

## **Keeping the Cabin in the Family**

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## **I. Introduction.**

For many Minnesotans, the time between Memorial Day and Labor Day is spent at the cabin, and anyone who has attempted to travel west on Interstate 94 on a Friday afternoon can attest to the reality of “cabin traffic.” According to data from the Minnesota Department of Revenue, about 135,000 properties have ID numbers assigned to “seasonal/recreational properties.”<sup>1</sup>

For many Minnesotans, there is a desire to keep their cabin “within the family.” For practitioners, there are several tools available to accomplish this objective, and these materials will discuss some of the more common methods to pass a family cabin down through successive generations.

## **II. The Need for Planning.**

Planning for the use, maintenance and succession of a family-owned cabin is important because with multiple family members sharing in ownership, there can—and will be—disputes. For instance, disputes can arise if:

- Some family members may use it more than others.
- Family members want to use it at certain times.
- A co-owner may balk at paying his or her share of routine maintenance, needed renovations, or property taxes.
- One sibling may prefer to liquidate his or her interest in the property, and the other siblings do not have the immediate funds to buy out their brother or sister.
- One child may sell or leave his or her interest to a non-family member, such as a spouse.
- If a co-owner faces divorce, their ownership interest could become an issue in the divorce.
- Any of these issues can pose a real threat to the property and family structure and can lead to litigation, a forced sale, or a breakdown in family relationships.

**NOTE:** for some Minnesotans, hunting land is as important as the family cabin. It should be noted at the outset that many of the planning tools described herein can also be applied to effect the succession of this type of real property.

## **III. What is a Cabin Plan vs. an Estate Plan?**

A cabin plan is an extension of an estate plan. Most estate plans will address planning for incapacity, estate administration, asset distribution, taxation, and other planning considerations. But rarely will an estate plan cover the issues related to passing down the ownership and management of the family cabin property. Just as the estate plan attempts to eliminate the

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<sup>1</sup> <https://minnesota.cbslocal.com/2018/07/11/how-many-minnesotans-have-a-cabin/>

administrative uncertainties related to the property owner's incapacity and death, a cabin plan attempts to eliminate the complexities related to shared ownership and it works to keep the property in the family for generations.

#### **IV. Common Issues in Dealing with Co-Owned Cabin Property**

- A. Use:** when can each co-owner use the property and what are their duties/responsibilities during the period in which they are using the property.
- B. Maintenance and Repairs:** as any cabin owner knows, cabins require regular maintenance, just like a primary residence. How these maintenance and repair issues are handled amongst co-owners of the property, including how significant repair issues such as replacement of the roof, appliances, etc. are to be paid for, is an important issue that should be specified in a written document.
- C. Payment of Taxes and Insurance:** while many family cabins are already "paid for"; i.e., not subject to a mortgage, property taxes and insurance will remain ongoing expenses. Family members need to have a plan in place as to the allocation of these expenses amongst the co-owners, and an agreement as to the means as to how these expenses are paid (such as each co-owner depositing their pro rata share of expenses into a joint account to be used for payment).
- D. Succession of Ownership:** issues of what happens upon certain "triggering events" (i.e., death or divorce), especially with children and spouses and their rights in the property.

#### **V. Direct Ownership Transfers**

A direct transfer of ownership from one generation to another is a common form of ownership conveyance. Direct transfers are simply made by conveying an interest (or ownership share) in the cabin by deed from one owner to another. This can be handled in different ways, including:

- *Joint tenancy with rights of survivorship:* Two or more people have equal ownership interests in the property, and when one person dies, his/her share goes to the surviving tenant.
- *Tenants in common:* Two or more people have ownership interests in the property, but the interests don't have to be equal. Unlike joint tenancy, there are no rights of survivorship, so a person is free to dispose of his/her interest to a new owner (unless prohibited by the legal agreement).
- *Retained life estate:* The owner of a life estate retains ownership of the cabin during his/her lifetime, or the life of another, with the property going to the remainder interest holder after the death of the life estate owner.

The primary benefit of a direct transfer of ownership is the ease of the transaction. A direct transfer occurs by drafting and recording a deed transferring a cabin interest (typically to just one new owner), and there is little cost involved.

Direct transfers can, however, also have negative consequences. For instance, direct transfers offer little or no protection from creditor claims and divorce of a new interest holder. The direct transfer method also lacks methods for resolving disputes or transferring interests (for example, when a new owner wants out).

## **VI. Cabin LLC**

### **A. LLCs Generally**

One strategy commonly utilized to keep a cabin or property in the family is to form a limited liability company, or “LLC”, for the property. An LLC is commonly used for business purposes, but there is no reason why you can’t use one in this context to preserve the property for your family and future generations. An LLC can be set up to have perpetual duration unless and until the owners take steps to terminate it.

An LLC is a business structure that is often described as a hybrid between a partnership and a corporation. It combines the pass-through taxation of a partnership with the limited liability protections of a corporation. With an LLC, ownership is assigned to family members, and management is vested in them or to one person.

### **B. The Operating Agreement**

An LLC requires an operating agreement to govern its affairs. Through the operating agreement, you can address various issues that would arise. For example, the operating agreement can govern how decisions will be made (e.g. by majority vote, unanimous, or by certain family members). It could also require that some major decisions be made by more than a simple majority, while other day-to-day decisions can be made by a designated person. The agreement can include provisions to address how repairs or taxes are to be paid and a method for deciding what times family members may use the cabin. Finally, and similar to the operation of a closely held business, a business entity established for a cabin generally will contain transfer restrictions or “buy-sell” provisions. These provisions are intended to accomplish several objectives, such as preventing a sale to an outside party without the agreement of the ownership, and determining the methodology for transfer, valuation and payment provisions in the event of a bona fide sale.

Please see [Appendix A](#) for a sample Operating Agreement for a family cabin LLC.

### **C. Maintaining the LLC**

It is important to remember that use of an LLC to facilitate succession of a family cabin involves the formation of a business entity which is organized and registered pursuant to state law. Thus, there are formalities necessary for the formation of the entity as well as routine filings on an annual basis.

## **D. Advantages of Using an LLC**

There are several advantages in utilizing an LLC for the cabin plan. First, business entities can be established with a perpetual existence, which can give the family a sense of certainty. Other forms of ownership, such as trusts, must have a defined existence for a number of years based on state statutes. Another benefit of an LLC is that the LLC structure is much more flexible for purposes of amending the structure of the plan and the controlling documents. Often, there is a need to alter the structure of ownership of the entity due to changes in family circumstances over time. The changes may impact the overall management provisions of the entity (governance) or the operational provisions (the day-to-day property maintenance and improvements). Either way, the ability to make these changes is very appealing to some.

The ease in ownership transfer is another benefit of an LLC. These entities most often document ownership by membership units or member shares. Upon formation of the entity, the cabin property is retitled in the name of the LLC. Thereafter, the original owners of the cabin property can give or assign interests in the entity in one transfer or in several transfers over time. This allows the original cabin owners the flexibility to retain control during their lifetime if such retention is desired.

**NOTE:** in order to transfer membership interests in the LLC to younger generations free of gift tax, a gifting program can be established utilizing the annual gift tax exclusion amount. If a valuation is obtained through a qualified business valuation expert, discounts for lack of marketability and lack of control can be applied to accelerate the transfer of ownership to the next generation of family members, if the circumstances so require.

## **VII. Cabin Trust**

A cabin trust is another planning alternative available and can be preferable to the LLC structure when the current owners are concerned that joint ownership could lead to disagreements or that the cost of maintenance of the cabin may prove to be too much for the next generation to manage.

With the trust arrangement, rather than dividing ownership, the trust can be established to hold title to the cabin property and provide the funds necessary to handle maintenance expenses, taxes and insurance for the property.

**PRACTICE TIP:** the trust document should address some of the same issues as the LLC operating agreement; namely, use of the property by the trust beneficiaries and their respective family members (children and spouses) and how that use might be affected/terminated upon the death or divorce of a beneficiary.

The negative consequences of trusts generally deal with the lack of flexibility when administering a trust. Certain forms of trusts cannot be amended to address changes in circumstance among the beneficiaries or with the cabin property (for instance, who is allowed to vote on changes to the trust agreement). Trusts also can be cumbersome for dispute resolution and property management.

Finally, when compared to other forms of ownership, trusts can have inferior liability protection for family members.

### **VIII. Co-Tenancy Agreements**

Where an LLC or trust structure is not utilized, a co-tenancy agreement can be used amongst co-owners of a cabin property to address the issues outlined hereinabove (use, maintenance, payment of expenses and rights of purchase upon the happening of certain events). The agreement should include a dispute resolution clause which facilitates timely resolution of disputes amongst the co-owners.

**APPENDIX A**

**SAMPLE OPERATING AGREEMENT FOR FAMILY CABIN LLC**

**OPERATING AGREEMENT  
OF  
THE ANDERSON FAMILY CABIN, LLC**

This Operating Agreement (the “**Agreement**”), is made and entered into to be effective as of September 24, 2019 (the “**Effective Date**”) by and among the persons identified as the Initial Members on the signature page attached to this Agreement (hereinafter such persons are referred to collectively as the “**Members**” and individually as a “**Member**”) and THE ANDERSON FAMILY CABIN, LLC, a Minnesota limited liability company (the “**Company**”).

**WHEREAS**, the Company was formed as a limited liability company (“LLC”) on September 24, 2019 by the filing of Articles of Organization with the Minnesota Secretary of State pursuant to and in accordance with the Minnesota Revised Uniform Limited Liability Company Act, Minn. Stat. Ann. § 322C, et seq. (the “Revised Act”); and

**WHEREAS**, the Members have formed the Company for the purposes of holding and managing their interests in a certain parcel of real property in the State of Minnesota used as a family retreat, the Property (hereinafter defined); and

**WHEREAS**, each Member (i) is familiar with the plan of the Company, (ii) has reviewed this Agreement and has had the opportunity to consult with such Member’s legal, tax and financial accounting advisors regarding this Agreement, and (iii) desires to enter into this Agreement effective as of the Effective Date with the intention that this Agreement be the Company’s sole operating agreement for the purposes of the Revised Act; and

**WHEREAS**, the Members agree that the membership in and management of the Company shall be governed by the terms set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, all of the Members hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

- 1.1 **Terms Defined Herein.** As used herein, the following terms have the following meanings:
- a. “**Articles**” means the Articles of Organization of the Company, filed with the Minnesota Secretary of State on September 24, 2019. A copy of the Company’s Articles is attached as Exhibit A.
  - b. “**Available Cash**” means, subject to Section 322C.0405 of the Revised Act, the aggregate amount of cash on hand or in any bank, money market or similar accounts of the Company as of the end of each fiscal quarter, or other applicable

period, derived from any source (other than Capital Contributions and Liquidation Proceeds) that the Members determine is available for distribution to the Members after taking into account any amount required or appropriate to maintain a reasonable amount of reserves.

- c. **“Bankruptcy”** with respect to any Person, means the entry of an order for relief with respect to such person under the federal bankruptcy code (as set forth in Title 11 of the United States Code) of the insolvency of such Person under any state insolvency act.
- d. **“Capital Account”** means the separate account established and maintained by the Company for each Member and each Transferee pursuant to Section 3.2.
- e. **“Capital Contribution”** means with respect to a Member the total amount of cash and the agreed upon value of property (or services, where an Interest in Company Capital is issued for such services) contributed by such Member (or such Member’s predecessor in interest) to the Company for such Member’s Interest.
- f. **“Code”** means the Internal Revenue Code of 1986, as amended.
- g. **“Company Capital”** means at any measuring date the aggregate Capital Accounts of all Members.
- h. **“Covered Person”** means a person entitled to indemnification under 322C.0408 of the Revised Act.
- i. **“Distributions”** means any distributions by the Company to the Members of cash, Liquidation Proceeds or other amounts.
- j. **“Fair Value”** of an asset means its fair market value as determined by the Members or as otherwise required by law, taking Code § 7701(g) in account where required by Treasury Regulations.
- k. **“Fair Market Value”** means the fair market value of the Company determined pursuant to the terms and conditions set forth in Article VIII.
- l. **“Initial Capital Contributions”** means the Capital Contributions made by the Members pursuant to Section 3.1.
- m. **“Initial Member”** means a Person who became a Member on the Effective Date by delivering their Initial Capital Contribution to the Company on or before the Effective Date and executing this Agreement to be effective as of the Effective Date.
- n. **“Interest”** refers to all of a Member’s rights and interest in the Company in

such Member's capacity as a Member, all as provided in the Articles, this Agreement and the Revised Act, including the Member's interest in the capital, income, gain, deductions, losses and credits of the Company. Unless otherwise expressly separated, a Member's Interest includes that Member's transferable interest under the Revised Act.

- o. **“Liquidation Proceeds”** means all Property at the time of liquidation of the Company and all proceeds thereof.
- p. **“Majority in Interest”** means any Member or group of Members holding an aggregate of more than fifty percent (50%) of the Percentage Interests held by all Members.
- q. **“Member”** has the meaning set forth in the Preamble and each Person who is subsequently admitted to the Company as a Member pursuant to Section 8.3 or 8.5, other than a Person who ceases to be a Member of the Company pursuant to Section 8.7. The name, address, aggregate Capital Contributions and Percentage Interest of each Member is set forth on Schedule 1, as the same may be adjusted from time to time as required or permitted by the provisions of this Agreement.
- r. **“Officer”** means an individual designated by the Members, with the responsibilities and duties specified or delegated by the Members, including offices set forth in Section 5.2.
- s. **“Percentage Interest”** means with respect to any Member, the portion of all of the Company's outstanding Interests owned by such Member, expressed as a percentage. The Percentage Interests of each Member will be set forth on Schedule 1, as adjusted from time to time as required or permitted by the provisions of this Agreement.
- t. **“Permitted Transferee”** means (a) a trust if (i) the trust was created by and is revocable by the Member; (ii) the Member is and remains the primary beneficiary of such trust during his or her lifetime; and (iii) the trustee becomes a party to this Agreement by executing and delivering a consent to the Company; (b) to another Member of the Company; or (c) an Affiliate of the Transferor, an “Affiliate” means with respect to any Person, any Person directly or indirectly controlling, controlled by, or under common control with such Person. For purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through ownership, by contract or otherwise, and the terms “controlling” and “controlled” have correlative meanings. A Person is an affiliate of an entity if such Person is a governor, director, manager, officer or legal representative of such entity, or if such Person has a material financial interest in such entity. An individual Person's Affiliates include such individual's biological lineal descendants (e.g.,

biological children, niece, nephew, etc.) and any Trust for any such individual Person's benefit.

- u. **“Person”** means any individual, partnership, limited liability company, corporation, cooperative, trust or other entity.
- v. **“Property”** means that certain real property located in the City of \_\_\_\_\_, Minnesota, \_\_\_\_\_ County, commonly referred to as: \_\_\_\_\_, \_\_\_\_\_, Minnesota, and legally described on Exhibit D attached hereto, and all related assets that the Company may own or otherwise have an interest in from time to time.
- w. **“Required Expenses”** means all day to day operating costs related to operating the Company, including but not limited to the cost of utilities, insurance, real estate taxes, routine maintenance and upkeep of the Property.
- x. **“Required Contribution”** means an amount to be determined from time to time by a Majority in Interest to be contributed by all Members to the Company Expense Account to cover Required Expenses and Significant Expenditures of the Company.
- y. **“Revaluation”** means the occurrence of any event described in clauses (i), (ii), (iii), (iv) or (v) of Section 3.2(c) as a result of which the book value of the Property is adjusted by the Company to its Fair Value.
- z. **“Revised Act Date”** means August 1, 2015.
- aa. **“Significant Expenditure”** means any expenditure by the Company for any purpose, including building new structures, removing structures, land improvements such as addition a driveway, drainage field, septic system, labor contributed by any Member, legal fees, improvements, purchase of land, leasing of property, accounting fees, the value of which exceeds \$500.00, to be adjusted annually according to the consumer price index.
- bb. **“Super Majority in Interest”** means any Member or group of Members holding an aggregate of more than sixty-seven percent (67%) of the Membership Interest in the Company.
- cc. **“Tax Matters Partner”** means the Person designated pursuant to Section 7.4 to represent the Company in matters before the Internal Revenue Service.
- dd. **“Transfer”** means (i) when used as a verb, to give, sell, exchange, assign, transfer, pledge, hypothecate, bequeath, devise or otherwise dispose of or encumber; and (ii) when used as nouns corresponding to such verbs, in either case voluntarily or involuntarily, by operation of law or otherwise.

**ARTICLE II**  
**BUSINESS PURPOSES, OFFICES AND RELATED MATTERS**

2.1 Name; Business Purpose. The name of the Company is The ANDERSON FAMILY CABIN, LLC. The business purpose of the Company is to operate and maintain the Property and to do any and all things necessary, appropriate or incidental thereto.

2.2 Powers. In addition to the powers and privileges conferred upon the Company by law and those incidental thereto, the Company has the same powers as a natural person to do all things necessary or convenient to carry out its business and affairs.

2.3 Principal Office. The principal office of the company will be located at 123 Main Street, Anywhere, Minnesota 55555, or at such other place as the Members may determine from time to time.

2.4 Registered Office. The location of the registered office of the Company is stated in the Company's Articles of Organization. The registered office of the Company in the State of Minnesota may be changed, from time to time, by the Members.

2.5 Amendment of the Articles. The Company may amend the Articles at such time or times and in such manner as may be required by this Agreement or the Revised Act, as the case may be.

2.6 Operating Agreement. Subject only to Section 322C.0110 Subd. 2 and Subd. 3 of the Revised Act, the Members who are parties to this Agreement intend that this Agreement govern all aspects of the Company's business, activities and affairs, including without limitation: (a) the formation, operation, ownership, governance, management and dissolution of the Company; (b) the allocation of income, receipts, gain, losses, deductions, credits and Distributions; (c) the receipt of additional capital, admission of new Members and all valuation issues associated with the receipt of such additional capital and admission of Members; (d) the transfer or encumbrance of Interests, limitations on the transferability of Interests and Transferable Interests; (e) any broadening of the scope of any indemnification or exculpation; and (f) any other matter related to the Company's business and affairs. Notwithstanding Section 322C.0102, Subd. 17 of the Revised Act, the Members acknowledge and agree that this Agreement shall be the Company's sole operating agreement for purposes of the Revised Act, in each case as hereafter amended from time to time pursuant to Section 10.7, including any exhibits to this Agreement, and at no time shall any operating agreement be created by oral or implied means. It is expressly intended that, during the entire term of this Agreement, the provisions of this Agreement shall supersede any provisions of the Revised Act, as they now exist or as may be subsequently amended or restated, that are inconsistent or conflict with the provisions of this Agreement to the maximum extent permitted by law.

2.7 Ratification of Certain Acts. The Company and each Initial Member hereby adopt, approve and ratify all actions taken by the Company's organizers.

### ARTICLE III CAPITAL CONTRIBUTIONS AND LOANS

3.1 Capital Contributions. Upon the execution of this Agreement, each Initial Member will make an Initial Capital Contribution to the capital of the Company in the amount set forth opposite such Member's name on Schedule 1.

3.2 Capital Accounts.

- a. A separate Capital Account will be maintained for each Member and each Transferee. Each Member's Capital Account will be (i) increased by (A) the amount of money contributed by such Member, (B) the Fair Value of property contributed by such Member (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Code § 752), (C) allocations to such Member, pursuant to Article IV, of Company income and gain (or items thereof), and (D) to the extent not already netted out under clause (ii)(B) below, the amount of any Company liabilities assumed by the Member or which are secured by any property distributed to such Member; and (ii) decreased by (A) the amount of money distributed to such Member, (B) the Fair Value of property distributed to such Member (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code § 752), (C) allocations to such Member, pursuant to Article IV, of Company loss and deductions (or items thereof), and (D) to the extent not already netted out under clause (i)(B) above, the amount of any liabilities of the Member assumed by the Company or which are secured by any property contributed by such Member to the Company.
- b. If any Interest is transferred in accordance with the terms of this Agreement, the Transferee will succeed to the Capital Account of the Transferor to the extent it relates to the transferred interest and the Capital Account of each Transferee will be increased and decreased in the manner set forth above.
- c. In the event of (i) an Additional Contribution by an existing or an additional Member of more than a *de minimis* amount that results in a shift in Percentage Interest, (ii) the distribution by the Company to a Member of more than a *de minimis* amount of property as consideration for an Interest, (iii) the grant of more than a *de minimis* Interest in the Company as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a Member capacity or by a new Member acting in a Member capacity or in anticipation of being a Member, (iv) in connection with the issuance by the Company of a non-compensatory option (other than an option for a *de minimis* Interest), or (v) the liquidation of the Company within the meaning of Treasury Regulation § 1.704-1(b)(2)(ii)(g), the book basis of the Property will be adjusted to Fair Value and the Capital Accounts of all the Members will be adjusted simultaneously to reflect the aggregate net adjustment to book basis as if the Company recognized a gain or loss equal to the amount of such aggregate net adjustment; provided, however, that the adjustments resulting from clauses (i), (ii), (iii) or (iv) above will be made only if the Members determine that such adjustments are

necessary or appropriate to reflect the relative economic interests of the Members.

- d. If any Property is subject to Code § 704(c) or is revalued on the books of the Company in accordance with the preceding paragraph pursuant to § 1.704-1(b)(2)(iv)(f) of the Treasury Regulations, the Members' Capital Accounts will be adjusted in accordance with § 1.704-1(b)(2)(iv)(g) of the Treasury Regulations for allocations to the Members of depreciation, amortization and gain or loss, as computed for book purposes (and not tax purposes) with respect to such Property.
- e. The foregoing provisions of this Section 3.2 and other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation § 1.704-1(b) and 1.704-2, and will be interpreted and applied in a manner consistent with such Treasury Regulations. If it is determined by the Members that it is prudent or advisable to modify the manner in which the Capital Accounts, or any increases or decreases thereto, are computed in order to comply with such Treasury Regulations, the Members may cause such modification to be made provided that it is not likely to have any material effect on the amounts distributable to any Member upon dissolution of the Company, and upon any such determination by the Members, the Members are empowered to amend or modify this Agreement, notwithstanding any other provision of this Agreement.

3.3 Capital Withdrawal Rights, Interest and Priority. Except as expressly provided in this Agreement, no Member is entitled to withdraw or reduce such Member's Capital Account or to receive any Distributions. No Member is entitled to receive or be credited with any interest on the balance in such Member's Capital Account at any time. Except as may be otherwise expressly provided herein, no Member has any priority over any other Member as to the return of the balance in such Member's Capital Account.

3.4 Loans. Any Member may make a loan to the Company in such amounts, at such times (including in lieu of a capital contribution under Section 3.1) and on such terms and conditions as may be approved by the Members. Loans by any Member to the Company will not be considered contributions to the capital of the Company. Any loan for which an interest rate is not otherwise expressly provided for in writing shall bear interest at the prime rate then in effect at the bank/depository where the Company's account(s) are located (the "Prime Rate").

## **ARTICLE IV ALLOCATIONS AND DISTRIBUTIONS**

4.1 Non-Liquidation Cash Distributions. The amount, if any, of Available Cash will be determined by the Members at least annually and will be distributed to the Members within 45 days following the end of each calendar year in accordance with their respective Percentage Interests.

4.2 Liquidation Distributions. Liquidation Proceeds will be distributed in the following order of priority:

- a. First, to discharge the Company's obligations to creditors, including to Members that are creditors, as set forth in Section 322C.0707, Subd. 1 of the Revised Act.
- b. Second, and notwithstanding Section 322C.0707, Subd. 2 of the Revised Act, the remainder to the Members in accordance with their respective Percentage Interests.

4.3 Income, Losses and Distributive Shares of Tax Items. The Company's Income or Loss, as the case may be, for each fiscal year of the Company, as determined in accordance with such method of accounting as may be adopted for the Company pursuant to Article VII, will be allocated to the Members for both financial accounting and income tax purposes as set forth in this Article IV, except as otherwise provided for herein or unless all Members agree otherwise.

4.4 Allocation of Income, Loss and Credits.

- a. Income or Loss (other than from transactions in liquidation of the Company) and Credits for each fiscal year will be allocated among the Members in accordance with their Percentage Interests. To the extent there is any change in the respective Percentage Interests of the Members during the year, Income, Loss and Credits will be allocated among the pre-adjustment and post-adjustments periods.
- b. Income from transactions in liquidation of the Company will be allocated among the Members in the following order of priority:
  - i. First to those Members, if any, with negative Capital Account balances (determined prior to taking into account any Distributions pursuant to Section 4.2) in the ratio that such negative balances bear to each other until all such Members' Capital Account balances equal zero; then
  - ii. The remainder to the Members in accordance with their respective Percentage Interests.
- c. Losses from transactions in liquidation of the Company will be allocated among the Members in the following order of priority:
  - i. First to those Members, if any, with positive Capital Account balances (determined prior to taking into account any Distributions pursuant to Section 4.2) in the ratio that such positive balances bear to each other until all such Members' Capital Account balances equal zero; then
  - ii. The remainder to the Members in accordance with their respective Percentage Interests.

4.5 No Priority. Except as may be otherwise expressly provided herein, no Member has priority over any other Member as to Company capital, income, gain, deductions, loss, credits or Distributions.

4.6 Tax Withholding. Notwithstanding any other provision of this Agreement, the Members are authorized to take any action that they determine to be necessary or appropriate to cause the Company to comply with any withholding requirements established under any federal, state or local tax law, including withholding on any Distribution to any Member. For all purposes of this Article IV, any amount withheld on any Distribution and paid over to the appropriate governmental body will be treated as if such amount had in fact been distributed to the Member.

4.7 Reserves. The Members may establish, maintain and expend Reserves to provide for working capital, for future maintenance, repair or replacement of the Property, for debt service, for future investments and for such other purposes as the Members may deem necessary or advisable.

## **ARTICLE V MEMBER MANAGEMENT**

5.1 Member Management. The management and conduct of the Company shall be vested in the Members. In accordance with Section 322C.0407, Subd. 2 of the Revised Act, the Members will have the authority to bind the Company and will have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members of a limited liability company under the laws of the State of Minnesota.

5.2 Delegation of Authority.

- a. Officers. The Members will have the authority to appoint individual persons as “officers” to be agents and representatives of the Company and to delegate to any such person all or any of its powers pursuant to this Agreement. Any delegation pursuant to this Section 5.2 may be revoked at any time by the Members. The following named persons shall hold the offices set forth next to their names, with the duties and responsibilities set forth in **Exhibit C**:

<u>Name</u>	<u>Office</u>
John Anderson	President
James Anderson	Treasurer and Secretary

Salaries. The salaries of all officers, if any, will be fixed by the Members.

- b. Further Delegation. Unless prohibited by a resolution adopted by the Members, an officer elected or appointed by the Members may delegate in writing some or all of the duties and powers of such person’s office to other persons.
- c. Term of Office. Each officer will hold office until a successor has been appointed by the Members, or until such officer’s prior death, resignation, or removal from office.
- d. Removal and Vacancies. Any officer or agent elected or appointed by the Members will hold office at the pleasure of the Members and may be removed, with or without

cause, at any time by the Members, subject to the terms of this Agreement. Any vacancy in an office of the Company will be filled by action of the Members.

5.3 No Employment Rights. This Agreement does not, and is not intended to, confer upon any Member or any Officer any rights with respect to continued employment by the Company, and nothing herein shall be construed to have created any employment agreement with any Member or any Officer.

5.4 Reimbursement of Expenses. Except to the extent otherwise provided for herein, and except for items generally constituting a Member's overhead, the Company will pay all costs and expenses associated with the Company's business, and will reimburse the Members for any actual costs incurred for goods, materials, and services used by or for the Company.

5.5 No Personal Liability. Except as otherwise provided by applicable law or as expressly set forth in this Agreement, the debts, obligations and other liabilities of the Company, whether arising in contract, tort or otherwise (a) are solely the debts, obligations and other liabilities of the Company, and (b) do not become the debts, obligations or other liabilities of a Member or Officer solely by reason of such Member acting as a member or of such Officer acting as an officer; provided that any repeal of this provision as a matter of law or modification of this subpart by the Members shall be prospective only, and shall not adversely affect any limitation on the personal liability of the Member or any Officer existing at the time of such repeal or modification.

5.6 Execution of Documents Filed with Minnesota. The Members and any Officer authorized by the Members is authorized to execute and file with the Minnesota Secretary of State any document permitted or required by the Revised Act. Such documents may be executed and filed only after the Members have approved or consented to such action in the manner provided herein.

5.7 Indemnification; Covered Persons; Limitation of Liability.

- a. Conduct of Covered Persons. A Covered Person shall be deemed to have acted in "good faith" within the meaning of the Revised Act if such person acted in reliance upon the records of the Company and upon such information, opinions, reports or statements (including financial statements and information, opinions, reports or statements as to the value or amount of the assets, liabilities, Income or Losses of the Company or any facts pertinent to the existence and amount of assets from which Distributions might properly be paid) of the following Persons or groups: (i) another Member; (ii) one or more Officers or employees of the Company; (iii) any attorney, independent accountant, appraiser or other expert or professional employed or engaged by or on behalf of the Company; or (iv) any other Person selected in good faith by or on behalf of the Company, in each case as to matters that such relying Person reasonably believes to be within such other Person's professional or expert competence.
- b. Limitation. In accordance with Section 322C.0110, Subd. 7 of the Revised Act, no Person will be liable to the Company or its Members for any loss, damage, liability or expense on account of any action taken or omitted to be taken by such Person as a

- Member, or than for: (i) a financial benefit received by the Member to which the Member is not entitled; (ii) a breach of a duty under Section 322C.0406 of the Revised Act; (iii) intentional infliction of harm on the Company or a Member; or (iv) an intentional violation of criminal law. Any repeal of this provision as a matter of law or any modification of this subpart by the Members shall be prospective only, and shall not adversely affect any limitation on the personal liability of the Members existing at the time of such repeal or modification.
- c. Additional Limitation or Indemnification. Except as otherwise determined by the Members, the Company shall not be required to indemnify a Person or advance expenses in connection with a proceeding (or part thereof) covered by Section 322C.0408 of the Revised Act if such proceeding (or part thereof) was commenced by such Person.
- d. Right to Indemnification or Advancement. The Company shall indemnify and advance expenses to the Members, the Officers and other persons acting in their “official capacity” (as defined in Section 322C.0408 of the Revised Act) with respect to “proceedings” (as defined in Section 322C.0408 of the Revised Act) to the fullest extent required by Section 322C.0408 of the Revised Act for actions thereafter.

## **ARTICLE VI MEMBERS**

6.1 Classes of Membership Interests. The Interest of the Initial Members set forth on Schedule 1 are Membership Interests of one class and shall have the rights provided by law, subject to any statement in this Agreement regarding the specific rights or terms of such Membership Interest.

6.2 Use and Enjoyment of the Property. The Members shall have the right to share in the use and enjoyment of the Property and any and all watercraft located at the Property. The Members shall approve and adopt a tentative calendar for the anticipated use of the Property for the upcoming seasonal use of the Property no later than April 1 of each year. The Members agree to work together and cooperate with each other in developing the schedule for the use of the Property to encourage all Members to use and enjoy the Property. All Members shall have the right to use the Property during the weekends of Memorial Day, the Fourth of July and Labor Day. A Member may schedule exclusive use of the Property on a first come, first served basis by emailing proposed dates to the other Members or shall be included in the annual schedule; however, no Member shall be entitled to more than three (3) weekends of exclusive use of the Property without the other Members’ prior consent. Shared use of the Property may be made during any time that has not been reserved by an individual Member.

There are six (6) designated locations for campers or trailers to park on the Property, either temporarily or permanently. Each of the Members have guaranteed use of one (1) of the permanent camper or trailer parking locations, with the remainder to be used by family members or guests of the Member(s). Family members or guests using the remaining camper or trailer locations cannot park in the location for a period greater than two (2) weeks, as required by Minnesota law, as may be amended.

6.3 Rental of the Property. The Members agree that the Property shall not be rented.

6.4 Cabin Rules. Rules related to the use and maintenance of watercraft owned by the Company, scheduling cabin visits, pets on the Property, visitors and non-Members staying at the Property, cleaning of the Property, use of personal property located at the Property and related matters (collectively, the “Cabin Rules”) may be established from time to time by an affirmative vote of the Majority in Interest of the Members. The Cabin Rules must be consistent with this Operating Agreement and any amendments thereto, a copy of which is attached hereto as **Exhibit E.** Any Cabin Rules adopted by the Members shall be made available to all Members. Any changes to the Cabin Rules requires an affirmative vote of the Majority in Interest of the Members.

6.5 Pets. Members are permitted to bring house pets to the Property, but care must be taken to clean up after the pet, removing all pet hair and waste.

6.6 Guests. Members are permitted to bring guests to the Property as long as at least one Member is present or a Member has given their prior authorization to use the Property. If any guests engage in violent, unsafe or harassing behavior or act in a way that is potentially harmful to other Members or guests, the guest or guests may be asked to leave the Property immediately. The Members may adopt additional Cabin Rules regarding guests, their occupancy and use of the Property and related matters.

6.7 Meetings of Members; Place of Meetings. Except as provided in Section 6.10, all decisions of the Members will be made at a meeting duly held in accordance with this Article VI. Meetings of the Members may be held for any purpose or purposes, unless otherwise prohibited by law or by the Articles, and may be called by the Members holding not less than twenty percent (20%) of the Percentage Interests. All meetings of the Members will be held at the principal office of the Company or at such other place as is designated from time to time by the Members and stated in the notice of the meeting. Members may participate in a meeting of the Members by means of telephone conference or similar communications equipment whereby all Members participating in the meeting can hear each other and participation in a meeting in this manner constitutes presence in person at the meeting. If an annual meeting of the Members occurs, the following items shall remain permanently on the agenda of the annual meeting:

- a. Report on the annual budget provided by the President;
- b. The Property schedule for the year; and
- c. Maintenance and improvements.

6.8 Quorum. The presence, in person or by proxy, of a Majority in Interest constitutes a quorum for the transaction of business by the Members. If less than a Majority in Interest is represented at a meeting, a majority of the Interests so represented may adjourn the meeting to a specified date not longer than 90 days after such adjournment, without further notice. At such adjourned meeting at which a quorum is present or represented by proxy, any business may be transacted that might have been transacted at the meeting as originally noticed. The Members present at a duly convened meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members such that the remaining Members constitute less than a quorum. At any time, if there is no Person with the right to vote or participate in the management

of the business and the affairs of the Company with respect to a particular Interest, then the Percentage Interest represented by such Interest will be disregarded for the purposes of determining whether a quorum is present at a meeting of the Members and the requisite Percentage Interest necessary for a valid decision of the Members has been obtained.

6.9 Proxies. At any meeting of the Members, every Member having the right to vote will be entitled to vote in person or by proxy appointed by an instrument in writing signed by such Member and bearing a date not more than three (3) years prior to such meeting.

6.10 Action Without Meeting. Any action required or permitted to be taken at any meeting of the Meeting of the Members of the Company may be taken without a meeting if the action is authorized by a writing or writings signed by all of the Members who would be entitled to vote on that action. Such action will be effective on the date on which the last signature is placed on such writing or writings, unless a different effective date is provided in the written action.

6.11 Meetings and Participation by Remote Communication.

- a. A meeting of the Members may be held by conference call or by one or more other means of Remote Communication through which all Members may participate in the meeting, if notice of the meeting is given as described in the preceding sections. Participation in a meeting by conference call or such other means of communication constitutes presence in person at the meeting.
- b. For purpose of this Agreement, “Remote Communication” means communication via Electronic Communication, telephone conference, video conference, the internet or other means by which persons who are not physically present in the same location may communicate with each other on a substantially simultaneous basis. “Electronic Communication” means any form of communication, not directly involving the physical transmission of paper, which creates a record that may be retained, retrieved and reviewed by a recipient of the communication, and reproduced in paper form by the recipient through an automated process. “Authenticated” means that the Electronic Communication is delivered to the President of the Company and that the communication sets forth information from which the recipient can reasonably conclude that the communication was sent by the purported sender.

6.12 Notice of Meetings. Notice stating place, day, time and purpose for which the meeting is called must be given, not less than ten (10) days nor more than sixty (60) days before the date of the meeting, by or at the direction of the Members calling the meeting, to each Member entitled to vote at such meeting. A Member’s attendance at a meeting:

- a. Waives objection to lack of notice or defective notice of the meeting, unless such Member, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting; and
- b. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the notice of meeting, unless such Member objects

to considering the matter when it is presented.

6.13 Waiver of Notice. When any notice is required to be given to any Member of the Company hereunder, a waiver thereof in writing signed by the Member entitled to such notice, whether before, at, or after the time stated therein, is equivalent to the giving of such notice.

6.14 Voting Requirement.

- a. The Company shall be objective in decision-making. When disagreements are significant, decisions may be tabled for further research and reflection. Except as otherwise provided for herein, the affirmative vote of a Majority in Interest of the Members is required for a valid decision of the Members. Notwithstanding anything to the contrary in the Revised Act, and solely to the extent authorized in this Agreement, each Member has the right to vote in proportion to such Member's Percentage Interest. Except as expressly set forth herein, this standard represents the voting power required to take action at a duly called meeting pursuant to Section 322C.0407, Subd. 5 of the Revised Act.
- b. In addition to those matters specified elsewhere in this Agreement requiring the approval of at least a Majority in Interest of the Members, the affirmative vote of all of the Members is required for the following actions by the Company:
  - i. Amendment of this Agreement;
  - ii. Approval of Significant Expenditures;
  - iii. To voluntarily dissolve the Company; and
  - iv. To change of the status of the Company from a member-managed limited liability company to a manager-managed limited liability company or board-managed limited liability company (in each case, as those terms are defined in Section 322C.0102 of the Revised Act).
- c. Unless otherwise agreed by all of the Members, a Member may not vote his, her or its Membership Interest if the Member has failed to make his, her or its required contribution to the Company Expense Account for a consecutive 12-month period.
- d. At any time that a Person does not have the right to vote or to participate in the management of the business and affairs of the Company with respect to the Interest held by such Member, then the Percentage Interest represented by such Interest will be disregarded in determining whether the requisite percentage necessary for a valid decision of the Members has been obtained, with the effect that such Interest will be treated as if such Interest had not been issued and the requisite percentage necessary for a valid decision will be applied against the remaining Percentage Interests.

6.15 Deadlock. If the Members are unable to agree on any of the matters that require a unanimous decision under this Agreement, fundamentally disagree on the intended use of the Property, proposed improvements to the Property, or Members', guests' or other family members' use of the Property, and such disagreement continues for thirty (30) days despite good faith

deliberations by the Members, then the Members agree to participate in mediation to resolve the dispute(s). The mediator shall be mutually selected by the Members and the cost of the mediator, if any, shall be shared equally by the Members. The mediator may be a professional mediator such as an attorney or may be a family member or friend of the Members. The decision of the mediator shall be final and binding on the Members.

6.16 Minutes of Meetings and Record of Other Actions. The Company will keep at its principal office minutes of all meetings of the Members and a record of all actions taken by the Members without a meeting.

## **ARTICLE VII ACCOUNTING AND BANK ACCOUNTS**

7.1 Fiscal Year. The fiscal year and taxable year of the Company will end on December 31 of each year, unless a different year-end is chosen by the Members or required by the Code.

7.2 Books and Records. At all times during the existence of the Company, the Company will cause to be maintained full and accurate books of account, which will reflect all Company transactions and be appropriate and adequate for the Company's business. The books and records of the Company will be maintained at the principal office of the Company. The books and records of the Company shall be maintained using such method of accounting as determined by the Members.

7.3 Financial Reports. Within ninety (90) days after the end of the fiscal year, there will be prepared and delivered to each Member:

- a. A balance sheet as of the end of such year and related financial statements for the year then ended; and
- b. All information with respect to the Company necessary for the preparation of the Members' federal and state income tax returns.

7.4 Tax Matters Partner. If necessary, the Company will appoint a Member to act on behalf of the Company as the "tax matters partner" within the meaning of Section 6231(a)(7) of the Code.

7.5 Bank Accounts. All funds of the Company will be deposited in a separate bank, money market or similar account or accounts approved by the Members and in the Company's name. Withdrawals from the account(s) may be made only by individuals authorized to do so by the Members.

7.6 Company Information. The information that the Company is required to furnish, without demand, to the Members pursuant to Section 322C.0410, Subd. 2(1) of the Revised Act is limited to the following:

- a. Articles of Organization;
- b. This Agreement and any amendments thereto;

- c. Quarterly financial statements, internally prepared;
- d. Annual financial statements, internally prepared;
- e. State and federal tax returns; and
- f. Articles of Dissolution.

Each Member acknowledges and agrees that the foregoing is all of the information that is reasonably necessary, without demand, for the proper exercise of its rights and duties under this Agreement and the Revised Act for the purposes of Section 322C.0410, Subd. 2(1)(i) and Subd. 1(3) of the Revised Act whether such information is held by the Company or another Member.

7.7. Maintenance of the Property and Company Expenses. Unless otherwise agreed to by the Members, Christopher A. LaBounty agrees perform regular maintenance of the Property, such as lawn mowing, trimming, watering and the like, at his cost and expense. Thomas J. LaBounty shall be responsible for payment of the real estate taxes for the Property. All other expenses, including Required Expenses and Significant Expenditures, may be paid out of a Company Expense Account, if established by the Members.

If a Company Expense Account is established, the funds deposited in the account shall be used to cover the costs associated with Required Expenses and approved Significant Expenditures of the Company. A vote of the Majority in Interest of the Members shall determine the Required Contribution to the Company Expense Account from time to time and each Member will contribute a percentage of the total Required Contribution equal to each individual Member's Percentage Interest in and to the Company. Such contribution shall not be considered an additional capital contribution. If any Member fails to make a contribution as required, the amount of the contribution shall be deemed a loan to that Member. The amount of any unpaid loan will be repaid to the Company prior to any future distribution to a Member who fails to contribute to the Company Expense Account as required or upon dissolution of the Company as described in Article IX. Unless otherwise agreed to by the Members, failure to contribute to the Company Expense Account for a consecutive 36-month period where a balance remains outstanding, will result in an automatic decrease in the non-paying Member's Membership Interest in the Company in proportion to what the amount of the unpaid contribution bears to the value of the outstanding Membership Interests.

## **ARTICLE VIII TRANSFERS OF INTEREST AND EVENTS OF WITHDRAWAL**

8.1 General Restrictions. Except as expressly provided in this Agreement, no Member may Transfer all or any part of such Member's Interest to another Person. Any purported Transfer of an Interest in violation of the terms of this Agreement will be null and void and of no effect. A permitted Transfer will be effective as of the date specified in the instruments relating thereto. Any Transferee desiring to make a further Transfer will become subject to all of the provisions of this Article VIII to the same extent and in the same manner as any Member desiring to make any Transfer.

8.2 Permitted Transfers. Each Member (a "Transferor") may Transfer (but not substitute the assignee as a Substitute Member in such Member's place, except in accordance with Section 8.3),

by a written instrument, all or any part of such Member's Interest to a Permitted Transferee only, provided that the Transfer would not result in the "termination" of the Company pursuant to Code § 708. The notice of any proposed transfer by written instrument will state the Interest proposed to be transferred, the nature of the Transfer, the amount and terms of any consideration offered, and the name and address of the proposed Transferee and any other parties to the transaction. If a written offer, purchase agreement or any other documents has been prepared in connection with such proposed Transfer, the notice will include a copy of all such documents. Any assignee of an Interest as allowed by this Section 8.2 who does not become a Substitute Member as provided in Section 8.3 (a "Transferee") (i) will not be a Member and will not have any right to vote as a Member or participate in the management of the business and affairs of the Company, such right to vote such Interest and to participate in the management of the business and affairs of the Company continuing with the Transferor, and (ii) shall have only those rights accorded to the transferee of a transferable interest as set forth in Section 322C.0502 of the Revised Act. The Transferee will, however, be entitled to distributions and allocations of the Company, as provided in Article IV, attributable to the Interest that is the subject of the Transfer to such Transferee.

### 8.3 Substitute Members.

- a. No assignee of all or part of a Member's Interest will become a Member in place of the Transferor (a "Substitute Member") unless and until:
  - i. The Transferor (if living) has stated such intention in the instrument of assignment;
  - ii. The Transferee has executed a joinder or other instrument accepting and adopting the terms and provisions of this Agreement in the form attached as **Exhibit B**;
  - iii. The Transferor or Transferee has paid all reasonable expenses of the Company in connection with the admission of the Transferee as a Substitute Member; and
  - iv. The Transferee is (A) a Permitted Transferee, (B) the Members holding at least a majority of the remaining Percentage Interests, in their sole and absolute discretion, have consented in writing to such Transferee becoming a Substitute Member, or (C) the Transferee acquired the Interests properly pursuant to this Article VIII.
- b. Upon satisfaction of all of the foregoing conditions with respect to a Transferee, the Members will cause this Agreement to be duly amended to reflect the admission of the Transferee as a Substitute Member.

8.4 Effect of Admission as a Substitute Member. Unless and until admitted as a Substitute Member pursuant to Section 8.3, a Transferee is not entitled to exercise any rights of a Member in the Company, including the right to vote, grant approvals or give consents with respect to such Interest, the right to require any information or accounting of the Company's business or the right

to inspect the Company's books and records, but a Transferee will only be entitled to receive, to the extent of the Interest transferred to such Transferee, the Distributions to which the Transferor would be entitled.

A Transferee who has become a Substitute Member has, to the extent of the Interest transferred to such Transferee, all the rights and powers of the Member for whom such Transferee is substituted and is subject to the restrictions and liabilities of a Member under this Agreement. Upon admission of a Transferee as a Substitute Member, the Transferor will cease to be a Member of the Company to the extent of such Interest.

8.5 Additional Members and Interests. Additional Members may be admitted to the Company and additional Interests may be issued with the approval of all of the Members of the Company. Whenever any additional Member is admitted to the Company, or any additional Interest is issued, in accordance with this Section 8.5, the Percentage Interest of each Member outstanding immediately prior to such admission or issuance will be decreased proportionately, as appropriate, to maintain the aggregate Percentage Interests of the Members at exactly one hundred percent (100%). The Members or Officers will cause Schedule 1 to be revised to reflect any adjustment in the Percentage Interests of the Members in accordance with this Section 8.5, but such revision shall not, by itself constitute an amendment of this Agreement for purposes of Section 10.7.

8.6 Redemption of Interests. Any Interest may be redeemed by the Company, by purchase or otherwise, upon the consent of the holder of such Interest and approval by the Members. Whenever any Interest is redeemed by the Company in accordance with this Section 8.6, the Percentage Interest of each Member outstanding immediately following such redemption will be increased proportionately, as appropriate, to maintain the aggregate Percentage Interests of the Members at exactly one hundred percent (100%). The Members or Officers will cause Schedule 1 to be revised to reflect any adjustment in the Percentage Interests of the Members in accordance with this Section 8.6, but such revision shall not, by itself constitute an amendment of this Agreement for purposes of Section 10.7.

8.7 No Dissociation. A Member shall not cease to be a Member as a result of the Bankruptcy of such Member or as a result of any other events specified in Section 322C.0602 of the Revised Act except for the events set forth in clauses (11), (12) and (13) of Section 322C.0602 of the Revised Act. So long as a Member continues to hold any Interest, such Member shall not have the ability to withdraw or resign as a Member and any such withdrawal or resignation or attempted withdrawal or resignation by a Member prior to the dissolution or winding up of the Company shall be null and void. As soon as any Person who is a Member ceases to hold any Interest (other than (i) a transfer for security purposes; or (ii) a charging order in effect under Section 322C.0503 of the Revised Act which has not been foreclosed) such Person shall no longer be a Member and shall be dissociated.

8.8 Negotiated Sale to Company or Members. In the event that any Member should desire to transfer such Member's Membership Interest, other than to a Permitted Transferee, and whether or not pursuant to a bona fide third-party offer, the Members of the Company shall first negotiate in good faith to determine if an agreement as to the terms (excluding the purchase price) of the sale of the Membership Interest to the Company can be reached. In determining the purchase price for

the Membership Interest to be purchased by the Company or the remaining Members, the value of the Property shall be one-half (1/2) of the tax-assessed value of the Property for the year of sale, as determined by the \_\_\_\_\_ County Assessor's Office.

If the transferring Member and the Company cannot reach an agreement as to terms within thirty (30) days following receipt of the notice described in Section 8.2, whichever shall first occur (the "Company Option Period"), the provisions of Section 8.9 and Section 8.10 hereof shall govern.

If the transferring Member and the Company reach an agreement, then the purchase by Company of all, but not less than all, of the transferring Member's Membership Interest offered for sale must be approved by a unanimous vote of the Members (other than any Member who is also the transferring Member), within twenty (20) days following the agreement by the transferring Member and the Company.

8.9 Member Right of First Refusal. In the event the Company does not purchase the Membership Interest, then for a period of thirty (30) days after the end of the Company option period described in Section 8.8, the non-transferring Members will have an option to purchase all, but not less than all, of the Membership Interest described in the notice at the price and on the terms the transferring Member proposes to sell to the third party. This option will be exercised by giving notice of such exercise to the transferring Member and all other Members. Each non-transferring Member will be entitled to purchase a proportionate share of the Membership Interest described in the notice. For purposes of this section, the term "proportionate share" means that portion of the Membership Interest described in the notice which the Membership Interest owned by the non-transferring Member bears to the total Membership Interest (other than the Membership Interest described in the notice) owned by all other non-transferring Members who have elected to purchase the Transferring Member's Interest. If any portion of the Membership Interest described in the notice is not purchased by the non-transferring Member first entitled thereto, the remaining Members shall have the option to purchase the Membership Interest of the transferring Member.

8.10 Failure to Exercise Option. If the Company and/or the non-transferring Members do not purchase or exercise options described in Section 8.8 and 8.9 to purchase all of the Membership Interest described in the notice of proposed Transfer, the transferring Member may, at any time within ninety (90) days after expiration of the options, transfer the Membership Interest described in the notice that are not purchased by the non-transferring Members to the proposed transferee, but only in the manner and on the terms set forth in the notice of proposed Transfer. If the proposed transferee is not an existing Member of the Company, the proposed transferee must become a Substitute Member as described in Section 8.3 herein. If the Transfer is not made within such ninety (90) day period the exercise of the options by the non-transferring Members shall remain effective, and the Member must again comply with all provisions of this Article VIII as to the portion of the Membership Interest not purchased by the non-transferring Members.

8.11 Death of a Member. Upon the death of a Member, the estate of the deceased Member ("Deceased Member") shall give written notice (the "Transfer Notice") to the Company and to all other remaining Members. Thereafter, the Deceased Member's Membership Interest may pass to a Permitted Transferee so long as the Permitted Transferee agrees in writing to be bound by the terms of this Agreement; provided, however, that if the transfer is not to a Permitted Transferee

who agrees in writing to be bound by the terms of this Agreement, than the Membership Interest of the Deceased Member shall be subject to the purchase options set forth in Section 8.8, above, with the option period commencing as of the date of receipt of the Transfer Notice, and the surviving Members or Company shall have the option to purchase the Membership Interest in accordance with Section 8.8, for the price determined in accordance with Section 8.8, and on the terms described in Sections 8.12, 8.13, and 8.14.

If the Permitted Transferee of a Deceased Member is less than 25 years old, the Permitted Transferee must become a Substitute Member under Section 8.3 herein, and will be deemed a "Minor Permitted Transferee". Minor Permitted Transferees shall not be responsible for any maintenance responsibilities associated with the Property, the payment of real estate taxes or the payment of Required Expenses or Significant Expenditures until the Minor Permitted Transferee reaches the age of 26. During the period of ownership of Membership Interests by a Minor Permitted Transferee, the Percentage Interest represented by such Interest will be disregarded in determining each of the Members' respective financial obligation under this Agreement and for those decisions that do not require unanimous approval of the Members, with the effect that such Interest will be treated as if such Interest had not been issued. However, for those decisions requiring unanimous consent of the Members under this Agreement, the Minor Permitted Transferee shall be entitled to vote his or her interest, or if the Minor Permitted Transferee is under the age of 18, the appointed guardian or custodian for the Minor Permitted Transferee shall vote on his or her behalf. At all times, the remaining Members who are not Minor Permitted Transferees shall carry out the terms and spirit of this Agreement in good faith and with the intention of protecting the Property and all Members' Membership Interests in the Company.

8.12 Payment of Purchase Price. Unless otherwise agreed between Seller and Purchaser, payment of the purchase price determined under Section 8.8 will be made as follows:

- a. If the payment is being made to a Member who is indebted to the Company, the amount of the indebtedness will be paid by the indebted Member by first applying the amount of the initial payment to the indebtedness and thereafter applying payments on the note.
- b. The initial down payment on the purchase price will be thirty percent (30%) of the purchase price. The balance of the purchase price will be paid in equal quarterly installments over four (4) years commencing ninety (90) days after the initial payment.

The unpaid principal balance will accrue interest from and after the initial payment at the Prime Rate, or the maximum rate then allowed to be paid in such circumstances, whichever is less. The maker of the note will have the right to prepay the entire balance or any part thereof, without penalty, at any time. The obligation to pay the balance and interest thereon will be evidenced by a duly executed promissory note containing the aforesaid terms and such other terms as are customary for such instruments. In the event of default on such promissory note, and if such default is not remedied within thirty (30) days of notice, or in the event of sale of all or substantially all of the assets by the Company the entire unpaid principal balance of the note, together with interest accrued thereon, may be declared due and payable, and the transferring Member or his or her successor in interest or legal representative, as the case may be, may take any action or proceeding at law or in equity which is deemed advisable to enforce payment, including reasonable

attorney fees and costs of collection

8.13 Transfer and Pledge of Membership Interest Sold. Upon receipt of the initial payment for the Membership Interest, the seller will execute and deliver to the purchasing Member all documents necessary for the transfer of the Membership Interest being purchased. When the initial payment on the purchase of the Membership Interest has been paid to the selling Member or his or her legal representative, as the case may be, the parties will enter into a security agreement, in customary and usual form, whereby the Membership Interest being purchased will be pledged as security for payment of the promissory note.

8.14 Closing. The closing of any purchase transaction pursuant to this Article VIII will take place at the principal office of the Company or such other location as the parties may agree within thirty (30) days after the later of: (i) the exercise of the option giving rise to the purchase; or (ii) the final determination of the purchase price pursuant to Section 8.12.

8.15 Involuntary Transfers. There will be absolutely no involuntary transfer of all or any portion of a Membership Interest whatsoever, whether by operation of law, judgment or decree of any court (including a Judgment and Decree of Dissolution of Marriage) or otherwise without the prior written consent of all Members. Without in any manner restricting the effect of the foregoing sentence, in the event of any involuntary transfer of all or any portion of a Membership Interest, the non-transferring Members will have the same options described in Section 8.8 and Section 8.9 to purchase the Membership Interests transferred. Involuntary transfer includes, without limitation, if the Member is adjudicated as bankrupt, makes a general assignment for the benefit of creditors or is subject to a judgment on which execution is levied, or in the event that all or any portion of the Membership Interest is foreclosed upon or sold pursuant to any collateral agreement or otherwise. The option will commence as of the date all non-transferring Members receive actual notice of the involuntary transfer.

8.16 Transfer to Permitted Transferee. In the event of a Transfer of all or any portion of his or her Membership Interest to a Permitted Transferee, the Member shall, within fifteen (15) days following said Transfer, give written notice to the Company and all other Members of the Transfer, which notice will state the number of Membership Interest transferred, the nature of the Transfer, and the name and address of the transferee.

8.17 Procedure on Transfer. Following any Transfer, whether voluntary or involuntary, including a Transfer to a Permitted Transferee, all restrictions in this Agreement as to all Membership Interests will continue in full force and effect. Before any Transfer of any Membership Interest will be honored by the Company, or before any right, title or interest therein will vest in any transferee, including a transfer to a Permitted Transferee or a transfer as a result of the death of a Member, the transferee must execute and deliver to the Company an addendum to this Agreement, acceptable in form and substance to the Company, whereby the transferee agrees to become a party to this Agreement and to be bound by all of its terms and conditions.

**ARTICLE IX  
DISSOLUTION AND TERMINATION**

9.1 Events Causing Dissolution.

- a. Notwithstanding Section 322C.0701, the Company will be dissolved upon the first to occur of the following events:
  - i. Upon approval of all of the Members of the Company; or
  - ii. Upon the entry of a decree of judicial dissolution permitted under Section 322C.0701 of the Revised Act.
- b. To the full extent permitted by applicable law, the foregoing events which cause dissolution of the Company shall be the exclusive events which cause the dissolution of the Company.

9.2 Effect of Dissolution. Except as otherwise provided in this Agreement, upon the dissolution of the Company, the Members will take such actions as may be required to wind up, liquidate and terminate the business and affairs of the Company in accordance with this Agreement and applicable laws. In connection with such winding up, the Members may liquidate and reduce to cash (to the extent necessary or appropriate) the assets of the Company as promptly as is consistent with obtaining fair market value therefor, apply and distribute the proceeds of such liquidation and any remaining assets in accordance with the provisions of Section 9.3, and do any and all acts and things authorized by, and in accordance with, applicable laws for the purpose of winding up and liquidation.

9.3 Application of Proceeds. Upon dissolution and liquidation of the Company, the assets of the Company will be applied and distributed in the order of priority set forth in Section 4.2.

**ARTICLE X  
MISCELLANEOUS**

10.1 Title to the Property. Title to the Property will be held in the name of the Company. No Member has any ownership interest or rights in the Property, except indirectly by virtue of such Member's ownership of an Interest. No Member has any right to seek or obtain a partition of the Property, nor does any Member have the right to specific assets of the Company upon the liquidation of or any distribution from the Company.

10.2 Nature of Interest in the Company. An Interest is personal property for all purposes.

10.3 Notices. Any notice, demand, request or other communication ("Notice") required or permitted to be given by this Agreement or the Revised Act to the Company, any Member, or any other Person will be sufficient if in writing and if hand delivered or mailed by registered mail, certified mail or courier to the Company at its principal office or to a Member or any other Person at the address of such Member or such other Person as it appears on Schedule 1 next to such

Member's name or, if updated by the Member by written notice to the Company, in the records of the Company or sent via email to the email address, if any, of the recipient as it appears on Schedule 1 next to such Member's name or, if updated by the Member by written notice to the Company, in the records of the Company. All Notices that are mailed will be deemed to be given when deposited in the United States mail, postage prepaid. All Notices that are hand delivered will be deemed to be given upon delivery. All Notices that are given via email (with confirmation of transmission) will be deemed given when sent by the sender.

10.4 Waiver of Default. No consent or waiver, express or implied, by the Company or a Member with respect to any breach or default by another Member hereunder will be deemed or construed to be a consent or waiver with respect to any other breach or default by such Member of the same provision or any other provision of this Agreement. Failure on the part of the Company or a Member to complain of any act or failure to act of another Member or to declare such other Member in default will not be deemed or constitute a waiver by the Company or the Member of any rights hereunder.

10.5 No Third-Party Rights. None of the provisions of this Agreement are for the benefit of or enforceable by any third-party, including creditors of the Company; provided, however, that the Company may enforce any rights granted to the Company under this Agreement, its Articles or under the Revised Act, as the case may be.

10.4 Entire Agreement. This Agreement constitutes the entire agreement of the Members with respect to the subject matter hereof and supersedes all prior agreements with respect to each Member's Interest in the Company, agreements, arrangements and understandings among the Members regarding formation, operation and continuation of the Company and the relations among and between the Members and the Company.

10.5 Amendments. Except as otherwise provided herein, and notwithstanding Section 322C.0407, Subd. 3(4)(iv) of the Revised Act, this Agreement and the Articles may not be amended or modified in any manner other than by a written agreement of all of the Members at the time of such modification or amendment.

10.6 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable to any extent, the legality, validity and enforceability of the remainder of this Agreement will not be affected thereby and will remain in full force and effect and may be enforced to the greatest extent permitted by law.

10.7 Binding Agreement. Subject to the restrictions on the disposition of Interests contained herein, the provisions of this Agreement are binding upon, and will inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

10.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which shall constitute but one instrument.

10.9 Governing Law. This Agreement will be governed by, and construed under, the laws of

the State of Minnesota, all rights and remedies being governed by said laws.

IN WITNESS WHEREOF, the Company and the Members hereto have signed and acknowledged this Agreement as of the Effective Date.

**THE ANDERSON FAMILY CABIN, LLC**

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By: John Anderson  
Its: President  
Date: September 24, 2019

**INITIAL MEMBERS:**

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John Anderson  
Date: September 24, 2019

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James Anderson  
Date: September 24, 2019

**THE ANDERSON FAMILY CABIN, LLC – OPERATING AGREEMENT**

**SCHEDULE 1**

**Schedule of Members and Percentage Interests**

<b>Member's Name and Address</b>	<b>Capital Contribution</b>	<b>Percentage Interest</b>	<b>Membership Class</b>

**THE ANDERSON FAMILY CABIN, LLC – OPERATING AGREEMENT**  
**EXHIBIT A**

**(Articles of Organization)**

**THE ANDERSON FAMILY CABIN, LLC – OPERATING AGREEMENT**  
**EXHIBIT B**

**Form of Joinder to Operating Agreement**

The person whose name and signature appears below has, on the date indicated, become a party to that certain Operating Agreement of The ANDERSON FAMILY CABIN, LLC, dated as of September 19, 2018, as the same has been amended from time to time as of the date hereof (the “**Operating Agreement**”) and shall be deemed for all purposes a Member and/or Substitute Member (as applicable) thereunder. The terms of the Operating Agreement shall be fully applicable to all interests now owned or hereafter acquired by such Member:

Name of Member: \_\_\_\_\_

Signature: \_\_\_\_\_

Description of Member’s Interest: \_\_\_\_\_

Date: \_\_\_\_\_

***Acknowledged and Agreed By:***

**THE ANDERSON FAMILY CABIN, LLC**

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

Its: President

Date: \_\_\_\_\_

**THE ANDERSON FAMILY CABIN, LLC – OPERATING AGREEMENT**  
**EXHIBIT C**

**Duties and Responsibilities of Officers**

**Chief Executive Officer or President.** Unless provided otherwise by a resolution adopted by the Member, the Chief Executive Officer or President will: (i) have general active management of the day-to-day business of the Company; (ii) preside at meetings of the members; (iii) see that all orders and resolutions of the Member are carried into effect; (iv) have authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by this Agreement or the Member to some other officer or agent of the Company; (v) maintain records of and certify proceedings of the members; and (vi) perform such other duties as may from time to time be prescribed by the Member.

**Treasurer.** Unless provided otherwise by a resolution adopted by the Member, the Treasurer will: (i) keep accurate financial records for the Company; (ii) deposit all monies, drafts, and checks in the name of and to the credit of the Company in such banks and depositories as the Member may designate from time to time; (iii) endorse for deposit all notes, checks, and drafts received by the Company as ordered by the Sole member, making property vouchers therefore; (iv) disburse Company funds and issue checks and drafts in the name of the Company as ordered by the Member; (v) render to the Member, whenever requested, an account of all such officer's transactions as Treasurer and of the financial condition of the Company; and (vi) perform such other duties as may be prescribed by the Member or the President from time to time.

**Vice President.** The Vice President, if any, or Vice Presidents in case there be more than once, will have such powers and perform such duties as the President or the Member may prescribe from time to time. In the absence of the President or in the event of the President's death, inability, or refusal to act, the Vice President, or in the event there be more than one Vice President, the Vice President in the order designated by the Member, or, in the absence of any designation, in the order of their seniority, will perform the duties of the President, and, when so acting, will have all the powers of and be subject to all of the restrictions upon the President.

**Secretary.** The Secretary will attend all meetings of the members and will maintain records of, and whenever necessary, certify all proceedings of the members. The Secretary will: (i) keep the required records of the Company, when so directed by the Member or other person or person authorized to call such meetings; (ii) give or cause to be given notice of meetings of the members; and (iii) perform such other duties and have such other powers as the President or the Member may prescribe from time to time.

**THE ANDERSON FAMILY CABIN, LLC – OPERATING AGREEMENT**

**EXHIBIT D**

**Legal Description of Property**

Lot Three (3), Block One (1), South Twins, Todd County, Minnesota, subject to easements and restrictive covenants of record.

**THE ANDERSON FAMILY CABIN, LLC – OPERATING AGREEMENT**

**EXHIBIT E**

**Cabin Rules**

