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# Nine Bean-Rows Llc: Using the Limited Liability Company to Hold Vacation Homes and Other Personal-Use Property

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**NINE BEAN-ROWS LLC: USING THE LIMITED LIABILITY COMPANY TO HOLD VACATION HOMES AND OTHER PERSONAL-USE PROPERTY**

J. William Callison<sup>†</sup>

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I. INTRODUCTION

Many state limited liability company (LLC) statutes permit LLC formation for any lawful purpose; therefore, LLCs can be formed for non-business purposes.<sup>1</sup> This has led to LLCs used as subsidiaries for nonprofit, charitable entities.<sup>2</sup> It has also led to

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1. See, e.g., COLO. REV. STAT. § 7-80-103 (2006 & Supp. 2010) (“A limited liability company may be formed under this article for any lawful business . . .”); *id.* § 7-80-102(3) (defining “business” to mean “any lawful activity, including ownership of real or personal property, whether or not engaged in for profit”).

2. See generally Cassady V. Brewer, *A Novel Approach to Using LLCs for Quasi-Charitable Endeavors (a/k/a “Social Enterprise”)*, 38 WM. MITCHELL L. REV. 678 (2012) (arguing that a complex ownership arrangement, including LLC subsidiaries, is the most productive entity structure for “social entrepreneurs” or “quasi-

LLC use by individuals and families for property holding purposes, where the LLC's property is not leased to third parties or otherwise used for commercial purposes, but is used instead for personal purposes, such as for a vacation home. This article considers personal-use LLCs and concludes that they are viable vehicles for holding family property.<sup>3</sup> The extreme adaptability of the LLC form allows families that hold personal-use property together to avoid many of the problems, discussed *infra*, with real estate co-ownership.<sup>4</sup> For example, placing personal-use property in an LLC allows families to establish a coherent system for managing and controlling the property, restricting the transferability of ownership interests, providing a buy-out mechanism in the event a family member desires to withdraw from ownership, preventing and resolving disputes among family members, and providing estate planning and gifting options that do not involve real estate transfers.

In some sense, this article can be viewed as an attempt to put into words the thoughts behind my own creation of a Colorado LLC to hold a non-Colorado vacation property.<sup>5</sup> A version of an operating agreement drafted for such an LLC is included as

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charitable" organizations); David S. Walker, *A Consideration of an LLC for a 501(c)(3) Nonprofit Organization*, 38 WM. MITCHELL L. REV. 627 (2012) (explaining the advantages of a subsidiary structure whereby a tax exempt organization, in accordance with I.R.C. § 501(c)(3), is the sole member of a single-member LLC).

3. See *infra* Part IV.

4. See *infra* Part II.3.

5. I chose a Colorado LLC only because I am a Colorado lawyer and have familiarity with Colorado's LLC statute. The name "Nine Bean-Rows" is entirely fictional and is borrowed from William Butler Yeats's poem, *The Lake Isle of Innisfree*:

I will arise and go now, and go to Innisfree,  
And a small cabin build there, of clay and wattles made;  
Nine bean-rows will I have there, a hive for the honeybee,  
And live alone in the bee-loud glade.

And I shall have some peace there, for peace comes dropping slow,  
Dropping from the veils of the mourning to where the cricket sings;  
There midnight's all a glimmer, and noon a purple glow,  
And evening full of the linnets' wings.

I will arise and go now, for always night and day  
I hear lake water lapping with low sounds by the shore;  
While I stand on the roadway, or on the pavements gray,  
I hear it in the deep heart's core.

WILLIAM BUTLER YEATS, *The Lake Isle of Innisfree* (1893), in *THE COLLECTED POEMS OF W.B. YEATS* 31 (2000).

Appendix A to the article.<sup>6</sup> The facts of my particular situation are as follows: (a) parents (Ps) presently own property in a Northeastern state; (b) Ps acquired property by gift from a friend who owned it for many decades, such that there is low (or no) present basis and there is no debt encumbering the property; (c) Ps and their children (Cs) have been using the property as vacation property for many years; (d) the property has not been used for commercial purposes for the last century or so, other than occasional third-party timbering, thus operating expenses are paid for by Ps and Cs; (e) Cs are three siblings who are relatively close but live in different parts of the country and have different uses for the property; (f) two of the Cs are married with different numbers of children, and the third C is married without children; and (g) Ps want to continue to use the property but also want to convey ownership and other responsibilities to Cs. I suspect this is not a unique situation. The rest of the story follows.

## II. CHOICE OF ENTITY OR NON-ENTITY

The first question is whether to use an entity to hold the real property or whether Cs should receive the property as co-owners—specifically, as tenants in common.<sup>7</sup> In making the choice it seems that there are two potentially viable entity forms: a family corporation and a family LLC. General and limited partnerships are not available due to the “for profit” nature of partnerships.<sup>8</sup> The corporate form is undesirable for the traditional reasons corporations are not used for real estate holdings, including double taxation and the inability to extricate the property from the corporate solution without taxation.<sup>9</sup> This leaves the choice

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6. See *infra* Appendix A. The operating agreement represents one lawyer’s distillation of the issues concerning the holding of valued (if not valuable) property. Although it may provide a model for others, it should not be treated as the last word, and drafters should approach family personal-use LLCs on an individual basis and with an open mind.

7. See BLACK’S LAW DICTIONARY 1604 (9th ed. 2009) (defining a tenancy in common as “[a] tenancy by two or more persons, in equal or unequal undivided shares, each person having an equal right to possess the whole property but no right of survivorship”).

8. See UNIF. P’SHP ACT § 202(a) (amended 1997), 6 U.L.A. 56 (Supp. 2001) (“[T]he association of two or more persons to carry on as co-owners a business for profit forms a partnership . . .”).

9. See Mohsen Manesh, *Legal Asymmetry and the End of Corporate Law*, 34 DEL. J. CORP. L. 465, 494 (2009) (“The tax code tax[es] . . . both corporate income at the entity level, and any dividends distributed at the shareholder level.”).

between the LLC form and a non-entity co-ownership arrangement. In making the choice to use an LLC, the following factors should be considered:

A. *Income Tax Treatment*

Business law practitioners have come to think of multiple member LLCs as partnerships for income tax purposes. However, such treatment presupposes that the LLC is a “business entity” that is not classified as a corporation.<sup>10</sup> The tax regulations define “business entity” as “any entity recognized for federal tax purposes . . . that is not properly classified as a trust . . . or otherwise subject to special treatment under the Internal Revenue Code.”<sup>11</sup> Thus, if a particular LLC is “recognized for federal tax purposes” as a partnership, the check-the-box rules apply to tax the multi-member LLC as a partnership, unless corporation tax status is elected.<sup>12</sup>

“Partnership” is defined for tax purposes as an “unincorporated organization through or by means of which any business, financial operation, or venture is carried on.”<sup>13</sup> In the case of a personal-use LLC, no business or financial operation is being carried on or is intended. Therefore, the LLC would not be recognized as an entity for tax purposes and would not be a partnership under the check-the-box regulations.<sup>14</sup> As a result, the personal-use LLC should be treated as a co-ownership of real property and the members who paid tax-deductible items, such as

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10. Treas. Reg. § 301.7701-2(a) (2009).

11. *Id.*

12. *See id.*

13. I.R.C. §§ 761(a), 7701(a) (2011).

14. *See, e.g.,* Madison Gas & Elec. Co. v. Comm’r, 633 F.2d 512, 515 (7th Cir. 1980) (“While it is well-settled that mere co-ownership of property does not create a tax partnership, co-owners may also be partners if they or their agents carry on the requisite ‘degree of business activities.’” (quoting Powell v. Comm’r, 26 T.C.M. (CCH) 161 (1967))); *see also* ARTHUR B. WILLIS, JOHN S. PENNELL & PHILIP F. POSTLEWAITE, PARTNERSHIP TAXATION ¶ 1.05 (7th ed. 2011) (discussing partnership or co-tenancy classification). If the LLC’s assets started to be used for business purposes, then its tax status might change. An interesting question may arise if the LLC subsequently has business purposes, such as occasionally timbering the property. It may be that the LLC becomes a partnership during the short-term period while there is a business. A further wonderment is whether the LLC might reorganize in a state with series LLCs, and undertake the business activity in a partnership-taxable series while leaving personal use in a co-ownership-taxable series. These considerations are beyond this article’s scope and are articulated only to highlight particular questions.

property taxes, should receive the deductions attributable thereto.<sup>15</sup>

*B. Liability Considerations*

It is commonplace to think of the LLC as providing liability protection to its members and managers as every state LLC statute contains liability protection language.<sup>16</sup> There are several exceptions to the no-personal-liability rule that are likely to apply in the case of personal-use LLCs. First, an LLC member or manager can be liable to third parties on the ground that his or her activities caused the liability.<sup>17</sup> Stated differently, people are always liable for their own negligence and other tortious conduct.

Second, a member or manager can be personally liable under a contract when the contract is construed as having been made by the member or manager on his or her own behalf, rather than by the LLC on the LLC's behalf.<sup>18</sup> Under this undisclosed principal rule, for example, a member or manager who personally contracts for a replacement roof without designating that he or she is acting as agent for an LLC may be personally liable to the roofer. Similarly, a member's or manager's personal guaranty of an LLC obligation creates personal liability to the extent of the guaranty, and it can be expected that significant personal-use LLC creditors will require member guaranties.<sup>19</sup>

Third, important in the personal-use LLC context, LLC members generally are liable to third parties, particularly with respect to tort and other non-contract based liabilities, under corporate veil piercing theories. Some states, such as Colorado, establish an LLC veil piercing doctrine by statute.<sup>20</sup> In most states,

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15. See *Madison Gas & Elec. Co.*, 633 F.2d at 517. The asset could presumably be placed into a trust, in which trustees take title to property for the purpose of protecting or conserving it for beneficiaries. This creates a different regime for tax and other purposes and is beyond the scope of this article.

16. See, e.g., COLO. REV. STAT. § 7-80-705 (2011) ("Members and managers of limited liability companies are not liable under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company.").

17. See J. WILLIAM CALLISON & MAUREEN A. SULLIVAN, LIMITED LIABILITY COMPANIES: A STATE-BY-STATE GUIDE TO LAW AND PRACTICE § 5:2 (2007), and cases cited therein.

18. *Id.*

19. *Id.*

20. See, e.g., COLO. REV. STAT. § 7-80-107(1) ("[T]he court shall apply the case law which interprets the conditions and circumstances under which the corporate veil of a corporation may be pierced under Colorado law.").

the LLC veil piercing doctrine is an equitable remedy available to courts under the common law.<sup>21</sup> Although I am unaware of any case law involving the application of veil piercing concepts to LLCs similar to those formed to hold family vacation property, I have elsewhere noted several theoretical bases for limited liability protection and considered veil piercing as a “flip-side” response to them.<sup>22</sup> Generally speaking, the overall foundation for limited liability protection reflects business law’s “judgment that the benefits of limited liability exceed its costs.”<sup>23</sup> It is arguable that limited liability protection is grounded in the business nature of most organizations and that extending limited liability protection to the owners of entities that are not engaged in any business makes little sense. However one might cast this argument, the fact remains that the state LLC statutes provide unequivocally that limited liability protection is available for LLC members without distinguishing business LLCs from non-business LLCs. As stated below, I suspect that the business/non-business distinction may come into play when courts consider equitable veil piercing and that some courts will be more likely to pierce in personal-use contexts. However, even if there is veil piercing, the end result should not differ from the co-owner’s liability in a tenancy in common; therefore, I see no disadvantage (and much likely advantage) to using the LLC form.

Although studies demonstrate that veil piercing cases are fact-specific and that owner control is a common feature in those cases where the veil is pierced, “it is difficult to discern any overarching doctrine that assists in determining when the limited liability veil will be pierced and when it will not.”<sup>24</sup> The cases generally set forth

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21. See CALLISON & SULLIVAN, *supra* note 17, § 5:3, and numerous cases cited therein.

22. See J. William Callison, *Rationalizing Limited Liability and Veil Piercing*, 58 BUS. LAW. 1063 (2003) [hereinafter *Rationalizing*] (the bases are, first, reducing transaction costs and securing efficient capital financing; second, founded in corporate “nexus-of-contracts” theory to reflect a hypothetical bargain with creditors; and, third, based on a democratic approach to entity formation and keeping entry into business markets competitive and democratic); see also J. William Callison, *Federalism, Regulatory Competition, and the Limited Liability Movement: The Coyote Howled and the Herd Stampeded*, 26 J. CORP. L. 951 (2001) (exploring theories of efficiency, corporate personhood, democracy, and limited liability, and considering veil piercing as a response to these theories).

23. Robert B. Thompson, *Unpacking Limited Liability: Direct and Vicarious Liability of Corporate Participants for Torts of the Enterprise*, 47 VAND. L. REV. 1, 23 (1994).

24. *Rationalizing*, *supra* note 22, at 1069.

vague standards, such as that limited liability should not “sanction a fraud or promote injustice,” provide a laundry list of supposedly relevant factors, fail to analyze the application of those factors, and make conclusory pronouncements of results.<sup>25</sup> The most important veil piercing factor appears to be the presence or absence of financial impropriety, such as where owners use entity assets as their “personal piggybanks” and thereby fail to respect the financial separation of the entity and themselves.<sup>26</sup> The theoretical discussion of limited liability and veil piercing appears to have relatively little practical interface with personal-use LLCs, in which statutes create broad liability protection that is not founded in business-oriented rationales, and where the very nature of the organization implies the personal use of entity assets.<sup>27</sup> This lack of clarity may be troubling to people who engage in planning (such as lawyers), but in my view the question of veil piercing should boil down to the question of whether an entity is used to “sanction a fraud or promote injustice.” In the case of a family-owned personal-use LLC, piercing generally should not occur since there are valid reasons, albeit perhaps not business reasons, for placing assets in LLC form and maintaining entity/owner separation other than to shield personal assets from creditors.

To illustrate the operations of limited liability rules in the

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25. *Id.* (quoting *Assoc. Vendors, Inc. v. Oakland Meat Co.*, 26 Cal. Rptr. 806, 815 (Dist. Ct. App. 1962)).

26. See Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036, 1071 (1991) (“[M]ore powerful factors are demonstrations of lack of substantive separation of the corporation and its shareholders, and intertwining in the activities of the corporation and its shareholders.”); Robert B. Thompson, *The Limits of Liability in the New Limited Liability Entities*, 32 WAKE FOREST L. REV. 1, 11 (1997) (“Courts generally refuse to impose liability on shareholders unless they have control of the corporation and there has been some misuse of the corporate form, such as . . . intermingling of corporate and individual transactions.”).

27. See, e.g., COLO. REV. STAT. § 7-80-103 (2011) (“A limited liability company may be formed under this article for any lawful business . . . .”); *id.* § 7-80-102(3) (defining “business” as “any lawful activity, including ownership of real or personal property, whether or not engaged in for profit”); see also Ken Laino, *Family LLC’s*, ASSET PROTECTION L.J. (May 21, 2010), <http://www.assetprotectionlawjournal.com/2010/05/articles/estate-planning/family-llcs/> (describing family LLCs as “vehicle[s] to hold and administer *family investments*” (emphasis added)); Frank L. Watson, Jr. & Mary A. Jackson, *The Tennessee Revised Limited Liability Company Act: A Practitioner’s Guide to Avoiding the Pitfalls*, 37 U. MEM. L. REV. 311, 336–37 (2007) (discussing the Tennessee Revised Limited Liability Company Act, which allows only family LLCs to take advantage of restrictions that are “useful in the *estate planning context* to achieve valuation discounts for lack of marketability” (emphasis added)).

personal-use LLC context, assume that C1 contracts with a ditch-digger to dig a ditch, and that she enters the contract without clarifying that it is the LLC which is retaining the ditch-digger. The ditch-digger digs half the ditch and is fired by C1, who proceeds to dig the rest of the ditch herself. C1 lays down the shovel for a nap, without marking the ditch's boundaries. While C1 snoozes, a car comes up the driveway, drops into the unmarked ditch, and breaks an axle. C1 gets irritated with the ditch-digger and refuses to pay. The ditch-digger sues C1 on the contract, and the car owner sues the LLC and C1 for negligence. My suspicion is that C1 is liable to the ditch-digger under undisclosed principal agency rules. If C1 was negligent in leaving an unmarked ditch, C1 would be personally liable for damages to the car. Since C1 was ditch-digging on the LLC's behalf (the ditch improving the property), the LLC would also be liable for damages to the car, and the car owner would be able to obtain judgments against C1 and the LLC for damage to the car.<sup>28</sup> C2 and C3, who were far from the scene, should lack any personal liability since they did not act as agent for an undisclosed principal and since they did not act negligently. Although veil piercing may remain an issue, my strong suspicion is that C2 and C3 would not be personally liable since the LLC is not being used inequitably and since the LLC's assets are themselves at risk.

*C. Property and Related Issues—LLC versus Tenancy in Common*

*1. Members' Creditors*

Tenancy in Common (TIC) is the main form of non-spousal, collective property ownership. In a TIC, each co-owner has a separate fractional share of undivided property, and all co-tenants share a single right of possession of the entire property.<sup>29</sup> A co-tenant can unilaterally alienate his or her property interest, pass his or her property interest to heirs, encumber his or her property interest, use property, and exclude third parties other than co-

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28. CALLISON & SULLIVAN, *supra* note 17, § 5:2 ("Persons are always individually liable for their own torts, and if a member, or the agent or employee of a member, commits a tort (e.g., fraud, negligence, professional malpractice) in the course of the LLC's business or otherwise, that person is liable for the injury caused.").

29. Taylor v. Canterbury, 92 P.3d 961, 964 (Colo. 2004).

tenants and their invitees from property.<sup>30</sup> Because a tenant in a TIC can encumber or alienate his or her interest without his or her co-tenants' consent, the tenant's individual creditors can take title to the interest without affecting the other co-tenants' interests. Creditors who take title, by foreclosure or otherwise, can exercise rights inherent in a TIC, including the right to an accounting and, importantly in connection with real property, the right to partition the property.

Although a TIC owner cannot bind the other co-owners to his or her creditors, the tenant's creditors can wreak havoc, for example, by threatening to seek a partition of the property sufficient to force the co-tenants to deal with it. Creditors with title obtained through foreclosure can control the making of improvements to the property, might be able to borrow money secured by the property, and can use the property. For example, a co-tenant has the right to lease the property to third persons as long as the leasing does not oust other co-tenants by making their occupancy impracticable.<sup>31</sup> Although the other co-tenants can get an accounting and receive their share of rent, the ability of a co-tenant's creditors to use and lease TIC property fundamentally affects the ownership and use of personal-use property.

In the case of an LLC, a member's creditors can generally obtain a charging order on the member's economic interest and may be able to foreclose on and sell the interest.<sup>32</sup> However, both the charging order and the foreclosure assignment affect economic rights only and do not afford the creditor any other rights regarding the LLC's property. Therefore, LLC ownership of personal-use property provides much more robust protection to the entity and the other members against an individual member's invasive creditors.

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30. *United States v. Craft*, 535 U.S. 274, 280 (2002).

31. *See Kean v. Dench*, 413 F.2d 1, 3 (3d Cir. 1969) (“[A] tenant in common may not, without the consent of his cotenant, convey by metes and bounds his undivided interest in a portion of the common property to a third person . . . such a conveyance is voidable only and as between the parties is valid and is to be given full effect if it can be done without prejudice or injury to the nonconveying cotenant.”).

32. *See CALLISON & SULLIVAN, supra* note 17, § 4:5, and cases cited therein.

## 2. *Transfer*

As a TIC involves real property ownership, transfer of a TIC interest involves real property conveyance, generally by deed. Thus, intergenerational transfers of TIC interests require the consideration of issues involved in real property conveyances, such as the triggering of due-on-sale clauses in mortgages, transfer fees and taxes, and changes in ownership for title insurance purposes.

Membership interests in LLCs are the members' personal property and transfers of membership interests do not involve conveyance of real property owned by the LLC, which remains LLC property.<sup>33</sup> Therefore, use of an LLC allows intra-family transfers without triggering anti-transfer contractual provisions (other than those specifically drafted to include transfers of underlying membership interests), without causing real property transfer fees and taxes, and without affecting an owner's title insurance policies and rights.

## 3. *Restraints on Alienation*

Families that collectively own real property generally will seek to limit ownership and use rights to family members and will seek to restrict the ability of family members to transfer their interests to outsiders. Real property held in TIC form may be subject to common law proscriptions against contractual provisions unreasonably restricting the alienation of property.<sup>34</sup> In an LLC, a family member's membership interest is personal property that should not be subject to contractual limitations on an owner's ability to restrict the power to alienate real property.

## 4. *Management*

Although an agreement among tenants in common can create a TIC management structure, an LLC allows and contemplates an operating agreement that sets forth management rights and powers in considerable detail. In particular, limitations on agency authority to managers of manager-managed entities, with a resulting elimination of members' authority to act unilaterally, may

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33. *See id.* § 4:1.

34. Glen O. Robinson, *Personal Property Servitudes*, 71 U. CHI. L. REV. 1449, 1460 (2004) (discussing the public policy surrounding the effect of contract provisions on alienability of property).

avoid chaos resulting from multiple generational ownership of property. In addition, management authority and managerial roles can be clearly delineated in an LLC operating agreement, and power can be given to older generations when desired. Finally, courts have become accustomed to enforcing LLC operating agreements, which can be binding on transferee members and managers who did not actually execute the agreement.

### III. OPERATING AGREEMENT DRAFTING CONSIDERATIONS

A sample vacation home LLC operating agreement is provided as Appendix A hereto. Although each such operating agreement will likely differ in material respects, consideration was given to the following:

1. Term. The original members, in this case the three Cs, recognized that they have a good sense of how the property should be managed and financed as between them. They also recognized that the next generation, their children, will likely be a larger and more diverse group that will have different relationships among themselves and with respect to the underlying property. Rather than burden subsequent owners with their conceptions of LLC ownership, the decision was made to dissolve the LLC when the youngest child of the original members reaches thirty-five. This allows the next generation to decide among themselves whether and how to continue joint ownership of property and allows an exit for those who want to exit.
2. Purpose. The stated purpose is to own, manage, and use the LLC's property for the members' benefit. In some cases, other uses, such as leasing the property, might be considered.
3. Use. Each member is allowed to use the property. The operating agreement expresses a hope that members will cooperate to work out their own use structure, but, in the event their intercession is required, it provides that the managers can establish time, duration, and other use rules. In addition, the managers need to approve material alterations and improvements to the LLC's assets—this prevents members from installing new kitchens to their tastes and at the other members' expense.
4. Right of First Refusal. The operating agreement contains a provision giving the members a right of first refusal to acquire any portion of the LLC's property that is to be sold. The

operating agreement provides pricing rules and encourages interested members to work together to purchase the property.

5. Finance. There being no present need for capital, no capital contributions are required. Members are required to pay their pro rata share of capital expenditures and operating expenses on an ongoing basis. There is no penalty for failure to pay, although many families may want penalty provisions. Also, in order to pay utilities and other expenses incurred on property use, the managers are allowed to establish a periodic use fee.
6. Membership. Membership is limited to the original members and their lineal descendants by birth or adoption. The decision was made not to allow spousal membership. Different families will certainly approach the membership question in different ways.
7. Management. Management is vested in a board of managers, initially comprised of the original members. One concern, which may frequently present itself in family settings, relates to replacement managers (effectively giving nieces and nephews power equivalent to that of their older and wiser uncles and aunts). The decision was made to allow initial managers to designate their replacements with agreed-upon replacement managers in the event a manager has not named his or her replacement at the time of death. All power is given to the managers on a one vote per manager basis and majority control. Different families might consider and adopt different power structures.
8. Assignability of Interests. Interests can be held only by the initial members and their lineal descendants. Complex rules assure that no descendant amasses greater relative power than other descendants, and this was primarily accomplished through rules requiring that any member's lineal descendants receive that member's ownership equally. Further, since one of the initial members may have no children, rules were adopted concerning intra-familial transfers of that member's interests. Here again, different families will have different needs and careful attention should be paid to inter-generational ownership issues. Some may adopt rules whereby all members are equal rather than starting with equality and then diluting ownership based on how many children are in a particular family branch.

9. Buyout. The operating agreement has a buyout provision in order to avoid locking members into an asset that they do not use and cannot liquidate and for which they bear a cost share. This provision was drafted to force members who want to continue to participate in ownership to buy out a dissociating member on fair terms and, potentially, to force a sale of the property if no member is willing to buy out all dissociating members. Again, different families will take different approaches.

#### IV. CONCLUSION

Limited liability companies, formed in states that allow LLC use for non-business activities, are a useful and desirable tool for holding family personal-use property, such as vacation homes. They can allow limited liability protections, protection from intermeddling creditors, and transaction structuring possibilities that are not available in property co-ownership form or which, if available, are more difficult to realize in a co-ownership arrangement than they are through use of an LLC operating agreement. When using an LLC to hold family property, it is necessary to draft a customized and artful operating agreement that is sensitive to particular family dynamics and that allows use, control, and financing of the property with a minimal amount of undesirable friction. My experience is that this is not an easy drafting task.

Appendix A

**NINE BEAN-ROWS LLC**

**OPERATING AGREEMENT**

**THIS OPERATING AGREEMENT** of Nine Bean-Rows LLC, a Colorado limited liability company (the “Company”), is made as of \_\_\_, 20\_\_\_, by and among those persons executing this Agreement as members of the Company (the “Original Members”).

**WHEREAS**, Nine Bean-Rows, the legal description of which is attached hereto, has become a center for family members to grow together, support and nourish each other, and maintain family unity; and

**WHEREAS**, Nine Bean-Rows continues to provide that undeveloped beauty, which allows its users to experience the joys of mountains, meadows, and woods; and

**WHEREAS**, the opportunity for ourselves and our future generations to continue to use Nine Bean-Rows in a spirit of consensus, cooperation, and sharing is important; and

**WHEREAS**, the Colorado Limited Liability Company Act (the “Act”) authorizes the members of a limited liability company to enter into an operating agreement, and the Members desire that this agreement constitute the operating agreement of the Company.

**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, the Members hereby agree as follows:

**ARTICLE I  
DEFINED TERMS**

Section 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Article I shall, for the purposes

of this Agreement, have the meanings herein specified.

“Act” means the Colorado Limited Liability Company Act.

“Additional Members” has the meaning set forth in Article X hereof.

“Agreement” means this Operating Agreement, as amended, modified, supplemented, or restated from time to time.

“Articles of Organization” means the articles of organization of the Company, as filed with the Colorado Secretary of State.

“Board of Managers” means a board consisting of the Managers of the Company, which Board of Managers shall manage the business and affairs of the Company in accordance with this Operating Agreement.

“Capital Expenditures” means major improvements (including, but not limited to, roofing, siding, windows, doors, and outside and inside painting), major appliances (including, but not limited to, water heater, stove, washer, and dryer), septic tank, and other major expenses that are capital in nature.

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

“Company” means Nine Bean-Rows LLC.

“Covered Person” means a Manager, a Member, or any employee, officer, or agent of the Company.

“Dwelling” means any one of the inhabitable structures on the Property. “Dwellings” means more than one Dwelling.

“Majority Vote” means the affirmative vote of Members holding more than 50% of the outstanding Shares.

“Manager” means one or more Persons designated pursuant to Section 6.1 hereof as a Manager of the Company.

“Member” means a Person reflected in the records of the Company as a member of the Company and includes any Person admitted as an Additional Member pursuant to the provisions of this Agreement. “Members” means two or more of such Persons when acting in their capacities as members of the Company.

“Operating Expenses” includes, but is not limited to, taxes, special assessments, insurance, utilities (including propane, electricity, and phone), opening and closing costs, and outside maintenance.

“Person” includes any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, or other legal entity or organization.

“Property” means the real property described in Exhibit A attached hereto and any furniture, fixtures, equipment, and other personal property located thereon.

“Share” means a Member’s interest in the Company, denominated in a number of shares, including such Member’s right to share in the profits, losses, and distributions of the Company and such Member’s right to participate in the management of the Company, each in accordance with the provisions of this Agreement and the Act and as further described in Subsection 4.6.

Section 1.2 Headings. The headings and subheadings in this Agreement are included for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

## **ARTICLE II FORMATION AND TERM**

### Section 2.1 Formation.

(a) The Original Members hereby form the Company as a limited liability company under and pursuant to the provisions of the Act and agree that the rights, duties, and liabilities of the

Members shall be as provided in the Act, except as otherwise provided herein.

(b) Upon the execution of this Agreement or a counterpart of this Agreement, each of the Original Members shall be admitted as a Member of the Company.

(c) The name and mailing address of each Member and the number of Shares assigned to each Member shall be listed on Schedule 2.1 attached hereto, as amended from time to time.

Section 2.2 Name. The name of the Company is Nine Bean-Rows LLC. The activities and business of the Company may be conducted, upon compliance with all applicable laws, under any other name designated by the Board of Managers.

Section 2.3 Term. The term of the Company shall commence on the date the Articles of Organization are filed in the office of the Colorado Secretary of State and shall continue until the date the Company is terminated under the Act. Further, the Company shall dissolve at such time as the Property is no longer owned by the Company or shall dissolve when the youngest child of the Original Members reaches his or her thirty-fifth birthday (with such date being extended for up to five additional years if two-thirds of the Members, acting per capita, so direct). The Original Members intend that such thirty-fifth birthday dissolution arrangement shall cause the then-Members to determine, based on their own relationships and circumstances and the fact that they will all be adults, whether they desire to continue to own the Property together and how to structure their own relationships with respect to the Property and the Company.

Section 2.4 Registered Agent and Office. The Company's registered agent and office in the State of Colorado shall be [C3]. At any time, the Board of Managers may designate another registered agent and/or registered office.

Section 2.5 Qualification in Other Jurisdictions. The Board of Managers shall, if required by law or if deemed advisable by the Managers, cause the Company to be qualified, formed, or registered under assumed or fictitious name statutes or similar laws

in any jurisdiction in which the Company transacts business.

**ARTICLE III  
PURPOSE AND POWERS OF THE COMPANY**

Section 3.1 Purpose. The Company is formed for the object and purpose of, and the nature of the activities to be conducted and promoted by the Company is: (i) sharing ownership, care, maintenance, and management of the Property for the use and enjoyment of the Members, their families, and their guests; (ii) engaging in any lawful act or activity for which limited liability companies may be formed under the Act; and (iii) engaging in any and all activities necessary, convenient, desirable, or incidental to the foregoing. The Property shall be made available to the children and grandchildren of [P1] and [P2], their spouses, and their descendants on the terms and conditions set forth herein.

Section 3.2 Powers of the Company. The Company shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, incidental, or convenient to or for the furtherance of the purpose set forth in Section 3.1, including occasional timbering of the Property as determined by the Board of Managers.

Section 3.3 Use.

(a) The Members agree to use and occupy the Property as a personal use vacation property. Each Member shall be entitled to joint use, occupancy, and enjoyment of the Property. No Member shall transfer or assign any right to use, occupy, or enjoy the Property to any Person without the prior written consent of the Board of Managers. The failure of a Member to use, occupy, or enjoy the Property shall not relieve that Member from any of the Member's obligations under this Agreement. The Board of Managers may adopt, from time to time, rules and regulations relating to the use and occupancy of the Property.

(b) Although it is intended that the Members shall work cooperatively to establish fair and appropriate use arrangements for the Property, in the event of disagreement concerning use, the Board of Managers may establish a system for determining the

Members' rights to use the Property, which system shall ensure that use by Members is in a fair manner substantially equivalent to the Members' proportionate interest in the Company. For example, the Board of Managers could, but need not, establish an occupancy reservation system under which each Original Member shall randomly draw a number between one and three, with the Original Member drawing the number one having first choice of a two-week use period, then the Original Member drawing the number two having second choice, and the Original Member drawing the number three having the third choice, and then back to the first Original Member (or back in reverse order). Such Original Members could then designate the users during the selected period. A similar system could be used when there are Members other than the Original Members, although proportionate ownership would need to be considered.

(c) No Member, acting in that Member's individual capacity or on behalf of the Company, shall make any material alterations or improvements to the Property without the prior agreement of the Board of Managers.

(d) The Company shall purchase and maintain adequate insurance on the Property, including liability and casualty insurance. If the Property is damaged and available insurance proceeds are insufficient to pay restoration costs, such proceeds shall be applied to restoration to the extent necessary to preserve the Property until additional funds are available to the Company to complete the restoration.

Section 3.4 Sale of Property. If the Company decides to sell all or any portion of the Property (the "Sale Property") such Sale Property shall first be offered to the then-living Original Members and the children of any deceased Original Member for a sale price equal to the fair market value of the portion of the Sale Property. Unless agreed upon by the Members, fair market value shall be established by an independent appraiser selected by the Board of Managers, taking into account the then-current use and property tax valuation method of the Sale Property. Original Members and the children of any deceased Original Member who wish to purchase shall give written notice to the Board of Managers within sixty (60) days after being furnished with the agreed-upon

valuation or the appraisal. If more than one (1) Original Member or a group of children of a deceased Original Member desires to purchase the Sale Property, then such electing persons shall attempt to work out arrangements whereby all of them can participate in the purchase and, if no arrangement is made within 120 days after the agreed-upon valuation or the appraisal is furnished, each Original Member and the group comprised of the children of any deceased Original Member may submit a written bid to purchase the Sale Property for cash to the Board of Managers, and the person or group submitting the highest bid shall purchase the Sale Property.

**ARTICLE IV**  
**CAPITAL CONTRIBUTIONS; ANNUAL FEE; USE FEE;**  
**INTERESTS; CAPITAL ACCOUNTS AND ADVANCES**

Section 4.1 Capital Contributions, Annual Fee.

(a) Members shall not be required to make capital contributions to the Company.

(b) Each Member shall be required to pay an amount equal to his or her pro rata share of all Capital Expenditures and Operating Expenses as determined by the Board of Managers on an annual basis regardless of each Member's use or nonuse of the Property ("Annual Fee"). For all purposes of this Agreement a Member's "pro rata share" means a fraction obtained by dividing the number of Shares owned by the Member by the total number of Shares of the Company issued and outstanding.

Section 4.2 Use Fee.

(a) If so determined by the Board of Managers, each Member and each of Member's family members and/or guests shall be required, and each Member hereby agrees, to pay a use fee ("Use Fee") for periods when the Member or the Member's guests use the Property, the amount and terms of which shall be set from time to time by the Board of Managers.

(b) The funds collected from the Use Fee shall be used to pay Operating Expenses and Capital Expenditures, and any excess

funds shall be placed in a reserve account to fund future Operating Expenses and Capital Expenditures.

Section 4.3 Member's Interest. A Member's Shares shall for all purposes be personal property. A Member has neither an interest in specific Company Property nor an undivided interest in any Property.

Section 4.4 Status of Capital Contributions.

(a) No Member shall receive any interest, salary, or drawing with respect to any capital contributions that may be made by the Member or for services rendered on behalf of the Company or otherwise, except as otherwise determined by the Board of Managers.

(b) Except as otherwise provided herein and by applicable state law, no Member shall be required to lend any funds to the Company or to make any capital contributions to the Company. Members and Managers shall not be personally liable for the Company's debts, obligations, or liabilities.

Section 4.5 Advances. If any Member shall advance any funds to the Company, the amount of such advance shall not increase the Member's number of Shares. The amount of any such advance shall be a debt obligation of the Company to such Member and shall be subject to such terms and conditions acceptable to the Company and such Member. Any such advance shall be payable and collectible only out of Company assets, and the other Members shall not be personally obligated to repay any part thereof. No advances shall be made without the agreement of the Board of Managers.

Section 4.6 Shares. The interests of the Members in the Company shall be represented by Shares. The Company shall issue an aggregate of One Hundred Fifty Thousand (150,000) Shares, with the intention that this number shall not be increased, but that Shares shall be passed down by Members by gift or inheritance to eligible Members. The number of Shares initially assigned to each Original Member shall be listed opposite his or her name on Schedule 2.1. Each Share shall represent an equivalent interest in

the Company and the right to one (1) vote on matters submitted to a vote of the Members. A Member may voluntarily forfeit any Shares at any time. Forfeited shares shall be retired and cancelled on the effective date of the forfeiture and shall reduce the total number of Shares.

## **ARTICLE V MEMBERS**

Section 5.1 Powers of Members. Membership in the Company is restricted exclusively to the Original Members and to lineal descendants by blood or adoption (and not by marriage) of the Original Members; provided that [P1] and [P2] shall hold an honorary membership in the Company with full right to use the Property during each of their lifetimes (both pursuant to any life estate they may retain in the Property and as honorary Members of the Company). The Members shall have the power to exercise any and all rights or powers granted to the Members pursuant to the express terms of this Agreement and the Act.

Section 5.2 Indemnification. The Company shall indemnify every Manager and Member for payments made and personal liabilities reasonably incurred in the ordinary and proper conduct of the Company's activities or business, or in the preservation of the Company's business or property; provided, however, that this indemnification shall be limited to the total assets of the Company (including unpaid capital contributions of the Members).

Section 5.3 Limit on Members' Right to Participate in Management. Except as expressly authorized and provided in this Operating Agreement, no Member who is not also a Manager of the Company shall participate in the management of the Company or the transaction of any Company business, and no Member who is not also a Manager shall have authority to transact business on behalf of or legally bind the Company. Any Member who breaches this Section 5.3 shall indemnify, defend, and hold harmless the Company and every other Member from and against any loss, liability claim, or payment, including reasonable attorneys' fees, that arises or results from such breach of this Section 5.3.

Section 5.4 Partition. Each Member waives any and all rights

that such Member may have to maintain an action for partition or other division of the Company's property.

## **ARTICLE VI MANAGEMENT**

Section 6.1 Managers. The business and affairs of the Company shall be managed by a Board of Managers comprised of all the Managers. The Original Members shall serve as the initial Managers and shall comprise the Board of Managers. Each initial Manager shall serve as a Manager until he or she shall die, resign, or cease to be a Member of the Company. In the event that any Original Member shall cease to be a Manager due to his or her death, resignation, or transfer of Shares such that he or she ceases to be a Member, then such Original Member may name a replacement Manager. If [C1] has failed to name a replacement Manager on his death, then [GC1] shall be his replacement Manager; if [C3] has failed to name a replacement Manager on his death, then [GC3] shall be his replacement Manager. In the event that [C2] transfers her Shares, then she shall cease to be a Manager unless the Original Members agree that she shall continue as a Manager.

Section 6.2 Management. The Board of Managers shall have the sole and exclusive responsibility for the operation of the Company. The Managers shall manage the affairs of the Company in a prudent fashion and shall use their reasonable best efforts to carry out the purposes and character of the Company.

Section 6.3 Actions of the Managers. Decisions shall be made by a majority of the Managers if there is at least one Manager, or if there are no Managers then acting, by vote of the Members. In the event there is deadlock between the Managers, and if only one of such Managers is an Original Member, then the decision of the Manager who is an Original Member shall control. Notwithstanding the foregoing, the following decisions ("Major Decisions") shall require a vote of seventy-five percent (75%) of the Shares represented in person or electronically at a meeting of the Members:

- (a) any decision to sell all or substantially all of the assets and

properties of the Company; and

(b) any decision to dissolve the Company.

**Section 6.4 Powers of Managers.** The Managers shall have all necessary powers to carry out the purposes of the Company. Without limiting the generality of the foregoing but subject to the obligation of the Managers to obtain any required consent of the other Members as provided elsewhere in this Agreement (including Major Decisions described in Section 6.3), in addition to any other rights and powers which the Managers may possess, the Managers shall have all specific rights and powers required or appropriate to the management of the business of the Company, and only the Managers shall have these rights and powers, including the following:

(a) to hold record title to assets of the Company in the name or names of a nominee or nominees for any purpose convenient or beneficial to the Company;

(b) to acquire and enter into any contract of insurance that the Managers deem necessary and proper for the protection of the Company or for any purpose convenient or beneficial to the Company;

(c) to retain or employ from time to time persons, firms, or companies on behalf of the Company for the operation and management of the Property, all on such terms and for such compensation as the Managers shall determine;

(d) to incur or assume indebtedness or other obligations and to refinance, increase, modify, consolidate, extend, or prepay any indebtedness of the Company; and

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

**Section 6.5 Committees.**

(a) The Board of Managers may establish committees having such powers as the Board of Managers may legally delegate.

Committees shall be subject at all times to the direction and control of the Managers.

(b) A committee shall consist of one or more natural persons, who need not be Managers, appointed by the Board of Managers.

(c) Minutes, if any, of committee meetings shall be made available upon request to members of the committee, to any Manager, and to any Member.

Section 6.6 Binding the Company. The Managers shall be authorized to sign for and bind the Company as provided in this Agreement. Except as provided herein, no Member shall have any right or authority to act for or to bind the Company.

Section 6.7 Reimbursements. The Company shall reimburse the Managers for all ordinary and necessary out-of-pocket expenses incurred by the Managers on behalf of the Company.

## **ARTICLE VII AMENDMENTS**

Section 7.1 Amendments. Any amendment to this Agreement shall be adopted and be effective as an amendment hereto if it receives approval of the Members; provided, however, that any amendment to this Agreement shall require the consent of the Members holding at least 80% of the Shares, together with the unanimous written consent of the Original Members then living who remain as Members.

## **ARTICLE VIII BOOKS AND RECORDS**

Section 8.1 Books and Records. At all times during the continuance of the Company, the Company shall maintain separate books of account for the Company that shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received, and all revenues. Such books of account, together with a copy of this Agreement and a copy of the Articles of Organization, shall be open to inspection and examination at reasonable times by each Member for any purpose

reasonably related to such Member's interest in the Company.

Section 8.2 Accounting Method. The books and records of the Company shall be kept on the method of accounting selected by the Board of Managers and shall reflect all Company transactions and shall be appropriate and adequate for the Company's activities.

#### **ARTICLE IX LIABILITY, EXCULPATION, AND INDEMNIFICATION**

Section 9.1 Liability. Except as otherwise provided by the Act, the debts, obligations, and liabilities of the Company, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the Company, and no Covered Person shall be obligated personally for any such debt, obligation, or liability of the Company solely by reason of being a Covered Person.

Section 9.2 Exculpation. No Covered Person shall be liable to the Company or any other Covered Person for any loss, damage, or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement.

Section 9.3 Fiduciary Duty. To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any Member for the Covered Person's good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Covered Person.

Section 9.4 Indemnification. To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification by the Company for any loss, damage, or claim

incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement; provided, however, that any indemnity under this Section 9.4 shall be provided out of and to the extent of Company assets only, and no Member shall have any personal liability on account thereof.

Section 9.5 Expenses. To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person in defending any claim, demand, action, suit, or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit, or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is entitled to be indemnified as authorized in Section 9.4 hereof.

#### **ARTICLE X ADDITIONAL MEMBERS**

Section 10.1 Admission. Membership in the Company is restricted exclusively to lineal descendants (by birth or adoption) (and not by marriage) of the Original Members, provided that with the unanimous consent of the Members, the Company may admit any Person as an additional member of the Company (each, an “Additional Member” and collectively, the “Additional Members”). Each Additional Member shall receive the number of Shares as determined by the Members. Each such Person shall be admitted as an Additional Member at the time such Person (i) executes this Agreement or a counterpart of this Agreement and (ii) is named as a Member on Schedule 2.1 hereto.

#### **ARTICLE XI ASSIGNABILITY AND SUBSTITUTE MEMBERS**

Section 11.1 General. No transfer of Shares (including but not limited to a sale, a gift, a testamentary transfer, assignment, mortgage, or pledge), whether during the Member’s lifetime or at death, shall be effective unless:

(a) the transfer is made in accordance with this Article XI, and

(b) the transferee becomes a party to this Agreement by the signature of the transferee at the foot of this Agreement as amended from time to time, and such transferee's spouse or domestic partner, if any, waives in writing any interest in the Shares.

Section 11.2 Permitted Transferees. Shares may be transferred (whether by sale, gift, testamentary transfer, assignment, mortgage, pledge, or otherwise) only in accordance with the requirements of this Section 11.2. If an Original Member has children (whether by birth or adoption), any transfer of such Original Member's Shares shall be to such children equally. If an Original Member has one or more children who predecease the Original Member, and if such child has one or more children (by birth or adoption), then the Original Member may elect to transfer his or her Shares to his or her surviving children only or to transfer his or her Shares equally to his or her surviving children and the group comprised of the children of the deceased child (with those grandchildren sharing equally in the portion attributable to the deceased child). Similar rules shall apply to further intergenerational transfers.

If an Original Member has no children at the time of his or her Share transfer, then such Original Member may elect (including privately in his or her will) one of the following transfer options: (a) 50% each to surviving Original Members; (b) 50% to each group comprised of the surviving children of the other Original Members (namely, his or her nieces and nephews), shared equally among such children; or (c) equally among the surviving children (his or her nieces and nephews) of the other Original Members. If one of the Original Members with children predeceases an Original Member without children, then the Original Member without children may elect option (b) or (c) above or may elect to transfer 50% of his or her Shares to the surviving other Original Member and 50% of his or her Shares to the children of the deceased Original Member. In the event an Original Member without children makes an invalid transfer election or fails to make an election, then options (a) or (b) above

shall apply, as circumstances may require.

Section 11.3 Share Buy-out. During the period when all Shares are owned by the Original Members, any Original Member may give written notice (the “Buyout Notice”) of his or her desire for the other Original Members to acquire all of his or her Shares. From the date of their receipt of the Buyout Notice, the other Original Members shall have 455 days to acquire the Shares, equally, for a price equal to the fair value of such Shares. Fair value shall equal the amount that would be distributed to the Original Member seeking buyout if the Property were sold at its value, taking into account its then-current use and any use taken into account for property tax purposes, and the Company liquidated. If, after an Original Member provides a Buyout Notice another Original Member determines within the 455 day purchase period that he or she also desires for the remaining Original Member to acquire his or her Shares, such other Original Member may also provide a Buyout Notice to the other Members. In the event a second Buyout Notice is issued, then the remaining Original Member shall have 90 days to determine whether he or she will acquire the Shares of the other Original Members for the price set forth above. If the remaining Original Member elects to acquire such shares, he or she shall give written notice to the other Original Members, the price shall be as provided above, and closing shall occur on the later of 365 days after the third Original Member gives the election notice, or the original 455-day period. If the third Original Member does not elect to acquire the Shares, then no Original Member shall be required to acquire Shares and the Board of Managers shall cause a sale of the Company’s Property and liquidation of the Company.

Section 11.4 For the purposes of this Article, a Member desiring to transfer his or her Shares shall include the executor or administrator of a deceased Member’s estate, or a trustee in bankruptcy of a Member’s estate.

Section 11.5 Any Shares which are transferred, voluntarily, involuntarily, or by operation of law, other than in accordance with the provisions of this Article XI shall be void ab initio and shall not give to the holder any rights of a Member or the use of the Property or other rights under this Agreement.

**ARTICLE XII**  
**DISSOLUTION, LIQUIDATION, AND TERMINATION**

Section 12.1 Events Causing Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the occurrence of any of the following events:

- (a) the sale or disposition of all or substantially all of the assets of the Company;
- (b) the majority vote of the Members; or
- (c) the entry of a decree of judicial dissolution under the Act.

Section 12.2 Liquidation. Upon dissolution of the Company, the Board of Managers shall carry out the winding up of the Company and shall immediately commence to wind up the Company's affairs; provided, however, that a reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the satisfaction of liabilities to creditors. The proceeds of liquidation shall be distributed in the following order and priority:

- (a) to creditors of the Company, including Members who are creditors, to the extent otherwise permitted by law, in satisfaction of the liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof); and
- (b) to the Members in equal Shares.

The Board of Managers may determine to transfer the Company's assets to one or more Members for such consideration as the Board of Managers determines reasonable.

Section 12.3 Termination. The Company shall terminate when all of the assets of the Company, after payment of or due provision for all debts, liabilities, and obligations of the Company, shall have been distributed to the Members in the manner provided for in this Article XII and the articles of termination shall have been filed with the Secretary of State of the State of Colorado in the manner required by the Act.

Section 12.4 Claims of the Members. The Members shall look solely to the Company's assets for the return of any capital contributions and if the assets of the Company remaining after payment of or due provision for all debts, liabilities, and obligations of the Company are insufficient to return such capital contributions, the Members shall have no recourse against the Company or any other Member.

### **ARTICLE XIII MISCELLANEOUS**

Section 13.1 Notices. All notices provided for in this Agreement shall be in writing, duly signed by the party giving such notice, and shall be delivered, mailed via an overnight courier service, faxed, or mailed by registered or certified mail, as follows:

(a) if given to the Company at the address of the Company's principal office or the addresses of all the Managers; or

(b) if given to any Member at the address set forth opposite his or her name on Schedule A attached hereto, or at such other address as such Member may hereafter designate by written notice to the Company.

All such notices shall be deemed to have been given when received.

Section 13.2 Failure to Pursue Remedies. The failure of any party to seek redress for violation of, or to insist upon the strict performance of, any provision of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

Section 13.3 Cumulative Remedies. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Section 13.4 Binding Effect. This Agreement shall be binding

upon and inure to the benefit of all of the parties and, to the extent permitted by this Agreement, their successors, legal representatives, and assigns.

Section 13.5 Interpretation. Throughout this Agreement, nouns, pronouns, and verbs shall be construed as masculine, feminine, neuter, singular, or plural, whichever shall be applicable. All references herein to “Articles” and “Sections” shall refer to corresponding provisions of this Agreement.

Section 13.6 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

Section 13.7 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one instrument.

Section 13.8 Integration. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

Section 13.9 Governing Law. This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the State of Colorado, and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above stated.

MEMBERS:

\_\_\_\_\_  
[C1]  
\_\_\_\_\_

[C2]

---

[C3]

2012]

LLC TO HOLD VACATION HOMES

625

**SCHEDULE 2.1**

**MEMBERS**

<u>Name and Address</u>	<u># of Shares</u>	<u>%</u>
[C1]	50,000	33.333%
[C2]	50,000	33.333%
[C3]	50,000	33.333%
TOTAL	150,000	100%

**EXHIBIT A**  
**LEGAL DESCRIPTION**