



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: June 1, 2016

Department: Legal Counsel Agenda Planning Date: 5/26/16 Time required: 15 min.

Audio/Visual aids

Contact: Scott Norris, Legal Counsel Phone: ext. 5690

Department Head Signature: Alan M. Roy

TITLE: Receive petition for annexation of certain property along Talbot Road South to the Santiam Water Control District, and consider order setting public hearing with publication/posting of notice.

Issue, Description & Background: The owner of four parcels located at 3605 and 3636 Talbot Road South has petitioned for annexation to the Santiam Water Control District pursuant to ORS 198.705 to 198.955. The owner of the parcels is GWM Trucking LLC, and George and Marlene Meyer, both members of the LLC, submitted the petition. The petition was approved by the Santiam Water Control District Board of Directors. The petition has now been forwarded on to the Board of Commissioners for further action. Pursuant to ORS 198.857, the board must conduct a public hearing on the petition not sooner than 20 days nor later than 50 days after the petition has been filed. The petition was filed with the board on May 12, 2016.

Financial Impacts: There is no fiscal impact on the county other than costs associated with processing the petition.

Impacts to Department & External Agencies: The board is required by state law to hold a hearing on the annexation petition. If the board approves the petition following the public hearing, the owner becomes liable for the indebtedness of the Santiam Water Control District in the same manner as other District members.

Options for Consideration: 1. Receive petition, set a public hearing for June 29 at 9:30 a.m. and direct posting and publication of notice for a hearing. 2. Take no action at this time.

Recommendation: It is recommended that the board receive the petition, and approve an order setting a public hearing on the petition for June 29, 2016 at 9:30 a.m. and directing the posting and publishing of notice of the hearing.

List of attachments: Petition Form of order with publication notice

Presenter: Scott Norris, Legal Counsel

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Scott Norris, snorris@co.marion.or.us

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the matter of setting a public hearing to )  
consider annexation of certain land to the )  
Santiam Water Control District. )

**ORDER No. \_\_\_\_**

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on June 1, 2016.

WHEREAS, the Marion County Board of Commissioners has received a petition to annex four parcels of land located at 3605 and 3636 Talbot Road South, Jefferson, Oregon, to the Santiam Water Control District; and

WHEREAS, the proposed boundaries of the parcels to be annexed to the District include land owned entirely by the petitioners and those lands are wholly within Marion County abutting the Santiam Water Control District; and

WHEREAS, it is the intention of the Board of Commissioners to initiate the necessary procedures to consider annexation of additional lands to the Salem Suburban Rural Fire Protection District; now, therefore,

IT IS HEREBY ORDERED that a public hearing on the proposal shall be held on June 29, 2016, at 9:30 a.m. in the Senator Hearing Room of Courthouse Square, 555 Court Street NE, Salem, Oregon; and

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IT IS FURTHER ORDERED that notice of the public hearing be posted and published forthwith.

DATED at Salem, Oregon, this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

NOTICE OF PUBLIC HEARING

PUBLIC NOTICE is hereby given in the manner required by law that a public hearing will be held by the Marion County Board of Commissioners on June 29, 2016, at 9:30 a.m. in the Senator Hearing Room of Courthouse Square, 555 Court Street NE, Salem, Oregon. The purpose of the public hearing is to consider the annexation of four parcels of land located at 3605 and 3636 Talbot Road S in Jefferson, Oregon to the Santiam Water Control District. An exact legal description of the land to be annexed may be examined at the office of the Marion County Board of Commissioners. Anyone wishing to testify may do so in person, through a representative, or by written comments to the Board of Commissioners prior to or at the public hearing.

DATED this \_\_\_\_\_ day of June, 2016.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Publish in Statesman Journal twice: The first time on or before June 14; the second time on or before June 24.

Post in three public places.

RECEIVED

MAY 12 2016

MARION COUNTY  
BOARD OF COMMISSIONERS

BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON

In the matter of a petition for            )  
annexation of property to the            )  
Santiam Water Control District        )

PETITION

Pursuant to ORS 198.857, we, being all the owners of land in the proposed service district hereby petition and request that the Marion County Board of Commissioners undertake proceedings for a change of organization and approve annexation of real property described in Exhibit A to the Santiam Water Control District.

In accordance with the provisions of Oregon Revised Statutes, Chapter 553, the following information is provided.

- 1) The district affected by this petition is the Santiam Water Control District and the only county affected is Marion County.
- 2) The principal Act concerning the affected district is Chapter 553, Oregon Revised Statutes, Water Control Districts.
- 3) The change of organization proposed is annexation of the above described property to the existing district.
- 4) The territory subject to this petition is inhabited.
- 5) Petitioners request that proceedings be undertaken for the annexation proposed.
- 6) Petitioners represent all the landowners within the area sought to be annexed.
- 7) It is proposed that the change of organization be subject to the following terms and conditions: none.

STATE OF OREGON )  
 )  
County of Marion )

I George & Marlene Meyer, the undersigned landowner of properties 1 through 4 on Exhibit A, request that proceedings be initiated for the annexation of said territory to the Santiam Water Control District.

OWNER:

George Meyer

Marlene Meyer

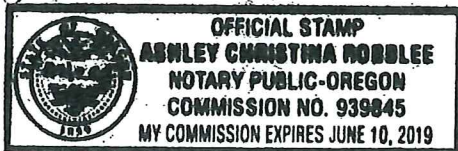
Water Control District Endorsement

Approval for the annexation has been granted by the Board of the Santiam Water Control District at their meeting, May 9<sup>th</sup>, 2016

SANTIAM WATER CONTROL DISTRICT

By: \_\_\_\_\_  
Secretary, Board of Directors

STATE OF OREGON, County of Marion ) ss.  
This instrument was acknowledged before me on this 11<sup>th</sup> day of May, 2016, by  
George Meyer, "Owner."



Ashley Christina Robblee  
Notary Public for Oregon  
My Commission Expires: June 10, 2019

STATE OF OREGON, County of Marion ) ss.  
This instrument was acknowledged before me on this 11<sup>th</sup> day of May, 2016, by  
Marlene Meyer, "Owner."

Laura Lee Marcus  
Notary Public for Oregon  
My Commission Expires: March 23, 2019



STATE OF OREGON, County of \_\_\_\_\_) ss.  
This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by  
\_\_\_\_\_, Secretary of the Board of Directors of the Santiam Water  
Control District.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_





Exhibit A

This annexation approved through motion at the May 9<sup>th</sup>, 2015 Board Meeting, would include within the boundary of Santiam Water Control District (SWCD) the following parcel of land:

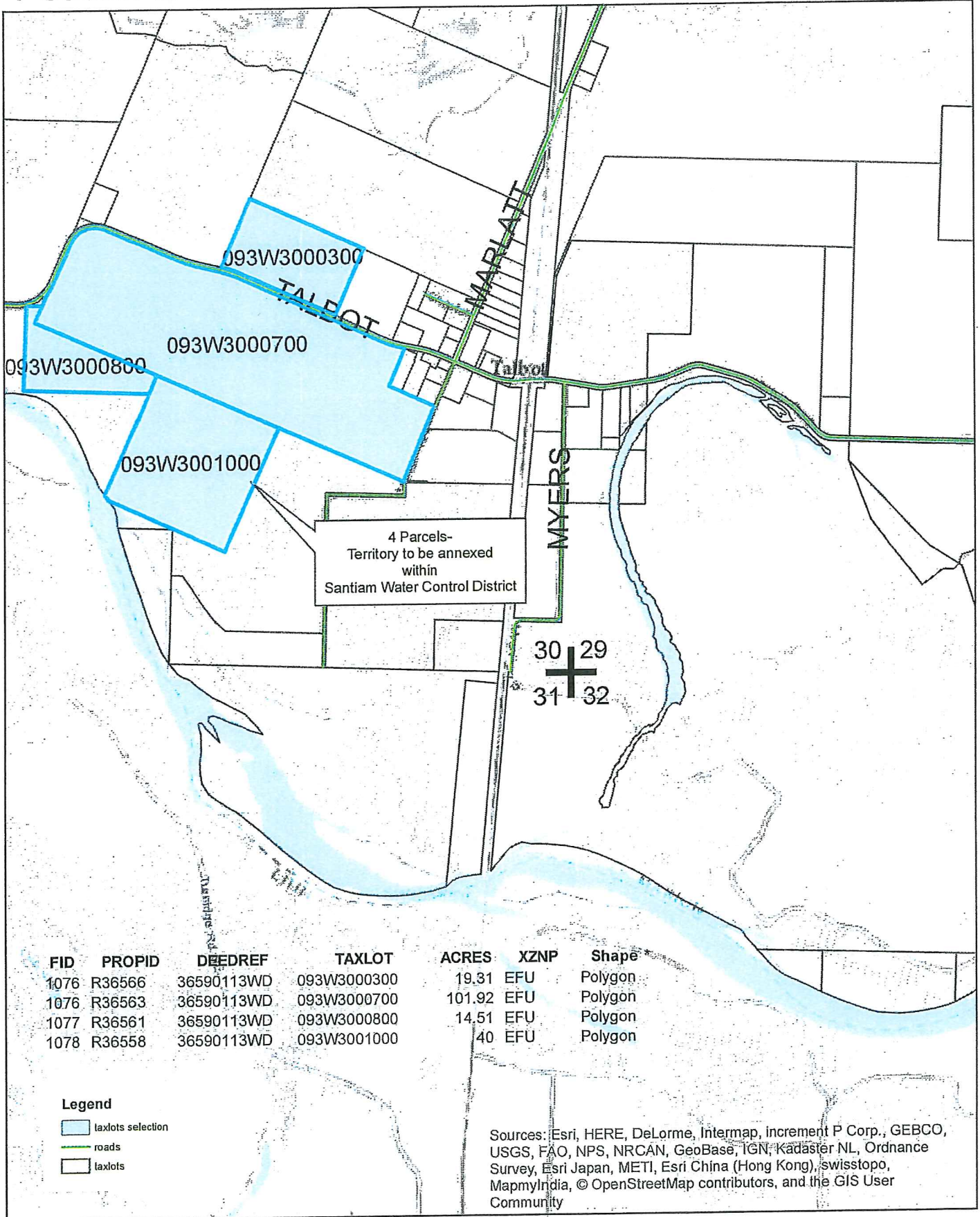
Parcel 1: Township 9S Range 3W Section 30 Tax lot 300 deed recorded at Reel 3730 Page 84  
Beginning at a point in the center of a 40-foot county road, which point is South 21-1/2° West 28.80 chains distant and North 68-1/2° West 19.485 chains distant from the most Northwesterly corner of the Donation Land Claim of Reason Roby No. 48, Township 9 South, Range 3 West, Willamette Meridian, Marion County, Oregon; running thence North 21-1/2° East 11.04 chains; thence North 68-1/2° West 18.115 chains to the Southeasterly line of land owned by J.S. Buchner; thence South 21-1/2° West 11.04 chains to the center of a 40 foot county road; thence South 68-1/2° East, along the center of said county road, 18.115 chains to the point of beginning

Parcel 2: Township 9S Range 3W Section 30 Tax lot 700 deed recorded at Reel 3730 Page 85  
Beginning at the Southeast corner of the Donation Land Claim of James Pritchett No. 46 in Township 9 South, Range 3 West of the Willamette Meridian in Marion County, Oregon; thence North 68°30' West, along the Southerly line of said claim, 60.20' chains to the Southwest corner of said claim; thence North 21°35' East, along the Westerly line of said claim, 17.15 chains; thence South 68°30' East 22.50 chains; thence North 21°35' East 1.25 chains; thence South 68°30' East 37.50 chains to the Easterly boundary of said claim; thence South 20°35' West 18.40 chains to the place of beginning.  
EXCEPTING THEREFROM, Beginning at a point 18.40 chains North 21°35' East and 17-1/2 feet North 68°30' West from the Southeast corner of the James Pritchett Donation Land Claim No. 46 in Township 9 South, Range 3 West of the Willamette Meridian in Marion County, Oregon; thence North 68°30' West 500.0 feet; thence South 21°35' West 400.0 feet; thence South 68°30' East 500.0 feet to a point 17-1/2 feet North 68°30' West from the East line of said Pritchett Claim; thence North 21°35' East 400.0 feet to the point of beginning.  
FURTHER EXCEPTING THEREFROM, a strip of land 17-1/2 feet in width lying adjacent to the most Easterly line of the first above described property, more particularly described in Deed recorded October 25, 1913 in Volume 128, page 448, Deed Records for Marion County, Oregon

Parcel 3: Township 9S Range 3W Section 30 Tax lot 800 deed recorded at Reel 3730 Page 87  
All of Government Lot Four (4), Section 30 in Township 9 South, Range 3 West of the Willamette Meridian in Marion County, Oregon.  
EXCEPTING THEREFROM, that portion which lies within that certain 40-acre tract of land more particularly described in a deed to Delmar A. Davidson, et ux, recorded August 4, 1941 in Volume 262, page 1, Deed Records for Marion County, Oregon.

Parcel 4: Township 9S Range 3W Section 30 Tax lot 1000 deed recorded at Reel 3730 Page 86  
Beginning at a point on the South line of the Donation Land Claim of James Pritchett and wife,  
20.70 chains North 68°30' West from the Southeast corner of said claim in Township 9  
South, Range 3 West of the Willamette Meridian, Marion County, Oregon; thence North  
68°30' West 20.00 chains. along the South line of the James Pritchett claim; thence  
South 21°30' West 20.00 chains; thence South 68°30' East 20.00 chains, parallel to the  
South line of the James Pritchett claim; thence North 21°30' East 20.00 chains to the  
place of

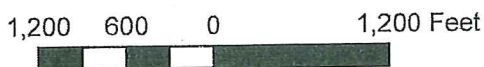
# Petition to Include within Santiam Water Control District



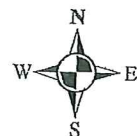
FID	PROPID	DEEDREF	TAXLOT	ACRES	XZNP	Shape
1076	R36566	36590113WD	093W3000300	19.31	EFU	Polygon
1076	R36563	36590113WD	093W3000700	101.92	EFU	Polygon
1077	R36561	36590113WD	093W3000800	14.51	EFU	Polygon
1078	R36558	36590113WD	093W3001000	40	EFU	Polygon

- Legend**
- taxlots selection
  - roads
  - taxlots

Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community



Map prepared by Stevenson/McGill



# Operating Agreement of GWM Trucking, LLC

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# OPERATING AGREEMENT

of

## GWM TRUCKING, LLC an Oregon Limited Liability Company

(Member-Managed)

THIS OPERATING AGREEMENT (the "Agreement") is made and entered into effective January 1, 2003, by and between *George W. Meyer* (hereafter referred to as the "Member").

### SECTION 1. THE LIMITED LIABILITY COMPANY

**1.1 Formation.** Effective as of the date set forth above, the Member is forming an Oregon Limited Liability Company under the name of *GWM Trucking, LLC* (the "Company"), on the terms and conditions set forth in this Agreement and pursuant to the Oregon Limited Liability Company Act (the "Act"). The Member has filed with the Corporation Division of the Oregon Secretary of State the Articles of Organization for the Company, which were filed on May 22, 2003.

**1.2 Name.** The business of the Company will be conducted under the name *GWM Trucking, LLC*, or such other name as the Member may decide.

**1.3 Purpose.** The Company may conduct or promote any lawful business or purpose that a partnership or corporation may conduct or promote. The primary purpose of the Company is to own, manage and invest the assets and property of the Company, and to engage in all activities reasonably necessary and incidental thereto.

**1.4 Office.** The Company will maintain its principal business office within Oregon at 13274 Marlott Rd. S, Jefferson, OR 97352

**1.5 Registered Agent.** Michael G. Cowgill is the Company's initial registered agent in Oregon and the registered office is 130 W. First Ave., PO Box 667, Albany, OR 97321.

**1.6 Term.** The term of the Company commences as of the date set forth above in this Agreement, and shall be perpetual as provided in the Articles of Organization.

1.7 Names and Addresses of Member. The name and address of the initial Member of the Company is as follows:

*George W. Meyer, 31274 Marlatt Rd. S, Jefferson, OR 97352*

1.8 Admission of Additional Members. Except as otherwise expressly provided in this Agreement, no additional members may be admitted to the Company through issuance by the Company of a new interest in the Company without the prior unanimous written consent of the Members.

## SECTION 2. CAPITAL CONTRIBUTIONS

2.1 Initial Capital Contribution and Percentage of Ownership Interest. The Member's name, address, agreed value of his initial capital contribution, (as described below and in Exhibit "A" attached hereto), and his initial percentage ownership interest is:

<u>Name and address</u>	<u>Contribution</u>	<u>Percentage</u>
<i>George W. Meyer 13274 Marlatt Rd. S Jefferson, OR 97352</i>	<i>See Exhibit A</i>	<i>100%</i>

The member's percentage ownership interest at any time shall be the ratio of that member's capital contribution to all members' capital contributions.

2.2 Additional Capital Contributions. The Members intend that to the maximum extent possible, the Company's obligations should be paid from operating cash flows and from Company borrowings, whether short term or longer term. To the extent cash flow from operations and borrowings are not sufficient to meet the obligations of the Company as they become due, then on the prior consent of Members holding a majority of the Ownership Interests (such majority of Ownership Interests hereinafter referred to as a "Majority of the Members") the Members will contribute to the Company proportionately to their Ownership Interests the funds necessary to meet such obligations.

2.2.1 The Operating Managers (defined in Subsection 4.1.1 below) may initiate a required capital contribution by giving the other Members written notice (the "Notice") of the total amount of capital required and by stating the reasons the additional capital contribution is needed. If approved by a Majority of the Members, each Member must contribute its proportionate share (determined by reference to Ownership Interests) of the amount stated in the Notice. Each Member must make all contributions of capital within 30 days of the date the Notice is received by the other Members. Failure to make a required capital contribution is a breach of this Agreement, unless, pursuant to Section 2.3 below, the other Member(s) advance funds, which decision is in the sole discretion of the other Members.

2.3 **Failure to Make Additional Capital Contribution.** Should any Member for any reason fail to make an additional capital contribution required under Section 2.2 above (a "Defaulting Member"), then the other Members may advance funds proportionate to their Ownership Interests or as they otherwise may agree for the account of the Defaulting Member (a "Default Advance"). A Member who makes a Default Advance is an "Advancing Member." A Default Advance is a debt of the Defaulting Member due to the Advancing Member that bears interest from the date made at a rate equal to two percent (2%) above the prime rate of U.S. Bank. The Defaulting Member's share of the Company cash distributions and proceeds will be paid to the Advancing Members in the chronological order of, and proportionately to, the Default Advances then to be repaid until that debt, including interest and costs of collection, are repaid in full. A Default Advance is the personal obligation of the Defaulting Member to the Advancing Member, and if not repaid within two (2) years of the date made, the Advancing Member may pursue any remedy at law or in equity for its repayment.

2.4 **No Interest on Capital Contributions.** Members are not entitled to interest or other compensation for or on account of their capital contributions to the Company except to the extent, if any, expressly provided in this Agreement.

### SECTION 3. ALLOCATION OF PROFITS AND LOSSES; DISTRIBUTIONS

3.1 **Income and Loss Determination.** The Company's taxable income or loss for each fiscal year will be determined as of the end of the fiscal year by the Company's accountant in accordance with federal income tax accounting principles, consistently applied, using that method of accounting employed in the federal income tax informational return filed by the Company for that fiscal year.

3.2 **Allocations of Income and Loss.** All items of income, gain, loss, deduction and credit will be allocated among the Members pro rata in proportion to their respective Ownership Interests.

3.3 **Distributions.** Except as provided in Section 8 below, distributions will be made to the Members pro rata in proportion to their respective Ownership Interests at times and in amounts as the Operating Managers may deem appropriate or advisable; provided, however, that if any Default Advances then remain unpaid and outstanding, distributions otherwise payable to the Defaulting Member instead will be paid to the Advancing Members in chronological order of the Default Advances until all Default Advances made on behalf of the Defaulting Member and all accrued and unpaid interest and costs of collection are repaid in full.

3.3.1 Notwithstanding the portion of Section 3.3 above, no distribution may be made to any Member if, after giving effect to the distribution, in the judgment of the Operating Managers, determined as permitted in the Act, either (1) the Company would



not be able to pay its debts as they become due in the ordinary course of business, or (2) the fair value of the total assets of the Company would not at least equal its total liabilities.

3.4 **Transfer of Interest by Member During Fiscal Year.** If any Member transfers all or a portion of an interest in the Company during any fiscal year of the Company consistent with the provisions of Section 7 below, by sale, exchange, transfer, assignment, gift, death, operation of law or in any other manner, the income or deduction of the Company allocable to the membership interest so transferred will be prorated between the transferor and the transferee in accordance with the number of days during the fiscal year each owned the interest, but, unless otherwise agreed between the Member and the transferee, gains or losses recognized from the sale or conveyance of the Company's assets will be allocated based on a closing of the books to the Member owning the interest at the time of the sale or conveyance.

3.5 **No Right to Demand Return of Capital.** No Member has any right to any return of capital or other distribution except as expressly provided in this Agreement. No Member has any drawing account in the Company.

#### SECTION 4. POWERS AND DUTIES OF MANAGERS

4.1 **Management of Company.** The management and control of the Company and its business and affairs is exclusively in the Members. The Members, or any of them, have all the powers that may be possessed by a member in a limited liability company without managers pursuant to the Act.

4.1.1 Notwithstanding the portion of Section 4.1 above, the Members agree among themselves that, except as otherwise provided in Section 4.2 below, in connection with Major Decisions (defined in Section 4.2 below), the right to manage the day-to-day operations of the Company rests exclusively in George W. Meyer (the "Operating Managers"). Consistent with and subject to the foregoing, the Operating Managers have all the rights and powers that may be possessed by a manager in a limited liability company with managers pursuant to the Act, and such rights and powers as are otherwise conferred by law or are necessary, advisable or convenient to the discharge of the Operating Managers' duties under this Agreement and to the management of the business and affairs of the Company. The Operating Managers shall be entitled to receive, from the Company, reasonable compensation for managing the day-to-day operations of the Company. Without limiting the generality of the foregoing, subject to the restrictions set forth in Section 4.2 below, the Operating Managers have the following rights and powers (which they may exercise at the cost, expense and risk of the Company):

(1) To expend the funds of the Company in furtherance of the Company's business;

(2) To perform all acts necessary to fulfill the purposes of the Company, including engaging persons the Operating Managers deem advisable to fulfill those purposes;

(3) To execute, deliver and perform on behalf of and in the name of the Company, without any other signature, agreements and documents deemed necessary or desirable by the Operating Managers to carry out the business of the Company, including any lease, deed, easement, bill of sale, mortgage, trust deed, security agreement, contract of sale or other document conveying, leasing or granting a security interest in the interest of the Company in any of its assets, or any part thereof, whether held in the Company's name, the name of the Operating Managers, or otherwise; and

(4) To borrow or raise money on behalf of the Company in the name or in the name of the Operating Managers for the benefit of the Company and, from time to time, to draw, make, accept, endorse, execute and issue promissory notes, drafts, checks and other negotiable or nonnegotiable instruments and evidences of indebtedness, and to secure their payment by mortgage, security agreement, pledge, conveyance or assignment in trust of the whole or any part of the assets of the Company, including contract rights.

**4.2 Restriction on Authority of Operating Managers.** Notwithstanding any other provision of this Agreement, without the prior written approval or consent of a Majority of the Members, the Operating Managers do not have any authority to do any of the following (the "Major Decisions"):

- (1) Amend the Company's Articles of Organization or this Agreement;
- (2) Finance or refinance any assets of the Company, or demolish, renovate or lease the existing improvements on the Company's existing real property (the "Property"), except in the ordinary course of business;
- (3) Sell, transfer or exchange all or substantially all of the Property owned by the Company;
- (4) Execute any lease or other arrangement involving the rental, use or occupancy of the Property, or any part of it, if such lease or other arrangement is for a term (including renewal options) in excess of twenty (20) years; or
- (5) Construct any improvements or make any capital improvements, repairs, alterations or changes in or to the Property involving in any instance an expenditure in excess of \$10,000.00, except for matters expressly delegated to the Operating Managers by the Members.

**4.3 Member's Exercise of Authority.** Notwithstanding any other provision of this Agreement, should any Member who is not an Operating Manager exercise any right

or power vested in the Member as a manager of the Company (other than voting or consenting to Major Decisions as provided in Section 4.2 above), on the approval of a Majority of the Members other than the breaching Member, the Company or such remaining Members have the option, but not the obligation, to purchase and acquire the interest of that Member in the Company, at any time within 180 days of such breach, for an amount equal to the amount that the estate of the breaching Member would have received if the breaching Member had died as of the date of the breach and the Company had elected to purchase all of the breaching Member's Interest in the Company pursuant to the provisions of Section 7.5 below, using the "deemed value" provided for in Subsection 7.5.2 below to determine the purchase price. Payment for the breaching Member's Interest in the Company will be unsecured. A payment of twenty percent (20%) of the purchase price will be paid at closing, and the balance of the purchase price will be paid in five (5) equal annual installments, including interest, with the first such payment to be one (1) year after the date of closing. The unpaid balance of the purchase price will bear interest, from the date of closing, at the minimum rate allowable so as not to create unstated interest for U.S. income tax purposes.

**4.4 Tax Matter Member.** The Operating Managers are hereby designated and approved as Tax Matter Members for the Company; in such capacity, the Operating Managers are authorized to participate in any audit of the Company's federal income tax return, and in connection therewith, to negotiate, settle and make agreements and adjustments with respect to the Company's federal income tax return that will be binding on all the Members; provided, however, that the Operating Managers will first consult with and obtain the approval of the other Members concerning any audit adjustments proposed to be made to the Company's federal income tax return. The Operating Managers, as Tax Matter Members, must notify all Members of any final Company audit adjustments.

**4.5 Duties of the Operating Managers.** The Operating Managers must take all actions that may be necessary or appropriate for the continuation of the Company's valid existence as a limited liability company under the laws of the State of Oregon and of each jurisdiction in which such existence is necessary for the Company to conduct the business in which it is engaged and for the accomplishment of the Company's purposes, including the preservation and operation of Company assets in accordance with the provisions of this Agreement and applicable laws and regulations. Notwithstanding the foregoing, the Operating Managers are not required to devote their full time to the business and affairs of the Company, but must devote such time as reasonably is necessary to perform their duties under this Agreement and prudently to manage or operate the Company's assets and conduct its business.

**4.6 Limitation on Liability of Operating Managers.** The Operating Managers have no liability to the Company or to any other Member for any loss suffered by the Company or any Member that arises out of any action or inaction of the Operating Managers if the Operating Managers, in good faith, determined that such course of conduct

was in the best interest of the Company and such course of conduct did not constitute gross negligence or intentionally wrongful misconduct.

4.7 **Indemnification of Operating Managers.** The Operating Managers are not personally liable for any debt, obligation or liability of the Company merely by reason of being the Operating Managers or Members. To the fullest extent provided or allowed by the laws of the State of Oregon, the Company will indemnify the Operating Managers, in their capacity as Operating Managers, from and against all costs, losses, liabilities, damages, claims and expenses (including attorney fees as incurred at trial and on appeal) (collectively, the "Claims") arising from actions or inactions taken or omitted in their capacity as Operating Managers, including, without limitation, action taken or omitted by the Operating Managers consistent with this Agreement and in furtherance of the business or affairs of the Company. The satisfaction of any indemnification of the Operating Managers under this Agreement will be from, and limited to, the Company assets, and the Members will not have any personal liability on account thereof.

4.8 **Other Business.** Each Member is entitled to enter into transactions that may be considered to be competitive with, or a business opportunity that may be beneficial to, the Company, it being expressly understood that the Members may enter into transactions that are similar to the transactions into which the Company may enter, and the Company and each Member hereby waive any right or claim to participate in them. Notwithstanding the foregoing, Members must account to the Company and hold, as trustee for the Company, any property, profit or benefit derived by the Member, without the consent of all of the Members, in the formation, conduct and winding up of the Company business or from a use or appropriation by the Member of the Company Property, including information developed exclusively for the Company and opportunities expressly offered to the Company.

4.9 **Decisions by Members.** Whenever in this Agreement reference is made to the decision, consent, approval, judgment or action of the Members, unless otherwise expressly provided in this Agreement, such decision, consent, approval, judgment or action shall mean a Majority of the Members.

4.10 **Withdrawal by a Member.** A Member has no power to withdraw from the Company.

4.11 **Removal of the Operating Managers.** Notwithstanding the provisions of Subsection 4.1.1 above, either or both of the Operating Managers may be removed, from their position as one of the Operating Managers, upon the written consent or approval of a Majority of the Members of the Company.

## SECTION 5. SALARIES, REIMBURSEMENT AND PAYMENT OF EXPENSES

5.1 **Organization Expenses.** The Company will pay all expenses incurred in connection with the organization of the Company.

5.2 **Reimbursements.** The Operating Managers are entitled to reimbursement from the Company for actual out-of-pocket expenses of the Company reasonably incurred in connection with the Company's business.

5.3 **Salary.** Except as may be otherwise provided in Subsection 4.1.1 above, for the Operating Managers, no salary will be paid to a Member for the performance of his or her duties under this Agreement unless the salary has been approved in writing by both: (i) a Majority of the Members and (ii) the Operating Managers.

5.4 **Insurance.** At all times, the Operating Managers must obtain and keep in full force and effect a comprehensive public liability policy and a property damage policy in amounts, with companies, and on terms acceptable to a Majority of the Members. Each policy of insurance covering any Company Property or any portion of any Company Property must provide that the policy may not be canceled without at least ten (10) days' written notice to the Members.

5.5 **Legal and Accounting Services.** The Operating Managers are authorized to obtain legal and accounting services to the extent reasonably necessary for the conduct of the Company's business.

## SECTION 6. BOOKS OF ACCOUNT, ACCOUNTING REPORTS, TAX RETURNS, FISCAL YEAR AND BANKING

6.1 **Books of Account.** At the expense of the Company, the Operating Managers must maintain records and accounts of all operations and expenditures of the Company at the principal office of the Company. At a minimum, the Company records must include (1) a current list of the full name and last-known business, residence or mailing address of each Member, both past and present; (2) a copy of the Articles of Organization and all amendments; (3) a copy of the Company's currently effective written Operating Agreement and all amendments; and (4) a copy of the Company's federal, state and local income tax returns and reports, if any, for the three (3) most recent years. Each Member shall have access to these records at all reasonable times. The Operating Managers must keep and maintain books and records of the operations of the Company that are appropriate and adequate for the Company's business and for carrying out this Agreement. The Operating Managers must prepare the books and records on the basis of generally accepted accounting principles.

**6.2 Accounting Reports.** Within 120 days after the end of each fiscal year of the Company, the Operating Managers must furnish each Member with copies of internally prepared financial statements of the Company.

**6.3 Audit.** At any time, on the written request of a Member, an audit of the accounting books of the Company will occur at the expense of the Company. All Members must cooperate fully with the accountant conducting the audit.

**6.4 Tax Returns.** Within 90 days after the end of each taxable year, or such lesser time if prescribed by the Internal Revenue Service, the Operating Managers must cause to be prepared and, on the review and approval of a Majority of the Members, must timely file with the appropriate authorities all federal and state income tax returns for the Company. Each Member will be furnished with a statement that may be used by the Member in the preparation of the Member's income tax returns, showing the amounts of any distributions, gains, profits, losses, deductions or credits allocated to him or her during the fiscal year.

**6.5 Method of Accounting.** The Company will use the method of accounting previously determined by the Members for financial reporting and tax purposes.

**6.6 Fiscal Year; Taxable Year.** The fiscal year and the taxable year of the Company is the calendar year.

**6.7 Capital Accounts.** The Company will maintain a Capital Account for each Member on a cumulative basis in accordance with federal income tax accounting principles in Treasury Regulation §1.704-1 (b)(2)(iv).

**6.8 Banking.** All funds of the Company will be deposited in a separate bank account or in an account or accounts of a savings and loan association in the name of the Company as determined by a Majority of the Members. The Company funds will be invested or deposited with an institution, the accounts or deposits of which are insured or guaranteed by an agency of the United States government. The Company funds may be withdrawn from the Company accounts on the signature of either of the Operating Managers.

**6.9 Management of Funds.** The Operating Managers must hold and disburse all funds of the Company in accordance with the terms of this Agreement and must account for all funds as a fiduciary. All funds of the Company held by a Member must be held in trust for the benefit of the Company, not be commingled with other funds of a Member, not be the personal property of a Member, and, to the maximum extent permitted by law, not be vulnerable to inclusion in the bankruptcy estate of a Member.

## SECTION 7. TRANSFER OF MEMBERSHIP INTEREST

7.1 **Sale or Encumbrance Prohibited.** Except as permitted in Section 7.2 below, no Member may voluntarily or involuntarily transfer, sell, convey, encumber, pledge, assign or otherwise dispose of (collectively, "Transfer") an interest in the Company to any person other than another Member of the Company without the prior written consent of all of the other Members.

7.2 **Permitted Transfers.** Notwithstanding Section 7.1 above, a Member may transfer all or any part of the Member's interest in the Company (the "Interest") as follows:

7.2.1 A Member may, during life or at death, transfer his or her Interest in the Company to another Member of the Company.

7.2.2 In the event there is only one (1) Member owning one hundred percent (100%) of all the ownership Interest of the Company, the sole Member may transfer, sell, convey, encumber, pledge, assign or otherwise dispose of all or any part of his or her Interest at any time.

7.2.3 Should a Member be entitled to and elect to acquire all the Interest of the other Members of the Company, as permitted by Section 7.1 above, the acquiring Member may assign the right to acquire all or any part of said Interest to a spouse, lineal descendant or an affiliated entity if the assignment is reasonably believed to be necessary to continue the existence of the Company as a limited liability company.

7.2.4 In the event of the death of a Member, the deceased Member may transfer his or her Interest to (1) an existing Member of the Company, (2) to such deceased Member's children, (3) to such deceased Member's brother or sister, (4) to the children of such deceased Member's brother or sister, (5) to such deceased Member's father or mother, or (6) any of them.

7.3 **Substituted Parties.** Any permitted transfer in which the transferee becomes a fully substituted Member is not effective unless and until:

(1) The transferor and assignee execute and deliver to the Company the documents and instruments of conveyance necessary or appropriate in the opinion of counsel to the Company to effect the transfer and to confirm the agreement of the permitted assignee to be bound by the provisions of this Agreement; and

(2) The transferor furnishes to the Company an opinion of counsel, satisfactory to the Company, that the transfer will not cause the Company to terminate for federal income tax purposes or that any termination is not adverse to the Company or the other Members.

**7.4 Death, Incompetency or Bankruptcy of Member.** On the death, adjudicated incompetence or bankruptcy of a Member, unless the transferee receiving the Interest of the deceased, incompetent or bankrupt Member is a permitted transferee pursuant to the provisions of Section 7.2 above, the successor in interest to the Member (whether an estate, bankruptcy trustee or otherwise) will receive only the economic right to receive distributions whenever made by the Company and the Member's allocable share of taxable income, gain, loss, deduction and credit (the "Economic Rights") unless and until all of the other Members admit the transferee as a fully substituted Member in accordance with the provisions of Section 7.1 above.

**7.4.1** Any transfer of Economic Rights pursuant to this Section 7.4 will not include any right to participate in management of the Company, including any right to vote, consent to or approve any actions of the Operating Managers, and will not include any right to information on the Company or its operations or financial condition. Following any transfer of only the Economic Rights of a Member's Interest in the Company, the transferring Member's power and right to vote or consent to any matter submitted to the Members will be eliminated, and the Ownership Interests of the remaining Members, for purposes only of such votes, consents and participation in management, will be proportionately increased until such time, if any, as the transferee of the Economic Rights becomes a fully substituted Member.

**7.4.2** Notwithstanding anything to the contrary set forth in this Section 7.4, in the event any Member commences a voluntary case under the Federal Bankruptcy Code, or permits the entry of a decree of order for relief against such Member in an involuntary case under the Federal Bankruptcy Code or makes an assignment for the benefit of creditors, the Company shall have the option, but not the obligation, for a period of 180 days following notice of such event to purchase all of such Member's Interest in the Company. The purchase price for such Member's Interest in the Company shall be an amount equal to the amount that such Member would have received if the Member had died, as of the date of such event, pursuant to the provisions of Section 7.5 below, but using the "deemed value" as determined pursuant to Subsection 7.5.2 below. Payment for such Member's Interest in the Company will be unsecured. A payment of twenty percent (20%) of the purchase price will be paid at closing and the balance of the purchase price will be paid in five (5) equal annual installments, including interest, with the first such payment to be made one (1) year after the date of closing. The unpaid balance of the purchase price will bear interest, from the date of closing, at the minimum rate allowable so as not to create unstated interest for U.S. Income Tax purposes. The right of the Company to purchase, acquire and redeem all of the Interest of such Member may be assigned by the Company to any one or more of its other Members.

**7.5 Death Buy Out.** Notwithstanding the foregoing provisions of this Section 7, the Members covenant and agree that on the death of any Member, the Company, at its option, by providing written notice to the estate of the deceased Member within 180 days of the death of the Member, may purchase, acquire and redeem all or any part of the



Interest of the deceased Member in the Company, pursuant to the provision of this Section 7.5. The interest, or portion thereof, passing, by reason of a deceased Member's death, to a person or persons who are permitted transferees as defined in Section 7.2 above, shall be valued as provided in Subsection 7.5.1 below. The Interest, or portion thereof, passing, by reason of a deceased Member's death, to a person or persons who are not permitted transferees, as defined in Section 7.2 above, shall be valued as provided in Subsection 7.5.2 below. The Company may assign its right to purchase, acquire and redeem all or any part of the interest of the deceased Member to any of the other Members of the Company.

7.5.1 Upon the death of a Member, the purchase and sales price of such deceased Member's interest in the Company, or the portion thereof, being purchased by the Company from transferees who are permitted transferees, shall be determined by mutual agreement of the surviving Members and the personal representative of the estate of the deceased Member. If the parties cannot reach an agreement on the value within thirty (30) days after the appointment of the personal representative of the deceased Member, then the purchase and sales price of such deceased Member's interest in the Company shall be the "deemed value" of the Company at such Member's death (determined as below provided in this Subsection 7.5.1) divided by all of the Interest of the Company at the date of such Member's death and multiplied by the interest of the Company owned by such deceased Member at the date of such Member's death, or by the portion thereof that is being purchased by the Company. The "deemed value" of the Company shall be determined as follows:

The Operating Managers shall determine at least on an annual basis, the "deemed value" of the Company. Immediately after making a determination of the "deemed value" of the Company, the Operating Managers shall mail notice to each Member indicating the "deemed value" determined by the Operating Managers. Each Member shall have a period of thirty (30) days after the date that said written notice is placed in the U.S. Mail to object to the "deemed value" determined by the Operating Managers. In the event that during said thirty (30) day period, a Majority of the Members in the Company object, in writing, to the "deemed value" determined by the Operating Managers, then, at the cost and expense of the Company, the Operating Managers shall employ the services of a qualified appraiser to determine the fair market value of the Company, and the fair market value of the Company as determined by the appraiser, shall become the "deemed value" of the Company, until such time as the Operating Managers next determine the "deemed value" of the Company. Notwithstanding anything to the contrary set forth in this paragraph, the "deemed value" of the Company may be determined or re-determined at any time by unanimous agreement of the Members of the Company.

The last "deemed value" established preceding the death of a Member shall be the "deemed value" of the Company for purposes of this Agreement. This provision as to the determination of "deemed value" shall not be altered by the fact that the Operating Managers for any reason have failed to redetermine such "deemed value" at any time or from time to time.

7.5.2 Upon the death of a Member, the purchase and sales price of such deceased Member's Interest in the Company, or portion thereof, being purchased by the Company from a person or persons who are not permitted transferees as defined in Section 7.2 above, shall be determined in the same manner as provided in Subsection 7.5.1 above; provided, however, that for purposes of this Subsection 7.5.2 the "deemed value" of the Company shall not be "deemed value" as determined in Subsection 7.5.1 above, but shall be an amount equal to 75% of the "deemed value" as determined in Subsection 7.5.1 above. It being the intent of this Subsection 7.5.2 that all purchases of the Interest of a Member are an amount equal to 75% of what such Member would have received had such Member's Interest been purchased pursuant to the provisions of Subsection 7.5.1 above.

7.5.3 Closing of the sale of the deceased Member's Interest, or portion thereof, in the Company will be held at the office of the Company on a date designated by the Company, not be later than 90 days after agreement with the personal representative of the deceased Member's estate on the fair market value of the deceased Member's Interest in the Company; provided, however, that if the purchase price is determined by use of the "deemed value" as set forth in Subsections 7.5.1 or 7.5.2 above, the closing will be not later than 120 days after the appointment of a personal representative for the estate of the deceased Member. If no personal representative has been appointed within 60 days after the deceased Member's death, the surviving Members have the right to apply for and have a personal representative appointed.

7.5.4 At closing, the Company will pay, as a down payment, a sum equal to twenty percent (20%) of the purchase price for the deceased Member's Interest, or portion thereof, being purchased by the Company. The balance of the purchase price by the Company shall be evidenced by the Company executing and delivering its promissory note for the balance, with interest at the prime interest rate stated by U.S. Bank of Oregon, N.A., at the date of closing. The unpaid balance, together with interest thereon, shall be paid in five (5) equal annual installments, the first of which shall be payable one year after the date of closing. The promissory note will be unsecured and will contain provisions that the principal sum, and all interest thereon, may be paid in whole or in part at any time, without penalty.

7.5.5 At the closing, the deceased Member's estate or personal representative must assign to the Company all of the deceased Member's Interest, or portion thereof being purchased, free and clear of all liens, claims and encumbrances, and, at the request of the Company, the estate or personal representative must execute all other instruments as may reasonably be necessary to vest in the Company all of the deceased

instruments as may reasonably be necessary to-vest in the Company all of the deceased Member's right, title and interest in the Company and its assets. If either the Company or the deceased Member's estate or personal representative fails or refuses to execute any instrument required by this Agreement, the other party is hereby granted the irrevocable power of attorney which, it is agreed, is coupled with an interest, to execute and deliver on behalf of the failing or refusing party all instruments required to be executed and delivered by the failing or refusing party.

7.5.6 On completion of the purchase of the deceased Member's Interest, or portion thereof, in the Company, the Ownership Interests of the remaining Members will increase proportionately to their then-existing Ownership Interests.

## SECTION 8. DISSOLUTION AND WINDING UP OF THE COMPANY

**8.1 Dissolution.** The Company will be dissolved on the happening of any of the following events:

8.1.1 The expiration of fifty (50) years from the date the Articles of Organization of the Company was filed;

8.1.2 Sale, transfer or other disposition of all or substantially all of the Property of the Company;

8.1.3 The agreement of all of the Members;

8.1.4 By operation of law; or

8.1.5 The death, incompetency, expulsion, withdrawal (as permitted herein), bankruptcy or dissolution of a Member, or the occurrence of any event that terminates the continued membership of a Member in the Company, unless there are then remaining at least the minimum number of Members required by law and all of the remaining Members, other than the Member with whom the event described in the provisions of this Subsection 8.1.5 has occurred, within 120 days after the date of the event, elect to continue the business and affairs of the Company.

**8.2 Winding Up.** On the dissolution of the Company (if the Company is not continued as provided in Subsection 8.1.5 above), the Members must take full account of the Company's assets and liabilities, and the assets will be liquidated as promptly as is consistent with obtaining their fair value, and the proceeds, to the extent sufficient to pay the Company's obligations with respect to the liquidation, will be applied and distributed, after any gain or loss realized in connection with the liquidation has been allocated in accordance with Section 3 above, and the Members' Capital Accounts have been adjusted to reflect the allocation and all other transactions through the date of the distribution, in the following order:

8.2.1 To payment and discharge of the expenses of liquidation and of all the Company's debts and liabilities to persons or organizations other than Members;

8.2.2 To the payment and discharge of any Company debts and liabilities owed to Members; and

8.2.3 To Members in the amount of their respective adjusted Capital Account balances on the date of distribution; provided, however, that any then-outstanding Default Advances (with interest and costs of collection) first must be repaid from distributions otherwise allocable to the Defaulting Member pursuant to Section 2.4 above.

## SECTION 9. GENERAL PROVISIONS

9.1 **Amendments.** Any Member may propose an amendment to this Agreement. A proposed amendment will be adopted and become effective as an amendment only on the written approval of all of the Members.

9.2 **Governing Law.** This Agreement and the rights and obligations of the parties under it are governed by and interpreted in accordance with the laws of the State of Oregon (without regard to principles of conflicts of law). Venue for all actions concerning this Agreement and the rights and obligations of the parties under it will be in Linn County Circuit Court, Oregon.

9.3 **Waiver of Action for Partition.** Each of the Members irrevocably waive, during the existence of the Company and during the period of its winding up and liquidation following any event of dissolution, any right that the Member may have to maintain any action for partition with respect to any of the assets of the Company.

9.4 **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same counterpart. All counterparts will be construed together and will constitute one and the same Agreement. A single counterpart may be introduced as evidence of this Agreement.

9.5 **Parties in Interest.** Subject to the limitations on transfers of membership interests set forth in Section 7 above, each and every covenant, term, provision and agreement is binding on and inures to the benefit of the parties and their heirs, successors, assigns and legal representatives.

9.6 **Entire Agreement; Modification.** This Agreement constitutes the entire understanding and agreement between the Members with respect to the subject matter of this Agreement. There are no agreements, understandings, restrictions, representations or warranties between the Members other than those in this Agreement or referred to or provided for in this Agreement. No modification or amendment of any provision of this

Agreement will be binding on any Member unless in writing and signed by all the Members.

9.7 **Attorney Fees.** In the event of any suit or action to enforce or interpret any provision of this Agreement (or that is based on this Agreement), the prevailing party is entitled to recover, in addition to other costs, reasonable attorney fees in connection with the suit, action or arbitration, and in any appeals. The determination of who is the prevailing party and the amount of reasonable attorney fees to be paid to the prevailing party will be decided by the court or courts, including any appellate courts, in which the matter is tried, heard or decided.

9.8 **Further Effect.** The parties agree to execute other documents reasonably necessary to further effect and evidence the terms of this Agreement, as long as the terms and provisions of the other documents are fully consistent with the terms of this Agreement.

9.9 **Severability.** If any term or provision of this Agreement is held to be void or unenforceable, that term or provision will be severed from this Agreement, the balance of the Agreement will survive, and the balance of this Agreement will be reasonably construed to carry out the intent of the parties as evidenced by the terms of this Agreement.

9.10 **Captions.** The captions used in this Agreement are for the convenience of the parties only and will not be interpreted to enlarge, contract or alter the terms and provisions of this Agreement.

9.11 **Notices.** All notices required to be given by this Agreement will be in writing and will be effective when actually delivered or, if mailed, when deposited as certified mail, postage prepaid, directed to the addresses set forth in Section 1.7 above for each Member or to such other address as a Member may specify by notice given in conformance with these provisions to the other Members.

9.12 **Disclaimer.** This Agreement has been prepared by Michael G. Cowgill of the law firm of Weatherford, Thompson, Cowgill, Black & Schultz, P.C., solely at the request of the Company. The Members have been advised to consult with their own independent attorneys prior to executing this Agreement and all related documents, and hereby acknowledge that they have had a full and complete opportunity to consult with their own attorney prior to the execution of this Agreement and all related documents. Therefore, in the event of any future legal dispute regarding the terms and conditions of this Agreement and any related documents, the general rule of construction that a legal document is interpreted or construed against the drafter thereof, shall not be applicable.

IN WITNESS WHEREOF, the parties have executed this Operating Agreement to be effective on the date first above stated.

  
\_\_\_\_\_  
George W. Meyer

*EXHIBIT "A"*  
to the  
**OPERATING AGREEMENT**  
of  
**GWM TRUCKING, LLC**  
an Oregon Limited Liability Company

INITIAL CAPITAL CONTRIBUTIONS

Each Member's initial capital contribution (net equity) to the Company is as follows:

(1) George W. Meyer .....	<u>\$ 1,000.00</u>
TOTAL: <u>\$ 1,000.00</u>	

OWNERSHIP INTERESTS

Each Member's respective percent of ownership interest in the Company is as follows:

(1) George W. Meyer .....	<u>100%</u>
TOTAL: <u>100%</u>	

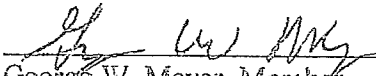
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RESOLUTION OF THE MEMBERS  
OF  
GWM TRUCKING, LLC

The undersigned, constituting all of the Members of GWM Trucking, LLC, an Oregon limited liability company (the "Company"), do hereby adopt the resolutions hereunder set forth.

BE IT HEREBY RESOLVED: That the Members approve the transfer of 50% of George W. Meyer's interest in the Company to Marlene K. Meyers.

The undersigned Member, has adopted this resolution effective October 12, 2010.

  
George W. Meyer, Member





RESOLUTION OF THE MEMBERS  
OF  
GWM TRUCKING, LLC

The undersigned, constituting all of the Members of GWM Trucking, LLC, an Oregon limited liability company (the "Company"), do hereby adopt the resolutions hereunder set forth.

BE IT HEREBY RESOLVED: That the Members approve the transfer of 50% of George W. Meyer's interest in the Company to Marlene K. Meyers.

The undersigned Member, has adopted this resolution effective October 12, 2010.

  
George W. Meyer, Member

MEMORANDUM OF GIFT  
TO  
MARLENE K. MEYER

I, George W. Meyer, hereby state and declare that on October 12, 2010, I did give 50% of my interest in GWM Trucking, LLC, to my wife, Marlene K. Meyer, for no consideration. This gift had no restrictions or strings attached.

Dated effective October 12, 2010.

  
George W. Meyer