

# Exhibit 3

***EXECUTION COPY***

---

---

**SECOND AMENDED AND RESTATED**

**OPERATING AGREEMENT**

**OF**

**KGS AGRO GROUP, LLC**

---

---

**SECOND AMENDED AND RESTATED****OPERATING AGREEMENT OF KGS AGRO GROUP, LLC**

This SECOND AMENDED AND RESTATED OPERATING AGREEMENT (this “**Agreement**”) of KGS Agro Group, LLC (the “**Company**”), dated as of February 24, 2016, is made and entered into among the Company and each of the parties set forth on Exhibit A hereto as members (the “**Members**”).

**W I T N E S S E T H:**

WHEREAS, the Company’s Certificate of Formation was filed with the Secretary of State of the State of Delaware on February 25, 2013 (the “**Certificate of Formation**”);

WHEREAS, the Company was previously governed by that certain amended and restated Operating Agreement of the Company, dated as of December 15, 2014 (the “**Prior Agreement**”);

WHEREAS, Rajiv Kacholia has previously withdrawn as a Member of the Company pursuant to that certain Amendment to Amended and Restated Operating Agreement, effective as of February 2, 2016 (the “**Amendment**”);

WHEREAS, this Agreement is being executed in connection with that certain Securities Purchase Agreement, dated as of the date hereof, by and among the Company and various Members (the “**Purchase Agreement**”) and, as such, (i) this Agreement shall be effective from and after the Closing (as defined in the Purchase Agreement, (ii) each of the parties hereto acknowledges and agrees that nothing herein shall preclude the transactions contemplated by the Purchase Agreement, and (iii) the Company shall take any and all actions necessary to give effect to the transactions and terms set forth in the Purchase Agreement; and

WHEREAS, in accordance with the Delaware Limited Liability Company Act, each of the Members desires to amend and restate the Prior Agreement in its entirety and to enter into this Agreement to set forth the respective rights, powers and interests of the Members with respect to the Company and their respective Membership Interests therein and to provide for the management of the business and affairs of the Company.

NOW, THEREFORE, in consideration of the mutual promises and agreements made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**ARTICLE I****DEFINITIONS**

Section 1.01. Definitions. As used in this Agreement, the following terms not otherwise defined herein shall each have the meaning set forth in this Article I (unless the context otherwise requires).

“**Act**” means the Delaware Limited Liability Company Act, Chapter 18 of Title 6 of the Delaware Code, 6 Del. Code § 18-101 *et. seq.*, as amended from time to time.

“**Adjusted Capital Account Deficit**” means, at any time with respect to any Member, the deficit balance, if any in such Member’s Capital Account as of the end of the relevant allocation year, after giving effect to the following adjustments:

(a) such Capital Account shall be increased by the amounts which such Member is deemed obligated to restore *as* described in the penultimate sentence of Treasury Regulation Section 1.704-2(g)(1) and Treasury Regulation Section 1.704-2(i)(5); and

(b) such Capital Account shall be reduced by the amount of the items described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The definition of Adjusted Capital Account Deficit is intended to comply with Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“**Affiliate**” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person. The term “control” (including the terms “controlled by” and “under common control with”) as used in this definition means the possession, directly or indirectly (including through one or more intermediaries), of the power or authority to direct or cause the direction of the management and policies of a Person, whether through the ownership of membership interests, by contract or otherwise.

“**Bankruptcy Action**” means any action, of, by, on behalf of, or with respect to the Company or any Subsidiary, (a) to commence or file (including the authorization of any action to commence or file) any case or proceeding under any applicable bankruptcy, insolvency, reorganization, or liquidation proceeding (including any chapter 11 or chapter 7 proceeding, or under any similar or analogous law), any other case or proceeding pursuant to which the Company or any Subsidiary is or may be adjudicated to be bankrupt or insolvent, and any other similar or analogous proceeding) or (b) to consent (i) to the entry of a decree or order appointing a trustee, custodian, receiver, liquidator, assignee or similar official or (ii) to initiate a voluntary dissolution, liquidation or termination.

“**Board of Managers**” means the Board of Managers provided for in Article IV.

“**Capital Account**” means, with respect to any member, such Member’s Capital Contribution to the Company as adjusted in accordance with Section 6.02 hereof.

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

“**Company Minimum Gain**” has the meaning assigned to the term “partnership minimum gain” in Treasury Regulation Section 1.704-2(d).

“**Contribution**” means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to render services that a Member contributes to the Company in his or her capacity as a Member.

“**Distribution**” means the transfer of Property by the Company to one or more of its Members in his or her capacity as a Member.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended from time to time.

“**Fiscal Year**” means, to the extent permitted by Code Section 706 and the Treasury Regulations promulgated thereunder, the calendar year and the initial tax year of the Company shall begin upon the commencement of the existence of the Company and shall expire on December 31 thereafter.

“**GAAP**” means (i) United States generally accepted accounting principles consistently applied in effect or (ii) other comprehensive basis of accounting.

“**Gross Asset Value**” means, with respect to any asset of the Company, the asset’s adjusted basis as of the relevant date for federal income tax purposes, except as follows:

(i) the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the fair market value of such asset, as determined by the Board of Managers;

(ii) the Gross Asset Values of all Company assets (including intangible assets such as goodwill) shall be adjusted, at the election of the Board of Managers, to equal their respective gross fair market values, as determined by the Board of Managers, as of the following times: (A) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution, (B) the distribution by the Company to a Member of the more than a de minimis amount of money or Company property as consideration for an interest in the Company, (C) the liquidation of the Company within the meaning of Treasury Regulation Section 1.704- I (b)(2)(ii)(g); and (D) in connection with the grant of an interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a member capacity, or by a new Member acting in a partner capacity in anticipation of being a Member; provided, however, that adjustments pursuant to clauses (A) and (B) shall be made only if the Board of Managers determines such adjustment is necessary or appropriate to reflect the relative economic interests of the Members;

(iii) the Gross Asset Value of any item of Company assets distributed to any Member shall be adjusted to equal the gross fair market value (including intangible assets such as goodwill) of such asset on the date of distribution as determined by the Board of Managers;

(iv) the Gross Asset Value of any Company asset distributed to a Member shall be the gross fair market value of such asset on the date of distribution the Gross Asset Values of the Company’s assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining capital accounts pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m); and

(v) if the Gross Asset Value of an asset has been determined or adjusted pursuant to subsection (i), (ii) or (iv) above, such Gross Asset Value shall thereafter be adjusted by the

Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses and other items allocated pursuant to Section 6.03.

The foregoing definition of Gross Asset Value is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(iv) and shall be interpreted and applied consistently therewith.

**“Indebtedness”** means, with respect to any Person, without duplication, (a) all indebtedness of such Person, whether or not contingent, for borrowed money, (b) all obligations of such Person evidenced by notes, bonds, debentures or other similar debt instruments, (c) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (d) all obligations, contingent or otherwise, of such Person under bankers acceptance, letters of credit or similar arrangements, (e) obligations of such Person upon which interest charges are customarily paid, (f) all Indebtedness of others referred to in clauses (a) through (e) above guaranteed by such Person through an agreement (i) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, or (ii) otherwise to guarantee a creditor against loss, and (g) all Indebtedness referred to in clauses (a) through (f) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any encumbrance on property (including account and contract rights) owned by such person, even though such Person has not assumed or become liable for payment of such Indebtedness.

**“Leiber”** means The Leiber Group, Inc. and its successors or assigns.

**“Lien”** shall mean lien, pledge, security interest, claim, encumbrances, option, right of first refusal or offer, mortgage, deed of trust, easement, or any other restriction or third party right, including restrictions on the right to vote equity interests.

**“Majority in Interest of the Members”** means, as of the applicable time of determination, the Members whose aggregate Membership Interest in the Company constitutes more than one-half of the aggregate of all Membership Interests of all Members; provided, however, that Leiber must necessarily be one of such Members constituting more than one-half of the aggregate of such Membership Interests of all Members for any group of or single Member to constitute a Majority in Interest of the Members.

**“Manager”** means a natural person serving as a member of the Board of Managers in accordance with this Agreement.

**“Manager Voting Percentages”** means, with respect to each Manager, such Manager’s, together with such Manager’s, the Member appointing such Manager, and each such Manager’s and Member’s respective Affiliate’s, total Membership Interests, as of the applicable date and without duplication. The Manager Voting Percentages as of the date of this Agreement for each Manager are set forth in Schedule B, which Schedule B shall be amended and restated by the Company from time to time to reflect any changes in Manager Voting Percentages, in each case, in accordance with and pursuant to this Agreement.

**“Member”** means a person who has been admitted as a member of the Company and has a Membership Interest in the Company with the rights, obligations, preferences and limitations

specified herein. The Members as of the date of this Agreement and their respective aggregate share of Membership Interests are set forth on Schedule A.

**“Member Nonrecourse Debt Minimum Gain”** means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Treasury Regulation Section 1.704-2(0)(3).

**“Member Nonrecourse Debt”** has the meaning assigned to the term “partner nonrecourse debt” in Treasury Regulation Section 1.704-2(b)(4).

**“Member Nonrecourse Deductions”** has the meaning assigned to the term “partner nonrecourse deductions” in Treasury Regulation Section 1.704-2(i)(1) and (2).

**“Membership Interest”** means a Member’s aggregate rights in the Company, including, without limitation, the Member’s right to a share of the Profits and Losses of the Company, the right to receive Distributions from the Company and the right to vote and participate in the management of the Company. The Membership Interests as of the date of this Agreement for each Member are set forth in Schedule A, which Schedule A shall be amended and restated by the Company from time to time to reflect any changes in Membership Interests, in each case, in accordance with and pursuant to this Agreement.

**“Necessary Action”** means, with respect to a specified result, all actions that are permitted by law and necessary to cause such result, including (i) voting or providing a written consent or proxy with respect to Membership Interests, (ii) causing the adoption of resolutions and amendments to the Certificate of Formation or any other charter documents of the Company, (iii) causing members of the Board of Managers (to the extent such members were nominated or designated by the Person obligated to undertake the Necessary Action, and subject to any fiduciary duties that such members may have as Managers of the Company) to act in a certain manner or causing them to be removed in the event they do not act in such a manner, (iv) executing agreements and instruments, and (v) making, or causing to be made, with governmental, administrative or regulatory authorities, all filings, registrations or similar actions that are required to achieve such result.

**“Nonrecourse Deductions”** has the meaning set forth in Regulations Sections 1.704-2(b)(1) and 1.704-2(c).

**“Nonrecourse Liability”** has the meaning set forth in Treasury Regulations Sections 1.704-2(b)(3).

**“Original Member”** means each of Arnold H. Simon and Eugene Kremener.

**“Permitted Transferee”** means with respect to a Member, such Member’s (i) Affiliates, and (ii) in the case of an individual, such individual’s spouse, domestic partner, sibling, child, or other lineal descendant of such individual (including adoptive relationships and stepchildren) and the spouses of each such natural person, a company, partnership or a trust established for the benefit of any of the foregoing or any personal representative, estate or executor under any will

of such Member or pursuant to the laws of intestate succession; provided, however, that, in each case, such Transfer is made in accordance with the applicable provisions of Article V.

“**Person**” means any association, corporation, joint stock company, estate, general Company, limited association, limited liability company, joint venture, limited Company, natural person, real estate investment trust, business trust or other trust, custodian, nominee or any other individual or entity in its own or representative capacity.

“**Profits**” and “**Losses**” means, for each fiscal year of the Company or part thereof, the Company’s taxable income or loss for such year or period 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:

(i) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

(ii) 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)(1) and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall reduce such taxable income or increase such loss;

(iii) any expenditure of the Company that shall be deductible for federal income tax purposes subject to the application of a limitation based on a taxpayer’s gross income or adjusted gross income shall be deemed to be allowable as a deduction without regard to such limitation;

(iv) the difference between the adjusted tax basis and the Gross Asset Value of any property distributed in kind by the Company to any Member (in liquidation or otherwise) shall be taken into account (as an item of Profit if such fair market value shall exceed such adjusted basis, or as an item of Loss if such adjusted basis shall exceed such fair market value);

(v) gain or loss with respect to any assets contributed to the Company by a Member, shall be computed by reference to the Gross Asset Value of such assets, rather than such assets’ adjusted tax bases;

(vi) gain or loss following any adjustment of the Members’ Capital Accounts pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(f), shall be computed by reference to the restated value of the Company’s assets, rather than such assets’ adjusted tax bases;

(vii) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with the definition thereof; and

(viii) any items which shall be specially allocated pursuant to Section 6.03(b) or Section 6.03(b)(vi) shall not be taken into account in computing Profit or Loss.



“**Property**” means all real, personal and mixed properties, cash, assets, interests, and rights of any type owned by the Company. All assets acquired with Company funds or in exchange for Company Property shall be Company Property.

“**Subsidiary**” means with respect to any Person, any other Person, whether incorporated or unincorporated, in which the Company or any one or more of its other Subsidiaries, directly or indirectly, owns or controls: (i) fifty percent (50%) or more of the securities or other ownership interests, including profits, equity or beneficial interests; or (ii) securities or other interests having by their terms ordinary voting power to elect more than fifty percent (50%) of the board of directors or others performing similar functions with respect to such other Person that is not a corporation.

“**Substituted Member**” means a Person who acquired Membership Interests and who has been admitted as a Member pursuant to Article V of this Agreement.

“**Tax Matters Member**” means a Member of the Company designated by the other Members pursuant to Section 4.01(e) hereof to act as tax matters Member (or partner, as applicable) of the Company for purposes of the Code and in any similar capacity under state or local law.

“**Treasury Regulations**” means the Income Tax Regulations (final, temporary and, as applicable, proposed) promulgated under the Code.

Section 1.02. 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 provisions hereof.

Section 1.03. Gender and Number. Wherever from the context it appears appropriate, each term states in either the singular or plural shall include the singular and plural, and pronouns stated in either the masculine, the feminine or the neuter gender shall include the masculine, the feminine and the neuter.

## ARTICLE II

### CONTINUATION, NAME, PURPOSE, CHARACTER OF BUSINESS, PLACE OF BUSINESS, TERM

Section 2.01. Name. The name of the Company is KGS Agro Group LLC.

Section 2.02. Purpose and Character of Business. The Company is formed for the purpose of engaging in any lawful act or activity for which limited liability companies may be formed under the Act.

Section 2.03. Place of Business. The principal place of business of the Company shall be located in such place as the Board of Managers shall determine.

Section 2.04. Term. The term of the Company shall begin upon the date of the Certificate of Formation or any later effective date as set forth therein and will continue until dissolution pursuant to Article IX of this Agreement or by law.

Section 2.05. Qualification in Other Jurisdictions. The Board of Managers shall cause the Company to be qualified, formed, reformed or registered under assumed or fictitious name statutes or similar laws in any jurisdiction, if such qualification, formation, reformation or registration is necessary in order to protect the limited liability of the Members and the Board of Managers or to permit the Company lawfully to transact business.

### ARTICLE III

#### MEETINGS OF MEMBERS

Section 3.01. Annual Meetings. Meetings of the Members shall be held at least annually in the first half of each calendar year. Meetings of Members may be held at such place or places, within or without the State of Delaware, as shall be determined by the Board of Managers and stated in the notice of the meeting or in a duly executed waiver of notice thereof. Members of the Company may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at such meeting.

Section 3.02. Special Meetings. A meeting of the Members for any purpose or purposes may be called at any time by the Board of Managers and shall be called at any time by the Board of Managers upon the written request of Members holding of record in the aggregate at least a Majority in Interest of the Members in the Company entitled to vote, at such meeting Such notice shall state the purpose(s) for which such meeting is to be called.

Section 3.03. Notice of Meetings. Every Member's address at which notices of meetings and all other notices may be served on or mailed to him or her are set forth next to such Members' name on Schedule A. Any Member may update or revise is or her notice address by furnishing the Company through the Board of Managers an updated address. Notice of each meeting of the Members shall be given to each Member entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the day on which the meeting is to be held, either by personally giving notice or by delivering written notice thereof by mailing such notice in a first-class postage prepaid envelope addressed to him or her at his post-office address furnished by him to the Company, or if he or she shall not have furnished to the Company his or her address, then at his or her post-office address last known to the Company, or, in the absence of knowledge on the part of the Company of any such post-office address, then at the Office of the Company in the State of Delaware. Notice of a meeting of the Members shall provide the place, date and hour of the meeting, indicate that it is being issued by or at the direction of the Person or Persons calling the meeting, and state the purpose or purposes for which the meeting is called. An affidavit of any Manager that notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. When a meeting is adjourned to another time and place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment

is taken, and at the adjourned meeting any business may be transacted that might have been transacted at the original date of the meeting.

Section 3.04. Waiver of Notice. Notice of a meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him or her.

Section 3.05. Quorum. A Majority in Interest of the Members of the Company entitled to vote at a meeting shall constitute a quorum for the transaction of business when present at such meeting either in person or by proxy. When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any Members.

Section 3.06. Voting. When voting on any matter that requires the vote at a meeting of the Members pursuant to the Act, the Certificate of Formation, or this Agreement, each Member shall vote in proportion to such Member's Membership Interest in the Company. Whenever any action is to be taken under the Act by the Members, it shall, except as otherwise provided, be authorized by a majority of the total Membership Interests of the Members entitled to vote thereon, it being understood that, as of the date of this Agreement, (i) Arnold Simon holds a majority of the total Membership Interests, and (ii) Arnold Simon and Leiber hold, and constitute, together a Majority in Interest in the Company. No provision in this Agreement which provides for the vote of a Membership Interest of the Members may be amended without the consent of at least such Membership Interest of the Members.

Section 3.07. Proxies. Each Member entitled to vote at any meeting of Members may authorize another Person or Persons to act as his or her proxy by an instrument in writing signed by such Member or his or her attorney-in-fact.

Section 3.08. Action Without a Meeting.

(a) Whenever Members of the Company are required or permitted to take any action by vote, such action may be taken without a meeting, without prior notice and without a vote, if consent or consents in writing, setting forth the action so taken shall be signed by the Members who hold the voting interests having not less than the minimum number of votes that would be necessary to authorize such action at a meeting at which all of the Members entitled to vote therein were present and voted and shall be delivered to the office of the Company by hand or by certified or registered mail, return receipt requested.

(b) Every written consent shall bear the date of signature of each Member who signs the consent. No written consent shall be effective to take the action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this section, written consents signed by a sufficient number of Members to take the action are delivered to the office of the Company by hand or by certified or registered mail, return receipt requested.

(c) Prompt notice of the taking of action without a meeting by less than unanimous written consent shall be given to those Members who have not consented in writing

but who would have been entitled to vote thereon had such action been taken at a meeting. In the event that the action that is consented to is such as would have required the filing of articles or a certificate under any Section of the Act, if such action had been voted on by Members at a meeting thereof, such articles or certificate filed under such Section shall state, in lieu of any statement required by such Section concerning any vote of Members, that written consent has been given as provided in Section 407 of the Act.

## ARTICLE IV

### MANAGEMENT

#### Section 4.01. Management and Control of the Company.

(a) The day to day management, operation and control of the business and affairs of the Company shall be vested exclusively in the Board of Managers (the “**Board of Managers**”), except as otherwise expressly provided for in this Agreement. The Board of Managers shall initially consist of four (4) natural persons with Arnold Simon to be the Chairman of the Board of Managers and the Chief Executive Officer of the Company. Subject to Section 4.04(c), the Board of Managers shall have full and complete power, authority and discretion for, on behalf of and in the name of the Company, to enter into and perform all contracts and other undertakings that it may deem necessary or advisable to carry out any and all of the objects and purposes of the Company, except as otherwise expressly provided for in this Agreement. A Manager acting individually will not have the power to bind the Company, except for Arnold Simon in his capacity as Chairman of the Board of Managers and Chief Executive Officer of the Company, subject to the other provisions of this Agreement. The power and authority of the Board of Managers may be delegated by the Board of Managers to a committee of Managers, to any officer of the Company or to any other Person engaged to act on behalf of the Company. The initial Board of Managers as of the date hereof shall be comprised of the following four Managers David Cogut, Arnold Simon, Rajiv Kacholia, and Eugene Kremener. Thereafter, the Board of Managers shall be elected at each annual meeting of the Members (with the first such annual meeting to take place in 2017), which election may also be conducted through action by written consent pursuant to Section 3.08; provided, however, that for so long as Leiber is a Member, the Board of Managers shall at all times be comprised of not less than one (1) Manager appointed by Leiber, in Leiber’s sole and absolute discretion (the “**Leiber Manager**”), for a total of four (4). For the avoidance of doubt, the initial Leiber Manager shall be David Cogut.

(b) Leiber, in its sole and absolute discretion, shall at any time have the right to designate one (1) individual to attend all meetings of the Board of Managers as an observer (the “**Observer**”); provided, however, that (i) such Observer shall be provided with copies of all notices, memoranda, presentations and other materials provided to the Board of Managers (such notices, memoranda, presentations and other materials shall be confidential information subject to Section 8.04, and (ii) in the event the Leiber Manager does not to attend a meeting of the Board of Managers, such Observer shall hold such Leiber Manager’s proxy to vote in all respects and in the same capacity as the Leiber Manager at any such meeting. Notwithstanding the foregoing, no Member (other than Arnold Simon and Eugene Kremener) who does not, together

with its Affiliates, hold a majority of the Membership Interests shall have access to the Company's formulas for production of agricultural products.

(c) The Company shall send prompt written notice to all Members and the Observer of the annual meeting and any change in the composition or size of the Board of Managers.

(d) The designation of an individual as a Manager or Observer shall not of itself create a right to continued membership on the Board of Managers, attendance of the meetings of the Board of Managers, or employment with the Company.

(e) The Board of Managers shall designate one Manager that is a Member of the Company to be the Tax Matters Member of the Company, which initially shall be Arnold Simon.

(f) Unless otherwise determined by the affirmative approval or written consent of the Majority in Interest of the Members and except as otherwise required by applicable law, the Company shall ensure that the composition of the board of managers, board of directors or other governing body of each of its Subsidiaries shall be the same as, and shall be selected in the same manner as, the Board of Managers as set forth in Section 4.01(a).

(g) The Company and each of the Members shall take any and all Necessary Action to ensure the compliance of this Section 4.01.

(h) In the event that the Company makes an in-kind Distribution described in Section 734 of the Code, or in the event of a transfer of any Membership Interest permitted by this Agreement made and described in Section 743 of the Code, the Managers, on behalf of the Company, may, in their absolute discretion, file an election under Section 754 of the Code in accordance with the procedures set forth in the applicable Treasury Regulations promulgated thereunder.

Section 4.02. Members Shall Not Manage or Control. Except for Arnold Simon, in his capacity as Chairman of the Board of Managers and Chief Executive Officer of the Company and as otherwise required or permitted by the terms of this Agreement, the Members, other than as they may act by and through the Board of Managers, shall take no part in the management of the business and affairs of the Company and shall transact no business for the Company, in each case, other than as specifically delegated by the Board of Managers.

Section 4.03. Duties of Managers.

(a) Each Manager shall owe to the Company and its Members the same fiduciary duties of care and loyalty as those that are owed by a director or officer of a Delaware corporation to the company (upon the assumption that there are no provisions in the certificate of incorporation of such corporation or in any contract between such manager or officer and the company that limit the scope of such statutory duties).

(b) In performing their duties, each Manager shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial

data, in each case prepared or presented by: (a) one or more agents or employees of the Company, or (b) counsel, accountants or other Persons as to matters that such Manager believes to be within such Person's professional or expert competence, provided such Manager has no knowledge concerning the matter in question that would cause such reliance to be unwarranted.

Section 4.04. Action by Board of Managers; Member Approval.

(a) The Board of Managers shall manage the Company by the affirmative vote of a majority of the Manager Voting Percentages. No action may be taken by the Board of Managers unless a quorum is present. A quorum shall consist of the presence, in person or by proxy, of a majority of the Managers then in office, including the Leiber Manager. The Board of Managers shall act by vote of a majority of the Manager Voting Percentages, and each Manager shall, as of the date hereof, have the voting percentages set forth on Schedule B.

(b) Subject to Section 4.03, no Manager shall be disqualified from acting on any matter because such member is interested in the matter to be acted upon by the Board of Managers so long as all material aspects of such matter have been disclosed in reasonable detail to all Managers who are to act on such matter. Each Manager may authorize in writing another natural person or natural persons to vote and act for such member by proxy, and such natural person or natural persons holding such proxy shall be counted towards the determination of whether a quorum of the Board of Managers is present. One natural person may hold more than one proxy and each such proxy held by such natural person shall be counted towards the determination of whether a quorum of the Board of Managers exists.

(c) Notwithstanding anything to the contrary in this Agreement, none of the following actions may be taken by the Company or the Board of Managers, directly or indirectly (and the Company shall cause its Subsidiaries to refrain from taking such actions directly or indirectly), without the affirmative approval or written consent of the Majority in Interest of the Members:

- (i) the dissolution and winding up of the Company;
- (ii) taking (or permitting any Subsidiary of the Company to take) any Bankruptcy Action;
- (iii) a material change in the Company's business powers or purposes;
- (iv) the declaration of a Company dividend or any decision with respect to making a Distribution of the Company's Profits;
- (v) the formation of any Subsidiary of the Company;
- (vi) the designation of salaries or other compensation to any Manager; provided, however, that the current salaries of Arnold Simon and Eugene Kremener are allowed in the current amounts of \$45,000 and \$25,000 per month, respectively; provided further, that such salaries shall only be paid out of available cash and in no event shall any Indebtedness be incurred by the Company to pay such salaries;



(vii) entering into any agreement or transaction following the date hereof between the Company or any of its Subsidiaries, on the one hand, and any Member or any of its executive officers, directors or Affiliates, on the other hand;

(viii) entering into any material Related Party Agreement;

(ix) engaging in any material new line of business unrelated to the Company's lines of business existing as of the date hereof, including as the result of an acquisition or other transaction outside of the ordinary course of business;

(x) engaging in any redemption, reclassification, purchase, retirement or other acquisition, directly or indirectly, for cash, of any equity securities or indebtedness for borrowed money of the Company;

(xi) incur, create, amend, modify, assume or permit to exist any Indebtedness which, in a single instance, is over \$1,000,000, or in the aggregate with any other related Indebtedness, is in excess of \$5,000,000 or grant any Lien; provided, however, that any such Indebtedness or Lien must, in each case, be in the ordinary course of business and consistent with the Company's business purposes and practice;

(xii) change the auditors of the Company or any of its Subsidiaries;

(xiii) change the size of the Company's Board of Managers;

(xiv) declaring any change in any tax election or treatment of the Company;

(xv) instituting or settling any material legal or regulatory claim or action on behalf of the Company or any of its Subsidiaries that would result in a payment by the Company and/or its Subsidiaries (net of any insurance proceeds actually recovered by or paid on behalf of the Company and its Subsidiaries) which, claim, action or payment in a single instance, is in excess of \$25,000, or, in the aggregate in an applicable fiscal year, is in excess of \$100,000.

(xvi) any initial public offering, including registering the Membership Interest or other equity securities of the Company under Section 12 of the Exchange Act, or entering into any transaction or permitting the occurrence of any event (including any transfer) that would result in or require the registration of any Membership Interest or any other equity securities of the Company under Section 12 of the Exchange Act; or

(xvii) subject to Section 4.05, the direct or indirect sale, license, lease, assignment, pledge, hypothecation, or transfer of any of the Company's assets or rights, or the direct or indirect sale, license, lease, assignment, pledge, hypothecation, or transfer of all of the Membership Interests, whether such transaction occurs by a direct or indirect sale, merger or otherwise and whether in a single or series of transactions; provided, however, that any license or lease that is in the ordinary course of business consistent with past practice and consistent with the Company's business purposes and practice, shall not, in and of itself, violate this Section 4.04(c)(xvii) and require the consent of the Majority Members (it being

understood that any transaction involving all or substantially all of the assets of the Company or rights thereto or any transaction, including any license or lease of such assets or rights, shall not be consistent with past practice and shall be outside of the ordinary course of business);

(xviii) other than in the ordinary course of business consistent with past practice, acquire by merger or consolidation with, or merge or consolidate with, or purchase substantially all of the assets of, any corporation, partnership, association, joint venture or other business organization or division thereof; provided, however, that any purchase of assets that is in the ordinary course of business consistent with past practice and consistent with the Company's business purposes and practice, shall not, in and of itself, violate this Section 4.04(c)(xviii) and require the consent of the Majority Members (it being understood that any transaction or series of related transactions in excess of \$50,000 shall not be consistent with past practice and shall be outside of the ordinary course of business); and

(xix) the making of any payment or expenditure outside the ordinary course of business which, in a single instance, is over \$10,000, or, in the aggregate in an applicable fiscal year, is in excess of \$25,000.

Section 4.05. Procedural Matters.

(a) Any action required or permitted to be taken by the Board of Managers may be taken without a meeting if all of the Managers consent thereto in writing and such writing is filed with the records of the Company. The Managers may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting hear each other. Such participation shall constitute presence in person at such meeting.

(b) The Board of Managers (and each committee thereof) shall cause to be kept a book of minutes of all of its actions by written consent and in which there shall be recorded with respect to each meeting of the Board of Managers (or any committee thereof) the time and place of such meeting, whether regular or special (and if special, how called), the names of those present and the proceedings thereof.

Section 4.06. Officers. The Board of Managers may and hereby does appoint Arnold Simon as the Chairman of the Board of Managers and the Chief Executive Officer of the Company. The Board of Managers may appoint such other officers of the Company as it deems appropriate. All officers of the Company shall have such authority and perform such duties as may be provided in this Agreement or, to the extent not so provided, by resolution passed by the Board of Managers. Each officer shall be a natural person eighteen years of age or older. One person may hold more than one office. In all cases where the duties of any officer, agent, or employee are not prescribed by this Agreement, such officer, agent or employee shall follow the orders and instructions of the Board of Managers. The officers, to the extent of their powers as set forth in this Agreement or as delegated to them by the Board of Managers, are agents of the Company and the actions of the officers taken in accordance with such powers shall bind the Company.



Section 4.07. Term of Managers. Each Manager shall hold office and have the terms and responsibilities accorded to him or her by the terms hereof until resignation or removal by the Members in accordance with Section 4.08; provided, however, that Leiber may remove the Leiber Manager at any time in its sole and absolute discretion and for the avoidance of doubt, no other party may remove the Leiber Manager.

Section 4.08. Removal of Managers. Other than the Leiber Manager, Managers may be removed at any time by the vote of a majority of the total Membership Interests of the Members entitled to vote thereon. Moreover, other than the Leiber Manager, a Manager may be removed for good cause by a majority of the total Membership Interests of the Members for fraud, misappropriation of funds, or gross negligence in the performance of his duties on behalf of the Company. With respect to the Leiber Manager and the Observer only, Leiber shall, in its sole and absolute discretion, be entitled to and shall be the sole party entitled to remove such Leiber Manager and/or such Observer at any time.

Section 4.09. Resignation of Managers. A Manager or Observer may resign at any time by giving written notice to the Company.

Section 4.10. Vacancies. Other than with respect to the Leiber Manager, vacancies occurring among the Managers shall be filled by the vote of the Members holding a majority of the Membership Interests entitled to vote thereon. Any Manager chosen to fill a vacancy shall serve the unexpired term of his or her predecessor. With respect to the Leiber Manager and the Observer only, Leiber shall, in its sole and absolute discretion, appoint an individual to fill any such vacancy.

Section 4.11. Reimbursement. The Company shall reimburse the Managers and Observer for all ordinary and necessary out-of-pocket expenses incurred by them on behalf of the Company. Such reimbursement shall be treated as an expense of the Company that shall not be deemed to constitute a distributive share of Profits or a Distribution or return of capital to the Managers, and such reimbursement shall be made out of the assets of the Company (including the proceeds of the initial sale of Membership Interests) to the extent possible. The obligations of the Managers to be performed under this Agreement will not be affected by a failure of the Company to reimburse expenses under this Section 4.11.

Section 4.12. Related Party Transaction; Interested Managers. Neither the Company nor any of its Subsidiaries shall enter into any transaction, agreement or arrangement with any Related Person, other than employment or indemnification arrangements with Managers, officers or employees of the Company (a “**Related Party Agreement**”) in the ordinary course of business unless such transaction, agreement or arrangement is approved by a majority of the disinterested members of the Board of Managers, including the Leiber Manager, if applicable. Subject to compliance with the first sentence of this Section 4.12, no contract or other transaction between the Company and one or more of the Managers or between the Company and any other limited liability company or other business entity in which one or more of the Managers are managers, directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such Manager or Managers were present at the meeting of Managers which approved such contract or transaction, or that his or her or their votes were counted for such purposes, (i) if the material facts as to such Manager’s interest in

such contract or transaction and as to any such common managership, directorship, officership or financial interest are disclosed in good faith or known to the other Managers, and the Managers approve such contract or transaction by a vote sufficient for such purpose without counting the vote of such interested Manager or, if the votes of the disinterested Managers are insufficient to constitute an act of the Managers pursuant to the terms hereof and the Act, by unanimous vote of the disinterested Managers; or (ii) if the material facts as to such Manager's interest in such contract or transaction and as to any such common managership, directorship, officership or financial interest are disclosed in good faith or known to the Members entitled to vote thereon, and such contract or transaction is approved by the vote of such Members.

Section 4.13. Other Activities of Managers.

(a) The Managers shall devote so much of their time to the affairs of the Company as in the judgment of each such respective Manager the conduct of the business of the Company shall reasonably require. Each Manager shall have the right to engage in outside business activities of any kind and such outside activity by any Manager shall not constitute a breach under this Agreement.

(b) Notwithstanding Section 4.13(a), in the event that the Leiber Manager who is not an employee of the Company or its Subsidiaries acquires knowledge of a potential transaction or matter which may constitute a corporate opportunity for both (x) the Leiber Manager, in his or her capacity as a representative of the Leiber, and (y) the Company, the Leiber Manager shall not have any duty to offer or communicate information regarding such corporate opportunity to the Company; provided, however, that for the avoidance of doubt, the execution of this Agreement is not intend to nor shall it restrict or preclude in any way any activities of a third party not a party hereto. To the fullest extent permitted by the Act, the Company hereby renounces any interest or expectancy of the Company in such corporate opportunity and waives any claim against the Leiber Manager and shall indemnify the Leiber Manager against any claim that the Leiber Manager is liable to the Company or its Members for breach of any fiduciary duty solely by reason of the fact that the Leiber Manager (i) pursues or acquires any corporate opportunity for its own account or the account of any Affiliate, (ii) directs, recommends, sells, assigns or otherwise transfers such corporate opportunity to another Person, or (iii) does not communicate information regarding such corporate opportunity to the Company; provided, however, that in each case, that any corporate opportunity which is expressly offered to the Leiber Manager solely in his or her capacity as an officer or Manager of the Company shall belong to the Company.

(c) None of the Managers or any Member guarantees, in any manner, the return of any Member's investment in the Company, any profit of the Company or any dividends or distributions for the Member from the operations of the Company.

**ARTICLE V**

**TRANSFERS; PUT OPTION**

Section 5.01. Transfers Generally.

(a) Except as set forth herein, no Member may, directly or indirectly, sell, assign, exchange, transfer, pledge, hypothecate, mortgage, charge or in any manner dispose of, or create, or suffer the creation of, a security interest in or any encumbrance on, all or a portion of its respective Membership Interest (the commission of any such act being referred to as a “**Transfer**,” any Person who effects a Transfer being referred to as a “**Transferor**” and any Person to whom a Transfer is effected being referred to as a “**Transferee**”) without the consent of the Board of Managers. The foregoing notwithstanding, (i) a Member shall have the right to Transfer any part or all of its Membership Interest to a Permitted Transferee, and (ii) Leiber (or any successor, assigner, or transferee of Leiber) may Transfer all or any part of its Membership Interest to any party, in each case, so long as such Permitted Transferee or Transferee agrees to be bound by the terms and conditions hereof.

(b) No Transfer of a Membership Interest shall be effective until such date as all requirements of this Article V in respect thereof have been satisfied. Any Transfer or purported Transfer not made in accordance with Section 5.01(a) shall be null and void and of no force or effect whatsoever. Any amounts otherwise distributable to a Member pursuant to Article VI, in respect of a Membership Interest that has been transferred in violation of this Section 5.01, may be withheld by the Company following the occurrence of a void transfer until the void transfer has been rescinded, whereupon the amount withheld shall be distributed without interest.

(c) Any Transferee that has received all or a portion of a Member’s Membership Interest pursuant to a Transfer in accordance with Section 5.01(a) shall be admitted to the Company as a Substituted Member upon agreeing in writing to be bound by the terms and provisions of this Agreement as if such Transferee were originally a party to this Agreement. Unless a Transferee is admitted as a Substituted Member pursuant to this Section 5.01(c), such Transferee shall have none of the powers of a Member hereunder and shall only have such rights of an assignee under the Act as are consistent with the other terms and provisions of this Agreement.

#### Section 5.02. Consequences of Transfer

(a) In the event of any Transfer permitted under this Article V, the Transferor and the Membership Interest that is the subject of such Transfer shall remain subject to all of the terms and provisions of this Agreement, and the Transferee shall hold such Membership Interest subject to all unperformed obligations of the Transferor and shall agree in writing to the foregoing if requested to do so by the Member. Any successor or Transferee hereunder shall be subject to and bound by all the terms and provisions of this Agreement as if a Member originally a party to this Agreement.

(b) Unless a Transferee becomes a Substituted Member, such Transferee shall have no right to obtain or require any information concerning, or any account of, Company transactions, or to inspect the Company’s books, or to vote on Company matters. Such a Transfer shall entitle the Transferee only to receive the share of distributions, income and losses to which the transferring Member otherwise would be entitled.

(c) Each Member agrees that such Transferee Member will, upon request of the Board of Managers, execute such certificates or other documents and perform such other acts as the Board of Managers may deem necessary or advisable after a Transfer of all or part of that Member's Membership Interest (whether or not the Transferee becomes a Substituted Member) to preserve the limited liability of the Members under the laws of the jurisdictions in which the Company is doing business.

(d) Neither the Transfer of a Membership Interest nor the admission of a Substituted Member shall be cause for dissolution of the Company.

(e) Any Transferee pursuant to the provisions of this Article V shall succeed to the Capital Account so Transferred to such Person.

Section 5.03. Code Section 83 Safe Harbor Election. By executing this Agreement, each Member (and former Member) authorizes and directs the Company to elect to have the "Safe Harbor" described in the proposed Revenue Procedure set forth in Internal Revenue Service Notice 2005-43 (the "**IRS Notice**") apply to any interest in the Company transferred to a service provider by the Company on or after the effective date of such Revenue Procedure (or any substantially similar Revenue Procedure or other guidance issued by the Internal Revenue Service) in connection with services provided to the Company; provided that the Company shall make such election only in the manner such "Safe Harbor" is set forth in any final Revenue Procedure or other guidance and only if the final Revenue Procedure or such other guidance does not impose conditions that, in the reasonable discretion of the Board of Managers, are materially more onerous economically to the Members than those in the IRS Notice. For purposes of making such Safe Harbor election, the Board of Managers is hereby designated as the person "who has responsibility for Federal income tax reporting" by the Company and, accordingly, execution of such Safe Harbor election by such Person constitutes execution of a "Safe Harbor Election" in accordance with Section 3.03(1) of the IRS Notice. The Company and each Member hereby agree to comply with all requirements of the Safe Harbor described in the IRS Notice (as it or any substantially similar guidance becomes finally effective), including, without limitation, the requirement that each Member shall prepare and file all federal income tax returns reporting the income tax effects of each Safe Harbor interest issued by the Company in a manner consistent with the requirements of the IRS Notice (as it or any substantially similar guidance becomes effective). A Member's obligations to comply with the requirements of this Section 5.03 shall survive such Member's ceasing to be a Member in the Company and/or the termination, dissolution, liquidation and winding up of the Company. Each Member authorizes the Board of Managers, on behalf of such Member and the Company, to amend this Agreement to the extent necessary to effect the foregoing.

Section 5.04. Transfer of Membership Interests.

(a) Right of First Offer.

(i) Subject to Section 5.04(a)(iv), if Arnold Simon or Eugene Kremener, or any Original Member holding a Membership Interest (an "**Offering Member**") desires to transfer some or all of its Membership Interest (other than to a Permitted Transferee), it shall deliver a written notice (an "**Offer Notice**") of such desire to the Board of Managers.

The Board of Managers, on behalf of the Company, shall have 30 days after receipt of the Offer Notice (the “**Election Period**”) to elect by affirmative vote of the majority of the Managers, including the Leiber Manager, in accordance with this Agreement, to purchase all (but not less than all) of the Membership Interest specified in the Offer Notice at a price and on the terms specified in written notice of such election (the “**Election Notice**”) to the Offering Member. If the Board of Managers has elected to purchase all of the Membership Interest set forth in the Offer Notice and submitted the Election Notice of the Offer Notice, the Transfer of such Membership Interest shall be consummated as soon as practical after the delivery of the Election Notice, but in any event within 75 days thereafter.

(ii) If the Board of Managers has not elected to purchase all of the Membership Interest being offered during the Election Period, the Offering Member shall deliver an Offer Notice to Leiber. Leiber shall have 30 days after receipt of the Offer Notice (the “**Leiber Election Period**”) to elect to purchase all (but not less than all) of the Membership Interest specified in the Offer Notice at a price and on terms specified in written notice of such election (the “**Leiber Election Notice**”) to the Offering Member. If Leiber elects to purchase all of the Membership Interest set forth in the Officer Notice and submitted the Leiber Election Notice of the Offer Notice, the Transfer of such Membership Interest shall be consummated as soon as practical after delivery of the Leiber Election Notice, but in any event within 75 days thereafter.

(iii) If neither the Board of Managers nor Leiber have elected to purchase all of the Membership Interest being offered, the Offering Member may, within nine months after the expiration of the Leiber Election Period, and subject to the provisions of Section 5.04(c), transfer the Membership Interest to one or more third parties at a price no less than the price specified in the Offer Notice and on other terms that are not more favorable in the aggregate to the Transferees thereof than those that were offered by the Board of Managers in the Election Notice or by Leiber in the Leiber Election Notice; provided, however, that the Offering Member shall first have delivered a second notice setting forth such more favorable terms (the “**Amended Offer Notice**”) to the Board of Managers and Leiber, as applicable.

(A) If the Offering Member delivers an Amended Offer Notice, the Board of Managers may elect, on behalf of the Company, to acquire all of the Membership Interest specified in the Amended Offer Notice by delivering written notice to the Offering Member not later than 30 days after delivery of the Amended Offer Notice (the “**Amended Election Period**”). Closing of the purchase pursuant to the Board of Managers’ acceptance of an amended Offer shall occur within 75 days after the Board of Managers gives its Election Notice with respect to the Amended Offer Notice. Any Membership Interest not Transferred by the Offering Member within such nine months after the expiration of the Election Period must be reoffered to the Board of Managers pursuant to this Section 5.04(a) prior to any subsequent Transfer.

(B) If the Board of Managers has not elected to purchase all of the Membership Interest set forth in the Amended Offer Notice during the Amended Election Period, the Offering Member shall deliver such Amended Offer Notice to Leiber. Upon receipt of such Amended Offer Notice, Leiber may elect to acquire all of the Membership Interest specified in the Amended Offer Notice by delivering written notice to the Offering Member not



later than 30 days after delivery of the Amended Offer Notice (the “**Leiber Amended Election Period**”). Closing of the purchase pursuant to Leiber’s acceptance of an amended Offer shall occur within 75 days after Leiber gives its Leiber Election Notice with respect to the Amended Offer Notice. Any Membership Interest not Transferred by the Offering Member within such nine months after the expiration of the Leiber Amended Election Period must be reoffered to the Board of Managers and Leiber, as applicable, pursuant to this Section 5.04(a) prior to any subsequent Transfer.

(iv) For the avoidance of doubt and notwithstanding anything to the contrary in this Agreement, Leiber shall not be subject to provisions set forth in this Section 5.04(a). If Leiber desires to transfer some or all of its Membership Interest, it may do so without subjecting itself to the provisions set forth in this Section 5.04(a), or any restriction of any kind, other than the requirement that the Transferee agree to be bound by the terms and conditions of this Agreement in the same manner as Leiber is bound and with the same rights and privileges; provided, however, that Leiber’s rights and privileges set forth in Article IV shall not transference to a Transferee that receives less than one hundred percent (100%) of Leiber’s Membership Interest.

(b) Drag-Along. If the Majority in Interest of the Members elects to cause the Transfer of all, but not less than, all of the Membership Interests in the Company to a bona fide third party purchaser, and if the Board of Managers has not exercised its rights pursuant to Section 5.04(a), then the Majority in Interest of the Members shall notify the other Members in writing (the “**Drag Notice**”) at least 30 days prior to the consummation of such transaction of its election to exercise the rights set forth in this Section 5.04(b). The Drag Notice shall disclose in detail the identity of the prospective Transferee(s), and the terms and conditions of the proposed Transfer.

(i) If the Majority in Interest of the Members delivers the notice specified in this Section 5.04(b), then, subject to this Section 5.04(b), the other Members shall vote for, consent to, and raise no objections to the proposed transaction so long as the terms and conditions of the sale of Membership Interests by the Majority in Interest of the Members is the same as that which is proposed to the other Members, and all Members shall take all actions reasonably necessary to cause the consummation of such Transfer on the terms proposed by the Majority in Interest of the Members. Without limiting the foregoing, (A) if the proposed Transfer is structured as a sale of assets or a merger or consolidation, each Member shall vote or cause to be voted all Membership Interests that such Member holds in favor of such transaction and shall waive any dissenter’s rights, appraisal rights or similar rights which such Member may have in connection therewith, (B) if the Transfer is structured as or involves a sale or redemption of Membership Interests, the Members shall agree to sell their pro rata share of Membership Interests on the terms and conditions approved by and applicable to the Majority in Interest of the Members, and such Members shall execute all documents reasonably required to effectuate such Transfer, (C) each Member shall be obligated to provide the same representations, warranties, covenants and agreements that Majority in Interest of the Members agree to provide in connection with such Transfer (except that each Member shall only be obligated to provide any such representations and warranties that relate specifically to such particular Member, such as representations and warranties given by a Member regarding such Member’s title to and ownership of such Member’s Interest), (D) each Member shall be obligated to join severally on a

pro rata basis (based on the relative consideration to be received by each such Member) in any indemnification or other obligations that Majority in Interest of the Members agree to provide in connection with such Transfer (other than any such obligations that relate specifically to a particular Member such as indemnification with respect to representations and warranties given by a Member regarding such Member's title to and ownership of such Member's Membership Interest); provided, however, that the indemnification obligation of each individual Member shall not exceed the aggregate consideration to be received by such Member, and (E) no Member shall be required to enter into any non-competition, non-solicitation or similar restrictive covenants (although they may be required to remain subject to confidentiality restrictions in respect of the business of the Company and its Subsidiaries consistent with those set forth in this Agreement).

(ii) The obligations of the Members under this Section 5.04(b) are subject to the condition that upon the consummation of the Transfer, all of the holders of Membership Interest shall receive the same form and proportionate amount of consideration as the Majority in Interest of the Members.

(iii) Each Member transferring Membership Interest pursuant to this Section 5.04(b) shall pay its pro rata share based on its Membership Interest of the expenses incurred by the Majority in Interest of the Members in connection with such Transfer.

(c) Tag-Along Rights.

(i) Subject to Section 5.04(c)(iv), if an Offering Member proposes to Transfer (other than a Transfer pursuant to Section 5.04(a) and 5.04(b)) any of its Membership Interest, it shall deliver a written notice (the "**Sale Notice**") to other Members (the "**Participation Members**") at least 30 days prior to making such Transfer, specifying in reasonable detail the identity of the prospective Transferee(s), the Membership Interest to be Transferred and the terms and conditions of the Transfer. Each Participation Member may elect to participate in the contemplated Transfer at the same price and on the same terms and conditions by delivering written notice to the Offering Member within 30 days after delivery of the Sale Notice, which notice shall become irrevocable and shall specify the Membership Interest that such Participation Member desires to include in such proposed Transfer; provided that each Participation Member shall be required, as a condition to being permitted to sell Membership Interest pursuant to this Section 5.04(c), to elect to sell Membership Interest in the same relative proportions (which proportions shall be determined on a Membership Interest for Membership Interests basis) as the Membership Interest being transferred by the Offering Member. If none of the Participation Members gives such notice prior to the expiration of the 30-day period for giving such notice, then the Offering Member may Transfer Membership Interest to the identified Transferee at a price no greater, and on other terms and conditions that are not more favorable in the aggregate to the Offering Member than those set forth in the Sale Notice at any time within 180 days after expiration of such 30-day period for giving notice. Any such Membership Interest not Transferred by the Offering Member during such 180-day period shall again be subject to the provisions of this Section 5.04(c) upon subsequent Transfer. If any Participation Member has elected to participate in such Transfer:

(A) The Offering Member shall use its commercially reasonable efforts to cause the entirety of such Participation Member's Membership Interests to be transferred. If the Participation Member elects to purchase less than all of the Membership Interests offered for sale (1) the Offering Member shall have the right to include in such sale such number of Membership Interests equal to such Offering Member's pro rata portion of the Membership Interests to be Transferred to such third party purchaser (such pro rata portion shall be determined by dividing the Participation Member's total Membership Interests to be sold by all Membership Interests to be sold, including by the Offering Member) and (2) each Participation Member exercising its rights hereunder shall have the right to include in such sale its pro rata portion of the remaining Membership to be Transferred to the third party purchaser, in each case, on the same terms and conditions as the Offering Member, including in exchange for its respective pro rata share of consideration to be received in the Transfer to the third party purchaser based on its applicable portion of Membership Interests being so Transferred.

(B) The Participation Members shall be entitled to sell in the contemplated Transfer at the same price and on the same terms as the Offering Member, a portion of the total number of Membership Interest to be sold in the Transfer, to be calculated according to the following formula: number of Membership Interest that a participating Participation Member may sell equals the total number of Membership Interest to be sold in the Transfer, multiplied by a fraction (1) the numerator of which is the number of Membership Interest by such Participation Member, and (2) the denominator of which is the number of Membership Interest owned, in the aggregate, by the Offering Member and all participating Participation Members.

(ii) Notwithstanding anything to the contrary herein, the Offering Member shall not consummate the Transfer contemplated by the Sale Notice at a price greater or on other terms more favorable in the aggregate to it than those set forth in the Sale Notice unless the Offering Member shall first have delivered a second notice setting forth such more favorable terms (the "**Amended Sale Notice**") to each Participation Member who had not elected to participate in the contemplated Transfer. Each Participation Member receiving an Amended Sale Notice may elect to participate in the contemplated Transfer on such amended terms by delivering written notice to the Offering Member not later than the later of (A) 30 days after delivery of the Sale Notice or (B) 10 days after delivery of the Amended Sale Notice.

(iii) If the Transfer pursuant to this Section 5.04(c) is actually consummated, each Member transferring Membership Interest pursuant to this Section 5.04(c) shall pay its own costs of any sale and a pro rata share (based on the relative consideration to be received in respect of the Membership Interest to be sold) of the expenses incurred by the Members (to the extent such costs are incurred for the benefit of all Members and are not otherwise paid by the Transferee). Each Member transferring Membership Interest pursuant to this Section 5.04(c) shall be obligated to make the same representations, warranties, covenants, and agreements and to join on a severally pro rata basis (based on the relative consideration to be received in respect of the Membership Interest to be sold) in any indemnification or other obligations that the Offering Member agrees to provide in connection with such Transfer (other than any such obligations that relate specifically to a particular Member such as indemnification with respect to representations and warranties given by a Member regarding such Member's title to and ownership of such Member's Membership Interest).



(iv) For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement, Leiber shall not be subject to sale or notice provisions or any other restrictions applicable to Offering Members, set forth in this Section 5.04(c).

Section 5.05. Nature of Interest. A Membership Interest in the Company is personal property. A Member has no interest in specific property of the Company.

Section 5.06. Leiber Put Option.

(a) Subject to the terms set forth in this Section 5.06, following (i) the 30-month anniversary of the date of this Agreement, and, (ii) if not exercised on or after such date, again on the 42nd-month anniversary of the date of this Agreement, Leiber, in its sole and absolute discretion, shall have the right, but in no event shall be obligated, to resell to the Company, at Leiber's sole and absolute discretion (each the "**Put Option**"), all or a pro-rated portion of the Membership Interest held by Leiber. The purchase price for the Put Interests under the Put Option (the "**Put Price**") shall be equal to eight million dollars (\$8,000,000); provided, however, that, if Leiber and its Affiliates sell their respective Membership Interest such that at the time of Leiber's exercise of the Put Option, Leiber, together with its Affiliates, holds less than such Membership Interests held by Leiber and its Affiliates as of the date hereof, then the Put Price shall equal (y) the Put Price, multiplied by (z)(1) the number of Membership Interests held by Leiber and its Affiliates as of the date of exercise of the Put Option, divided by (2) the total number of Membership Interests held by Leiber and its Affiliates as of the date of this Agreement. The "**Put Interests**" refer to the 12.5% Membership Interests held by Leiber as of the date hereof; provided, however, that (1) if Leiber acquires additional Membership Interests following the date hereof, the Put Interests shall only refer to the portion of the Membership Interests constituting the 12.5% of the total Membership Interests that are held by Leiber and (2) if Leiber sells its Membership Interest such that at the time of Leiber's exercise of the Put Option, Leiber, together with its Affiliates, holds less than such Membership Interests held by Leiber and its Affiliates as of the date hereof, then the Put Interests shall refer only to such Membership Interests held by Leiber and such Affiliates as of such time.

(b) Leiber shall give notice (the "**Put Notice**") in writing to the Company of its intention to sell the Put Interests pursuant to the Put Option within sixty (60) days of the applicable anniversary date (the "**Put Option Period**"). The closing of the purchase and sale pursuant to the Put Option shall take place on a date reasonably designated by Leiber but no later than thirty (30) days after the Put Notice (the "**Put Closing Date**"). At such closing, Leiber shall deliver to the Company certificates or instruments, if any, evidencing the Put Interests, duly endorsed (or accompanied by duly executed assignments) and otherwise in good form for delivery and free and clear of all liens other than as provided for in this Agreement, and the Company or Simon shall pay the Put Price in cash (by wire transfer of immediately available funds or by certified or cashier's check).

(c) Each of the Original Members hereby agrees to take any and all Necessary Actions, including causing members of the Board of Managers (to the extent such members were nominated or designated by such Original Member) to take any and all Necessary Actions, to cause the Company or permit the Company to comply with the provisions set forth in this Section 5.06.

(d) Leiber's rights under this Section 5.06 may be assigned or transferred in whole or in part to any other Member or third party, without any consent or other action on the part of any Member, who acquires the Leiber Membership Interests.

## ARTICLE VI

### **CONTRIBUTIONS, CAPITAL ACCOUNTS, ALLOCATIONS AND DISTRIBUTIONS**

Section 6.01. Capital Contributions. No Member shall be required to make any Contribution to the Company. No Member shall be entitled to withdraw any part of his or her Capital Account or Contribution except as expressly provided in this Agreement.

Section 6.02. Maintenance of Capital Accounts.

(a) A Capital Account shall be established in the Company's books for each Member by the Managers in accordance with the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). Each Member's Capital Account shall be:

(i) increased by:

(A) such Member's Cash Contributions to the Company;

(B) the amount of any Company liabilities assumed by such Member or that are secured by any property distributed to such Member;

(C) the fair market value of the property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to); and

(D) the amount of Profits allocated to such Member and any items in the nature of income or gain that are specially allocated to such Member under this Agreement; and

(ii) decreased by:

(A) the amount of cash and the Gross Asset Value of any property of the Company distributed to such Member pursuant to any provision of this Agreement,

(B) such Member's allocable share of Losses and any items in the nature of expenses or losses that are specially allocated to such Member under this Agreement; and

(C) the amount of any liabilities of such Member that are assumed by the Company or which are secured by any property contributed by such Member to the Company.

(b) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(e), immediately prior to the actual or deemed distribution of any Company asset, the Capital Accounts of all Members shall be adjusted (consistent with the provisions hereof) to reflect the manner in which the unrealized income, gain, loss and deductions inherent in such property (that has not been reflected in the Capital Accounts previously) would be allocated to the Members if there were a taxable disposition of such property for the fair market value of such property on the date of distribution. In determining such unrealized gain or unrealized loss, the aggregate fair market value of any such asset as of any date of determination shall be determined by the Managers using such reasonable methods of valuation as they may adopt.

(c) In determining the amount of any liability for purposes of subparagraphs (i) and (ii) above there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

(d) The foregoing provisions and other provisions of this Agreement relating to maintenance of Capital Accounts are intended to comply with Treasury Regulation Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such regulation. In the event the Managers shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such regulations, the Managers, without the approval of the Members, may amend this Agreement to reflect such modification, provided that such amendment is not likely to have a material effect on the amounts distributed to the Members pursuant to Article VIII upon dissolution of the Company.

Section 6.03. Profits and Losses. Section 6.03(a) sets forth the general rule for allocations of Profits and Losses to the Members. Sections 6.03(b), 6.03(c), 6.03(e) 6.03(d) and 6.03(e) set forth various special rules which modify or clarify the general rules of Section 6.03(a).

(a) General Rule.

(i) The Profits of the Company shall be allocated among the Members in the following order and priority:

(A) First, Profits shall be allocated in proportion to the cumulative Losses each Member has previously been allocated pursuant to Section 6.03(a)(ii)(B), until the cumulative Profits allocated to such Member pursuant to this Section 6.03(a)(i)(A) for the current and all prior Fiscal Years equals the cumulative Losses previously allocated to such Member pursuant to Section 6.03(a)(ii)(B).

(B) Then, remaining Profit shall be allocated to the Members pro rata in proportion to their respective Membership Interests (*i.e.*, as of the date hereof, Simon 62.5%, Kremener 25% and Leiber 12.5%).

(ii) Losses of the Company shall be allocated among the Members as follows:

(A) Loss shall be allocated among the Members pro rata in proportion to their respective Membership Interest (*i.e.*, as of the date hereof, Simon 62.5%, Kremener 25% and Leiber 12.5%).

(B) Notwithstanding any other provision in this Section 6.03, to the extent that the allocation of any Losses (or any item thereof) would cause a Member to have a negative Adjusted Capital Account while any other Member has a positive balance in its Adjusted Capital Account, the portion of the Losses (and items thereof) that would cause any Member to have a deficit in its Adjusted Capital Account shall instead be allocated among the Members having positive Adjusted Capital Account balances, pro rata in accordance with such positive balances.

(b) Special Allocations. The following special allocations shall be made in the following order:

(i) Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding any other provision of this Agreement, if there is a net decrease in Company Minimum Gain during a fiscal year, each Member shall be specially allocated items of Company gross income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the immediately preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulation Sections 1.704-2(f)(6) and 1.704-2(j)(2)(i). This Section 6.03(b)(i) is intended to comply with the minimum gain chargeback requirement in Treasury Regulation Section 704-2(f) and shall be interpreted consistently therewith.

(ii) Notwithstanding any other provision of this Agreement except Section 6.03(b)(i), if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during a fiscal year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulation Section 1.704-2(i)(5), shall be specially allocated items of Company gross income and gain for such year (and, if necessary, subsequent years) in the amount required by Treasury Regulation Section 1.704-2(i)(4). Allocations pursuant to the immediately preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulation Sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii). This Section 6.03(b)(ii) is intended to comply with the minimum gain chargeback requirement in Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) In the event a Member unexpectedly receives any adjustment, allocations or distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company gross income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by Treasury Regulation Section 1.704-1(b)(2)(ii)(d), the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 6.03(b)(iii) shall be made

only if and to the extent that such Member has an Adjusted Capital Account Deficit after all other allocations provided for in this Agreement have been tentatively made as if this Section 6.03(b)(iii) were not in the Agreement. Any such allocation of gross income or gain pursuant to this Section 6.03(b)(iii) shall be made to each Member having an Adjusted Capital Account Deficit in the proportion such Adjusted Capital Account Deficit bears to the aggregate Adjusted Capital Account Deficits of all the Members. This Section 6.03(b)(iii) is intended to constitute a “qualified income offset” within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

(iv) In the event any Member has an Adjusted Capital Account Deficit at the end of any fiscal year that is in excess of the amount such Member is deemed to be obligated to restore pursuant to Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of gross income and gain in the amount of such excess as quickly as possible; provided, however, that an allocation pursuant to this Section 6.03(b)(iv) shall be made only if and to the extent that such Member has an Adjusted Capital Account Deficit after all allocations provided for in this Agreement have been made as if Section 6.03(b)(iii) and this Section 6.03(b)(iv) were not in the Agreement.

(v) To the extent an adjustment to the adjusted tax basis of any Company asset, pursuant to Code Section 734(b) or Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's Membership Interest, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their Membership Interest in the event Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(vi) Any Nonrecourse Deductions for any fiscal year or other period shall be specially allocated among the Members in the same manner as if such Nonrecourse deductions were taken into account in determining Profit or Loss for such Fiscal Year or other period.

(vii) Any Member Nonrecourse Deductions for any fiscal year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Deductions in accordance with Treasury Regulation Section 1.704-2(i)(1).

(c) Curative Allocations. The allocations set forth in Section 6.03(b) (the “**Regulatory Allocations**”) are intended to comply with certain requirements of Treasury Regulation Section 1.704-1(b). The Regulatory Allocations may not be consistent with the manner in which the Members intend to divide distributions from the Company. Accordingly, the Manager is hereby authorized to divide other allocations of gross income, gain, deduction and losses and other items among the Members so as to prevent the Regulatory Allocations from distorting the manner in which distributions from the Company will be divided among the Members pursuant to Section 6.03(a) or Section 6.03(b). In general, the Manager anticipates that

this will be accomplished by specially allocating items of gross income, profit, loss and deduction among the Members so that the net amount of the Regulatory Allocations and such special allocations to such Member is zero. However, the Manager shall have discretion to accomplish this result in any reasonable manner. In exercising such discretion, the Manager may take into account future Regulatory Allocations under Section 6.03(b)(i) and (b)(ii) that, although not yet made, are likely to offset other Regulatory Allocations under Sections 6.03(b)(vi) and (b)(v).

(d) Code Section 704(c) Allocations. In accordance with Code Section 704(c), gross income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall solely for tax purpose be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Gross Asset Value at time of contribution. In the event the Gross Asset Value of any property of the Company is adjusted pursuant to the definition of Gross Asset Value, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder. Any elections or other decisions relating to such allocations, including the choice of permissible method under Treasury Regulation § 1.704-3, shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 6.03(e) are solely for purposes of federal, state and local income taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of items of the Company's gross income, gains, losses, deductions and credits, or distributions pursuant to any provision of this Agreement.

(e) Profits and Losses shall be allocated to the Members as set forth in Section 6.03(a) above in accordance with their respective Membership Interests, as adjusted from time to time, and for this purpose, on the last day of the month (the "**Effective Date**") that includes the date on which occurs the admission of a new Member into the Company or a valid transfer of all or part of a Member's Membership Interest, the books of the Company shall be closed in accordance with Section 706(d) of the Code, and consistent therewith: (i) items of income, deduction, gain, loss and/or credit of the Company that are recognized on or prior to the Effective Date shall be allocated among those persons or entities who were Members in the Company on or prior to the Effective Date in accordance with their respective Membership Interest prior to the Effective Date; and (ii) items of income, deduction, gain, loss and/or credit of the Company that are recognized after the Effective Date shall be allocated among those persons or entities who were Members after the Effective Date in accordance with their respective Membership Interest after the Effective Date.

Section 6.04. Distribution Rules. Cash available for distribution to Members shall be applied and/or distributed to the Members in proportion to their respective Membership Interests in the Company with Simon to receive his share of the profits (*i.e.*, as of the date hereof, Simon 62.5%, Kremener 25% and Leiber 12.5%).

Section 6.05. Further Distribution Rules. The Managers shall not be obligated to make any Distributions hereunder at any time prior to the dissolution of the Company. All



Distributions pursuant to Section 6.03(a) and Section 6.05 hereof shall be made at such times and in such amounts as shall be determined by the Managers to be in the best interests of the Members; provided, however, that, if practicable, the Managers shall use their best efforts to, but shall not be obligated to, cause the Company to distribute to the Members an amount of Net Cash Flow as shall be sufficient to enable the Members to fund their federal and state income tax liabilities attributable to their respective distributive shares of the taxable income of the Company.

(a) All amounts withheld pursuant to the Code or any provision of any state or local law with respect to any payment, Distribution or allocation to the Company or the Members shall be treated as amounts distributed to the Members pursuant to this Article VI for all purposes of this Agreement. The Managers are authorized to withhold from Distributions, or with respect to allocations, to the Members and to pay over to any federal, state or local government any amounts required to be so withheld pursuant to the Code or any provision of any other federal, state or local law and shall allocate such amounts to those Members with respect to which such amounts were withheld.

Section 6.06. Distributions in Kind. A Member, regardless of his or her Contribution, has no right to demand and receive any Distribution from the Company in any form other than cash. A Member may not be compelled to accept a Distribution of any asset in kind from a Company to the extent that the percentage of the asset distributed to him or her exceeds a percentage of that asset that is equal to the percentage in which he or she shares in Distributions from the Company.

Section 6.07. Limitations on Distributions. (a) Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a Distribution to a Member to the extent that, at the time of the Distribution, after giving effect to the Distribution, all liabilities of the Company, other than liabilities to Members on account of their Membership Interest and liabilities for which recourse of creditors is limited to specified property of the Company, exceed the fair market value of the assets of the Company, except that the fair market value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the Company only to the extent that the fair value of such property exceeds such liability. A Member who receives a Distribution in violation of this Section, and who knew at the time of Distribution that the Distribution violated this Section, shall be liable to the Company for the amount of the Distribution. A Member who receives a Distribution in violation of this Section 6.07, and who did not know at the time of the Distribution that the Distribution violated this Section 6.07, shall not be liable for the amount of the Distribution.

(b) This Section 6.07 shall not affect any obligation or liability of a Member under this Agreement or other applicable law for the amount of a Distribution. Unless otherwise agreed, however, a Member who receives a wrongful Distribution from the Company shall have no liability under this Agreement or other applicable law for the amount of the Distribution after the expiration of three (3) years from the date of the Distribution.

Section 6.08. Distribution Upon Withdrawal. Except as provided in the Act, upon withdrawal as a Member of the Company, any withdrawing Members shall be entitled to receive (A) any Distribution to which he or she is entitled under this Agreement and (B) within a

reasonable time after withdrawal, an amount equal to the positive balance in such Member's Capital Account as of the date of withdrawal after taking into account all Capital Account adjustments for the Fiscal Year during which such withdrawal occurs.

## ARTICLE VII

### EXCULPATION; INDEMNIFICATION; LIABILITY

#### Section 7.01. Exculpation.

(a) No Manager, officer or Member, in any way, guarantees the return of any Members' capital contributions or a profit for the Members from the operations of the Company or the Company's ability to fulfill the Put Option. To the fullest extent permitted by the Act, none of (i) the Managers, (ii) the Members, or (iii) any of the Managers' or the Members' respective Affiliates, or any of their respective officers, directors, employees, general and limited partners, members, representatives or equityholders (each, a "**Protected Person**") will be liable to the Company or any Member for any loss or damage sustained by the Company or any Member except as specifically provided to the contrary in the immediately following sentence. None of the Protected Persons shall be liable to the Company or its Members for any loss or damage resulting from any act or omission taken or suffered by such Protected Person in connection with the conduct of the affairs of the Company or otherwise in connection with this Agreement or the matters contemplated hereby, unless such loss or damage is incurred by reason of such Protected Person's acts or omissions that constitute a breach of this Agreement, the breach of either the fiduciary duties of care or loyalty to the Company and the Members, or are unlawful. Any Protected Person or officer may consult with legal counsel, accountants, advisors or other similar persons with respect to the Company's affairs and shall be fully protected and justified in any action or inaction that is taken or omitted in good faith, in reliance upon and in accord with the opinion or advice of such persons; provided, however, such legal counsel, accountants, advisors or other similar persons shall have been selected in good faith. The preceding sentence shall in no way limit any Person's right to rely on information to the extent provided in Section 18-406 of the Act.

(b) None of the Members, by reason of their execution of this Agreement or their status as Members or equity holders of the Company shall be responsible or liable for any indebtedness, liability or obligation of any other Member incurred either before or after the execution of this Agreement.

#### Section 7.02. Indemnification.

(a) To the fullest extent permitted under the Act and applicable law, the Company shall indemnify and hold harmless each of the Protected Persons and each officer of the Company and its Subsidiaries (each, an "**Indemnitee**") from and against any and all claims, liabilities, damages, losses, costs and expenses (including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and reasonable expenses of investigating or defending against any claim or alleged claim) of any nature whatsoever, known or unknown, liquidated or unliquidated (collectively, "**Damages**"), that are incurred by any Indemnitee, and arise out of, are related to, or are in connection with (i)



the affairs or operations of the Company or the performance by such Indemnitee of any of the Indemnitee's responsibilities hereunder and (ii) the service at the request of the Company by such Indemnitee as a partner, member, manager, director, officer, trustee, employee or agent of any other Person; provided, however, that (A) the Indemnitee is not in breach of this Agreement, (B) the Indemnitee acted in accordance with all applicable fiduciary duties of care and loyalty to the Company and to the Members and (C) the Indemnitee's conduct is not unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the Indemnitee breached this Agreement or did not act in good faith and in a manner which such Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such Indemnitee's conduct was unlawful. The indemnification obligations of the Company pursuant to this Section 7.02 shall be satisfied from and limited to the Company's assets and no Member shall have any personal liability on account thereof.

(b) The Company shall pay reasonable, documented expenses incurred by any Indemnitee in defending any action, suit or proceeding described in subsection (a) of this Section 7.02 in advance of the final disposition of such action, suit or proceeding, as such Damages are incurred; provided, however, that any such advance shall only be made if such Indemnitee provides written affirmation to repay such advance if it shall ultimately be determined by a court of competent jurisdiction that such Indemnitee is not entitled to be indemnified by the Company pursuant to this Section 7.02.

(c) Certain Indemnites that are directors, officers, employees, stockholders, partners, limited partners, members, equityholders, managers, or advisors of any Member or any of such Member's Affiliates (each such Person, a "**Fund Indemnitee**") may have certain rights to indemnification, advancement of expenses and/or insurance provided by or on behalf of such Member and/or its Affiliates (collectively, the "**Fund Indemnitors**"). Notwithstanding anything to the contrary in this Agreement or otherwise: (i) the Company is the indemnitor of first resort (*i.e.*, the Company's obligations to each Fund Indemnitee are primary and any obligation of the Fund Indemnitors to advance Damages or to provide indemnification for such Damages incurred by each Fund Indemnitee are secondary), (ii) the Company shall be required to advance the full amount of Damages incurred by each Fund Indemnitee and will be liable for the full amount of all such Damages paid in settlement to the extent legally permitted and as required by this Agreement, without regard to any rights each Fund Indemnitee may have against the Fund Indemnitors, and (iii) the Company irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. Notwithstanding anything to the contrary in this Agreement or otherwise, no advancement or payment by the Fund Indemnitors on behalf of a Fund Indemnitee with respect to any claim for which such Fund Indemnitee has sought indemnification or advancement of Damages from the Company shall affect the foregoing and the Fund Indemnitors will have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Fund Indemnitee against the Company. The Fund Indemnitors are express third party beneficiaries of the terms of this Section 7.02(c).

(d) Without limiting Section 7.02(c), the indemnification provided by this Section 7.02(d) shall not be deemed exclusive of any other rights to indemnification to which those seeking indemnification may be entitled under any agreement, determination of the Board of Managers or otherwise. The rights to indemnification and reimbursement or advancement of expenses provided by, or granted pursuant to, this Section 7.02(d) shall continue as to an Indemnitee who has ceased to be a Member, Manager or officer (or other Person indemnified hereunder) and shall inure to the benefit of the successors, executors, administrators, legatees and distributees of such Person.

(e) The provisions of this Section 7.02(e) shall be a contract between the Company, on the one hand, and each Indemnitee who served at any time while this Section 7.02(e) is in effect in any capacity entitling such Indemnitee to indemnification hereunder, on the other hand, pursuant to which the Company and each such Indemnitee intend to be legally bound. No repeal or modification of this Section 7.02(e) shall affect any rights or obligations with respect to any state of facts then or theretofore existing or thereafter arising or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon such state of facts.

(f) The Company may enter into indemnity contracts with Indemnitees and adopt written procedures pursuant to which arrangements are made for the advancement of expenses and the funding of obligations under this Section 7.02(f) hereof and containing such other procedures regarding indemnification as are appropriate. For the avoidance of doubt, each of the Managers shall be entitled to receive indemnity contracts with the Company on terms no less favorable than any other indemnity contract entered into between the Company (or any of its Subsidiaries) and any other Manager.

#### Section 7.03. Liabilities; Duties.

(a) No Member, Manager or officer of the Company shall be personally liable for any indebtedness, liability or obligation of the Company, except as specifically provided for in this Agreement or required pursuant to the Act or any other applicable law.

(b) Subject to the terms hereof, the managers and officers of the Company, in their capacity as such, shall owe the Company and its Members the same fiduciary duties of care and loyalty as those that are owed by an officer of a Delaware corporation to the company (upon the assumption that there are no provisions in the certificate of incorporation of such corporation or in any contract between such officer and the company that limit the scope of such statutory duties).

(c) The Members acknowledge and agree that the foregoing is intended to comply with the provisions of the Act permitting members and managers of a limited liability company to eliminate fiduciary duties to the fullest extent permitted under the Act.

Section 7.04. Insurance. To the extent available, the Company shall purchase and maintain insurance, on behalf of such Indemnitees, and may purchase and maintain insurance on behalf of the Company, against any liability that may be asserted against or expenses that may be incurred by any such Person in connection with the activities of the Company or such

Indemnitees, and in such amounts, as the Board of Managers reasonably determines are customary for similarly-situated businesses such as the Company and its Subsidiaries, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement; provided, however, that notwithstanding the foregoing, the Company shall purchase D&O insurance, on behalf of such Indemnitees and in such amounts as the Board of Managers reasonably determines are customary for similarly-situated businesses such as the Company, within ninety (90) days of the date of this Agreement.

## ARTICLE VIII

### ACCOUNTING AND RECORDS

#### Section 8.01. Records.

(a) The Company shall maintain the following records: (a) the full name and mailing address of each Manager, (b) a current list of the full name set forth in alphabetical order and last known mailing address of each Member, together with the Contribution and the share of Profits and Losses of each Member or information from which such share can be readily derived, (c) a copy of the Certificate of Formation and all amendments thereto or restatements thereof, together with executed copies of any powers of attorney pursuant to which any certificate or amendment has been executed, (d) a copy of this Agreement, any amendments thereto and any amended and restated Operating Agreement, and (e) a copy of the Company's federal, state and local income tax or information returns and reports, if any, for the three (3) most recent fiscal years (true and correct copies of all tax returns for 2014 have been provided or delivered prior to the date of this Agreement to Leiber, receipt of which is hereby acknowledged and a copy of all tax returns for 2015 shall be provided promptly to Leiber upon completion). The Company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(b) Each Member, shall have the right to receive the following information, and, subject to Section 8.04, each Member may share and discuss such information (along with any other information provided to Members pursuant to this Agreement and otherwise made available to Members with any directors, officers, partners, managers, members, employees, equityholders, investors and advisors of such Members:

(i) For each fiscal year of the Company ending on or after December 31, 2015, copies of the consolidated financial statements of the Company and its Subsidiaries as of the end of such fiscal year, which financial statements shall (w) include a comparison to the prior fiscal year results; (x) be prepared in accordance with GAAP; (y) be reviewed or audited by a nationally recognized accounting firm approved by the Board of Managers and accompanied by a report and opinion thereon by such accounting firm prepared in accordance with GAAP; and (z) be delivered to the Members no later than ninety (90) days following the end of such fiscal year;

(ii) For each of the first three (3) fiscal quarters of each fiscal year of the Company, copies of the consolidated financial statements of the Company and its Subsidiaries as of the end of such fiscal quarter, which statements shall (x) include year-to-date

results and a comparison to the corresponding period in the prior fiscal year, (y) be prepared in accordance with GAAP, and (z) be delivered no later than forty-five (45) days following the end of such fiscal quarter; and

(iii) The Company shall deliver to the Members from time to time after the occurrence of an event required to be therein reported, such other reports (in each case, without exhibits) containing substantially the same information required to be contained in, and within the timing required by, a current report on Form 8-K under the Exchange Act.

Section 8.02. Inspection.

(a) Subject to the confidentiality obligations set forth in Section 8.04, upon the request of a Member or holder of an economic interest, for purposes reasonably related to the interest of that person as a Member or a holder of an economic interest, the Manager shall promptly deliver to the Member or holder of an economic interest, a copy of the information required to be maintained by the Act, and this Agreement.

(b) Each Member and holder of an economic interest has the right upon reasonable request, for purposes reasonably related to the interest of that person as a Member, or holder of an economic interest, to each of the following:

(i) To obtain from the Manager, promptly after becoming available, a copy of the Company's federal, state and local income tax or information returns for each year.

(ii) To consult with the Managers, officers, and employees of the Company and the Company on the operation and business of the Company;

(iii) To obtain a copy of the audited and unaudited consolidated financial statements of the Company and its Subsidiaries (including a balance sheet, statement of income and statement of cash flows, together with the notes thereto); and

(iv) To inspect and copy, during normal business hours, any and all records required to be maintained by the Act, except for formulas for the Company's products which shall not be provided to any Member (other than Arnold Simon and Eugene Kremener) who does not, together with its Affiliates, hold a majority of the Membership Interests.

Section 8.03. Annual Budget and Business Plan.

(a) On or prior to the sixtieth (60<sup>th</sup>) day following the date hereof, the Company shall prepare or cause to be prepared, and shall submit for approval of the Board of Manager, a proposed annual budget and business plan for the Company (the "**Annual Budget and Business Plan**") for the upcoming fiscal year.

(b) The Board of Managers shall convene a meeting within five (5) business days after receipt of the proposed Annual Budget and Business Plan to discuss whether to approve the foregoing. Approval of the Annual Budget and Business Plan shall require the approval of the Board of Managers, including the Leiber Manager. If a proposed Annual Budget and Business Plan is not approved in all respects in accordance with the preceding sentence at

any such meeting of the Board of Managers or any adjournment thereof, the Company shall modify such Annual Budget and Business Plan to address the comments and concerns of the Board of Managers. Within three (3) Business Days after receipt of any revised Annual Budget and Business Plan, the Board of Managers shall convene another meeting to discuss whether or not to approve the same; provided, however, that the Board of Manager's approval of such revised Annual Budget and Business Plan shall require the approval of the majority of the Board of Managers, including the Leiber Manager.

Section 8.04. Access: Confidentiality. No Member shall use or permit the use of (without a written consent of the Managers) and shall keep, and cause its employees, directors, partners, managers, consultants, advisors, representatives and agents to keep, confidential all information concerning the other parties in its possession, its custody or under its control (except to the extent that (a) such information has been in the public domain through no fault of such party or (b) such information has been lawfully acquired from other sources by such party and the Member reasonably believes that such third party properly obtained such information and has disclosed it to the Member without breach of any obligation of confidentiality or (c) this Agreement or any agreement entered into pursuant hereto permits the use or disclosure of such information) to the extent that such information (i) relates to any of this Agreement or any agreement contemplated hereby or thereby, (ii) is obtained in the course of performing services for the Company, or (iii) is based upon or is derived from information described in the preceding clauses (i) or (ii), and no Member shall (without the prior written consent of the Manager) otherwise release or disclose such information to any other person, except (x) such Member's auditors and attorneys on a need to know basis provided such auditors and/or attorneys are advised of the confidential nature of the confidential information, or (y) unless compelled to disclose such information by subpoena or court order, law, regulation, or judicial, regulatory or administrative process; provided, however, that the Member shall provide the Company with notice of the requirement of such disclosure (if legally permissible) promptly after he or she is notified thereof and prior to the disclosure thereof so as to enable the Company to challenge the order compelling such disclosure (at the Company's sole cost and expense). Notwithstanding the foregoing, no Member (other than Arnold Simon and Eugene Kremener) who does not, together with its Affiliates, hold a majority of the Membership Interests shall have access to the formulas for the Company's products.

## ARTICLE IX

### DISSOLUTION

Section 9.01. Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following: (a) the vote or written consent of all of the Members which in order to be effectuated must necessarily include Leiber, or (b) the entry of a decree of judicial dissolution under Section 702 of the Act.

Section 9.02. Winding Up. In the event of a dissolution of the Company, other than a judicial dissolution, the Board of Managers shall wind up the Company's affairs. Upon dissolution of the Company, the Persons winding up the Company's affairs may, in the name of and for and on behalf of the Company, prosecute and defend suits, whether civil, criminal or administrative, settle and close the Company's business, dispose of and convey the Company's



property, discharge the Company's liabilities and distribute to the Members any remaining assets of the Company, all without affecting the liability of Members, including Members participating in the winding up of the Company's affairs.

Section 9.03. Distribution of Assets. Upon the winding up of the Company, the assets shall be distributed as follows: (a) to creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for Distributions to Members pursuant to Sections 6.08 and 6.11 hereof, (b) to Members for the return of their Contributions and in respect of their Membership Interest in accordance with and to the extent of their positive Capital Account balances after taking into account all Capital Account adjustments for the taxable year during which such distribution occurs, including but not limited to pursuant to Section 6.03(a)(ii)(B), and (c) to the Members pro rata to their Membership Interest in the Company.

Section 9.04. Certificate of Dissolution. Within ninety (90) days following the dissolution and winding up of the Company, or at any other time there are no Members, Certificate of Dissolution shall be filed with the Delaware Department of State entitled "Certificate of Dissolution of KGS Agro Group LLC under the Limited Liability Company Act" and executed in accordance with the Act. The Certificate of Dissolution shall set forth (a) the name of the Company and, if it has been changed, the name under which it was formed, (b) the date of filing of its Certificate of Formation and each subsequent amendment thereto or restatement thereof, (c) the event giving rise to the filing of the Certificate of Dissolution, and (d) any other information the Persons filing the Certificate of Dissolution determine. The cancellation of the Certificate of Formation shall be effective at the time of filing of the Certificate of Dissolution. The cancellation of the Certificate of Formation shall not affect the liability of the Members during the period of winding up and termination of the Company.

## ARTICLE X

### MISCELLANEOUS

Section 10.01. Amendments to Agreement. This Agreement may only be amended by the affirmative approval or written consent of all of the Members; provided, that (a) any amendment, modification or waiver that would adversely affect in any respect the rights or obligations of any Member without similarly affecting the rights or obligations hereunder of the other Members (for the avoidance of doubt, without giving effect to any Member's specific holdings of Membership Interest, specific tax or economic position or any other matters personal to a Member), shall not be effective as to such Member without such Member's prior written consent; (b) any amendment or modification to Section 4.04, Section 5.01, Section 5.04, Section 5.06, this Section 10.01, or Section 10.11 shall require the prior written consent of each Member adversely affected by such amendment or modification and (c) the Company shall automatically amend Schedule A hereto without the consent of the Members and distribute such amended Schedule A to each of the Members upon any change in any Member's Membership Interests or any other information thereon. Any waiver of any provision of this Agreement requested by any party hereto must be in writing by the party granting such waiver. Nothing herein shall preclude the

transactions contemplated by the Purchase Agreement, and the Company shall take any and all actions necessary to give effect to the transactions and terms set forth in the Purchase Agreement.

Section 10.02. Binding Provisions. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

Section 10.03. No Waiver. The failure of any Member or Manager to seek redress for a violation or to insist on strict performance, of any covenant or condition of this Agreement shall not prevent a subsequent act which would have constituted a violation from having the effect of an original violation.

Section 10.04. Waiver of Jury Trial. THE UNDERSIGNED IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF THE TRANSACTIONS CONTEMPLATED BY THIS SUBSCRIPTION AGREEMENT. EACH PARTY TO THIS SUBSCRIPTION AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION; (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY; AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.05. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Delaware without giving effect to conflicts of laws principles thereof.

Section 10.06. Jurisdiction. The parties hereby agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort or otherwise, shall be brought in the United States District Court for the Southern District of New York or in the Supreme Court of the State of New York, New York county, so long as one of such courts shall have subject-matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of New York. Each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Service of process, summons, notice or other document by registered mail to the address designated in Schedule A shall be effective service of process for any suit, action or other proceeding brought in any such court.

Section 10.07. Severability of Provisions. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions of this Agreement, or the application of such provision to any Person or circumstance, shall be held invalid or

unenforceable in any jurisdiction, such provision or provisions shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining provisions hereof, or the application of the affected provision to Persons or circumstances other than those to which it was held invalid or unenforceable, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.08. Entire Agreement. This Agreement constitutes the entire agreement among the parties. This Agreement supersedes any prior agreement or understanding among the parties and may not be modified or amended in any manner other than as set forth herein or therein.

Section 10.10. Counterparts. This Agreement may be executed in several counterparts, all of which together shall constitute one agreement binding on all parties hereto notwithstanding that all the parties have not signed the same counterpart.

Section 10.11. Specific Performance; Breach.

(a) Each of the parties hereto hereby acknowledges and agrees that the failure of any party hereto to perform its or breach by such party of its agreements, obligations and covenants hereunder, including its failure to take all required actions on its part or causing (including taking any and all Necessary Actions) to consummate the transactions contemplated by the Purchase Agreement, will cause irreparable injury to the other parties hereto for which damages, even if available, will not be an adequate remedy. Accordingly, each party hereto hereby consents to the issuance of injunctive relief by any court of competent jurisdiction to compel performance of such party's obligations and to the granting by any court of the remedy of specific performance of its obligations hereunder. Unless otherwise expressly stated in this Agreement, no right or remedy described or provided in this Agreement is intended to be exclusive or to preclude a party hereto from pursuing other rights and remedies to the extent available under this Agreement, at law or in equity.

(b) In addition to any and all rights, remedies or relief Leiber may otherwise have hereunder, the parties hereto hereby agree as follows:

(i) in the event of a Procedural Breach which is not cured to Leiber's reasonable satisfaction within sixty (60) days of the date of notice of such Procedural Breach from Leiber, Leiber may elect to take any and all of the following actions, in each case, by providing, and effective as of the date specified in, written notice to the Company:

(A) the Leiber Manager shall, automatically and without any further action of any party, including any other Manager, be authorized, as a committee of the Board of Managers, to take any and all actions and to approve and cause the Company to take any and all actions necessary or appropriate to remedy the Procedural Breach and each Member and Manager hereby consents to, authorizes, and agrees to take any and all Necessary Actions to duly form and authorize such committee (it being understood that the Board of Managers shall in any such event remain in place and no member of the Board of Managers shall be removed as a result of this Section 10.11(b)(i)(A)); and



(B) Leiber may take any all actions at the Company's sole costs and expense to remedy such breach, including replacing any officer, hiring new officers (including a chief restructuring officer), and/or engaging an independent third party auditor or another representative, agent or attorneys to prepare any documents, books, or records required by this Agreement, including preparing and providing the financial records required by Section 8.01.

(ii) in the event of a Material Breach which is not cured to Leiber's reasonable satisfaction within thirty (30) days of the date of notice of such Material Breach from Leiber, Leiber may elect to take any and all of the actions provided for in the event of a Procedural Breach as well as any and all of the following actions, in each case, by providing, and effective as of the date specified in, written notice to the Company:

(A) to have the Company issue a secured senior note to Leiber in the amount of the damages resulting from the Material Breach, which will pay interest in cash or in payment-in-kind, at Leiber's sole election;

(B) to unilaterally exercise the drag-along rights set forth in Section 5.04(b); and

(C) to cause the Company to enter into a customary and reasonable management agreement, on terms agreed upon by the Company and Leiber, providing for the payment by the Company of Leiber's reasonable fees and expenses, which payment can be in the form of a priority note before distributions; provided, however, that such fees paid pursuant to such agreement shall not exceed \$150,000 in any applicable fiscal year.

(iii) For purposes of this Agreement:

(A) "**Material Breach**" means (i) a breach of any of the following sections of this Agreement Section 5.06, Section 7.01, Section 7.02, or Section 10.01, (ii) breach of Section 6 of the Purchase Agreement, or (iii) any fraud, intentional misrepresentation, bad faith, willful misconduct, negligence, or criminal conduct or intent on the part of the Company or Arnold Simon; provided, however, that with respect to Section 7.01 or Section 7.02, such breach results in actual damages to Leiber or the Leiber Manager in excess of \$25,000.

(B) "**Procedural Breach**" means any breach of this Agreement that is not a Material Breach, including any breach of Section 3.01, Section 3.02, Section 3.03, Section 3.05, Section 4.01, Section 7.04, Section 8.01, Section 8.02, or Section 8.03.


Section 10.12. Future Equity Issuances. Prior to entering into or agreeing to enter into any transaction, pursuant to which Rajiv Kacholia would be deemed to have assisted the Company is raising any financing from third party investors (or any other transaction pursuant to which Rajiv Kacholia would be entitled to receive Membership Interests or other equity in the Company or other compensation pursuant to the Amendment) (any such transaction, a "**Kacholia Transaction**"), Leiber must expressly consent in writing to such Kacholia Transaction. In the event Leiber expressly consents in writing to such Kacholia Transaction, such consent shall,

unless explicitly provided otherwise therein, be a consent to the issuance of fully diluted Membership Interest to Rajiv Kacholia pursuant to the terms of the Amendment.

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

KGS AGRO GROUP LLC

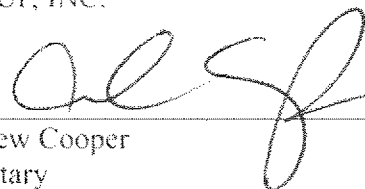
By:  
Name:  
Title:

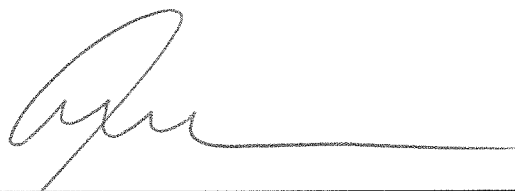
  
\_\_\_\_\_  
ARNOLD SIMON  
\_\_\_\_\_  
CEO  
\_\_\_\_\_

THE LEIBER GROUP, INC.

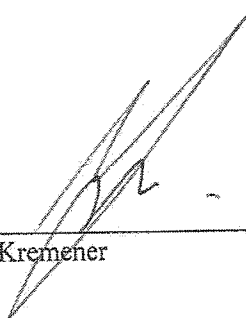
By:  
Name:  
Title:

\_\_\_\_\_  
Andrew Cooper  
Secretary

A handwritten signature in black ink, appearing to read 'Andrew Cooper', written over a horizontal line.

A handwritten signature in black ink, appearing to read 'Arnold Simon', is written over a horizontal line.

Arnold Simon



---

Eugene Kremer

**SCHEDULE A TO OPERATING AGREEMENT****MEMBERSHIP INTEREST**Member's Name and AddressMembership Interest**Arnold Simon**

62.5%

Notice Address:

---

---

Fax:

Email:

With copies to (which shall not constitute notice):

---

---

Fax:

Email:

**Eugene Kremener**

25%

Notice Address:

---

---

Fax:

Email:

With copies to (which shall not constitute notice):

---

---

Fax:

Email:



**The Leiber Group, Inc.**

12.5%

Notice Address:

c/o Pegasus Partners II, L.P.  
99 River Road  
Cos Cob, CT 06807  
Attn: Andrew Cooper  
Fax: (203) 869-6940  
Email: acooper@pcalp.com

With copies to (which shall not constitute notice):

Akin Gump Strauss Hauer & Feld LLP  
One Bryant Park  
New York, New York 10036  
Attn: Stephen Baldini; Iain Wood  
Fax: (212) 872-1002;  
(202) 887-4288  
Email: sbaldini@akingump.com;  
iwood@akingump.com

**SCHEDULE B TO OPERATING AGREEMENT****MANAGER VOTING PERCENTAGE**

<u>Manager</u>	<u>Voting Percentage</u>
Arnold Simon	62.5%
Eugene Kremener	25%
David Cogut	12.5%
Rajiv Kacholia	0%