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LIMITED LIABILITY COMPANY AGREEMENT OF  
TMLN ROYALTY, LLC

Dated as of July 25, 2008

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**LIMITED LIABILITY COMPANY AGREEMENT OF  
TMLN ROYALTY, LLC**

THIS LIMITED LIABILITY COMPANY AGREEMENT (“**Agreement**”) is entered into as of July 25, 2008 by and among Timeline, Inc., a Washington corporation, as the initial sole Member (“**Timeline**”), and such other Persons as may be admitted hereunder (collectively, the “**Members**”) and T Management Co. (the “**Manager**”).

WHEREAS, the Members desire to conduct the business described herein as a limited liability company under the laws of the State of Washington for the purposes set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

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**ARTICLE 1  
GENERAL TERMS**

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**1.1 Formation of Limited Liability Company.** The Company has been organized as a Washington limited liability company by the filing of a Certificate of Formation (the “**Certificate of Formation**”) under and pursuant to the Washington Limited Liability Company Act, Chapter 25.15 RCW (the “**Act**”).

**1.2 Name of Company.** The name of the Company shall be “TMLN Royalty, LLC.”

**1.3 Purposes.** The purposes of the Company are to facilitate the final winding up of the affairs of Timeline, administer the License Agreement, and, as necessary, manage (including potentially sell, transfer, convey or otherwise dispose of rights in) the Patents in the event they are no longer licensed under the License Agreement.

**1.4 Principal Place of Business.** The Company’s principal place of business shall be 8200 Wayne Avenue N., Stanwood, Washington or such other place as may be determined by the Manager.

**1.5 Term of Company.** The term of the Company commenced on July 25, 2008, the date the Certificate of Formation was filed with the Washington Secretary of State (such date, being the “**Effective Date**”) and shall continue perpetually, unless terminated earlier as provided herein.

**1.6 Filings.** The Members shall cause to be executed, filed and published all such other certificates, notices, statements or other instruments, and amendments thereto under the

laws of the State of Washington and other applicable states or jurisdictions as they may deem necessary or advisable for the operation of the Company.

**1.7 Company Property.** All property of the Company, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity and, except as provided herein, no Member shall individually have any ownership interest in such property. Title to any such property of the Company shall be held solely in the name of the Company.

**1.8 No Partnership Intended for Nontax Purposes.** The Members intend that the Company not be a partnership, corporation, company (including a limited company) or joint venture, and that no Member be a partner, member or joint venturer of any other Member for any purpose other than federal and state income tax purposes, and this Agreement may not be construed to suggest otherwise.

**1.9 Rights of Creditors and Third Parties.** This Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members, and their successors and assigns. The Agreement is expressly not intended for the benefit of any creditor of the Company or any other person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under this Agreement or any agreement between the Company and any Member with respect to any capital contribution or otherwise. No Member or Manager shall be liable for the debts, obligations, or liabilities of the Company, including under a judgment decree or order of a court

**1.10 Definitions.** As used in this Agreement, the capitalized terms defined in this Section 1.10 shall have the respective meanings specified below. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement. For purposes of this Agreement, the singular shall include the plural and the neuter shall include the feminine and masculine gender, and vice versa. Wherever the word “include,” “includes,” or “including” is used in this Agreement, it shall be deemed to be followed by the words “without limitation.” Any statute defined or referred to herein or in any agreement or instrument that is referred to herein means such statute as from time to time amended, modified or supplemented, including by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein.

“**Affiliate**” means any Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, or any member of such Person’s immediate family. For purposes of this definition, “control” means the ability, directly or indirectly, to direct the management and policies of the respective Person whether through the ownership of voting securities or interests, through a contract that provides for the delegation of that Person’s managerial rights and duties, or otherwise.

“**Acacia**” means Acacia Patent Acquisition LLC.

“**Agreement**” means this Limited Liability Company Agreement, as amended from time to time.

“**Article**” means an article of this Agreement, unless the context requires otherwise.

“**Assignment**” or “**Assign**” means, in the context of a Transfer of a Member’s Interest, a mere assignment (other than as security) of an economic interest held by the transferring Member, as opposed to a Transfer with the intent to substitute the transferee as a Member.

“**Bankruptcy**” means a situation in which the Company or a Member, as the case may be, becomes subject to any bankruptcy, insolvency, reorganization or similar proceeding, or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors.

“**Capital Account**” means the account maintained for each Member as provided in Section 2.1.

“**Capital Contribution**” means any contribution of money or property by a Member to the Company pursuant to Article 2. It is expected that no Member other than Timeline shall make any Capital Contribution, and that the Members other than Timeline shall succeed to Timeline’s Capital Account upon Timeline’s distribution of its interest in the Company to Timeline’s shareholders in liquidation.

“**Code**” means the United States Internal Revenue Code of 1986, as amended from time to time.

“**Company**” means TMLN Royalty, LLC, a Washington limited liability company.

“**Distributable Cash**” means, with respect to any fiscal period, all gross receipts of the Company from operations and all sales of any interest in Company property, less the sum of (a) operating expenses of the Company and (b) reasonable reserves for working capital and contingencies.

“**Interest**” means the interest of a Member or “permitted assignee” of a Member pursuant to Article 7. A Member’s Interest shall be reflected by the number of Shares as set forth on Schedule A.

“**License Agreement**” means that certain Exclusive License Agreement entered into effective July 30, 2008 between Timeline and Acacia.

“**Member**” means Timeline and any Person who, at the time of the reference thereto, has been admitted to the Company as a successor to the interest of any such party or as a replacement or additional Member, as provided herein, in any such party’s capacity as a Member, in any case, so long as such Person has not ceased to be a Member hereunder.

“**Majority**” means the vote of Members holding more than fifty percent (50%) of the Shares.

“**Manager**” initially means T Management Co. and any other person(s) who may become a substitute Manager as provided in Article 6.

“**Shares**” of a Member means the number of shares set forth opposite each such Member’s name in Schedule A (as amended from time to time by the Manager, in its sole and absolute discretion).

“**Patents**” means those patents owned by Timeline subject to the License Agreement.

“**Person**” means an individual, corporation, company, limited liability company, trust, estate, association, corporation or other entity.

“**Profits**” and “**Losses**” means, for each Fiscal Year or part thereof, the Company’s taxable income or loss for such year determined in accordance with Code section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code section 703(a)(1) shall be included in taxable income or loss) with the following adjustments:

- (a) any income of the Company that is exempt from federal income tax shall be added to such taxable income or loss; and
- (b) any expenditures of the Company described in Code section 705(a)(2)(B) (or treated as such pursuant to Treasury Regulation section 1.704-1((b)(2)(iv)(i)) shall be subtracted from such taxable income or loss;

“**Property**” means any property as may from time to time be owned by the Company.

“**Section**” means a section of this Agreement, unless the context requires otherwise.

“**Significant Matter**” means a material change in the Company’s business purposes as set forth in Section 1.3.

“**Transfer**” means any direct or indirect transfer, sale, assignment, distribution, pledge, encumbrance, tender, or otherwise grant, creation or suffrage of a lien in or upon, giving, placement in trust or otherwise (including transfers by testamentary or intestate succession) disposing of by operation of law or any derivative transaction, including any short sale, collar, hedging or other derivative transaction that has the effect of materially changing the economic benefits and risks of ownership.

“**Treasury Regulations**” mean the regulations issued by the Internal Revenue Service pursuant to the Code, as may be amended from time to time.

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**ARTICLE 2  
CAPITALIZATION**

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**2.1 Capital Accounts.**

(a) **Establishment of Capital Accounts.** The Company shall establish and maintain a Capital Account for each Member in accordance with Treasury Regulations issued under Code section 704.

(b) **Capital Account for Transferred Interest.** If any Interest or part thereof is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest in the Company.

**2.2 No Withdrawal of Capital.** Except as expressly set forth herein, no Member shall be entitled to withdraw any portion of its Capital Account balance.

**2.3 No Interest on Capital Account Balances.** No Member shall be entitled to receive any interest on the balance in such Member’s Capital Account.

**2.4 Initial Capital Contributions.** Timeline has contributed or shall contribute to the Company the initial Capital Contribution shown on Schedule A hereto.

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**ARTICLE 3  
PROFITS AND LOSSES**

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Profits and Losses with respect to any Fiscal Year or part thereof shall be allocated to the Members in accordance with their Shares.



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**ARTICLE 4  
DISTRIBUTIONS**

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**4.1 Nonliquidating Distributions.** Distributable Cash shall be distributed to the Members, at times such times and in such amounts as are determined by the Manager, in accordance with each Member's Shares.

**4.2 Liquidating Distributions.** Distributions upon liquidation of the Company shall be made as described in Section 8.3(e).

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**ARTICLE 5  
ACCOUNTING, RECORDS AND REPORTS**

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**5.1 Fiscal Year.** The fiscal year ("**Fiscal Year**") of the Company shall be the calendar year or such other fiscal year required by the Code or Treasury Regulations or selected by the Manager.

**5.2 Method of Accounting.** The Company's books shall be maintained using the method of accounting selected by the Manager.

**5.3 Books and Records; Inspection.** The Manager shall maintain, for and on behalf of the Company, full and proper ledgers and other books of account, of all receipts and disbursements and other financial activities of the Company, and all the records required to be maintained pursuant to the Act. All such books and records shall be open to inspection by each Member and each Member's representatives upon not less than five business days' notice to the Manager, at a time and place acceptable to the Manager. The Manager may delegate to a third party the duty to maintain and oversee the preparation and maintenance of such records and books of account.

**5.4 Tax and Financial Reporting.**

(a) **Tax.** The Company shall deliver to each person who was a Member at any time during the Fiscal Year of the Company no later than April 14 of the immediately succeeding Fiscal Year such information regarding the Member's Interest in the Company that is necessary for the preparation of such Member's federal income tax returns and any state income tax returns, including a statement showing such Member's share of gains, income, losses, deductions or credits for such year for federal income tax purposes and the amount of any distribution made to or for the account of such Member pursuant to this Agreement.

(b) **Financial.** As soon as is practicable after the end of each Fiscal Year of the Company, the Company shall send to each Member (i) a balance sheet for the Company as of the close of such Fiscal Year, (ii) a profit and loss statement for the Company for such Fiscal Year, and (iv) such other information as any Member may reasonably request.

## 5.5 Taxation.

(a) **Elections.** The Company shall make such elections under the Code or Treasury Regulations as the Manager shall choose; provided that the Company shall have no obligation to file an election under Code section 754 and Treasury Regulations thereunder to adjust the basis of the Company assets under Code section 734(b) or 743(b) and a corresponding election under the applicable sections of state and local law.

(b) **Company Tax Returns.** The Manager shall arrange for the necessary federal and state Company federal and state tax returns to be prepared by the Company's CPA and timely filed with the appropriate authorities. Each Member shall provide such information, if any, that may be needed by the Company for purposes of preparing such tax returns, and shall make such information readily available from regularly maintained accounting records. The Company shall deliver to each Member a copy of the Company's federal and state income tax and information returns for each Fiscal Year, together with any additional tax-related information in the possession of the Company that such Member may reasonably and timely request in order properly to prepare his own income tax returns.

(c) **Tax Matters.** The Manager shall be the tax matters Member of the Company (the "**Tax Matters Member**") within the meaning of Code section 6231(a)(7) with respect to federal income tax audits.

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## ARTICLE 6 MANAGEMENT

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**6.1 Management of the Company.** Subject to the limitations and except as otherwise provided herein, the management, decisions and control of the Company shall be vested solely in the Manager. The Manager shall have full power and authority to act for or bind the Company regarding all matters including the performance of any and all acts or activities customary or incident to the management of the Company's business, and execution of any and all documents or instruments necessary or reasonable in the opinion of the Manager to facilitate the purposes and business of the Company as set forth in Section 1.3, which may include: (a) the sale, license, transfer, or other disposition of substantially all of the assets of the Company; (b) entering into a licensing relationship or the formation of a partnership or joint venture involving the Company or the Patents; (c) the initiation of the liquidation, dissolution or winding up of the Company or any Bankruptcy proceeding; (d) the merger, combination or consolidation

of the Company with or into any Person; or (e) entering into any agreement or commitment to do any of the foregoing. The initial Manager shall be T Management Co.

**6.2 Majority Approval Rights.** All Significant Matters shall require the approval of a Majority, which action may be taken either (a) at a meeting of the Members or (b) by written consent of Members holding of record, or otherwise entitled to vote, in the aggregate not less than a Majority. To the extent the Act requires notice of any action taken by less than unanimous written consent to be given to non-consenting Members, such notice shall be given before the date on which the action becomes effective. Except as expressly set forth in this Agreement, Members shall have no voting or approval rights with respect to the business, management and affairs of the Company.

**6.3 Removal of the Manager.**

(a) **Removal.** The Manager may resign at any time, and may be removed by a Majority.

(b) **Successor Manager.** If a Manager resigns or is removed pursuant to Section 6.3(a), a successor Manager shall be appointed by a Majority. The former Manager shall take whatever steps are commercially reasonable to assist the successor Manager in assuming management of the Company, including transferring all historical financial, tax, accounting and other data in the possession of the former Manager, and giving such consents, assigning such permits and executing such instruments as may be necessary to vest in the successor Manager those rights that were necessary for the former Manager to perform its obligations.

**6.4 Compensation of the Manager.** The Manager shall receive compensation for serving as a Manager in the amount of a reasonable hourly fee for time expended, plus an amount equal to five percent (5%) of (x) the gross royalties received in each year by the Company pursuant to the License Agreement and any other gross revenues of the Company, in excess of (y) all costs properly accrued or paid during such year (excluding the Manager's fees). In addition, the Company shall reimburse the Manager for all out-of-pocket expenses reasonably incurred by the Manager in connection with the Company's operations.

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**ARTICLE 7  
THE MEMBERS**

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**7.1 Assignments and Transfers of Member Interests.**

(a) **Transfer Prohibited Unless in Compliance with Agreement.** No Member may Transfer, voluntarily or involuntarily, any part of such Member's interest in the Company except as provided in this Article 7. Any other attempted Transfer shall be void, and of no force or effect, except any Transfer mandated by operation of law and then only to the extent

necessary to give effect to such Transfer by operation of law. In addition, all Transfers are subject to compliance with all applicable federal and state securities laws. Any assignee is entitled to receive the assigning Member's share of Profits, Losses and other items pursuant to Article 3 and such Member's share of distributions pursuant to Article 4. An assignee shall not be a Member, and shall not be entitled to vote or to the other rights of a Member, other than the right to receive allocations of Profits, Losses and other items, and distributions; and the assigning Member shall continue as a Member and shall not be relieved of any of its obligations hereunder, unless and until the assignee is admitted to the Company as a substituted Member as provided in Section 7.1(c).

(b) **Permitted Transfers.** Subject to compliance with this Agreement and all applicable federal and state securities laws, a Member may Transfer such Member's entire interest in the Company (but not a portion thereof) to any of the following, provided that such Transfer is approved in writing by the Manager, which approval may be unreasonably withheld and subject to such restrictions and conditions as the Manager may impose in the exercise of its sole discretion:

- (i) the spouse of such Member or an immediate family member of such Member;
- (ii) a trust for the benefit of such Member;
- (iii) a corporation or other business entity all of the stock or ownership interests of which is or are owned by such Member or by a trust described in subsection (ii) above; or
- (iv) any Member.

In addition, Timeline, the initial Member, may Transfer its entire interest in the Company pro rata among its shareholders in connection with its dissolution and liquidation, and effective upon such distribution, each such shareholder shall be added as a Substituted Member and Schedule A shall be updated accordingly, and Timeline shall no longer be a Member.

(c) **Substituted Members.** A permitted assignee of a Member's Interest pursuant to Section 7.1 may not become a substituted Member unless each of the following conditions is satisfied:

- (i) the assignee executes an appropriate agreement, in form and substance acceptable to the Manager in its sole discretion, to be bound by all of the terms and conditions of this Agreement; and
- (ii) such substitution has been specifically consented to in writing by the Manager, which consent is in the sole and absolute discretion of the Manager.

(d) **Corresponding Changes to Agreements.** If, pursuant to the provisions of this Article 7, a Member Assigns or Transfers in whole or in part, any of its Interest in a

permitted manner, then the Manager may, without requiring Member approval, amend Schedule A to this Agreement to reflect such event.

(e) **Redemptions Permitted.** Notwithstanding the foregoing, the Company may redeem all (but not less than all) the Interest of a Member upon terms acceptable to the Manager in its sole discretion.

**7.2 Admission of a New Member.** A new Member may be admitted to the Company only with the written consent of the Manager, which consent is in the sole and absolute discretion of the Manager.

**7.3 Withdrawal.** No Member may withdraw from the Company without the written consent of the Manager, which consent is in the sole and absolute discretion of the Manager. Any permitted withdrawal shall be on terms agreed to by the Manager and the withdrawing Member in connection with such withdrawal. Upon any withdrawal or attempted withdrawal by a Member in violation of this Agreement, neither the Company nor any Member shall be obligated to pay any amount for the Interest of such withdrawing Member.

**7.4 Voting Procedures.** All meetings and voting, approval or consent procedures for Members shall be in accordance with the Act. Any meetings of the Members shall be held at such location, which may or may not be at the principal place of business of the Company, as determined in the sole election of the Manager.

**7.5 Limitation of Liability.** Except as required by the Act, the liability of each Member for the debts, obligations and liabilities of the Company, whether arising in contract, law or otherwise, shall be limited to the Capital Contributions of such Member, and no Member shall otherwise be obligated personally for any such debt, obligation or liability, except to the extent such Member is or becomes a guarantor of such a debt, obligation or liability.

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**ARTICLE 8**  
**DISSOLUTION AND TERMINATION**

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**8.1 No Termination.** Except as expressly provided in this Agreement, no Member shall have the right, and each Member hereby agrees not, to dissolve, terminate or liquidate the Company. No Member shall have the right, and each Member hereby agrees not to, petition a court for the dissolution, termination or liquidation of the Company except as such rights are provided in this Agreement or are available under applicable law notwithstanding any agreement herein to the contrary.

**8.2 Events of Dissolution.** The Company shall be dissolved upon the first to occur of the following:

(a) the determination of the Manager to dissolve the Company;

(b) the sale, condemnation or involuntary transfer of all or substantially all of the assets of the Company; provided that, this Section 8.2(b) shall not cause the dissolution of the Company if part of the consideration received by the Company in connection with any such event includes deferred payment obligations and the Manager determines to keep the Company in existence for the sole purpose of collecting amounts payable under such obligations and distributing such amounts in accordance with the terms of this Agreement, upon the satisfaction of which obligations, the Company shall dissolve;

(c) entry of a decree of judicial dissolution under Section 25.15.275 of the Act.

No other act with respect to any Member shall cause the dissolution of the Company. Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until the Certificate of Formation has been canceled and the assets of the Company shall have been distributed as provided herein. Notwithstanding the dissolution of the Company, prior to the termination of the Company, as aforesaid, the business of the Company and the affairs of the Members, as such, shall continue to be governed by this Agreement.

### **8.3 Procedures Upon Dissolution.**

(a) **General.** In the event the Company dissolves, it shall commence winding up pursuant to the appropriate provisions of the Act and the procedures set forth in this Section 8.3.

(b) **Control of Winding Up.** The winding up of the Company shall be conducted under the direction of the Manager.

(c) **Manner of Winding Up.** The Company shall engage in no further business following dissolution other than that necessary for the orderly winding up of the business and distribution of assets. The maintenance of offices shall not be deemed a continuation of the business for purposes of this Section 8.3(c). Upon dissolution of the Company, the Manager shall determine the time, manner and terms of any sale or sales of Company property pursuant to such winding up; provided however, sale of the Company assets shall be carried out as promptly as is consistent with obtaining fair value therefor.

(d) **Profits and Losses.** Each Member shall continue to share Profits, Losses and other items after the dissolution of the Company and during the period of winding up of the Company's business in the same manner as described in Article 3.

(e) **Application of Assets.** In the case of a dissolution of the Company, the Company's assets shall be applied as follows:

(i) **Creditors.** First, to payment of the liabilities of the Company owing to third parties, including to Members, the Manager and their Affiliates. After payment of any such known liabilities, the Manager shall set up such reserves as it deems reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company. Such reserves may be paid over by the Manager to an escrow holder or trustee, to be held in escrow or trust for the purpose of paying any such contingent or unforeseen liabilities or obligations, and, at the expiration of such period as the Manager may deem advisable, such reserves shall be distributed to the Members or their assigns in the manner set forth in Section 8.3(e)(ii).

(ii) **Members.** Second, to the Members in proportion to their Shares.

**8.4 No Recourse.** If distributions pursuant to Section 8.3(e)(ii) are insufficient to return to any Member the full amount of such Member's Capital Account, such Member shall have no recourse against any other Member. No Member shall have any obligation to restore a deficit in such Member's Capital Account either on liquidation of the Company or liquidation of such Member's Interest in the Company.

**8.5 Termination of Company.** Upon the completion of the liquidation of the Company and the distribution of all Company assets, the Company's affairs shall terminate and the Manager shall cause to be executed and filed a certificate of cancellation of the Certificate of Formation, as well as any and all other documents required to effectuate the termination of the Company, under the Act.

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## ARTICLE 9 EXCULPATION AND INDEMNIFICATION

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### 9.1 No Personal Liability.

(a) 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 Indemnified Person (as defined in Section 9.1(b)) shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being an Indemnified Person.

(b) No Member, Manager or their respective Affiliates (each an "**Indemnified Person**") shall be liable, responsible or accountable in damages or otherwise to the Company or to any other Indemnified Person for any act or omission performed or omitted by an Indemnified Person in connection with the transactions contemplated in this Agreement, whether for mistake of judgment or negligence or other action or inaction, unless such action or omission constitutes willful misconduct, gross negligence or bad faith. Each Indemnified Person may consult with counsel, accountants and other experts in respect of the affairs of the Company and such

Indemnified Person shall be fully protected and justified in any action or inaction that is taken in good faith in accordance with the advice or opinion of such counsel, accountants or other experts, provided that they should have been selected with reasonable care.

**9.2 Indemnification by Company.** To the maximum extent permitted by applicable law, the Company shall protect, indemnify, defend and hold harmless each Indemnified Person for any acts or omissions performed or omitted by an Indemnified Person (in his or her capacity as such) unless such action or omission constituted willful misconduct, gross negligence or bad faith. The indemnification rights shall be in addition to any and all rights, remedies and recourse to which any Indemnified Person shall be entitled, whether or not pursuant to the provisions of this Agreement, at law or in equity. The indemnity provisions of this Section 9.2 shall be recoverable only from the assets of the Company and there shall be no recourse to any Member or other Person for the payment of such indemnities.

**9.3 Notice and Defense of Claim.**

(a) **Notice of Claim.** If any action, claim or proceeding (“**Claim**”) shall be brought or asserted against any Indemnified Person in respect of which indemnity may be sought from the Company under Section 9.2, the Indemnified Person shall give prompt written notice of such Claim to the Company, which may assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Person and the payment of all of such counsel’s fees and expenses; provided that any delay or failure to notify the Company shall relieve the Company of its obligations hereunder only to the extent, if at all, that it is prejudiced by reason of such delay or failure. Any such notice shall refer to Section 9.2 and describe in reasonable detail the facts and circumstances of the Claim being asserted.

(b) **Defense by the Company.** If the Company undertakes the defense of the Claim, the Company will keep the Indemnified Person advised as to all material developments in connection with any Claim, including promptly furnishing the Indemnified Person with copies of all material documents filed or served in connection therewith. The Indemnified Person shall have the right to employ one separate firm per jurisdiction with respect to any of the foregoing Claims and to participate in the defense thereof, but the fees and expenses of such firm shall be at the expense of the Indemnified Person unless both the Indemnified Person and the Company are named as parties and representation by the same counsel is inappropriate due to actual differing interests between them; provided that under no circumstances shall the Company be liable for the fees and expenses of more than one law firm per jurisdiction in any of the foregoing Claims for the Indemnified Persons, taken collectively and not separately. The Company may without the Indemnified Person’s consent, settle or compromise any Claims or consent to the entry of any judgment if such settlement, compromise or judgment involves only the payment of money damages by the Company (which payment is made or adequately provided for at the time of such settlement, compromise or judgment) or provide for the unconditional release by the claimant or plaintiff of the Indemnified Person and his or her Affiliates from all liability in respect of such Claim and does not impose injunctive relief against any of them. The Indemnified Person shall provide reasonable assistance to the Company in the defense of the Claim. As between the Company, on the one hand, and the Indemnified Persons, on the other hand, any matter that is not



agreed to unanimously by the Indemnified Persons shall be determined by the Indemnified Person that is a party to this Agreement.

(c) **Defense by the Indemnified Person.** If the Company, within 20 business days after receiving written notice of a Claim, fails to assume the defense thereof, the Indemnified Person shall have the right, subject to the right of the Company thereafter to assume such defense pursuant to the provisions of this Article 9, to undertake the defense, compromise or settlement of such claim for the account of the Company.

(d) **Advancement of Expenses.** Unless the Indemnifying Party shall have assumed the defense of any Claim pursuant to Section 9.3(b), the Company shall advance to the Indemnified Person any of its reasonable attorneys' fees and other cost and expenses incurred in connection with the defense of any such Claim. Each Indemnified Person shall agree in writing prior to any such advancement, that in the event he or she receives any such advance, the Indemnified Person shall reimburse the Company for those fees, costs and expenses to the extent that it shall be determined that he or she was not entitled to indemnification under this Article 9.

(e) **Contribution.** Notwithstanding any of the foregoing to the contrary, the provisions of this Article 9 shall not be construed so as to provide for the indemnification of any Indemnified Person for any liability to the extent (but only to the extent) that such indemnification would be in violation of applicable law or to the extent such liability may not be waived, modified, or limited under applicable law, but shall be construed so as to effectuate the provisions of this Article 9 to the fullest extent permitted by law; provided, that if and to the extent that the Company's indemnification obligation under this Article 9 is unenforceable for any reason, the Company hereby agrees to make the maximum contribution permissible under applicable law to the payment and satisfaction of the losses of the Indemnified Person, except to the extent such losses are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from the Indemnified Person's gross negligence or willful misconduct.

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**ARTICLE 10**  
**SPECIAL AND LIMITED POWER OF ATTORNEY**

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**10.1 Special and Limited Power of Attorney.**

(a) The Manager shall at all times during the existence of the Company have, with full power of substitution, a special and limited power of attorney as the authority to act in the name and on the behalf of each Member to make, execute, swear to, verify, acknowledge and file the following documents and any other documents deemed by the Manager to be necessary for the business of the Company:

(i) this Agreement, any separate certificate or articles of formation, fictitious business name statements, as well as any amendments to the foregoing which, under the laws of any state, are required to be filed or which the Manager deems it advisable to file;

(ii) any other instrument or document which may be required to be filed by the Company under the laws of any state or by an governmental agency, or which the Manager deems it advisable to file; and

(iii) any instrument or document which may be required to effect the continuation of the Company, the admission of a Member, the Transfer of an interest in the Company, the substitution of an assignee of a Member, or the dissolution and termination of the Company (provided such continuation, admission or dissolution and termination are in accordance with the terms of this Agreement).

(b) The special and limited power of attorney granted to the Manager hereby:

(i) is a special and limited power of attorney coupled with an interest, is irrevocable, shall survive the dissolution or incompetency of the granting Member, and is limited to those matters herein set forth;

(ii) may be exercised by the Manager for each Member by referencing the list of Members on Schedule A, as may be amended from time to time, and executing any instrument with a single signature acting as attorney-in-fact for all of them;

(iii) shall survive a Transfer by a Member of such Member's interest in the Company pursuant to Section 7 for the purpose of enabling the Manager to execute, acknowledge and file any instrument or document necessary or appropriate to admit an assignee as a Member; and

(iv) notwithstanding the foregoing, in the event that the Manager ceases to be the Manager in the Company, the power of attorney granted by this Section to such Manager shall terminate immediately solely with respect to such Manager, but shall continue in full force and effect with respect to any substitute Manager appointed to replace the terminated Manager, and any such termination shall not affect the validity of any documents executed prior to such termination, or any other actions previously taken pursuant to this power of attorney or in reliance upon its validity, all of which shall continue to be valid and binding upon the Members in accordance with their terms.

