accept any such short sale. Further, Debtors are not permitted to file a Motion to Sell, open escrow  
19 or consummate any sale of the Subject Property for less than the total outstanding balance owed on  
20 Creditor claim; unless and until Debtors have completed any and all short sale requirements of  
21 Creditor (and/or its servicer) through its loss mitigation process, and Creditor has issued a  
22 subsequent short sale authorization related to such specific short sale. Further, in the event Creditor  
23 (and/or its servicer) subsequently approves short sale of the Subject Property and issues a short sale  
24 authorization letter as described herein, any such sale may only be consummated in strict accordance  
25 with the terms and provision of any such short sale authorization.

26 Further, any sale of the Subject Property must be to a bona fide third party with sufficient  
27 financial qualifications to complete the sale.

28 5. **Property Insurance.** Debtors shall be required to obtain and maintain real property

**Below is the Order of the Court.**

1 hazard insurance for the Subject Property through August 1, 2016, or any completed sale of the  
2 Subject Property, whichever occurs first, and that said insurance must be in compliance with any  
3 requirements set forth in the Deed of Trust and name Creditor (and/or its servicing agent) as an  
4 additional insured. Debtors agree to provide evidence of such insurance within 5 business days of  
5 executing this Stipulation.

6           6.       The foregoing terms and conditions shall be binding only during the pendency of this  
7 bankruptcy case. If, at any time, Debtors' case is dismissed or converted to any other chapter under  
8 Title 11 of the United States Bankruptcy Code, the foregoing terms and conditions shall cease to be  
9 binding and the Stipulation shall terminate, the Automatic Stay shall immediately terminate and  
10 Creditor may proceed to foreclose its security interest in the Subject Property in accordance with the  
11 Loan and applicable state law and thereafter commence any action necessary to obtain complete  
12 possession of the Subject Property without further notice, order, or proceeding of this Court.

13           7.       Debtors shall be required to attach a copy of this Stipulation and related Order  
14 thereon to any Chapter 11 Plan filed in this case as an exhibit, including any modifications or  
15 amendments thereto, and said Plan (including any modifications or amendments thereto), shall  
16 expressly and fully incorporate the terms and provisions of this Stipulation therein by reference. In  
17 the alternative, Debtors may attach a copy of this Stipulation and related Order thereon to any Order  
18 Confirming Debtors' Chapter 11 Plan as an Exhibit and expressly and fully incorporate the terms  
19 and provisions of this Stipulation therein by reference. In the event of a conflict between a provision  
20 of Debtors' Plan and the Stipulation, the Stipulation shall control. Further, the terms and provisions  
21 of this Stipulation may not be modified, altered, or changed by the Chapter 11 Plan, any  
22 subsequently filed amended or modified Chapter 11 Plan of Reorganization and/or confirmation  
23 order on the foregoing without the express written consent of the Creditor.

24 /././

25 /././

26 /././

27 /././

28 /././

