LIMITED LIABILITY COMPANY OPERATING AGREEMENT

OF

SPERO, LLC (DBA REVERIE)

This LIMITED LIABILITY COMPANY OPERATING AGREEMENT (this **"Agreement"**), dated as of _____, 2017 (the **"Effective Date"**), by and among _____, (the **"Class A Member"**), Spero LLC, a District of Columbia limited liability company (the **"Class B Member"**), and each other person who shall become party to this Agreement (whether by counterpart, separate signature page or otherwise) and is hereafter admitted to the Company as a Member.

W I T N E S S E T H:

WHEREAS, the Members (as hereinafter defined) desire to enter into an agreement with respect to the organization, management and operation of Spero, LLC, Washington, D.C. limited liability company (the **"Company"**), and to set forth their respective rights and obligations with respect thereto.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
GENERAL PROVISIONS

1.1 Certain Basic Definitions. For purposes of this Agreement:

The term **"Act"** means the Washington D.C. Limited Liability Company Law, as the same may be amended from time to time.

The term **"affiliate"** means with reference to any person, any partner, officer, director, shareholder, trustee, employee or agent of such person or any person directly or indirectly controlling, controlled by or under common control with such person, or any person who is a member of the family of any such partner, officer, director, shareholder, trustee, employee or agent, or a trustee or beneficiary of any trust for the benefit of any such person or any such partner, officer, director, shareholder, employee or agent or any such family member.

The term "**Budget**" shall mean the annual Budget for the Company.

The term **"Buildout"** means the design, construction, equipping, furnishing and decorating of all or a part of the Restaurant.

The term "**Cause**" means with respect to the Manager, the gross negligence, willful misconduct, criminal acts, breach of this Agreement, breach of the Sublease, misuse of Company funds or other failures to perform within the reasonable best interest of the Company

and the Members, including without limitation, the failure to achieve reasonable performance measures agreed to by and between the Members.

The term **"Certificate"** means the Articles of Organization of the Company filed under the Act, as the same may be amended or restated from time to time.

The term "**Class A Membership Interests**" means a Member's aggregate rights with respect to the Company, as a Class A Member, with respect to such Member's Units, including, without limitation, such Member's right to shares of Net Income and Net Loss (as such terms are hereinafter defined), the right to receive distributions from the Company and the right, if any, to vote or grant consents or participate in the management of the Company, with respect to such Member's Units.

The term "**Class B Membership Interests**" means a Member's aggregate rights with respect to the Company, as a Class B Member, with respect to such Member's Units, including, without limitation, such Member's right to shares of Net Income and Net Loss (as such terms are hereinafter defined), the right to receive distributions from the Company and the right, if any, to vote or grant consents or participate in the management of the Company, with respect to such Member's Units.

The term **"Code"** means the Internal Revenue Code of 1986, as amended and as the same may be amended or restated from time to time

The term **"Company Year"** shall mean the fiscal year of the Company for federal income tax purposes.

The term "**Initial Operating Budget**" shall meant the Budget for the Buildout and all pre-opening costs of the Restaurant, including without limitation, permits (liquor license included), professional fees, tenant improvements, furnishings, fixtures and equipment, pre-opening expenses, insurance and post-opening expenses (including working capital) for a period of six (6) months after opening.

The term "**Lease Agreement**" means that certain Agreement of Lease by and between Spero LLC, as tenant, and 3210 GRACE ST PROPERTY LLC, as landlord.

The term "**Majority in Interest"** means Members whose then Membership Interests constitute, singly or in the aggregate, a majority of the aggregate Membership Interests at such time of all such Members.

The term **"Management Agreement"** means the Management Agreement, if any, by and between the Company and the Class A Member, and/or its Affiliate, entered into on or after the Effective Date, as the same may be amended, modified and/or supplemented.

The term **"Manager"** means any person hereafter designated as the "Manager" of the Company pursuant to the terms hereof.

The term **"Member"** means each person owning Units as set forth on Schedule A hereto and each other person, if any, who is admitted as a member of the Company and a party

hereto (whether by counterpart, separate signature page or otherwise), and acquires a Membership Interest in the Company, with the rights, obligations, preferences and limitations specified herein. The Members of the Company and the number of Units held by each as of the Effective Date are as set forth on Schedule A hereto.

The term **"Membership Interest"** means the Class A Membership Interest and Class B Membership Interest.

The term **"Percentage Interest"** shall mean, for each Member at any time, the percentage determined by dividing the number of Units held by such Member at such time by the total number of all Units issued and held by all Members at such time. The Percentage Interest of each Member shall be set forth opposite each Member's name on Schedule A hereto, as the same may be amended by the Manager from time to time to reflect the admission of Additional Members or Substitute Members, or as otherwise provided by this Agreement.

The term **"person"** means any association, corporation, estate, general partnership, limited partnership, limited liability company, joint venture, natural person, real estate investment trust, business or other trust, custodian, or nominee, or any individual or other entity in his, her or its own or any representative capacity.

The term "**Premises**" means approximately 2400 square feet of the Premises designated for the Restaurant.

The term **"Regulations"** shall mean the income tax regulations promulgated under the Code, as such regulations may be amended from time to time.

The term "**Related Person**" with respect to any Member means (i) any spouse, domestic partner, descendant, heir or a member of the family of such Member (each a "**Family Member**"); (ii) any trust established by such Member and/or Family Member primarily for the benefit of such Member and/or any Family Member(s) of such Member ("**Family Trust**"); (iii) any corporation, limited liability company or partnership controlled by such Member or one or more Family Members of such Member ("**Family Venture**"); (iv) any executor, administrator, guardian, custodian, or other legal representative of such Member or any other Related Person in the event of such Member's or such Related Person's death or incompetence; (v) the stockholders, members or partners of such Family Venture; and (vi) any charitable remainder trust or similar trust established by such Member or a Family Member of such Member primarily for the benefit of such Member and/or any Family Member(s) of such Member.

The term **"Restaurant"** means the Reverie restaurant located at the Premises.

The term **"Subsidiary"** means, with respect to the Company, any other person in which the Company either (i) owns or controls, directly or indirectly, fifty percent (50%) or more of the outstanding voting shares or other voting equity or beneficial interests, or in respect of which the Company or any Subsidiary has the right or ability to elect a majority of the members of such person's board of directors or any counterpart thereto for any non-corporate person, or otherwise has the right or ability to control the management of such person, or (ii) owns or controls, directly or indirectly, fifty percent (50%) or more of the value of the outstanding stock or other equity or beneficial interests determined on a fully diluted basis.

The term **"Third Party Purchaser"** has the meaning ascribed to such term in Section 5.3 hereof.

The term **"Unit"** or **"Units"** means a fractional part of Class A Membership Interests or Class B Membership Interests of each of the Members representing the relative interest, rights and obligations a Member has with respect to certain economic rights and other items pertaining to the Company set forth in this Agreement, and which consist of Units and which include any Units and additional classes of Units that may be issued in the future by the Company in accordance with this Agreement. Each respective class of Units shall confer the respective privileges, preferences, benefits, rights, powers, duties, obligations and limitations set forth in this Agreement with respect thereto. Unless otherwise provided herein, references in this Agreement to "Units" of a Member shall include all of a portion of such Member's Membership Interest that is represented by or attributable to, or otherwise relates to, such Units.

The term **"Unrecovered Capital"** shall mean, as to a particular Member at a particular time, the excess, if any, of the aggregate Capital Contributions of such Member over all amounts theretofore distributed to such Member pursuant to Section 3.8(b)(i), Section 3.8(b)(ii)(A) and Section 4.3(d) hereof. Notwithstanding anything herein to the contrary, the amount of each Member's Unrecovered Capital as of the Effective Date shall be deemed to equal the amounts set forth on Schedule A hereto opposite the name of such Member under the column entitled "Effective Date Unrecovered Capital".

1.2 Formation; Effect.

(a) The Company was formed as a limited liability company under the provisions of the Act by the filing of the Certificate of incorporation with DCRA in Washington, D.C. on January 25th, 2017, in accordance with the Act. The incorporator's actions in filing the Certificate with DCRA are hereby ratified, approved and confirmed in all respects.

(b) It is the express intention of the Members that, subject to any written agreement between the Company and a Member or the Manager regarding such Member's or the Manager's provision of services to the Company, this Agreement shall be the sole source of agreement of the parties, and, except to the extent a provision of this Agreement is expressly prohibited or ineffective under the Act, this Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act. The Members hereby agree that: (i) the right and obligations of the Members with respect to the Company will be determined in accordance with the terms and conditions of this Agreement to the greatest extent permitted under applicable law, and (ii) where the Act provides that such rights and obligations specified in the Act shall apply "unless otherwise provided in a limited liability company agreement" or words of similar effect, such rights and obligations shall be as set forth in this Agreement, none of those statutory default provisions shall apply or have any effect whatsoever. To the extent any provision of this Agreement is prohibited or ineffective under the Act, this Agreement shall be considered amended to the smallest degree possible in order to make it effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to make any provision of this Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

(c) The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement, for any purposes other than as set forth in the last sentence of this Section 1.2(c), and neither this Agreement nor any other document entered into by the Company or any Member relating to the subject matter hereof shall be construed to suggest otherwise. The Members intend that the Company shall be treated as a partnership for federal and, to the extent permitted under applicable law, state and local income tax purposes, and that each Member and the Company shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment, except to the extent otherwise required by applicable law.

1.3 Name. The name of the Company shall be **"Spero, LLC"** or such other name as may be designated from time to time by the Class A Member and Class B Member.

1.4 Principal Office; Registered Agent and Office.

(a) The principal office of the Company shall be located in such place as shall be determined by the Manager.

(b) The registered agent of the Company for the service of process and the registered office of the Company shall be as set forth in the Certificate or as determined by the Manager. The Manager, may, from time to time, change the registered agent or registered office through appropriate filings with DCRA in Washington, D.C. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Manager shall promptly designate a replacement registered agent or file a notice of change of address as the case may be.

(c) The Manager is authorized to cause the Company to be qualified, formed or registered under assumed or fictitious name statutes or similar laws in any jurisdiction in which the Company transacts business in which such qualification, formation or registration is required or desirable. The Manager and any one or more of the officers of the Manager or of the Company, as authorized persons within the meaning of the Act, is authorized to execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

1.5 Purposes. The purposes of the Company are: (a) to own and operate the Restaurant; and (b) to do any and all other acts and things which may be necessary, appropriate or incidental to the carrying out of such purpose.

1.6 Powers of the Company. The Company shall have the power and authority to take any and all actions deemed by the Manager to be necessary, appropriate, proper, advisable, convenient or incidental to or for or in furtherance of any of the purposes of the Company, provided that they are in the ordinary course of the Company's business, including, but not limited to, the power and authority to conduct its business, carry on its operations and have and exercise the powers granted to a limited liability company by the Act in any jurisdiction that may

be necessary, convenient or incidental to the accomplishment of the purposes of the Company contemplated by Section 1.5 above.

1.7 Member's Interest. A Member's Membership Interest shall for all purposes be personal property. A Member has no interest in any specific Company asset, property or right.

1.8 Relative Rights. All rights and entitlements with respect to all Membership Interests, and all Units with respect thereto, shall be *pari passu* and identical, and the Membership Interests shall be treated as a single class of Membership Interests except as provided elsewhere in this Agreement where rights and/or obligations specifically applicable to certain Members or their respective Membership Interests shall be otherwise set forth.

ARTICLE 2
MANAGEMENT

2.1 Meetings of Members.

(a) There shall be no requirement that the Company hold annual or other meetings of Members, provided, however, that meetings of Members may be held to approve those acts or matters, if any, which, pursuant to the Act or this Agreement, expressly require the approval of the Members.

(b) Except as expressly required by the Act or by this Agreement, no vote, consent or authorization of the Members whatsoever shall be required for the taking of any action or for any matter on behalf of or with respect to the Company if taken in furtherance of the purpose Set forth in Section 1.5.

(c) Meetings of the Members may be called by the Manager, the Class A Member or any Member or Members, provided that such Member or Members own in excess of twenty-five percent (25%) of the Membership Interests of the Company. Duly called meetings of the Members shall be held at such place as shall be designated from time to time by the Manager, the Class A Member or such Member or Members owning in excess of twenty-five percent (25%) of the Membership Interests of the Company. Members may participate in such meetings in person or by means of conference telephone or similar communications equipment by means of which all persons participating in any such meeting can hear each other, and such participation shall constitute presence in person at such meeting.

(d) Written notice (which need not state the purpose or purposes for which the meeting is called) of any meeting of the Members, stating the place, date and hour of the meeting, shall be mailed or given by or at the direction of the Manager to each Member entitled to vote at the meeting at least ten (10) days prior to the meeting.

(e) At any meeting of the Members, every Member entitled to vote may vote or attend in person or by proxy. Except as otherwise provided in this Agreement, the Members shall vote as a single class on any matter or transaction where the vote of the Members is required hereunder or under the Act.

(f) Except as otherwise provided in this Agreement, all limited liability company action required to be approved by vote of the Members shall be authorized by a Majority in Interest. In every instance where this Agreement requires the consent or authorization of a Majority in Interest of Members or of any particular class or group of Members, such consent or authorization need not be in writing.

2.2 Management.

(a) The business and affairs of the Company shall be managed solely and exclusively by the Manager. The Manager on the Effective Date shall be the Class B Member. The Manager shall, except as expressly provided by law, in this Agreement, have the exclusive power and authority to authorize and cause to be taken any action, in the name of and/or by or on behalf of the Company, of any kind and to authorize and cause to be done anything and everything, in the name of and/or by or on behalf of the Company, which the Manager shall deem necessary or appropriate to carry on the business and affairs of the Company. Except as expressly provided by law, in this Agreement, only the Manager and no Member or any other person shall have the power or authority to take any action or bind the Company or make any decision for or on behalf of the Company.

(b) The Manager may resign as the Manager of the Company for any reason at any time by so providing notice to the Members. Such resignation shall be effective upon the date identified in such notice which shall be no less than sixty (60) days from the date thereof. Unless specified therein, the acceptance of a resignation shall not be necessary to make it effective. Upon the Manager's resignation or death, The Class A Member shall have the right to elect a replacement Manager. The Members shall not have the right to remove the Manager, except that the Class A Member shall have the right to remove the Manager at any time for Cause.

(c) During the continuance of the Company, the Manager shall devote such time and effort to the Company as determined by the Manager in the Manager's commercially reasonable discretion. Nothing contained in this Section 2.2 or elsewhere in this Agreement shall preclude the Manager, any Member or any affiliate thereof, from acting as an agent or representative of the Company or any Subsidiary or affiliate thereof or for or in connection with any of the businesses, properties and/or assets acquired, operated, conducted, managed and/or invested in from time to time by the Company, any Subsidiary thereof, or as a director, officer, agent or employee of any corporation, member or manager of any limited liability company, a trustee of any trust, an executor or administrator of any estate, a partner of any partnership, or an administrative official of any other entity, or from receiving any compensation or participating in any profits in connection with any of the foregoing.

(d) Except as otherwise provided in this Agreement, the Manager shall have all of the rights, powers and obligations of a manager as provided in the Act and as otherwise provided by law.

(e) No Member shall enter into any agreement or transaction or take any action in the name and/or by or on behalf of the Company or otherwise carry on the business or affairs of the Company without the consent or authorization of the Manager. The Manager shall

be an Authorized Agent of the Company for the purpose of the Company's business, and all authorized actions of the Manager shall bind the Company.

(f) Notwithstanding anything to the contrary contained herein, the following actions may not be taken by the Company, including the Manager or any designee thereof, without the prior written consent or approval of the Class A Member after consultation therewith:

(i) the engagement of primary contractors for the Buildout;

(ii) the approval of the Initial Operating Budget;

(iii) the approval of architectural plans in connection with the Buildout;

(iv) the approval of the Budget;

(v) cessation of activities and/or cancellation of the Certificate;

(vi) any transaction with the Manager or an affiliate of the Manager (other than the Sublease);

(vii) the execution of or any amendment, modification or supplement to the Management Agreement, if any;

(viii) the merger or consolidation of the Company with or into any corporation, partnership, limited liability partnership, limited liability company or other entity or the merger or consolidation of any such entity into the Company;

(ix) the purchase by the Company, in any one transaction or a series of related transactions, of the stock or assets of any corporation, partnership, limited liability partnership, limited liability company or other person or entity;

(x) any sale, exchange, lease, mortgage, pledge, conveyance, license or other transfer of all or substantially all of the Company's assets in one transaction or in a series of related transactions, or any grant of any exclusive distribution right or any exclusive licenses with respect to any of the Company's assets;

(xi) the borrowing of any money by the Company or the incurrence by the Company of any credit obligations or the issuance by the Company of any indebtedness or the guaranty by the Company of any liabilities, obligations or indebtedness of any other person or entity, or the loaning by the Company of any money or the advance by the Company of any credit to, or any other investment by the Company in, any person or entity;

(xii) the creation of any lien or encumbrance on the Company or any asset of the Company;

(xiii) the release or discharge by the Company, other than in the ordinary course of business, of any indebtedness due or owing to the Company at the time of such release or discharge, without the recovery by the Company of the full amount of such indebtedness;

(xiv) the loaning of any amount to any Member of the Company;

(xv) redemption or repurchase of any equity of the Company by the Company;

(xvi) the sale of any Units or other equities or profit interests of the Company;

(xvii) the admission of any Additional Member;

(xviii) the dissolution or liquidation of the Company;

(xix) any reorganization arrangement, moratorium, adjustment or composition of or in respect of the Company under any bankruptcy, insolvency or other similar law or the appointment of a receiver, liquidator, assignee, trustee or similar official over all or any part of the Company or its property, or otherwise effecting a liquidation of the Company;

(xx) any expenditure or payment which is more than ten percent (10%) above the amount contemplated and included in the approved Budget as adjusted from time to time, or in excess of three percent (3%) in the aggregate of the total Budget as most recently adjusted;

(xxi) notwithstanding (xx) above, any expenditure or payment which is not otherwise contemplated and included in the Budget, as adjusted, including without limitation, payment of bonuses and capital expenditures; and

(xxii) any change of the name of the Restaurant.

2.3 Authorized Agents.

(a) The Manager shall be entitled to designate one or more persons from time to time to act as authorized officers (**"Officers"**) or agents (each, an **"Authorized Agent"**) of the Company, and to execute, deliver and perform agreements, instruments and documents in the name and on behalf of the Company, consistent with the powers and authority of the Manager. In furtherance of the forgoing, the Manager shall be entitled to appoint one or more Officers and such other Officers and agents as are desired. One person may hold more than one position and title. Each Officer shall be an Authorized Agent of the Company. The Officers of the Company as of the Effective Date are as set forth on Schedule B attached hereto, each to hold such office and to serve until such person's resignation or removal or until the designation of such person's successor.

(b) From time to time, the Manager may establish, increase, reduce or otherwise modify responsibilities of any Authorized Agents of the Company and may create or eliminate offices as the Manager may consider appropriate.

(c) Each Authorized Agent of the Company shall hold such position at the pleasure and direction of the Manager, and until such Authorized Agent's resignation or removal or until the designation of such Authorized Agent's successor. Any Authorized Agent may resign at any time by so notifying the Manager in writing. Such resignation shall take effect upon the Manager's receipt of such notice or at such later time as is therein specified, and unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective. The appointment of an individual as an Authorized Agent shall not of itself create a right to any employment with the Company or any Subsidiary. The Manager may remove any Authorized Agent at any time for cause or without cause. This provision is not intended to affect any written employment agreement.

(d) Persons dealing with the Company are entitled to rely conclusively upon the power and authority of the Manager and/or any Authorized Agent, and upon the certificate of the Manager and/or any Authorized Agent, to the effect that the Manager is then acting as manager of the Company or that such Authorized Agent is then acting as an authorized agent, as the case may be, with authority to act by and/or in the name or on behalf of the Company.

2.4 Limitations on Personal Liability.

(a) No Member, Manager or Authorized Agent shall have any personal liability whatsoever for any obligations or liabilities of the Company whatsoever except if and then only to the extent expressly provided in the Act. Notwithstanding anything contained herein to the contrary, the failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business and affairs under this Agreement or the Act shall not be grounds for imposing personal liability on any Member, Manager or Authorized Agent for obligations or liabilities of the Company.

(b) No Member, Manager, any Authorized Agent nor any affiliate of any of the foregoing shall have any personal liability to the Company or any of the Members for damages for any breach of duty as a manager of the Company or as an Authorized Agent, as the case may be, and/or when acting with the consent of the Manager; provided that the foregoing provision shall not eliminate or limit the liability of any such person if a final judgment or other final adjudication adverse thereto establishes that the acts or omissions thereof were the result of fraud, intentional misconduct or such other conduct which under applicable law precludes the elimination or limitation of such liability.

(c) Neither the Manager nor any Member or Authorized Agent shall be personally liable for the return or payment of all or any portion of the capital of or profits allocable to or loans to the Company by any Member (or any successor, assignee or transferee thereof), it being expressly agreed that any such return of capital or payment of profits made pursuant to this Agreement, or any payment or repayment in respect of any such loan, shall be made solely from the assets of the Company (which shall not include any right of contribution from the Manager, any Member or any Authorized Agent).

(d) Notwithstanding the foregoing, the Manager shall cause the Company to obtain and maintain sufficient insurance to cover losses which may be incurred by the Company in its usual course of operation. The Class A Member shall have the right to review said insurance and require the Company to increase its limits as it may reasonably deem appropriate from time to time.

2.5 Tax Matters. The Class B Member shall, after consultation with the Class A Member, have the right, in its reasonable discretion, to make elections for federal, state and local tax purposes including, without limitation, any election, if permitted by applicable law, to adjust the basis of Company assets pursuant to Sections 754, 743(b) and 734(b) of the Code (as herein defined), or any successor provisions thereto, or comparable provisions of state or local law, in connection with any transfer(s) of any Membership Interest(s) and/or any Company distribution(s). The Class B Member shall be the tax matters partner of the Company (the **"Tax Matters Partner"**) for purposes of Subchapter C of Chapter 63 of Subtitle F of the Code.

2.6 Indemnification. (a) The Company shall indemnify, defend and hold harmless the authorized person (referred to in Section 1.2(a) hereof), each Member, the Manager, each Authorized Agent, and, if and only to the extent the Manager shall expressly so require and approve, any of the directors, agents, employees, advisors and consultants as may be expressly designated from time to time by the Manager with reference to this Agreement as entitled in a specific instance to indemnification hereunder, from and against any and all loss, liability, damage, cost or expense, including reasonable attorneys' fees, suffered or incurred in defense of any demands, claims or lawsuits against such person, in or as a result of or relating to such person's capacity, actions or omissions as the Manager, a Member, or Officer, or concerning the Company or any of its direct or indirect Subsidiaries or any activities undertaken on behalf of the Company or any of its direct or indirect Subsidiaries, including, without limitation, any demand, claim or lawsuit initiated by or on behalf of any Member or any direct or indirect member of a Member; *provided, however*, that no indemnification shall be made to or on behalf of any person otherwise entitled to indemnification hereunder if a judgment or other final adjudication adverse to such person establishes (i) that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, (ii) that such person personally gained in fact a financial profit or other advantage to which such person was not legally entitled or (iii) such person violated a lesser standard of conduct which under applicable law prevents indemnification hereunder.

(b) Upon request therefor by any indemnifiable person referred to in Section 2.6(a), to the extent not prohibited under the Act or under applicable law, the Manager may, in its sole discretion (but only to the extent it so determines), determine to make advances to such person to cover the costs of defending any claim or action against such person; provided, that such advances shall be repaid to the Company, without interest, if such person is found by a court of competent jurisdiction upon entry of a final judgment to have violated the standards for indemnification set forth in Section 2.6(a). All rights to indemnification and advances shall (i) survive the termination of this Agreement, the dissolution of the Company or any of its direct or indirect Subsidiaries and the death, retirement, removal, dissolution, incompetency or insolvency of the indemnifiable person referred to in Section 2.6(a), and shall inure to the benefit of the executors, administrators, legatees and distributees of such person, and (ii) continue as to any person who has ceased to be a Member, Manager, Authorized Agent or other indemnifiable

person referred to in Section 2.6(a) and shall inure to the benefit of the executors, administrators, legatees and distributees of such person.

(c) The right to indemnification and the advancement of expenses conferred in this Section 2.6 shall not be exclusive of any other right which any person may have or hereafter acquire hereunder or under any statute, agreement, vote, determination of the Manager or otherwise.

(d) The Company may, in its sole discretion, maintain insurance, at its expense, to protect any person referred to in Section 2.6(a) hereof against any loss, liability, damage, cost or expense, whether or not the Company would have the power to indemnify such person against such loss, liability, damage, cost or expense under the provisions of this Section 2.6.

2.7 Budget. The Manager shall present the Budget for each calendar year to the Members on or before November 30 of the prior calendar year. The Budget shall be subject to the approval of the Class A Member as contemplated by Section 2.2(f)(iv) hereof. The Manager and Class A Member shall review the finances and Budget on a monthly basis and make adjustments thereto as mutually agreed upon.

ARTICLE 3
CAPITAL; UNITS; PERCENTAGE INTERESTS; INCOME AND LOSSES; DISTRIBUTIONS

3.1 Certain Defined Terms.

(a) The **"Capital Contributions"** of a Member shall be the sum of the amounts which such Member (and/or such Member's direct or indirect predecessor(s) in interest) shall have contributed (or shall be deemed to have contributed) to the capital of the Company as provided in Section 3.3(a) and 3.3(b) hereof on the Effective Date or, following the Effective Date, in connection with the Buildout or in connection with providing the initial working capital of the Restaurant at the time of its opening to the public and in the 6-month period immediately following the date of the Restaurant's opening to the public.

(b) The term **"Net Income"** or **"Net Loss"** for any Company Year shall mean the net income or loss of the Company for such year, determined in accordance with Code Section 703(a), increased by any income exempt from federal income tax and decreased by any expenditure of the Company described in Code Section 705(a)(2)(B), or treated as such pursuant to Regulations Section 1.704-1(b)(2)(iv)(i). Without limiting the generality of the foregoing, Net Income and Net Loss shall reflect any gains or losses realized by the Company on the sale, exchange or other disposition of Company assets and all deductible Company expenses, including, without limitation, (i) any deduction or amortization of expenses incurred in connection with the formation and organization of the Company, (ii) any guaranteed payments (within the meaning of Code Section 707(c)), (iii) any taxes imposed on the Company, (iv) interest payable by the Company, and (v) general operating expenses of the Company. Net Income and Net Loss shall be determined net of items of Company gross income, gain, loss, or deduction specially allocated pursuant to Section 3.9 hereof.

3.2 No Interest on Capital. Except as provided in this Agreement, no Member shall be entitled to receive any interest on or in respect of any amount allocated to such Member's Capital Account or on or in respect of any distribution or withdrawal therefrom or thereof permitted under this Agreement.

3.3 Capital Contributions.

(a) Each Member made (or is deemed to have made), on or as of the Effective Date, the Capital Contribution set forth opposite such Member's name on Schedule A hereto under the column entitled "Effective Date Capital Contribution."

(b) After the Effective Date, if financing in excess of the Initial Operating Financing is necessary or appropriate for the continued operation of the Company, the Manager shall offer each Member the opportunity to provide such additional financing to the Company within no less than ten (10) days of the Manager's request therefor as a loan, which shall bear interest at (A) the "prime" rate of interest as published in *The Wall Street Journal* on the date of the loan plus two percent (2%) per annum, compounded annually, or (B) such other reasonable rate of interest as mutually agreed upon by the Company and the lending Members, and in each case on other customary and reasonable terms and conditions, and any amount so loaned, together with any accrued interest thereon, unless otherwise agreed by the Company and the lending Members, shall be repaid prior to any distributions in respect of Membership Interests other than Tax Distributions. The Members' Percentage Interests shall not be affected by any amounts loaned to the Company or contributed to the Company in respect of Initial Operating Financing. No Member shall be obligated to provide such additional financing. If and to the extent a Member decides in its sole and absolute discretion not to provide such additional financing within the time frame set forth in the Manager's request therefor (which shall be no less than ten (10) days)), the Manager may authorize the Company to seek to borrow such funds from the other Members, from banks or other potential lenders or investors (including business partners or associates of the Manager, the Company, the Members or their respective affiliates) in such principal amount (and terms and conditions) as determined by the Manager in its discretion, subject to any other approval rights herein, in which case the Members' Percentage Interests shall not be affected by any amounts so loaned.

(c) For the avoidance of doubt, each Member shall receive a credit to such Member's Capital Account and Unrecovered Capital in the amount of any Capital Contributions made in accordance with this Section 3.3 whether or not such Capital Contributions are accurately reflected on Schedule A hereto concurrently with the making thereof.

(d) The Manager shall be entitled, without the consent or approval of any Member or any other person, to amend and/or supplement Schedule A hereto from time to time to reflect any changes permitted by this Agreement.

3.4 Capital Accounts.

(a) A single, separate capital account (**"Capital Account"**) shall be established and maintained for each Member in accordance with Regulations Sections 1.704-1(b)(2) and 1.704-2. The Members' respective Capital Accounts shall be kept separate and apart

from the books in which the Company maintains records of the Company's adjusted tax basis in its assets and the Members' adjusted tax bases in their Company interests. Each Member's Capital Account shall be (i) increased by the amount of such Member's Capital Contributions and any Net Income and items of gross Company income and gain allocated to such Member pursuant to this Article 3 and (ii) reduced by the amount of all distributions of cash and the fair market value of all distributions of property made to such Member in respect of its interest in the Company, whether pursuant to this Article 3 or otherwise, and any Net Loss and items of gross Company deduction and loss allocated to such Member pursuant to this Article 3. In addition, the Members' Capital Accounts are to be adjusted in accordance with Section 3.4(b) hereof, if applicable. Allocations under Section 3.4(d) hereof shall affect the Members' Capital Accounts only to the extent provided in such Section. Distributions and/or payments to Members constituting guaranteed payments shall not be considered a distribution in respect of such Member's interest in the Company, and will not affect such Member's Capital Account other than by reason of the effect of such guaranteed payments on the Net Income of the Company allocated to such Member.

(b) The assets of the Company may (and in the circumstance described in clause (iv) below, shall) be revalued on the books of the Company to equal their fair market values in accordance with Regulations Section 1.704-1(b)(2)(iv)(f) at the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis contribution to the capital of the Company; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company assets (including money) as consideration for an interest in the Company; (iii) the grant of an interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company (or any Subsidiary) by any existing Member acting in a Member capacity or any new Member acting in a Member capacity or in anticipation of being a Member; and (iv) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); *provided, however*, that adjustments pursuant to clauses (i) through (iii) above shall be made only if required by and in the sole discretion of the Manager. It is understood that, except as specifically set forth above, no Member shall have any expectation as to, or any claim whatsoever as to the appropriateness or lack of appropriateness of, any revaluation, and hereby expressly and irrevocably waives any and all such expectations and claims. Upon a revaluation of the Company's assets pursuant to this Section 3.4(b), and before giving effect to any of the then applicable triggering events described above, the fair market values of such assets shall be determined in accordance with Section 3.12 hereof and each Member's Capital Account shall be increased or decreased in accordance with Regulations Section 1.704-1(b)(2)(iv)(f) and Section 3.5 hereof.

(c) When property is reflected in the Capital Accounts at a book basis different from the basis of such property for federal income tax purposes, all Net Income, Net Loss and items of gross Company income, gain, deduction and loss with respect to such property shall be determined for purposes of adjusting Capital Accounts based on the book basis of such property in accordance with Regulations Section 1.704-1(b)(2)(iv)(g).

(d) For federal income tax purposes, all gain, loss, depreciation or amortization with respect to property which is reflected in the Capital Accounts at a basis different from the tax basis of such property shall be allocated among the Members in a manner

that takes into account such difference in accordance with the principles of Code Section 704(c) and Regulations Section 1.704-3. Allocations pursuant to the previous sentence are solely for federal, state, and local income tax purposes and shall not affect or in any way be taken into account in computing a Member's Capital Account or share of distributions pursuant to any provision of this Agreement. Similarly, items of tax credit and tax credit recapture shall be allocated to the Members in accordance with Regulations Section 1.704-1(b)(4)(ii), but shall not be credited or charged to their respective Capital Accounts except to the extent required under Regulations Section 1.704-1(b)(2)(iv)(j).

3.5 Allocations of Net Income and Net Loss.

(a) After giving effect to the Regulatory Allocations required under Section 3.9 hereof and subject to Section 3.7 hereof, Net Income and Net Loss for each Company Year or other accounting period shall be allocated among the Members in a manner that will, as nearly as possible, cause the Capital Account balance of each such Member at the end of such accounting period to equal the hypothetical distribution, if any, that such Member would receive if, on the last day of such period: (i) all of the Company's assets, including cash, were sold for cash equal to their book values (as determined for purposes of maintaining Capital Accounts in accordance with Section 3.4 hereof), taking into account any adjustments thereto for such period, including pursuant to Section 3.4(b) hereof; (ii) all Company liabilities reflected on the face of the Company's balance sheet were satisfied in cash according to their terms (limited, with respect to each nonrecourse liability, to the book value (as so determined) of the Company assets securing such liability); and (iii) the net remaining proceeds thereof were distributed in full to the Members as proceeds upon dissolution in the order of priority described in Section 4.3 hereof. For purposes of determining the amounts described in clause (iii) above, the provisions of Section 3.8(c) shall apply. For purposes of determining Capital Accounts under this Section 3.5(a), (x) Capital Accounts shall first be reduced by any distributions during such period other than distributions pursuant to Article 4 hereof, and (y) a Member's Capital Account balance shall be deemed to be increased by such Member's Permissible Capital Account Deficit (as such term is defined in Section 3.9(c) hereof), if any, determined as of the end of such accounting period.

(b) The Members intend that the allocation provisions of this Agreement will produce final Capital Account balances of the Members that will be equal to the amount that would be distributable to the Members upon dissolution of the Company pursuant to Section 4.3 hereof. If such allocation provisions would fail to produce such final Capital Account balances, (i) such allocation provisions may be amended by the Manager in its sole discretion if and to the extent necessary to produce such result and (ii) if the Manager deems it advisable in its sole discretion, the Manager shall be entitled to require Net Income and Net Loss (or items of gross income, gain, loss and deduction, if necessary) for prior Company Years with respect to which the Company and all affected Members would then be entitled to file an amended tax return to be reallocated among the Members to the extent it is not possible to achieve such result with allocations of such items for the current and future Company Years, as determined by the Manager. This Section 3.5(b) shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the Internal Revenue Service or any other taxing authority.

3.6 Tax Withholding and Certain Other Matters.

(a) The Manager is authorized to cause the Company to withhold from or pay on behalf of any Member the amount of federal, state, local or foreign taxes that the Manager shall reasonably believe the Company is required to withhold or pay with respect to such Member's interest in the Company and/or any amount payable, distributable or allocable to such Member pursuant to this Agreement, including, without limitation, any taxes required to be paid by the Company pursuant to Code Sections 1441, 1442, 1445 or 1446 and any taxes imposed by any state or other taxing jurisdiction on the Company as an entity. Without limiting the foregoing, the Manager shall be entitled to cause the Company to withhold (and remit to the appropriate governmental authority), from amounts otherwise distributable or payable to a Member, any taxes that such Member notifies the Manager in writing should be withheld, which notice shall be given by any Member who becomes aware of any withholding obligation to which it is subject and shall specifically set forth, *inter alia*, the rate at which tax should be withheld and the name and address to which any amounts withheld should be remitted.

(b) If the Company is required to and does in fact withhold and pay over to any one or more taxing authorities amounts on behalf of a Member exceeding available amounts then remaining to be distributed to such Member, such payment by the Company shall constitute a loan to such Member that is repayable by the Member on demand, together with interest at the applicable federal rate determined from time to time under Code Section 7872(f)(2) (or any successor provision thereto) or the maximum rate permitted under applicable law, whichever is less, calculated upon the outstanding principal balance of such loan as of the first day of each month. Any such loan shall be repaid to the Company, in whole or in part, as determined by the Manager, in its sole discretion, either (i) out of any distributions or payments from the Company which the Member is (or becomes) entitled to receive, or (ii) by the Member in cash upon demand by the Company (said Member bearing all of the Company's costs of collection, including reasonable attorneys' fees, if payment is not remitted promptly by the Member after such a demand for payment).

(c) Each Member agrees to cooperate fully with all efforts of the Company to comply with its tax withholding and information reporting obligations and agrees to provide the Company with such information as the Manager may reasonably request from time to time in connection with such obligations.

(d) Except as otherwise provided in this Agreement, if the Company is obligated to pay any amount to a governmental authority (or otherwise makes a payment to a governmental authority) that is specifically attributable to a Member or a Member's status as the holder of a Membership Interest (including federal, state or foreign withholding taxes, state personal property taxes, and state unincorporated business taxes), then such person shall indemnify the Company in full for the entire amount paid and/or required to be paid (including interest, penalties and related expenses). The Manager may cause the Company to offset distributions and other payments to which a person is entitled under this Agreement or otherwise against such person's obligation to indemnify the Company under this Section 3.6. A Member's obligation to indemnify the Company under this Section 3.6 shall survive the termination, dissolution, liquidation and winding up of the Company, and, for purposes of this Section 3.6, the Company shall be treated as continuing in existence. The Manager may cause the Company

to pursue and enforce all rights and remedies it or the Company may have against each Member under this Section 3.6, including instituting a lawsuit to collect such indemnification payment with interest calculated at the rate referred to in Section 3.6(b) above (but not in excess of the highest rate per annum permitted by law).

3.7 Limitation on Net Loss Allocations. Notwithstanding any provisions of this Article 3 to the contrary, and in accordance with Section 1.704-1(b)(2)(ii)(d) of the Regulations, no Member shall be allocated Net Loss to the extent such allocation would cause or increase a deficit balance in such Member's Capital Account in excess of such Member's then Permissible Capital Account Deficit (as defined in Section 3.9(c) below). Solely for purposes of the limitation in the previous sentence, the Members' Capital Accounts shall be deemed reduced by the reasonably expected adjustments, allocations and distributions described in paragraphs (4), (5), and (6) of Regulations Section 1.704-1(b)(2)(ii)(d). Allocations of Net Loss that would be made to a Member but for such limitation shall be made to the other Members to the extent not inconsistent with such limitation.

3.8 Distributions.

(a) No distributions, whether in respect of the Net Income of the Company or otherwise, shall be made to the Members, except if, as and then only to the extent, determined from time to time by the Manager in its reasonable discretion taking into account the capital needs of the Company based on the Budget, but in each case subject to any and all restrictions, limitations or prohibitions on any distributions imposed by any bank(s) or other institutional creditor(s) of the Company or any of the Subsidiaries from time to time or any other financing agreements to which the Company or any of the Subsidiaries is now or hereafter may become a party; *provided, however*, that the Company shall make Tax Distributions (as herein defined) annually to each Member, but only to the extent of its available cash and cash equivalents (whether on hand or available under the Company's credit facilities).

(b) Distributions, other than distributions upon the liquidation of the Company, if and when made, shall be made in the following order of priority, subject to paragraphs (c) and (d) of this Section 3.8:

(i) First, to each of the Members who is, or whose member(s), partner(s), shareholder(s) or other equity owner(s) is (are), subject to current taxation in the tax jurisdiction(s) of their residence with respect to their allocable share hereunder of the income of the Company, whether or not any portion of such income is distributed to such Member, in an amount equal to the excess, if any, of (A) the product of (x) the cumulative amount of taxable income that has been allocated to such Member for United States federal income tax purposes in the Company's income tax returns for all prior Company Years, reduced by the cumulative amount of all taxable losses (if any) that have been allocated to such Member for United States federal income tax purposes in such Company income tax returns for all prior Company Years and (y) the Assumed Tax Rate, over (B) all previous distributions to such Member pursuant to this Section 3.8(b)(i) and Section 3.8(b)(ii). Distributions pursuant to this Section 3.8(b)(i) (**"Tax Distributions"**) shall be made in proportion to the respective amounts required to be distributed to each Member pursuant hereto. The **"Assumed Tax Rate"** shall equal:

$$A + (B \times (1-A))$$

where A equals the maximum federal income tax rate for taxable income of individuals filing single returns under Code Section 1, and B equals the maximum applicable combined state and local income tax rate for taxable income of residents in the jurisdiction with the highest income tax rate in which any Member is a resident for income tax purposes, each such applicable rate to be (to the extent deemed practicable in the sole judgment of the Manager) that rate in effect for the Company Year in which the corresponding amount of taxable income is allocated to the Members, as determined by the Manager. The determination of the amount of any Tax Distributions shall be made by the Manager and, as a condition thereto, each Member shall submit such calculations, certifications and other material as the Manager may reasonably request.

(ii) Thereafter, all distributions will be made as follows:

(A) first, until the Class A Member has received cumulative distributions pursuant to this clause (A) in an amount equal to one hundred percent (100%) of the Class A Member's Capital Contributions, the Company will pay all distributions pursuant to this clause (A) (i) seventy-five percent (80%) to the Class A Member; and (ii) twenty-five percent (20%) to the Class B Member, and

(B) then, once the Class A Member has received cumulative distributions pursuant to clause (A) above in an amount equal to one hundred percent (100%) of the Class A Member's Capital Contributions, and until the Class A Member has received cumulative distributions pursuant to this clause the Company will pay all distributions pursuant to this clause (B) (i) forty-nine percent (49%) to the Class A Member; and (ii) fifty-one percent (51%) to the Class B Member.

(c) Anything to the contrary contained in this Agreement notwithstanding, after taking into account Tax Distributions made pursuant to Section 3.8(b)(i), subsequent distributions to the Members pursuant to Section 3.8(b)(ii) or Section 4.3 hereof shall be adjusted as necessary to ensure that, over the period of time since the Effective Date, the aggregate cash distributed to a Member under this Agreement shall be equal to the amount to which such Member would have been entitled had there been no Tax Distributions.

(d) Distributions in connection with the liquidation of the Company shall be made as provided in Section 4.3 hereof.

(e) No distribution or redemption pursuant to this Section 3.8 or otherwise pursuant to Article 4 hereof shall be deemed or give rise to any liability or obligation of any Member to any other Member, and any rights of any Member to any such distribution or redemption shall be and constitute solely and exclusively a right against and an obligation solely of the Company itself.

3.9 Regulatory Allocations. The following allocations shall be made in accordance with and to the extent required by Regulations Sections 1.704-2(f), 1.704-2(i), and 1.704-1(b)(2)(ii)(d). References in this Section 3.9 to **"partner"** and **"partnership"** are intended to

relate to the characterization of the Members and the Company, respectively, for federal income tax purposes.

(a) If there is a net decrease in partnership minimum gain during a Company Year (determined in accordance with Regulations Section 1.704-2(d)), items of Company gross income and gain shall be allocated to the Members as quickly as possible in the amounts and manner described in Section 1.704-2(f) of the Regulations. This paragraph (a) is intended to comply with the minimum gain chargeback requirement relating to any nonrecourse liability of the Company set forth in Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) If there is a net decrease in partner nonrecourse debt minimum gain during a Company Year (determined in accordance with Regulation Section 1.704-2(i)(3)), items of Company gross income and gain shall be allocated as quickly as possible to those Members who had a share of such partner nonrecourse debt minimum gain at the end of the preceding Company Year (determined in accordance with Regulation Section 1.704-2(i)(5)) in the amounts and manner described in Regulation Section 1.704-2(i)(4). This paragraph (b) is intended to comply with the minimum gain chargeback requirement relating to nonrecourse debt set forth in Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) If a Member unexpectedly receives an adjustment, allocation or distribution described in Section 1.704-1(b)(2)(ii)(d) of the Regulations which creates or increases a deficit balance in his, her or its Capital Account in excess of the sum (with respect to each Member, such Member's **"Permissible Capital Account Deficit"**) of (A) such Member's share of the partnership minimum gain (as determined at the end of such Company Year in accordance with Regulation Section 1.704-2(g)), and (B) such Member's share of the partner nonrecourse debt minimum gain (as determined at the end of such Company Year in accordance with Regulation Section 1.704-2(i)(3)), then items of Company gross income and gain shall be allocated to such Member as quickly as possible to eliminate such excess, as required by Regulation Section 1.704-1(b)(2)(ii)(d), provided that an allocation pursuant to this paragraph (c) shall be made only if and to the extent such excess would exist after all other allocations provided for in this Section 3.9 have been tentatively made for such Company Year as if this paragraph (c) were not in this Section 3.9. This paragraph (c) is intended to comply with the qualified income offset requirement set forth in Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(d) Notwithstanding anything in this Agreement to the contrary, all items of Company gross deduction and loss attributable to partnership nonrecourse liabilities (as defined in Regulations Section 1.704-2(b)(3)) shall be allocated to the Members in the ratio of their respective Percentage Interests in accordance with the treatment of nonrecourse deductions under Regulations Section 1.704-2(e).

(e) Notwithstanding anything in this Agreement to the contrary, all items of Company gross deduction and loss attributable to a partner nonrecourse debt (as defined in Regulations Section 1.704-2(b)(4)) shall be allocated to the Member or Members that bear the economic risk of loss for such partner nonrecourse debt in accordance with Regulations Section 1.704-2(i)(1).

(f) The allocations required by Section 3.9(a) through (e) hereof and in Section 3.7 (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent permissible under the Regulations, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company gross income, gain, loss or deduction pursuant to this paragraph (f). Therefore, notwithstanding any other provision of this Article 3 (other than the Regulatory Allocations), the Manager shall make such offsetting special allocations of Company gross income, gain, loss or deduction in whatever manner the Manager shall reasonably determine appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Section 3.5 of this Agreement. In exercising its discretion under this Section 3.9(f), the Manager shall take into account future Regulatory Allocations under Sections 3.9(a) and (b) that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 3.9(d) and (e). This Section 3.9(f) is intended to minimize to the extent possible and to the extent necessary any economic distortions which may result from application of the Regulatory Allocations and shall be interpreted in a manner consistent therewith.

3.10 Determination of Certain Matters.

(a) All matters concerning the determination and allocation among the Members of the amounts to be determined and allocated pursuant to Article 3 hereof, including the taxes thereon and accounting procedures applicable thereto, shall be determined in accordance with instructions or requirements of the Manager in all cases unless expressly otherwise provided for by the provisions of this Agreement.

(b) The Manager may, without the consent of any Member, amend the provisions of this Agreement relating to the manner in which tax items are allocated to the extent necessary to comply with Regulations Sections 1.704-1(b) and 1.704-2; *provided, however*, that any such amendment may be made only if it is not likely to have a material effect on the amounts distributable to any Member pursuant to Article 4 hereof upon the liquidation of the Company.

3.11 Withdrawals by Members. Except as expressly provided in this Agreement, no Member (whether upon such Member ceasing to be a member of the Company or otherwise) shall have the right to withdraw any funds or other assets, or to receive any payments or distributions, from such Member's Capital Account without the express prior written consent of the Manager.

3.12 Fair Market Value Determinations. For purposes of determining the fair market value of securities and other assets pursuant to this Article 3, such securities and assets shall be valued as of the then most recent practicable date prior to the event for which such valuation is made, such valuation to be as determined in good faith on behalf of the Company in accordance with such instructions or determinations as the Manager shall make or establish or by such appraiser as the Manager shall select.

ARTICLE 4
DISSOLUTION

4.1 Grounds. The Company shall be dissolved and its affairs shall be wound up upon the approval of the Manager and the Class A Member.

4.2 No Right to Withdraw or Cause Dissolution. No Member shall have the right to withdraw (as such term is used in the Act) as a Member or otherwise cause, voluntarily or involuntarily, a dissolution of the Company other than as expressly permitted under the Act, or in connection with a Transfer permitted pursuant to Article 5 hereof, and any such action or any such dissolution caused by a Member, other than as so permitted, shall be null and void and shall constitute a breach by such Member of its obligations under this Agreement. Notwithstanding any provision of the Act to the contrary, no Member shall be entitled to any payment or distribution upon any such action or upon ceasing to be a Member of the Company for any reason, except as may be expressly provided to the contrary in this Agreement. This Section 4.2 expressly overrides any rights to distributions or other payments to which a Member or any assignee thereof might otherwise be entitled under the default provisions of the Act or any other provisions of the Act. Notwithstanding anything to the contrary contained in this Agreement, in the event that (i) the Company is in default of the lease (a **"Lease Default"**), (ii) the Company fails to open and operate the Restaurant within a reasonable period of time after its entry into the Premises, (iii) the Class B Member no longer owns 51% of the outstanding Units, or (iv) the Manager resigns, is terminated or dies then in each case the Class A Member shall have the right to cause a dissolution and liquidation of the Company without further consent of the Manager or other Members.

4.3 Liquidation. Upon dissolution of the Company, (i) the Company's assets will be liquidated in an orderly and business-like manner so as not to involve undue sacrifice, and (ii) the following actions and distributions out of the assets of the Company will be taken and made in the following manner and order:

(a) first, the Company will pay or establish reserves for all debts and liabilities of the Company to employees and persons other than Members and expenses of liquidation in the order of priority provided by law;

(b) then, the Company will establish any reserves which the Manager shall reasonably deem necessary to provide for contingent liabilities or obligations of the Company; *provided, however*, that, at the expiration of such period of time as the Manager may reasonably deem advisable, the balance of any reserves shall be paid or distributed as provided in clauses (c) through (k) of this Section 4.3 (in the order of priority thereof), it being agreed that such reserves may, at the election of the Manager, be paid over to an independent escrow agent to be held by it as escrowee for the purpose of disbursing such reserves in payment of any of the aforesaid contingencies;

(c) then, the Company will pay out of the balance of such assets, if any, the outstanding balance of all remaining debts and liabilities of the Company to the Members to whom the same are owed, *pro rata*;

(d) then, after giving effect to all allocations called for by Article 3 hereof, until the Class A Member has received cumulative distributions pursuant to Section 3.8(b)(i), Section 4.3(d) and this Section 4.3(e) in an aggregate amount equal to one hundred percent (100%) of the Class A Member's Capital Contributions the Company will pay distributions pursuant to this Section 4.3(d) (i) seventy-five percent (75%) to the Class A Member, and (ii) twenty-five percent (25%) to the Class B Member the Class A Member, until such time as the Class A Member's Unrecovered Capital has been reduced to zero dollars ($0);

(e) then, until the Class A Member has received cumulative distributions pursuant to Section 3.8(b)(i-ii), Section 4.3(d) and this Section 4.3(e) the Company will pay distributions pursuant to this Section 4.3(e) (i) forty-nine percent (49%) to the Class A Member, and (ii) fifty-one percent (51%) to the Class B Member; and

Except as otherwise expressly provided herein, no Member shall have any rights or claims against any other Member, the Company or the Manager with respect to the respective Capital Accounts of the Members.

4.4 Deferral of Distribution. Notwithstanding the provisions of Section 4.3 immediately above, if, upon dissolution of the Company, the Manager shall reasonably determine that sale of part or all of the Company's assets would cause undue loss to the Members, the Manager may, in order to avoid such losses, require the Company to defer the liquidation of, and to withhold from distribution for a reasonable time, any assets of the Company.

4.5 No Restoration Obligations. No Member shall have any obligation to restore any deficit balance in its capital account following the "liquidation" (as such term is defined in Regulations Section 1.704-1(b)(2)(ii)(g)) of its interest in the Company.

4.6 No Right to Partition. The Members, on behalf of themselves and their heirs, personal representatives, successors and assigns, hereby specifically renounce, waive and forfeit all rights, whether arising under contract or statute or by operation of law, to seek, bring or maintain any action in any court of law or equity for partition of the Company, or any interest which is considered to be Company assets, regardless of the manner in which title to any such assets may be held.

4.7 Cancellation of Certificate. Following completion of the distribution of Company assets as provided herein, and in any such event at such time as the Manager shall determine, the Company shall be terminated (and the Company shall not be terminated prior to such time), and the Manager (or such other person or persons as the Act may require or permit) shall be entitled and authorized to file a certificate of cancellation with the Secretary of State of Washington, D.C. cancel any other filings made pursuant to this Agreement that are or should be canceled and take such other actions as may be necessary to terminate the Company. The Company shall be deemed to continue in existence for all purposes of this Agreement until it is terminated pursuant to this Section 4.7.

ARTICLE 5
RESTRICTIONS ON TRANSFER OF MEMBERSHIP INTEREST

5.1 Restrictions on Transfer. (a) Except as otherwise permitted by this Agreement, no Member (nor any Related Person of any of them) shall have the right to sell, assign, pledge, transfer, donate, bequest, hypothecate, gift, convey, encumber, or otherwise dispose of all or any portion of their Units, and the corresponding Membership Interest related thereto, or any legal or equitable interests or rights therein (each, a **"Transfer"**), and no such person shall have any right to substitute a transferee in such person's place as a Member or grant or create any participation in such Member's right to receive distributions or returns of capital without the prior written consent of the Manager, except for (i) a Transfer to the Company, (ii) a Transfer to a Related Person or such Member's estate (each, a **"Permitted Transferee"**) as provided below, (iii) in connection with a Drag-Along Sale in accordance with Section 5.4 below, or (iv) in connection with a Tag-Along Transfer in accordance with Section 5.5 below.

(b) Following any Transfer of all of a Member's Units, such Member shall have no further rights as a Member of the Company.

(c) Notwithstanding anything to the contrary contained herein, no such Transfer shall be permitted if such Transfer might jeopardize, or necessitate any filings in respect of, any liquor license held by the Company or any of its Subsidiaries. Any such unpermitted purported Transfer shall be null and void *ab initio* and of no force or effect.

(d) A Member may Transfer such Member's Units and the corresponding Membership Interest related thereto *inter vivos*, upon death, by will or pursuant to the laws of descent and distribution (subject to any purchase rights in favor of the Company or the Purchasing Members (as defined below)) to a Permitted Transferee, provided, and if and only if, such Permitted Transferee agrees in writing to be bound by the provisions of this Agreement and executes such instruments and agreements relating to such transfer as the Manager shall reasonably require. No Permitted Transferee of a Member shall succeed or be entitled to any of the rights of such Permitted Transferee's transferor Member to be or become an Authorized Agent or to receive any compensation therefor, it being agreed that such rights are personal and exclusive to the Member.

5.2 Additional Restrictions on Transfers and Admissions.

(a) Notwithstanding any other provisions of this Article 5, no Transfer of a Member's Units and the corresponding Membership Interest related thereto nor admission of any new or additional Member may be made if, in the judgment of the Manager:

(i) such Transfer or admission would cause the Company to lose its status as a partnership that is not a publicly-traded partnership for federal income tax purposes or, when added to the total of all other Transfers of Membership Interests within the twelve (12) months prior thereto, would result in the Company being considered to have terminated within the meaning of Section 708 of the Code;

(ii) such Transfer or admission would violate any federal securities laws or any state or local securities or "blue sky" laws (including any investor suitability standards) applicable to the Company, the Units or the Membership Interest to be Transferred; or

(iii) such Transfer or admission would cause the Units or Membership Interests to be treated as "plan assets" within the meaning of Section 2510.3-101 of the Labor Department Regulations, if at the time of such transaction any Member is a United States "benefit plan investor" within the meaning of such Regulations and Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended.

(b) In the event a Transfer of a Member's Units and the corresponding Membership Interest related thereto (or a portion thereof) is consented to or permitted as provided herein, then it shall be deemed in each instance a condition to such consent that the transferor and the transferee shall execute and deliver to the Company such instruments and agreements relating to such Transfer and/or any of the matters referred to in Section 5.2(a) above as the Manager shall reasonably require.

(c) Any purported Transfer by any Member or Permitted Transferee thereof of the whole or any part of any Membership Interest or other interest in the Company, or admission of any new Member by reason of such Transfer, that is not made in compliance with this Article 5 shall be null and void *ab initio* and of no force or effect.

5.3 Right of First Refusal.

(a) If any Member (the **"Offering Member"**) desires to dispose (other than a Transfer to the Company, to a Permitted Transferee, in connection with a Drag-Along Sale, in connection with a Tag-Along Transfer or pursuant to a merger or reorganization transaction to which the Company is a party), in a transaction with a person that is not a Permitted Transferee (a **"Qualified Purchaser"**), of any or all of such Offering Member's Units (the **"Offered Units"**), pursuant to an offer (the **"Offer"**) received from a proposed Qualified Purchaser (the **"Offeror"**), at any time after the Effective Date, the Offering Member shall promptly furnish written notice (the **"Offer Notice"**) to the Company and to each other Member (the **"Offered Members"**). Each Offer Notice shall be accompanied by a copy of the Offer, setting forth in reasonable detail the terms and conditions of the Offer and the name, address and telephone number of the party or parties making the Offer. The Offer Notice shall constitute an offer to sell, at the same price per Unit and upon the same terms and conditions as set forth in the Offer, all, but not less than all, of the Offered Units to (i) the Offered Members, *pro rata* based on the relative number of Units owned of record or in such other proportions as the Offered Members may agree, and (ii) the Company, only to the extent of any Units that the Offered Members do not agree to purchase.

(b) Any determination of the number of Units to be offered to each Offered Member on the *pro rata* basis described above shall be made by the Manager in good faith and any such determination, absent manifest error, shall be binding on all of the Members.

(c) Each of the Offered Members shall have a period of twenty (20) days from the date the Offer Notice is received by such Offered Member to notify the Offering Member,

the other Members and the Company if such Offered Member agrees either to purchase all or a portion of the Offered Units offered to such Offered Member on the terms set forth in the Offer.

(d) Any Offered Units which any of the Offered Members do not agree in writing within such twenty-day period to purchase shall be deemed to be re-offered for sale to the Offered Members that had agreed to purchase all of the Offered Units offered to such Member, on the terms set forth in the Offer, *pro rata* based on the relative number of Offered Units that each of the Offered Members had previously agreed to purchase or in such other proportions as they may agree, and such Offered Members shall have an additional five (5) days to agree in writing to purchase such Offered Units. Any Offered Units which the Offered Members do not agree in writing within such five-day period to purchase shall be deemed to be re-offered for sale to the Company on the terms set forth in the Offer, and the Company shall have an additional five (5) days to agree in writing to purchase such Offered Units. If the Offered Members and the Company have agreed within such thirty-day period to purchase all of the Offered Units among them, the parties shall proceed to consummate such purchases in accordance with the terms and conditions of the Offer not later than the fortieth (40^{th}) day following the date the Offer Notice was received by the Offered Members and the Company.

(e) If the Offered Members and the Company do not agree in writing within thirty (30) days after the date the Offer Notice was received by the Offered Members and the Company to purchase all of the Offered Units among them, then the Offering Member shall have the right, subject to the tag-along rights contemplated by Section 5.5 below, to sell to the Offeror all of the Offered Units for a period of sixty (60) days following such thirtieth (30^{th}) day, such sale to be at no less favorable a price and upon terms and conditions no less favorable to the Offering Member than as set forth in the Offer Notice. All Units sold to such Offeror shall thereupon become subject to the restrictions of this Agreement. If the Offering Member fails to sell the Offered Units to the Offeror on such terms and conditions within such sixty-day period, the Offered Units shall again be subject to the provisions of this Section 5.3 and, if applicable, Section 5.5.

(f) If the Offeror makes one or more new bona fide offers at a lower price or upon terms which are more favorable to the Offeror than those previously offered to the Offered Members and the Company, then each new bona fide offer shall be treated as a new bona fide offer subject to the provisions set forth in this Section 5.3, except that the twenty (20) day offering period provided in subparagraph (c) above shall be ten (10) days; *provided, however*, that if any such ten (10) day period would terminate on a date prior to the date on which such period would have terminated without giving effect to the new bona fide offer, then such period shall continue until the original period's termination date.

(g) Notwithstanding anything contained to the contrary herein, any proposed sale which would result in the Class B Member owning less than fifty percent (50%) of the outstanding Units shall require the consent of the Class A Member.

5.4 Drag-Along Rights.

(a) The Class A Member, or subject to approval of the Class A Member, the Manager shall have the right to require all Members (the **"Drag-Along Members"** or **"Drag-**

Along Member", as the case may be) to transfer their Units, and the corresponding Membership Interests related thereto, in a transaction which constitutes a bona fide sale and assignment (a **"Drag-Along Sale"**) of all of the Units in the Company to any third party that is not a Permitted Transferee and is not an affiliate of the Manager (such third party, a **"Third Party Purchaser"**).

(b) To exercise such right, the Class A Member or the Manager, as the case may be (the "**Noticing Party**") shall send written notice (the **"Drag-Along Notice"**) to each Drag-Along Member, setting forth the aggregate consideration to be paid by the Third Party Purchaser for all outstanding Units and the other terms and conditions of such transaction. Each Member shall be entitled to receive a portion of such aggregate consideration equal to the amount which such Member would receive with respect to such Member's Units in a hypothetical distribution of such aggregate consideration upon dissolution pursuant to Section 4.3 hereof. Each Drag-Along Member shall be required to (i) consummate the Drag-Along Sale for the amount of consideration set forth in the foregoing sentence and under the terms and conditions set forth in the Drag-Along Notice, and (ii) execute and deliver the same or substantially similar documentation as shall be determined by the Noticing Party (the **"Drag-Along Documentation"**), provided that each Member shall be responsible for its proportionate share of the liabilities and obligations (including liabilities and obligations for indemnification) and of any escrow to which any of the holders of equity interests of the Company who participate in the Drag-Along Sale shall be subject (based upon such Member's share of net proceeds), and provided further that (A) no Drag-Along Member shall be required to provide any representations, warranties or indemnities in connection with the Drag-Along Sale, other than representations, warranties and indemnities concerning (1) such Drag-Along Member's valid title to and ownership of Units, free and clear of all liens, claims and encumbrances (excluding those arising under applicable securities laws), (2) such Drag-Along Member's authority, power and right to enter into and consummate such Drag-Along Sale, (3) the absence of any violation, default or acceleration of any agreement to which such Drag-Along Member is subject or by which its assets are bound, (4) the absence of, or compliance with, any governmental or third party consents, approvals, filings or notifications required to be obtained or made by such Drag-Along Member in connection with such Drag-Along Sale, (5) compliance by such Drag-Along Member with applicable laws and (6) other matters to the extent the Exercising Members are similarly obligated, (B) any indemnification provided by a Drag-Along Member in such Drag-Along Sale (other than with respect to breaches of representations, warranties and covenants by the Company) shall be provided on a several (and not joint and several) basis, (C) no Drag-Along Member shall be liable for, or obligated with respect to, the inaccuracy of any representation or warranty made by another person (other than the Company) in connection with a Drag-Along Sale, (D) no Drag-Along Member (except as such Drag-Along Member shall consent) shall be liable for, or obligated with respect to, the liabilities that arise based on the inaccuracy of any representation or warranty made by the Company, except on a several, *pro rata* basis, based on the number of Units held by such holder as a percentage of the total Units outstanding immediately prior to such transaction, and (E) in no event shall any Drag-Along Member be liable for an amount greater than the net proceeds of the Drag-Along Sale received by such Member. At the consummation of the purchase of such Units by the Third Party Purchaser, the Drag-Along Members shall deliver to the Manager duly executed instruments of transfer for their Units along with the Drag-Along Documentation. If one or more of the Drag-Along Members fails to deliver such instruments of transfer and/or Drag-Along Documentation to the Noticing Party, the Noticing Party shall cause the books and records of the Company to

show that such Units are bound by the provisions of this Section 5.4 and that such Units shall be transferred only to the Third Party Purchaser. In the event one or more of the Drag-Along Members fails to deliver the duly executed instruments of transfer and/or the Drag-Along Documentation to the Noticing Party as required herein, then the Noticing Party may execute any documents as shall be required by the Company for the purpose of transferring any Units on the books and records of the Company, including but not limited to, an instrument of transfer as required by this Section 5.4 and the Noticing Party is hereby deemed appointed the attorney-in-fact of each such Drag-Along Member for the purpose of effectuating the requirements of this Section 5.4.

(c) Promptly, but in no event later than five (5) days after the consummation of the sale of the Units of the Members and the Drag-Along Members pursuant to this Section 5.4, the Company, to the extent the Company received such funds, shall remit to the Drag-Along Members the applicable sales price for their Units sold pursuant hereto (net of all costs and expenses incurred in connection with the sale).

5.5 Tag-Along Rights.

(a) In the event the Offered Units contemplated by Section 5.3 constitute at least twenty percent (20%) of the issued and outstanding Units of the Company, the Offer Notice delivered to the Offered Members in accordance with Section 5.3 shall also constitute a **"Tag-Along Notice"** and each Offered Member shall be referred to hereinafter as a **"Tag-Along Member"**.

(b) Each Tag-Along Member which delivers a written notice of its intention to exercise its rights under this Section 5.5 to the Offering Member (such notice, a **"Tag-Along Election Notice"**) no later than ten (10) days following receipt of a Tag-Along Notice, which Tag-Along Election Notice shall be irrevocable once delivered (a **"Tag-Along Right"**), shall have the right to participate in such transaction with the Third Party Purchaser (but not in connection with the exercise of the Company's or any Member's right of first refusal as contemplated by Section 5.3) (a **"Tag-Along Transfer"**) by selling its Tag-Along Share (as defined below) of Units in such Tag-Along Transfer to the Third Party Purchaser. For the purposes of this Section 5.5, a Tag-Along Member's **"Tag-Along Share"** shall equal the product of (i) the number of Units then held by such Tag-Along Member, multiplied by (ii) a fraction, the numerator of which shall be the number of Units included in the Offered Units, and the denominator of which shall be the total number of Units then held by the Offering Member. All Units to be sold by the Tag-Along Member shall be sold for the same amount and type of consideration and otherwise on the same terms and conditions as apply to the Offered Units to be sold by the Offering Member. To the extent that the sum of Offered Units plus the aggregate number of Units proposed to be sold by all Tag-Along Members in such Tag-Along Transfer exceeds the total number of Units sought to be purchased by the Third Party Purchaser (as set forth in the Tag-Along Notice), the respective number of Offered Units of the Offering Member and Units of each selling Tag-Along Member to be included in such Tag-Along Transfer shall be proportionately reduced so that each Member participates in such Tag-Along Transfer ratably based on the aggregate number of Offered Units requested to be included in such Tag-Along Transfer by the Offering Member.

(c) Except as otherwise provided below, each Tag-Along Member which provides a Tag-Along Election Notice shall take all necessary and desirable actions requested by the Offering Member in connection with the consummation of the Tag-Along Transfer, including the execution of such agreements and instruments and the taking of such other actions as may be reasonably necessary to provide customary representations, warranties, indemnities, and escrow/holdback arrangements relating to such Tag-Along Transfer, in each case to the extent that the Offering Member and each other Tag-Along Member is similarly obligated; provided that:

(i) a Tag-Along Member shall not be required to provide any representations, warranties or indemnities other than representations, warranties and indemnities concerning (A) valid title to and ownership of the Units being transferred by such Tag-Along Member, free and clear of all liens, claims and encumbrances (excluding those arising under applicable securities laws and this Agreement), (B) authority, power and right of such Tag-Along Member to enter into and consummate such Tag-Along Transfer, (C) the absence of any violation, default or acceleration of any agreement to which such Tag-Along Member is subject or by which its assets are bound, (D) the absence of, or compliance with, any governmental or third party consents, approvals, filings or notifications required to be obtained or made by such Tag-Along Member in connection with such Tag-Along Transfer, (E) compliance by such Tag-Along Member with applicable laws, and (F) other matters to the extent each other Tag-Along Member and the Offering Member are similarly obligated in accordance with clause (ii) of this Section 5.5(c). The contributions to be made by the Offering Member and each Tag-Along Member to such escrow shall be proportionate based on the consideration to be received by each such person in the transaction;

(ii) any indemnification provided by a Tag-Along Member in such Tag-Along Transfer shall be either on a several (and not joint and several) basis or solely with recourse to an escrow established for the benefit of the proposed Third Party Purchaser, it being understood and agreed that any such indemnification obligation of any Tag-Along Member shall in no event exceed the amount of consideration to be received by such Tag-Along Member in connection with the Tag-Along Transfer; and

(iii) each Tag-Along Member participating in the Tag-Along Transfer shall only be required to bear such Tag-Along Member's proportionate share of any expenses of the transaction (including legal, investment banking, accounting and other similar fees and expenses), based on the consideration to be received by the Offering Member and all Tag-Along Members participating in such Tag-Along Transfer.

(d) Subject to, and in accordance with, the provisions of this Section 5.5, each Tag-Along Member and the Offering Member shall sell to the Third Party Purchaser all of the Units proposed to be transferred by them, at not less than the price and upon terms and conditions, if any, not more favorable, individually and in the aggregate, to the Third Party Purchaser than those in the Tag-Along Notice at the time and place provided for the closing in the Tag-Along Notice, or at such other time and place as the Tag-Along Members, the Offering Member and the Third Party Purchaser shall agree.

ARTICLE 6
CERTAIN OTHER AGREEMENTS

6.1 Acquisitions; Outside Businesses. Notwithstanding anything to the contrary contained herein, (a) each of the Members, the Manager and the equityholders and/or affiliates of each of the foregoing may engage in and/or possess interests in business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Company and/or any Subsidiary thereof or of any of the businesses, assets and/or properties acquired, held, operated, conducted, managed and/or invested in from time to time by the Company or any of its direct or indirect Subsidiaries, and (b) neither the Company, the Manager nor any of the Members, shall have any rights, by virtue of this Agreement or otherwise, in or to such ventures or interests, or the income or profits derived therefrom, and the pursuit or acquisition of any such venture or interest shall not be deemed wrongful or improper in any manner.

6.2 Individual Obligations. Each of the respective obligations of the Members under this Agreement shall be the respective obligations individually of each Member and shall be and remain binding on each such Member notwithstanding the failure of any other Member to comply with such obligation as its applies to him, her or it. Except as may be expressly set forth in this Agreement, no obligation of the Company under the Agreement shall in any manner constitute an obligation of or be deemed guaranteed in any manner by any Member.

ARTICLE 7
ADDITIONAL MEMBERS

7.1 Admission of New Members/Issuance of Additional Units. The Manager may cause the Company to issue additional Units or other beneficial interest in the Company and, otherwise, admit any additional person as a member of the Company (an **"Additional Member"**), with the consent of the Class A Member, provided that such person agrees in writing to be bound by all of the provisions of this Agreement. In addition, any person that acquires Units pursuant to a Transfer in accordance with the terms of this Agreement and which agrees in writing to be bound by all of the provisions of this Agreement shall be admitted as a substitute member (a **"Substitute Member"**). The Manager, pursuant to Section 9.1 hereof, upon the admission of an Additional Member or Substitute Member shall have the right to amend this Agreement to reflect such admission.

7.2 Allocations to New Members. If a Member transfers a Membership Interest or Units (or any portion thereof) in the Company or, pursuant to Section 7.1, any person is issued any membership or other beneficial interest in the Company and/or is admitted as a "member" of the Company, then the Company's Net Income or Net Losses shall be allocated between the transferor and transferee (or, as applicable, among the Members) by taking into account their varying interests in the Company during the Company Year in accordance with Code Section 706(d) using the interim closing of the books method or such other method as the Manager shall determine and which is not prohibited under Section 706(d) of the Code and the Regulations thereunder.

ARTICLE 8
BOOKS AND RECORDS

8.1 Books and Records. At all times during the continuance of the Company, the Company shall maintain, at its principal place of business, separate books of account for its operations in accordance with sound accounting principles and in accordance with applicable tax accounting principles. Within ten (10) days of any request by a Member, the Manager shall either (a) provide such Member copies of the books and records reasonably requested by such Member, or (b) afford such Member and its agents reasonable access, during normal business hours and without causing disruption to the business of the Company, to the books and records reasonably requested by such Member for the purpose of inspection and copying such books and records provided that the expense of copying shall be borne solely by the Member.

8.2 Accounting Method. For both financial and tax reporting purposes and for purposes of determining profits and losses, the books and records of the Company shall be kept on the accrual method of accounting or such other method of accounting as determined by the Manager.

8.3 Audit/Schedule K-1's. At any time at the sole discretion of the Manager, the financial statements of the Company and the Subsidiaries may be (but shall not be required to be) audited by an independent certified public accountant, selected by the Manager, with such audit to be accompanied by a report of such accountant containing its opinion. The cost of such audits, if any, will be an expense of the Company. A copy of any such financial statements will be made available for inspection by the Members. The Company will cause (i) the timely preparation and distribution of Schedule K-1's to each Member, and (ii) the preparation and distribution of (A) unaudited quarterly financial statements within forty-five (45) days after the end of the quarter to which such statements relate, and (B) monthly sales reports within fifteen (15) days after the end of the month to which such reports relate.

8.4 Fiscal Year. The fiscal year of the Company shall be the calendar year or such other period as shall be determined by the Manager.

ARTICLE 9
MISCELLANEOUS

9.1 Amendments.

(a) Except as otherwise provided in this Section 9.1, this Agreement may not be amended except by a writing approved by the Manager and executed by a Majority in Interest of the Members and a Majority in Interest of the Class A; *provided, however*, any amendment which would disproportionately (as in relation to other Members), materially and adversely affect the rights or duties of a Member shall require the consent of such Member.

(b) The Manager may amend this Agreement without the consent of any other Member (i) to reflect changes validly made in the membership of the Company and corresponding changes in the terms and provisions of this Agreement necessary to reflect or conform with any such change in membership, (ii) to reflect changes permitted in accordance with this Agreement in the Capital Accounts and/or Percentage Interests of the Members, or (iii)

if such amendment is of an inconsequential nature and does not affect the rights of the Members in any material adverse respect. No amendment to this Agreement which alters the provision of this Section 9.1 or which adversely impacts the Class A Member shall be made without the written consent of the Class A Member.

(c) Anything in the foregoing provisions of this Section 9.1 to the contrary notwithstanding, this Agreement shall be amended from time to time (without any required consent of the Members) in each and every manner deemed necessary or appropriate by the Manager to comply with the then-existing requirements of the Code and the Regulations and the Rulings of the Treasury Department or Internal Revenue Service affecting the Company.

9.2 Forfeiture. In the event that the Manager resigns, dies or is terminated before the Class A Member's Unrecovered Capital has been reduced to zero dollars ($0);, then effective as of the date of such resignation, death or termination, the Class B Member forfeits all of its Membership Interest without further action, payment or distribution. The Class B Member agrees to execute and deliver all documentation to reflect such forfeiture and release the Company and the Class A Member from any further obligations to it under this Agreement or otherwise under law.

9.3 Specific Performance. The parties hereto agree that money damages or other remedy at law would not be sufficient or adequate remedy for any breach or violation of, or a default under, this Agreement by them and that, in addition to all other remedies available to them, each of them shall be entitled to an injunction restraining such breach, violation or default or threatened breach, violation or default and to any other equitable relief, including without limitation specific performance, without bond or other security being required.

9.4 Entire Agreement. This Agreement sets forth the entire and only agreement or understanding among the parties hereto relating to the subject matter hereof and supersedes and cancels all previous agreements, letters, negotiations, commitments and representations in respect thereof among them, and no party shall be bound by any conditions, definitions, warranties or representations with respect to the subject matter of this Agreement.

9.5 Notices. Any and all notices, demands or requests required or permitted to be given under this Agreement shall be given in writing and addressed to the parties hereto at their addresses reflected in the records of the Company from time to time and to such other addresses as they may respectively from time to time designate by written notice, given in accordance with the terms of this Section 9.5 and if such notice, demand or request is to be delivered to the Company then it shall be delivered to 1825 7th St NW #1004, Washington D.C. 20001 Attention: Drink Company. Notices given as provided in this Section 9.5 shall be deemed effective: (i) on the date hand delivered; (ii) on the first business day following the sending thereof overnight by recognized overnight courier; and (iii) on the third (3rd) calendar day (or, if it is not a business day, then the next succeeding business day thereafter) after the depositing thereof into the exclusive custody of the U.S. Postal Service.

9.6 Certain Interpretive Matters. Whenever from the context it appears appropriate, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and

vice versa. The use of the words "include" or "including" in this Agreement shall be by way of example rather than by limitation. Reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof. Unless otherwise indicated, reference in this Agreement to a "Section" or Article" means a Section or Article, as applicable, of this Agreement. When used in this Agreement, words such as "herein," "hereinafter," "hereof," "hereto," and "hereunder" shall refer to this Agreement as a whole, unless the context clearly requires otherwise. The use of the words "or," "either" and "any" shall not be exclusive. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

9.7 Benefits of Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors and permitted assigns of the parties hereto; provided that nothing contained herein shall permit any assignment of any Membership Interests or any rights or obligations under this Agreement except as elsewhere expressly permitted in this Agreement. This Agreement shall not inure to the benefit of or be enforceable by any creditor of the Company or any creditor of any Member or be deemed to create any rights in favor of or be for the benefit of any person not a party hereto.

9.8 Waivers. No waiver by any party hereto of any failure by any other party hereto to comply with any obligation under this Agreement shall be effective unless in writing and signed by the party granting such waiver, and no such waiver shall be deemed a waiver of any subsequent failure of the same or similar nature.

9.9 Severability. If any provision of this Agreement would be held to be invalid, prohibited or unenforceable in any jurisdiction for any reason, such provision, as to such jurisdiction only, shall be ineffective to the extent of such invalidity, prohibition, unenforceability, without invalidating the remaining provisions of this Agreement, and the validity, legality and enforceability of such remaining provisions shall not be affected in any way thereby.

9.10 Headings. The headings and subheadings of Sections of this Agreement and/or any Schedule hereto are for convenience of reference only and shall not constitute part of or define or limit any of the provisions of this Agreement or such Schedule.

9.11 Counterparts. This Agreement may be executed by the parties hereto in counterparts, or by separate signature page or instrument, each of which shall be considered an original, and all of which shall together constitute but one and the same agreement. Execution and delivery of this Agreement by delivery of a facsimile or electronically recorded copy (including a .pdf file) bearing a copy of the signature of a party shall constitute a valid and binding execution and delivery of this Agreement by such party. Such copies shall constitute enforceable original documents.

9.12 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the District of Columbia, without giving effect to contrary choice of law principles of such State.

[remainder of page intentionally left blank;
signature page follows]

IN WITNESS WHEREOF, each of the undersigned has duly executed this Limited Liability Company Operating Agreement of Spero, LLC as of the date first above written.

COMPANY:

SPERO, LLC

By: Drink Company, LLC its Manager

By: _____
Name:
Title:

CLASS B MEMBER:

DRINK COMPANY, LLC

By: _____
Name:
Title:

CLASS A MEMBER:

_____

By: _____
Name:
Title:

Schedule A

As of the Effective Date

[MISSING FIGURE TO BE INSERTED]

Name of Member	Effective Date Capital Contribution	Effective Date Unrecovered Capital	Number of Class A Units	Number of Class B Units	Percentage Interest
[Name of Class A Member]	Amount of Initial Operating Budget	$_____	100	0	49%
Drink Company, LLC	$0	$_____	0	100	51%

Schedule B

As of the Effective Date

Officers of the Company

Name	Title(s)
	_____
	_____