

# Operating Agreement Template

Acer Series: Maple Business Development



FBFS045 - 4/21

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## About This Template

This educational resource is designed for maple syrup producers, maple sap producers, forest landowners and partners to formalize an LLC Operating Agreement. This resource is not intended to replace the guidance of a legal professional. The situation for each person and party is different and professional legal assistance is recommended to ensure your business agreements are accurate, appropriate and complete.

This template includes sections and language that can be used directly in an Operating Agreement. This educational document, however, is not a complete. The template includes many blank sections that require the addition of specific information for your agreement. Several sections of this document specifically reference relevant laws in the State of Vermont. Agreements prepared in states other than Vermont will require appropriate revisions to consider and comply with all relevant laws of that particular state.

In addition to standard clauses and optional clauses this document also includes reference sections marked by italics. These reference sections further describe considerations or risks related to the selection or omission of specific language in the Operating Agreement.

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**OPERATING AGREEMENT  
OF \_\_\_\_\_, LLC**

**THIS OPERATING AGREEMENT** (the “Agreement”) of \_\_\_\_\_, LLC, a Vermont, member-managed limited liability company (the “Company”), is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2021, by and between Member, Member, Member, Member, and Member each of whom is a “Member” and collectively referred to as the “Members.”

**WITNESSETH:**

**WHEREAS**, the Members desire to form a member-managed limited liability company under and pursuant to the Vermont Limited Liability Company Act, 11 V.S.A. §§ 4001-4163, as amended from time to time (the “Act”).

**NOW THEREFORE**, in consideration of the foregoing, and of the mutual promises set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

For purposes of this Agreement, unless the language or context clearly indicates that a different meaning is intended, the words, terms and phrases defined in this Section have the following meanings:

- (a) “Act” shall mean the Vermont Limited Liability Company Act, 11 V.S.A. §§4001-4163, as amended.
- (b) “Articles” shall mean the Articles of Organization as filed with the Vermont Secretary of State’s office.
- (c) “Agreement” means this Operating Agreement, as amended from time to time under the authority of Article 14.6.
- (d) “Capital Account” shall mean the aggregate Capital Contributions to the Company by a Member, as adjusted, up to the date in question pursuant to Article 4.
- (e) “Capital Contribution” shall mean any contribution to the capital of the Company in cash, or non-cash property, or services rendered, or the net fair market value of any tangible or intangible property, promissory notes, or contracts for services made by a Member, whenever made.
- (f) “Capital Interest” shall mean that proportion that a Member’s Capital Account bears to the aggregate Capital Accounts of all Members whose Capital Accounts have positive balances as may be adjusted from time to time.

(g) “Code” shall mean the Internal Revenue Code of 1986, as amended, and any successor to that Code.

(h) “Company” shall mean \_\_\_\_\_, LLC.

(i) “Company Property” shall mean all property, real or personal, tangible or intangible, as shall be contributed or acquired and as further defined by 11 V.S.A. §§ 4031 and 4032.

(j) “Dissociated Member” shall mean a former Member of the Company whose membership is terminated under Article 11 of this Agreement.

(k) “Economic Interest” shall mean a Member’s share of the Company’s net profits, net losses, and distributable cash, but shall not include any right to participate in the management or affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision of the Members.

(l) “Initial Capital Contribution” shall mean the initial contribution to the Capital of the Company pursuant to this Operating Agreement as reflected in Article 4.

(m) “Initial Members” shall mean Member, Member, Member, Member, and Member.

(n) “Majority Interest” shall mean one or more Membership Interests which taken together exceed fifty percent (50%) of the aggregate of all Membership Interests.

(o) “Member” means a Person or entity that owns one or more Membership Units as recorded in the Required Records.

(p) “Membership Interest” shall mean a Member’s entire interest in the Company, represented by Units.

(q) “Person” includes a natural person, domestic or foreign limited liability company, corporation, partnership, cooperative, community land trust, non-profit corporation, limited partnership, joint venture, association, business trust, estate, trust, enterprise and any other legal or commercial entity.

(r) “Required Records” means those records that are required to be kept under Article 3 of this Agreement.

(s) “Sharing Ratio” shall mean a Member’s Capital Interest.

(t) “Termination of the Company” means the end of the Company’s legal existence pursuant to the Act.

(u) “Transfer” includes any voluntary or involuntary sale, pledge, hypothecation, assignment, conveyance, lease, mortgage, granting of a security interest, deed encumbrance or gift other than by reason of a member’s death.

(v) “Unit” shall mean the number of Units which may be represented by a Certificate issued to each Member equivalent to the Member’s percentage Membership Interest in the Company pursuant to Exhibit A.

## ARTICLE II FORMATION OF COMPANY

**2.1 FORMATION.** The Company has been organized as a Vermont, member-managed, limited liability company. The Company was formed on \_\_\_\_\_, 2021 by filing its Articles of Organization with the Vermont Secretary of State’s office. The Company shall be governed by the Act except as provided herein or in the Articles of Organization.

**2.2 NAME.** The Company shall be called \_\_\_\_\_, LLC. Title to the property of the Company shall be held in the name of the Company. The Company may also conduct its business under one or more trade names.

**2.3. DURATION.** The Company shall continue in existence perpetually from the date of filing of the Articles of Organization with the Vermont Secretary of State’s office unless earlier dissolved in accordance with this Operating Agreement or the Act.

**2.4 REGISTERED OFFICE AND RESIDENT AGENT.** The registered office and resident agent of the Company shall be designated in the initial Articles of Organization or any amendment thereof. The registered office and/or resident agent may be changed from time to time. Any such change shall be made in accordance with the Act. If the resident agent shall ever resign, the Company shall promptly appoint a successor.

**2.5 PRINCIPAL PLACE OF BUSINESS.** The principal place of business of the Company shall be \_\_\_\_\_. The Company may locate its place of business and registered office at any other place or places as may from time to time be deemed advisable. The Company may have such other offices as the business of the Company may require from time to time.

**2.6 INTENT.** At any time, there is more than one Member of the Company, then for federal income tax purposes, the Company shall be operated in a manner consistent with its treatment as a “partnership” under the Code.

**2.7 PURPOSES OF THE COMPANY.** The Company is formed to engage in any one or more lawful acts or activities for which limited liability companies may be formed under the Act as well as to effectively manage the assets owned or which may be acquired by the Company. The Company is also formed to engage in sap collection, syrup production, processing of syrup products, and to conduct wholesale and retail sales and marketing of maple products produced principally by the Company.

*Entity authorizing legislation in most states will impose upon members a duty of loyalty to the Company. The duty of loyalty requires members or partners to refrain from competing with the company in the conduct of the company's business. It also requires that the members or partners bring business opportunities to the company rather than seizing the opportunity for personal gain. How you describe the business in both its articles of organization and in the operating agreement will establish the extent of this duty. Clients should understand the nature of this duty and you should craft a description of the “company’s business” that reflects their expectations about outside business activities and opportunities.*

**2.8 ADVICE OF COUNSEL.** Each person signing this Agreement understands that this Agreement contains legally binding provisions and has had the opportunity to consult with a lawyer and has consulted with a lawyer or has consciously decided not to consult a lawyer.

*This provision is particularly important if all of the Members are being jointly represented by one attorney. It's important to have each member seek out an independent review of the operating agreement prior to execution.*

### **ARTICLE III BOOKS, RECORDS AND ACCOUNTING**

**3.1 BOOKS AND RECORDS.** The Company shall maintain complete and accurate books and records of the Company’s business and affairs as required by the Act and such books and records shall be kept at the Company registered office.

**3.2 FISCAL YEAR; ACCOUNTING.** The Company’s fiscal year shall be the calendar year. The particular accounting methods and principles to be followed by the Company shall be selected by the Company from time to time.

**3.3. REPORTS.** The Company shall provide reports concerning the financial condition and results of operation of the Company and the Capital Accounts of the Members shall be provided to Members in the time, manner and form as the Members determine. Such reports shall be provided at least annually as soon as practicable after the end of each calendar year and shall include a statement of each Member’s share of profits and other items of income, gain, loss, deduction and credit.

**3.4 MEMBER’S ACCOUNTS.** The Company shall maintain separate Capital Accounts for each Member. Each Member’s Capital Account shall reflect the Member’s Capital Contributions and increases for the Member’s share of any net income or gain of the company. Each Member’s Capital Account shall also reflect decreases for distributions made to the Member and the Member’s share of any losses and deductions of the Company.

**ARTICLE IV  
CAPITAL CONTRIBUTIONS**

**4.1 UNIT INTERESTS IN THE COMPANY.**

- (a) The Company shall have the authority to issue one hundred (1000) Units.
- (b) Each outstanding Unit shall have equal voting rights proportionately with each other unit.

**4.2 Initial Commitments and Contributions**

Members \_\_\_\_\_ are making split gifts of interests in the Company to \_\_\_\_\_ as reflected in the Initial Commitments and Contributions set forth below and in the attached Exhibit A. Accordingly, Units shall be issued in proportion to the Initial Capital Interests. Any additional Member (other than an assignee of a Membership Interest who has been admitted as a Member) shall make the Capital Contribution set forth in any agreement governing the Members admission to the Company. No interest shall accrue on any Capital Contribution and no Member shall have the right to withdraw or to be repaid any Capital Contribution except as provided in this Operating Agreement.

**INITIAL COMMITMENTS AND CONTRIBUTIONS**

*The table presented below offers an example of a five member LLC with the different capital interest and membership units recorded for each member.*

Member	Initial Capital Interest \$ / %	Membership Units
Member (1)	\$223,000 / 44.6%	446 Units
Member (2)	\$223,000 / 44.6%	446 Units
Member (3)	\$18,000 / 3.6%	36 Units
Member (4)	\$18,000 / 3.6%	36 Units
Member (5)	\$18,000 / 3.6%	36 Units

**4.3 PROPERTY OF THE COMPANY.** The Initial Property of the Company shall consist of cash, product inventory, sap collection supplies, machinery and sugaring equipment as shown on the balance sheet and equipment list attached to this Agreement as Exhibit B and Exhibit C, respectively and any assets, which from time to time may be transferred to or purchased by the Company.

**4.4 MEMBERSHIP CERTIFICATES.** Membership Certificates representing Units held by each Member in the Company may be issued and be in such form as determined by the Members. Any such Membership Certificates shall be consecutively numbered or otherwise identified and shall contain the date of issue, number of Units representing the Membership Interest and the name of the Member to whom it is issued. Such information shall also be entered into the Certificate Register of the Company. A lost, destroyed or mutilated Membership Certificate may be replaced upon such terms and indemnity to the Company as the Members may prescribe. Membership Certificates shall contain the following legend:

The Membership Interests represented by the Membership Certificate are subject to, and may be transferred only in accordance with, the restrictions contained in the Operating Agreement of the Company, as amended from time to time. The Operating Agreement is on file in the principal office of the Company.

**4.5 ADDITIONAL CONTRIBUTIONS.** The Company may not accept additional contributions of capital from a Member without the consent of the other Members. The Capital Interest of a contributing Member or Members shall be adjusted such that each Member will have an amount of Membership Units, which bears the same relationship to total outstanding Membership Units as the aggregate capital contributions of all Members, as such capital contributions are reflected in each Member's Capital Account.

**4.6 CAPITAL ACCOUNTS.** A Capital Account shall be established and maintained by the Company for each Member.

(a) In general, each Member's Capital Account shall be increased by:

- (i) the amount of money contributed by the Member;
- (ii) the fair market value of property contributed by the Member (net of liabilities secured by the property that the Company is considered to assume to take subject to); and
- (iii) allocations of net profits to such Member.

(b) In general, each Member's Capital Account shall be decreased by:

- (i) the amount of money (exclusive of salaries) distributed to such Member;
- (ii) the fair market value of property distributed to such Member (net of liabilities secured by the distributed property that the Member is considered to assume or take subject to); and



(iii) allocations of net losses to such Member.

*In the first instance, the capital account is simply the value of the initial contribution to the entity. The “aggregate capital account” is equal to the total value of the entity at formation. Each member holds a portion of the aggregate capital account expressed both as a percentage and as a number. The capital account, and the owner’s share of the whole, however, will change over time. The capital account is increased by the amount of any money contributed by the member, the fair market value of any property contributed to the member and allocations to the member of entity income and gain. The capital account can be decreased by the amount of money or the fair market value of property distributed to the member, the member’s allocation of losses and deductions and other adjustments.*

*The IRS requires that a member’s capital account be “maintained” in accordance with IRS rules. (Treas. Reg. § 1.704) Adjustments will be made based on subsequent withdrawals or additions of capital as well as distributions and allocations of income.*

#### **4.7 LIMITATIONS PERTAINING TO CAPITAL CONTRIBUTIONS**

- (a) Except as otherwise provided in this Agreement and the Act, no Member shall be entitled or permitted to withdraw any Capital Contributions or any money or other property from the Company without the consent of the other Members. No Member shall have the right to receive property other than cash, unless otherwise specifically agreed by the unanimous vote of the Members at the time of such distribution.
- (b) No Member shall receive any payments of interest with respect to such Member’s Capital Contributions or Capital Account.
- (c) No Member shall be liable for the debts, liabilities, contracts or other obligations of the Company beyond his, her or its Capital Contribution to the Company.

#### **4.8 TAX CHARACTERIZATIONS AND RETURNS.**

- (a) The Members acknowledge that the Company shall elect to be treated as a “partnership” for federal and Vermont state tax purposes. All provisions of this Agreement, the Company’s articles of organization and the operating agreement are to be construed so as to preserve that tax status.
- (b) Within one hundred and eighty (180) days after the end of each Fiscal Year the Members will cause to be delivered to each person who was a Member at any time during such Fiscal Year a Form K-1 and such other information, if any, with respect to the Company as may be necessary for the preparation of each Member’s federal or state income tax (or information) returns, including a statement showing each Member’s share of income, gain or loss, and credits for the Fiscal Year.



#### 4.9 CAPITAL ACCOUNT MAINTENANCE

- (a) The Company will maintain the Capital Accounts in accordance with Treasury Regulation 1.704-1(b)(2)(iv).
- (b) If the Company liquidates itself or a Member's Membership interest, the Company will make liquidating distributions in accordance with Article 13.
- (c) A Member is not liable to fund any deficit in the Member's Capital Account at any time. Notwithstanding any other provision in this Agreement, if a member unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), and the unexpected adjustment allocation, or distribution results in a deficit balance in the Capital Account for the member, the member will be allocated items of income and gain in an amount and manner sufficient to eliminate the deficit balance or the increase in the deficit balance as quickly as possible. It is intended that this subdivision will meet the requirements of a "qualified income offset" as defined in Treasury Regulation 1.704-1(b)(2)(ii)(d), and this subdivision is to be interpreted and applied consistent with that intention.
- (d) If a Member's Capital Account has a deficit balance at any time and the deficit or increase in deficit was caused by the allocation of nonrecourse deductions as defined in Treasury Regulation 1.704-2(b), then beginning in the first taxable year of the Company in which there are nonrecourse deductions or in which the Company makes a distribution of proceeds of a nonrecourse liability that are allocable to an increase in minimum gain as defined in Treasury Regulation 1.704-2(d) and thereafter throughout the full term of the Company, the following rules shall apply:
- (i) Nonrecourse deductions shall be allocated to the Members in a manner that is reasonably consistent with the allocations that have substantial economic effect as defined in Treasury Regulation 1.704-1 or some other significant item attributable to the property securing the nonrecourse liabilities, if applicable; and
  - (ii) If there is a net decrease in minimum gain for a taxable year, each member will be allocated items of Company income and gain for that year equal to that Member's share of the net decrease in minimum gain as defined in Treasury Regulation 1.704-2(g)(2).

#### 4.10 ACCOUNTING DECISIONS

- (a) The Members will make all decisions as to accounting matters; and
- (b) The Members may cause the Company to make whatever elections the Company may make under the Code, including the election referred to in Section 754 of the Code to adjust the basis of Company assets.
- (c) \_\_\_\_\_ shall act on behalf of the Company as the "tax matters" partner within the meaning of Section 6231(a)(7) of the Code.

**ARTICLE V  
ALLOCATIONS AND DISTRIBUTIONS**

**5.1 ALLOCATIONS OF INCOME AND LOSS.**

(a) Except as stated in Article 5.1(b) all items of income, gain, loss, deduction, and credit of the Company shall be allocated among the Members in an amount that bears the same proportion to the total of such allocations as the number of each Member’s Units bears to the aggregate outstanding Membership Units of the Company.

(b) On account of loans made or other transactions performed by a Member, the Company may increase, temporarily or permanently, a Member’s right to share in profits and distributions. The Members may agree to reallocate profits and losses for any calendar year in percentages that are consistent with each Member’s contributions to the Company’s affairs and each Member’s work on the Company’s operations. Initially, distributions shall be allocated as follows:

*The table presented below offers an example of a five member LLC with the percentage of distributions planned for each member.*

<b>Member</b>	<b>Percent</b>
Member Name (1)	20%
Member Name (2)	20%
Member Name (3)	20%
Member Name (4)	20%
Member Name (5)	20%

(c) All items of income, gain, loss, deduction, and credit allocable to any Membership Interest or Economic Interest that may have been transferred shall be allocated between the transferor and the transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest without regard to the results of Company operations during any particular portion of that calendar year without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; provided, however, that this allocation

must be made in accordance with any method permissible under the Code and the Regulations thereunder.

*An income allocation not based on capital share must be “consistent with the underlying economic arrangement of the partners. This means that in the event there is an economic benefit or economic burden that corresponds to an allocation, the partner to whom the allocation is made must receive such economic benefit or bear such economic burden.” A member or partner with a small capital stake but who provides a majority of the day-to-day labor and management (economic burden) could receive a larger income share disproportional to his capital share (economic benefit.)*

## **5.2 DISTRIBUTIONS.**

(a) Subject to the terms governing the distribution of assets upon liquidation in Article 13, the Company’s net cash received shall be distributed to the Members at such times, as the Members shall determine in their absolute discretion.

(b) All distributions to the Members shall be made in cash, and no Member shall have the right to receive distributions of property other than cash, whether during the Company’s term or upon its dissolution.

## **ARTICLE VI MANAGEMENT**

*This sample operating agreement sets up a dual structure for making management decisions. Day to day decisions as listed in 6.1 may be made by any member without consulting other members. More significant decisions such as those listed in 6.2, however, require a majority vote of all members.*

**6.1 MEMBER’S AUTHORITY.** The Members shall be agents of the Company. Any act of a Member including the signing of an instrument in the Company name, for apparently carrying on in the ordinary course the Company’s business or the business of the kind carried on by the Company binds the Company. Members shall have the full, exclusive and complete duty and right to manage and control and within their discretion, make all decisions and take any necessary or appropriate action in connection with the Company’s business.

Without limiting a Member’s power or authority under this Agreement or the Act, the Member may, acting individually (without obtaining the consent or approval of any other Member) take the following actions if and when the Member deems any such action to be necessary, appropriate or advisable, at the sole cost and expense of the Company:

(a) Acquire and enter into any contract for insurance which the Member deems necessary and proper for the protection of the Company, for the conservation of the Company’s assets, or for any purpose convenient or beneficial to the Company;

- (b) Approve all employment and independent contractor agreements, including the right to hire and fire such personnel, and employ, from time to time on behalf of the Company, individuals on such terms and for such compensations as the Member shall determine;
- (c) Make decisions as to accounting principles and elections, whether for book or tax purposes (and such decisions may be different for each purpose and may require the engagement of an independent auditor to audit the books and records of the Company);
- (d) Set up or modify recordkeeping, billing and accounts payable accounting systems;
- (e) Open checking, savings and any other accounts in banks or similar financial institutions, in the name of the Company, and deposit cash in and withdraw cash from such accounts.
- (f) Execute, make perform and carry out on behalf of and in the name of, the Company all types of contracts, agreements, instruments, notes, certificates, titles or other documents of any kind or nature as deemed necessary and desirable by the Member;
- (g) Amend, extend, or modify any contract or agreement at any time entered into by the Company, provided that the Member uses their best efforts to ensure that all such contracts, or agreements are representative of fair market value;
- (h) Commence, prosecute or defend any proceeding in the Company's name; and
- (i) Do and refrain from doing all acts necessary or desirable to carry out the Business for which the Company is formed.

**6.2 LIMITATIONS ON THE MEMBERS.** Notwithstanding anything to the contrary contained in this Agreement or the Act, certain acts, which are outside the ordinary course of business, may not be taken without approval by Members holding a majority of the Voting Units of the Company. Such acts outside the ordinary course of business shall include but not be limited to:

- (a) Amend this Agreement in a manner which impacts the rights of any Member; or
- (b) Approve a merger of the company into or with another entity or sale of substantially all of the assets of the Company to another Person; or the recapitalization or reorganization of the Company.
- (c) Purchase, lease or otherwise acquire any real or personal property with a value exceeding five thousand dollars (\$5,000);
- (d) Sell, convey, mortgage, grant a security interest in, pledge, lease, exchange or otherwise dispose or encumber any real or personal Company property;
- (e) Borrow money, incur liabilities, and other obligations including the incurrence by the Company of any obligation or debt exceeding five thousand dollars (\$5,000).

**6.3 STANDARD OF CARE; LIABILITY.** Every Member shall discharge any duties as may be delegated by the Members from time to time in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner, he or she reasonably believes to be in the best interests of the Company.

**6.4 COMPENSATION OF MEMBERS.** Nothing herein shall prohibit the Members from serving as employees of the Company or from receiving a salary, guaranteed payments or other compensation, as may be fixed by the Members.

**6.5 CONSENSUS** Members shall make every effort to make decisions by consensus. Consensus shall mean that the group strives for the full agreement of most Members after a process that is both inclusive of all Members and collaborative.

**6.6 ALTERNATIVE DISPUTE RESOLUTION.** The Members agree to negotiate management decisions in good faith. In any dispute arising out of this agreement or relating to the management of the Company for which a majority of Members cannot agree, Members will attempt to settle the dispute by good faith negotiation. If negotiation fails to settle the dispute, any Member may initiate mediation of the dispute. To initiate mediation, the Member must first give notice to the other Members requesting mediation. The mediation shall occur within 30 days of the written request. The Mediator shall be acceptable to both Members. The Members agree further to share equally the costs of the mediation, which costs will not include costs incurred by a party for representation by counsel at the mediation.

## **ARTICLE VII MEETINGS OF MEMBERS**

**7.1 ANNUAL MEETING.** The annual meeting of the Members shall be held as determined from time to time by the Members for the purpose of the transactions of such business as may come before the meeting.

**7.2 SPECIAL MEETINGS.** A special meeting of the Members, for any purpose or purposes may be called by any Member or Members holding at least ten percent (10%) of the Units of the Company.

**7.3. PLACE OF MEETINGS.** The Members may designate any place, either within or outside the State of Vermont, as the place of meeting for any meeting of the Members. If no designation is made, the place of meeting shall be the principal executive office of the Company in the State of Vermont.

**7.4 NOTICE OF MEETINGS.** Written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered no fewer than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by electronic mail, by or at the direction of the Members or person calling the meeting, to each Member entitled to vote at the meeting.

**7.5 MEETING OF ALL MEMBERS.** If all of the Members shall meet at any time and place, either within or outside of the State of Vermont, and consent to the holding of a meeting at that time and place, the meeting shall be valid without call or notice, and at the meeting lawful action may be taken.

**7.6 RECORD DATE.** For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment of the meeting, or Members entitled to receive payment of any distribution, or to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring the distribution is adopted, as the case may be, shall be the record date for the determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, the determination shall apply to any adjournment of the meeting.

**7.7 QUORUM.** A meeting of all the Members shall constitute a quorum at any meeting of Members.

**7.8 ACTION BY MEMBERS WITHOUT A MEETING.** Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote, and delivered to the Company for inclusion in the minutes of for filing with the Company records. Action taken under this Article shall be effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date.

**7.9 WAIVER OF NOTICE.** When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice.

## **ARTICLE VIII MEMBER REPRESENTATIONS**

**8.1 MEMBER REPRESENTATIONS.** Each of the Members hereby makes the following representation to the other Members:

(a) The Member is acquiring the Units for investment for the Member's own account, not as a nominee or agent, and not with the view to, or for resale in connection with any distribution thereof. The Member understands that the Units to be purchased have not been, and will not be registered under the Securities Act of 1933 (1933 Act) or the securities laws of the State of Vermont by reason of a specific exemption from the registration provisions of the 1933 Act and the applicable state securities laws, the availability of which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Member's representations as expressed herein. The Member is acquiring the Units without expectation, desire or need for resale and not with the view toward distribution, resale, subdivision or fractionalization of the Units.

(b) The Member understands that the Units cannot be resold in a transaction to which the 1933 Act and the state securities laws apply unless (i) subsequently registered under the 1933 Act and applicable state securities laws or (ii) exemptions from such registrations are available. The Member is aware of the provisions of SEC Rule 144 promulgated under the 1933 Act, which permits limited resale of Units purchased in a private transaction subject to the satisfaction of certain conditions.



(c) The Member understands that no public market now exists for the Units and that it is unlikely that a public market will ever exist for the Units.

(d) The Member understands that any certificates issued to represent ownership of the Units will in addition to the legend required by Article 4.4 bear the following legend:

THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THE COMPANY WILL NOT TRANSFER THIS CERTIFICATE UNLESS (i) THERE IS AN EFFECTIVE REGISTRATION COVERING THE UNITS REPRESENTED BY THIS CERTIFICATE UNDER THE SECURITIES ACT OF 1933 AND ALL APPLICABLE STATE SECURITIES LAWS, (ii) IT FIRST RECEIVES A LETTER FROM AN ATTORNEY, ACCEPTABLE TO THE MEMBERS OR THEIR AGENTS, STATING THAT IN THE OPINION OF THE ATTORNEY THE PROPOSED TRANSFER IS EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933 AND UNDER ALL APPLICABLE STATE SECURITIES LAWS, OR (iii) THE TRANSFER IS MADE PURSUANT TO SEC RULE 144 UNDER THE SECURITIES ACT OF 1933.

## **ARTICLE IX: INDEMNIFICATION**

**9.1 EXCULPATION OF LIABILITY.** Unless otherwise provided by law or expressly assumed, a person who is a Member shall not be personally liable for the acts, debts or liabilities of the Company.

**9.2 INDEMNIFICATION.** Except as otherwise provided in this Article or the Act, the Company shall indemnify any Member and may indemnify any employee or agent of the Company who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal, by reason of the fact that such person is or was a Member, employee or agent of the Company against expenses, including attorneys fees, judgment, penalties, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with the action, suit or proceeding, if the person acted in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner that such person reasonably believed to be in the best interests of the Company and with respect to a criminal action or proceeding, if such person had no reasonable cause to believe such person's conduct was unlawful. To the extent that a Member or employee or agent of the Company has been successful on the merits or otherwise in defense of an action, suit or proceeding such person shall be indemnified against actual and reasonable expenses, including attorney fees, incurred by such person in connection with the action, suit or proceeding in any action, suit or proceeding brought to enforce the mandatory indemnification provided herein. Any indemnification permitted under this Article, unless ordered by a court, shall be made by the Company only as authorized in the specific case upon a determination that the indemnification is proper under the circumstances because the person to be indemnified has met the applicable standard of conduct and upon an evaluation of the reasonableness of expenses and amounts paid in settlement. This determination and evaluation shall be made by the Member who is not a party or threatened to be made a party to the action, suit or proceeding. Notwithstanding the foregoing, no indemnification shall be provided to any Member, employee or agent of the Company for or in connection with the receipt of a



financial benefit to which such person is not entitled, voting for or assenting to a distribution to Members in violation of this Operating Agreement or the Act, or a knowing violation of law or with respect to an action by or in the right of the Company concluded in favor of the Company.

## ARTICLE X TRANSFERS OF INTEREST

**10.1 RESTRICTIONS ON TRANSFER.** Generally, no sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation or other disposition of any Membership or Investment Interest shall be made unless the following conditions of transfer are satisfied.

- (a) An executed or authenticated copy of the written instrument of assignment or transfer is delivered to the Company;
- (b) The transferee agrees to be bound by all the terms of this Operating Agreement by executing a counterpart signature page to this Agreement;
- (c) The transferee has made payment to the Company of all costs and expenses incurred as a result of the admission to the Company of a substituted Member;
- (d) The initial Members have approved the transferee as a new Member by written and unanimous consent; **and**
- (e) The transfer will not require registration of the Membership Interest under any federal or state securities laws, and the transfer will not result in the termination of the Company pursuant to Section 708 of the Code.

Any Units transferred in contravention of this Article shall be void of all voting, inspection and other rights with respect to the transferee and any such Transfer shall be null and void *ab initio*.

*The following provision addresses involuntary transfers which occur as the result of bankruptcy or divorce of a member. A creditor, for example, who takes shares as result of an involuntary collection process can be treated as a “dissociated” member. Dissociated members will have economic rights including rights to income allocations but will have no management rights including the right to direct distributions. The buy sell agreement should also provide a mechanism for voluntary purchase of the disassociated members shares.*

**10.2 ASSIGNEE OF A MEMBER’S MEMBERSHIP UNITS.** If, notwithstanding the prohibitions in Section 10.1, a Member transfers all or any portion of its Membership Units (whether voluntarily, involuntarily or by operation of law) and a Person acquires such Membership Units, (but is not already a Member or admitted as a new Member pursuant to the terms of this Operating Agreement) such person shall:

- (a) Be treated as a Dissociated Member;

- (b) Have no right to participate in the business and affairs of the Company or to exercise any rights of a Member under this Agreement or the Act;
- (c) Share in distributions from the Company with respect to the transferred Membership Units on the same basis as the transferring Member previously had; and
- (d) Be required to Transfer the Units to the Company in accordance with Article 13.

**10.3 WITHDRAWAL OF A MEMBER.** Members with at least 7 years of service to the Company, and who seek to withdraw shall give each other Member written notice 90 days prior to date of withdrawal. Such notice shall include an offer to sell the Member’s units to the remaining Members at a value and upon terms as determined under Article 13.1 and 13.2 of this Agreement. Service shall mean a contribution of at least 300 hours per year spent on the day-to-day labor and/or management of the Company. Members \_\_\_\_\_, as founders of the Company shall be deemed to have given more than 7 years of service to the Company as of the date this agreement is signed.

*Most standard buy-sell agreements do not include a length of service requirement for a withdrawing member. In cases, where the initial stake in the business was gifted a length of service requirement may make sense. A similar provision can be included in the liquidation provisions in Article 13.*

## ARTICLE XI DISSOCIATION OF MEMBERS

**11.1 EVENTS RESULTING IN DISSOCIATION.** A member is dissociated from the Company upon:

- (a) In the case of a Member who is an individual:
  - (i) The transfer of a Membership Interest that fails to comply with Article 10 of this Agreement.
  - (ii) The Member’s death except that a transfer under the last will and testament of a deceased Member to another Member shall not result in disassociation.**

*A specific bequest in a member’s will or trust leaving their share of the business to an existing member will not result in dissociation or trigger a buy-sell event.*

- (b) In the case of a Member that is a Trust or is acting as a Member by virtue of being a Trustee of a trust, the termination of the trust, but not merely the substitution of a successor trustee.
- (c) On application by the Company or another Member, the Member’s expulsion by judicial decree because:

(i) The Member engaged in wrongful conduct that adversely and materially affected the Company business;

(ii) The Member willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under this Agreement or any other agreement between the Member and the Company or other Members.

(d) The Member's:

(i) Becoming a debtor in Bankruptcy;

(ii) Executing an assignment for the benefit of creditors;

(iii) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that Member or of all or substantially all of that Member's property; or

(iv) Failing within ninety (90) days after the appointment, to have vacated or stayed the appointment of a trustee, receiver or liquidator of the Member or of all or substantially all of the Member's property obtained without the Member's consent or acquiescence, or failing with ninety (90) days after the expiration of a stay to have the appointment vacated;

**11.2 RIGHTS OF MEMBER SUBSEQUENT TO DISSOCIATION.** Upon a member's dissociation, that Member's right to participate in the management and conduct of the Company business is terminated and such Member shall be treated as holding only an Economic Interest. If the Dissociated Member's Membership Interest in the Company is not purchased pursuant to the option granted the Members or the Company in Article 12, the Dissociated member shall be entitled to receive only the distributions of net cash flow and allocations of net income and net loss, if any.

## **ARTICLE XII PURCHASE OF DISSOCIATED MEMBER'S INTEREST**

**12.1 RIGHT OF FIRST REFUSAL.** Any member withdrawal under Article 10.3 or any purported voluntary or involuntary transfer or encumbrance of all or any part of a Member's Membership or Investment Interest in a manner not expressly permitted by this Agreement shall be deemed to be a "Buy-Sell Event." Upon the occurrence of a Buy-Sell Event, the Member to whom such event has occurred (the Withdrawing Member) or its executor, administrator or other legal representative in the event of death or declaration of legal incompetency, shall give notice of the Buy-Sell Event to the other Members within thirty (30) days after its occurrence. If the Withdrawing Member fails to give the Buy-Sell Notice, any other Member (other than a Withdrawing Member) may give the notice at any time thereafter and by so doing commence the Buy-Sell provisions provided for in this Article 11.

Upon the occurrence of a Buy- Sell Event, any Members other than the Withdrawing Member, shall have an option to purchase the Withdrawing Member's Membership Interest on terms and conditions set forth in this Article 12.

The Purchasing Member must give notice of their election to exercise their Purchase Option to the Withdrawing Member within thirty (30) days following delivery of the Buy-Sell notice. The purchase price for the Withdrawing Member's Membership Interest shall be for a value as hereinafter determined under Article 12.2. If the Purchase Option is exercised, the purchase price shall be payable over a period of 10 years in equal annual installments with interest paid at the Rate of Interest then in effect for the USDA Farm Services Agency direct farm operating loans as of the date the transaction is closed. The obligation of the Purchasing Member shall be represented by a Promissory Note, which shall be pre-payable, without penalty, at any time.

*The buy-sell agreement should be structured in a manner that ensures the ongoing viability of the farm. Providing for payments to be made over a period of time at a reasonable rate of interest will help. Discounts of value for lack of marketability and or control are also an option. In the farm transfer context, when one generation is contemplating retirement and withdrawal from the business, their capital share can be reduced over time by taking full distributions or distributions in excess of their share.*

**12.2 DETERMINATION OF FAIR MARKET VALUE.** The fair market value of the interest of a Dissociated Member shall be equal to the value of the interest of such Member determined by multiplication of the Dissociated or withdrawing member's sharing ratio by the fair market value of the Company as agreed between the Members in writing from time to time attached as Exhibit D, adjusted by any pro rata increase or decrease in the net book value of the Company from the date the value was last set to the end of the month prior to the dissociation of the Member.

*Annual valuation is a good practice and will spare the expense of an appraisal in the event of withdrawal.*

(a) In the event no most recent valuation has been completed; then the price of the Company Units shall be the book value per Unit as of the end of the Company fiscal year preceding the final valuation date. The book value per Unit as of the determination date shall be adjusted to reflect the appraised value of any personal or real property owned by the Company. For this purpose, the appraised value of such personal or real property shall be the value to which the Selling Member and the Company and/or the Non-Selling Members, as the case may be, may agree to, or lacking such agreement, the value to which three (3) professional real estate and or personal property appraisers [one (1) selected by the Selling Member, one (1) selected by the Company and/or the Non-Selling Members, as the case may be, and one (1) selected by the other two (2) appraisers] may agree upon, or lacking such agreement, the average of the two appraisals which are closest in value.

(b) For all valuations hereunder, book value shall be determined as of the last day of the fiscal year preceding such valuation date. The book value shall include the cash surrender value of life insurance policies taken out by the Company on the life of any member, but shall exclude the

proceeds of any policies payable on the death of a deceased Member in excess of their cash surrender values. The determination of book value shall be made by a public accountant acceptable to the Company or the Non-Selling Member and the Selling Member and such determinations shall be conclusive upon all parties. The company shall pay for the services rendered by the public accountants hereunder.

**12.3 TRANSFER OF MEMBERSHIP INTEREST.** Each Member agrees that there shall be executed such documents and instruments as may be necessary in the opinion of the Company's attorney to transfer title to the Membership Interest of the Company free and clear of all liens or encumbrances. The transfer shall occur at the closing. If payment for the Membership Interest is made in part or in whole through a Promissory Note, the Dissociated Member shall be entitled to a security interest in the Economic Interest of the Membership Interest transferred in order to secure the obligation of the Company with respect to the purchase price.

### **ARTICLE XIII DISSOLUTION AND WINDING UP**

**13.1 DISSOLUTION.** The Company shall dissolve and its affairs shall be wound up upon the unanimous consent of Members.

**13.2 DISTRIBUTIONS.** If the Company is dissolved and its business is not continued, the Members shall commence to wind up the affairs of the Company and to liquidate the Company's assets. The Members shall continue to share profits and losses during the period of liquidation in accordance with Article 5. Following the occurrence of any of the events set forth in Article 13.3(a) or (b), the Members shall determine whether the assets of the Company are to be sold or whether the assets are to be distributed to the Members. If assets are distributed to the Members, all such assets shall be valued at their then fair market value as determine under Article 12.2 and the difference, if any, of the fair market value over (or under) the adjusted basis of such property to the Company shall be credited (or charged) to the Capital Accounts of the Members in accordance with the provisions of Article 5. Such fair market value shall be used for purposes of determining the amount of any distribution to a Member pursuant to Article 13.3. If the Members are unable to agree on the fair market value of any asset of the Company, the fair market value shall be determined in accordance with Article 12.2.

**13.3 DISTRIBUTIONS.** Subject to the right of the Members to set up such cash reserves as may be deemed reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company; the proceeds of the liquidation and any other funds of the Company shall be distributed:

- (a) To creditors, in the order of priority as provided by law except those liabilities to Members in their capacities as Members.
- (b) To the Members for loans, if any, made by them to the Company or reimbursement for Company expenses paid by them.

(c) To the Members in proportion to their respective Capital Accounts until they have received an amount equal to their Capital Accounts immediately prior to such distributions, but after adjustment for gain or loss with respect to the disposition of the Company and the winding up of its affairs, whether or not the disposition occurs prior to the dissolution of the Company.

(d) To the Members in accordance with their Sharing Ratios.

Such proceeds shall be paid to such Members within ninety (90) days after the date of winding up.

## **ARTICLE XIV MISCELLANEOUS PROVISIONS**

**14.1 TERMS.** Nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person or persons, firm or corporation may in the context require.

**14.2 ARTICLE HEADINGS.** The Article headings contained in this Agreement have been inserted only as a matter of convenience and for reference, and in no way shall be construed to define, limit or describe the scope or intent of any provision of this Agreement.

**14.3 COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same.

**14.4 ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement among the parties hereto and contains all of the agreements among said parties with respect to the subject matter hereof. This Operating Agreement supersedes any and all other agreements, either oral or written, between said parties with respect to the subject matter hereof.

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

**14.6 AMENDMENT.** This Operating Agreement may be amended or revoked at any time by a written agreement executed by all Members.

**14.7 NOTICES.** Any notice permitted or required under this Operating Agreement shall be conveyed to the party at the address reflected in this Operating Agreement and will be deemed to have been given, when deposited in the United States mail, postage paid, or when delivered in person, or by courier or by facsimile or electronic mail transmission.

**14.8 BINDING EFFECT.** Subject to the provisions of this Operating Agreement relating to transferability, this Operating Agreement will be binding upon and shall inure to the benefit of the parties, and their respective distributees, heirs, successors and assigns.

**14.9 GOVERNING LAW.** This Operating Agreement is being executed and delivered in the State of Vermont and shall be governed by, construed, and enforced in accordance with the laws of the State of Vermont.

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

For the Company:

\_\_\_\_\_, LLC

Member:

\_\_\_\_\_

Member:

\_\_\_\_\_

Member:

\_\_\_\_\_

Member:

\_\_\_\_\_

Member:

\_\_\_\_\_



**EXHIBIT A  
INITIAL CAPITAL**

Member	Initial Capital Interest \$ - %	Membership Units
Member	\$223,000 / 44.6%	446 Units
Member	\$223,000 / 44.6%	446 Units
Member	\$18,000 / 3.6%	36 Units
Member	\$18,000 / 3.6%	36 Units
Member	\$18,000 / 3.6%	36 Units

**EXHIBIT B  
BALANCE SHEET**

**EXHIBIT C  
EQUIPMENT LIST**

## EXHIBIT D

### VALUATION OF COMPANY

The fair market value of the Company is as follows:

DATE	AGREED VALUE (\$)	MEMBER SIGNATURE
12/13/2021		
12/31/2022		
12/31/2023		
12/31/2024		
12/31/2025		
12/31/2026		
12/31/2027		
12/31/2028		
12/31/2029		
12/31/2030		
12/31/2031		

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