

**LIMITED LIABILITY COMPANY  
OPERATING AGREEMENT  
GUIDE TO DEFINITIONS AND USES  
FOR HAWKINS ELDER LAW ILLINOIS CLIENTS**

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**ARTICLE 1  
PREFACE TO TERMINOLOGY DEFINITIONS AND USES**

**1.1. Application.**

1.1.1. Hawkins Elder Law is furnishing this Limited Liability Company Operating Agreement Guide to Definitions and Uses for Hawkins Elder Law Illinois Clients (the “Guide”) as a supplement to limited liability company operating agreements prepared by Hawkins Elder Law.

1.1.2. Each limited liability company operating agreement that Hawkins Elder Law has drafted after 2022 incorporates by reference into the operating agreement and any amendment of the operating agreement prepared by Hawkins Elder Law (the “Agreement”), and the Agreement incorporates any future version of the Guide published on the Internet by Hawkins Elder Law on a webpage of the website presently identified as <https://www.hawkinselderlaw.com> (the “Updated Guide”) after the latest date of the Agreement. The Updated Guide will supersede this Guide unless the Members and Managers make a new Agreement that expressly states an intent not to incorporate the Updated Guide by reference.

**1.2. Priority of Definitions in this Guide Versus Definitions in the Trust Agreement**

Each definition of a word or phrase in this Guide applies to the Agreement’s use of the word or phrase unless the context or a provision of an article of the Agreement states that its provision defines or uses the word or phrase differently.

**1.3. References to Plurality, Singularity, and Gender**

1.3.1. The Agreement often uses singular references to persons and their respective roles regardless of whether the references concern one person or more than one person.

1.3.2. All references in the Agreement to the singular forms of nouns, pronouns, and verbs also apply to the plural.

1.3.3. Although the Agreement primarily uses gender-neutral terminology, all masculine forms of nouns, pronouns, and verbs also apply to the feminine or neuter forms as the context requires.

#### **1.4. Surplus Terminology**

1.4.1. Some words and phrases that this Guide defines may be surplus terminology remaining after the Agreement's preparer deleted provisions that used the defined words and phrases in earlier Agreement drafts.

1.4.2. Surplus terminology does not affect the meaning or construction of the Agreement.

#### **1.5. Terminology Alphabetization**

Although the remaining provisions of this Guide feature alphabetized terminology definitions, any appearance in this Guide of a term's definition out of alphabetical sequence is an unintended editorial result that does not alter the Members' and the Managers' intended definition or use of the term.

## **ARTICLE 2**

### **TERMINOLOGY DEFINITIONS AND USAGE CONTEXTS**

#### **2.1. "Act"**

"Act" means the Illinois Limited Liability Company Act, 805 ILCS 180/1-1, *et seq.*, as in effect on the effective date of the Agreement and as it may be amended hereafter from time to time.

#### **2.2. "Additional Member"**

"Additional Member" means any Member admitted to the Company as a Member entitled to Vote under the Agreement.

#### **2.3. "Affiliate Member"**

"Affiliate Member" means a Member that is a trust, estate, or other entity that is not a natural person, the entire Ownership Interest of which is vested in one or more natural persons, each of whom qualifies under the definition of a "Member" in Section 2.33 of this ARTICLE 2.

## **2.4. “Agreement”**

“Agreement” means this Operating Agreement, as amended, modified, or supplemented from time to time.

## **2.5. “Agricultural Real Property”**

2.5.1. “Agricultural Real Property” means any Real Property any buildings or other improvements situated on that Real Property wholly or partly used for:

2.5.1.1. planting, cultivating, harvesting, storing, and selling grain and other crops;

2.5.1.2. breeding, feeding, transporting, selling, and slaughtering livestock; or

2.5.1.3. other related agricultural uses.

2.5.2. Agricultural Real Property” includes but is not limited to:

2.5.2.1. Real Property enrolled in:

2.5.2.1.1. a land conservation or reserve program administered by the United States Department of Agriculture the “USDA”);

2.5.2.1.2. a land conservation program administered by the USDA's Farm Service Agency (the “FSA”); or

2.5.2.1.3. a conservation reserve program or agricultural easement program administered by the USDA's National Resources Conservation Service;

2.5.2.2. Real Property enrolled in a classified forest, wetlands, or wildlands program, or any similar or successor program;

2.5.2.3. Real Property classified in any category of agriculture use for Real Property tax assessment purposes; or

2.5.2.4. Real Property devoted to planting, cultivating, or harvesting timber.

## **2.6. “Articles” or “Articles of Organization”**

“Articles” or “Articles of Organization” means the Articles of Organization of the Company, as amended, modified, or supplemented from time to time.

## **2.7. “Ascendant”**

“Ascendant” means an individual who precedes another individual in lineage, in the direct line of ascent from the birth or adoption of the other individual. For example, an individual is an Ascendant of the individual’s children and grandchildren.

## **2.8. “Assigning Member”**

“Assigning Member” means

- 2.8.1. a deceased or disabled individual Member;
- 2.8.2. an individual Member whose Interest in the Company has transferred in an Involuntary Transfer; or the Member intends to transfer
- 2.8.3. an individual Member who has Transferred or intends to transfer a Member an Interest in the Company without the affirmative vote of a Consent Vote of the Members; or
- 2.8.4. a member that is a dissolved or dissolving business entity has the meaning outlined in the Agreement.

## **2.9. “Beneficial Interest”**

“Beneficial Interest” means a person’s rights as a current or contingent beneficiary of a trust, an account, or other system or arrangement by which the person may expect to receive income, property, services, or other kinds of intangible benefits or economic values.

## **2.10. “Capital Account”**

2.10.1. “Capital Account” means, concerning each Member, the account established and maintained for the Member on the books of the Company in compliance with Reg §1.704-1(b)(2)(iv) and Reg §1.704-2, as amended.

2.10.2. Subject to the preceding sentence, each Member’s Capital Account will initially equal the amount of cash and the Contribution Value of any other property initially contributed by the Member to the Company. Throughout the term of the Company, each Member’s Capital Account will be

2.10.2.1. increased by the amount of

2.10.2.1.1. income and gains allocated to the Member under the provisions of the Agreement concerning the allocation of income and losses, and



2.10.2.1.2. the amount of any cash or the Contribution Value of any property subsequently contributed by the Member to the Company, (net of liabilities secured by the contributed property that the Company may assume or take subject to Code §752); and

2.10.2.2. decreased by the amount of

2.10.2.2.1. losses and deductions allocated to the Member under the provisions of the Agreement concerning the allocation of income and losses, and

2.10.2.2.2. the amount of distributions in cash and the value (as determined by the Manager) of property (net of liabilities secured by the property that the Member may assume or take subject to Code §752) distributed to the Member.

## **2.11. “Capital Contribution”**

“Capital Contribution” means the amount of cash or the Contribution Value of property contributed to the Company by a Member or attributed as a contribution by Member under the Agreement.

## **2.12. “Centralized Partnership Audit Regime”**

“Centralized Partnership Audit Regime” means subchapter C of chapter 63 of Subtitle F of the Code as the subchapter is in effect for partnership taxable years beginning after December 31, 2017, including the Regulations thereunder, and all related and conforming amendments made to the Code and Regulations under and implementing Section 1101 of Pub.L. No. 114-74 (commonly referred to as the Bipartisan Budget Act of 2015).

## **2.13. “Code”**

“Code” means the Internal Revenue Code of 1986, as amended from time to time (or any succeeding law).

## **2.14. “Company”**

“Company” means the limited liability company formed by the filing of the Articles of Organization and governed by the Agreement under the name “Limited Liability Company.”

## **2.15. “Consensual Transfer”**

“Consensual Transfer” means a Transfer that a Member willingly initiates or desires to make of the Member’s Interest in the Company.

## **2.16. “Consent Vote”**

“Consent Vote” means consent to the admission of a Transferee as a Member by Voting Unanimously or by a Majority? the Members entitled to Vote concerning a Transfer to the Transferee.

## **2.17. “Contribution Value”**

“Contribution Value” means the fair market value as reasonably determined by the Manager of property (other than cash) contributed by a Member to the Company (net of liabilities secured by the contributed property that the Company may assume or take subject to Code §752).

## **2.18. “Degree of Relationship”**

2.18.1. “Degree of Relationship” means the proximity of relationship between two individuals through marriage, birth, or adoption.

2.18.2. The standards of this Subsection 2.18.2 apply to the definition of Degrees of Relationship for purposes of this Section 2.18.

2.18.2.1. An individual’s parent or child is related to the individual by one Degree of Relationship.

2.18.2.2. An individual’s grandparent, grandchild, or sibling is related to the individual by two Degrees of Relationship.

2.18.2.3. An individual’s great-grandparent, great-grandchild, or sibling’s child is related to the individual by three Degrees of Relationship.

2.18.2.4. An individual’s second great-grandparent, second great-grandchild, sibling’s grandchild, grandparent’s sibling, or child of a parent’s sibling is related to the individual by four Degrees of Relationship.

2.18.2.5. An individual’s third great-grandparent, third great-grandchild, sibling’s great grandchild, great-grandparent’s sibling, child of a grandparent’s sibling, or grandchild of a parent’s sibling is related to the individual by five Degrees of Relationship.

2.18.2.6. An individual’s Degrees of Relationship to another individual are imputed to the spouse or step-sibling of other individual (an “Imputed Relationship”).

2.18.3. The examples in this Subsection 2.18.3 illustrate Imputed Relationship.

2.18.3.1. An individual's spouse, step-parent, or step-child is related to the individual by one Degree of Relationship.

2.18.3.2. An individual's step-grandparent, step-grandchild, step-sibling, or a spouse of the individual's sibling, step-grandchild, or step-sibling is related to the individual by two Degrees of Relationship.

2.18.3.3. An individual's step-great-grandparent, step-great-grandchild, step-sibling's child, or a spouse of the individual's sibling's child, step-great-grandchild, or step-sibling's child is related to the individual by three Degrees of Relationship.

## **2.19. "Descendant"**

"Descendent" means an individual who follows another individual in lineage, in the direct line of descent by birth or adoption from the other individual. For example, an individual is a Descendent of the individual's parents and grandparents.

## **2.20. "Disabled"**

"Disabled" means that one of the following conditions or characteristics describes or pertains to an individual:

2.20.1. a court of competent jurisdiction has made findings that the individual is legally in incapacitated;

2.20.2. a state or federal government agency has approved the individual's application for Supplemental Security Income, Social Security disability benefits, or Medicaid;

2.20.3. an illness or mental or physical disability impair the individual's ability to use or manage the individual's Interest or Units in the Company wisely or effectively; or

2.20.4. individual's physician has issued a written opinion that the individual's health condition physically or mentally impairs the individual's ability to consistently, prudently, and timely participate in important personal or business transactions, such as monitoring account balances, paying bills as they become due, and maintaining property of which the individual is the owner.

## **2.21. "Disinterested"**

An individual is "Disinterested" if the individual is not:

2.21.1. a Member;

2.21.2. a Member's employer or employee;

2.21.3. an individual related to a Member's employer or employee by four or fewer Degrees of Relationship;

2.21.4. an individual related to a Member by four or fewer Degrees of Relationship; or

2.21.5. concerning a Land Appraiser or Mineral Appraiser,

2.21.5.1. an owner of Real Property whose boundaries are contiguous to the Real Property for which an Offeror or Offeree engages the Land Appraiser to issue a Land Appraisal Report or the Mineral Appraiser to issue a Mineral Appraisal Report; or

2.21.5.2. an individual related by two Degrees of Relationship to the owner of Real Property whose boundaries are contiguous to the Real Property for which an Offeror or Offeree engages the Land Appraiser to issue a Land Appraisal Report or the Mineral Appraiser to issue a Mineral Appraisal Report.

## **2.22. "Fiscal Year"**

2.22.1. "Fiscal Year" means the calendar year; provided, however, that the first Fiscal Year of the Company will begin on the date specified in the Agreement and end on December 31 of that same year.

2.22.2. The last Fiscal Year of the Company will end on the date on which the Company terminates under the provisions of the Agreement concerning the dissolution of the Company and liquidation and distribution of the Company's assets.

## **2.23. "Improvements"**

"Improvements" means permanent structures and other fixtures installed on Real Property.

## **2.24. "Indemnified Party"**

"Indemnified Party" means a person entitled to indemnification under the Agreement.

## **2.25. "Interest"**

2.25.1. "Interest," when used in the context of a Member's "Interest" or a Member's "Interest in the Company," means the Member's entire equity ownership share in the Company.

2.25.2. A Member's assignment all or part of the Member's Interest is subject to the provisions of the Agreement.

## **2.26. “Involuntary Transfer”**

“Involuntary Transfer” means a Transfer of a Member’s Interest in the Company that occurs under an order of a court of competent jurisdiction, including without limitation a Transfer ordered in proceedings for dissolution of the Member’s marriage for an order in proceedings concerning the Member’s insolvency or obligations to creditors.

## **2.27. “Involuntary Transferee”**

“Involuntary Transferee” means a Person who acquires a Beneficial Interest in a Member’s Interest in the Company through an Involuntary Transfer.

## **2.28. “Land Appraisal Report”**

A “Land Appraisal Report” is a Land Appraiser’s written opinion that:

2.28.1. is prepared with procedures and content that are consistent with Standards Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice (USPAP) for a Land Appraisal Report; and

2.28.2. states a conclusion about the fair market value of the Real Property that is the subject of the Land Appraisal Report.

## **2.29. “Land Appraiser”**

“Land Appraiser” means a Disinterested, licensed real estate appraiser who is engaged under provisions of the Agreement to issue a Land Appraisal Report.

## **2.30. “Liquidator”**

“Liquidator” means a liquidating agent or committee appointed by a Super Majority Vote of Members.

## **2.31. “Majority Vote”**

“Majority Vote” means the affirmative Vote of Members having more than 50% of the Votes as of the Record Date.

## **2.32. “Manager”**

“Manager” means a Person appointed or employed under the Agreement to manage the Company's business under the Agreement's terms and conditions.

### **2.33. “Member”**

2.33.1. “Member” means a Person who has contributed property in exchange for an Interest in the Company or has received an Interest in the Company through a Transfer.

2.33.2. The Agreement may state each Initial Member’s name with a description of the Member’s initial contributions of property to the Company and Percentage Interest.

2.33.3. If Section 2.17 of this ARTICLE 2 provides for Members to Vote by Units, the Agreement may also specify the number of Units that the Company has issued to each Member.

2.33.4. If the Company’s initial Members are the Trustees of a trust (the “Trust”) established under a will or trust agreement that directs the Trustees to distribute the Trust’s Interest in the Company to the Trust’s beneficiaries, the Trust’s beneficiaries will become Members after the Trustees distribute the Trust’s Interest in the Company to the beneficiaries.

2.33.5. If the Trustees of the Trust are also the Trust’s beneficiaries, their execution of the Agreement will be in their individual capacities and their capacities as Trustees.

2.33.6. The Trustees’ execution of the Agreement will bind the Trust’s beneficiaries, so it will not be necessary for the individual beneficiaries of the Trust to execute any other document to effectuate their acceptance of the Agreement or their admission as Members, other than the Trustees’ assignments of Interests to the Trust’s beneficiaries.

2.33.7. A Member may also be a Person admitted as a Substituted Member or an Additional Member under the terms of the Agreement.

### **2.34. “Mineral Appraiser”**

2.34.1. A “Mineral Appraiser” is a Disinterested person who possesses sufficient expertise about the value of one or more kinds of Minerals to give an expert written opinion of the Minerals’ fair market value.

2.34.2. It is not necessary for Mineral Appraiser to be licensed real estate appraiser.

2.34.3. Although it is not necessary, a Mineral Appraiser may be a Certified Minerals Appraiser certified by the International Institute of Minerals Appraisers.

### **2.35. “Mineral Appraisal Report”**

A “Mineral Appraisal Report” is a Mineral Appraiser’s written opinion that states a conclusion about the fair market value of the Minerals that are the subject of the Mineral Appraisal Report.

## **2.36. “Minerals”**

“Minerals” mean coal, oil, gas, clay, fire clay, stone, gravel, sand, and other solid, gaseous, and liquid substances remaining undeveloped and unextracted below the surface of Real Property.

## **2.37. “Net Income” and “Net Loss”**

2.37.1. “Net Income” and “Net Loss,” respectively, mean the income or loss of the Company as determined under the Company's accounting method for Federal income tax purposes, including, for all purposes, any income exempt from tax and any expenditures of the Company under Code §705(a)(2)(B).

2.37.2. However, if any property's value in the Company's accounting records differs from that property's adjusted basis for tax purposes, the Company will compute gain, loss, depreciation, and amortization for the property according to the property's book basis consistent with the requirement of Treasury Regulation §1.704-1(b)(2)(iv)(g).

2.37.3. Furthermore, the Company will exclude from the computation of Net Income and Net Loss any item allocated under the provisions of the Agreement concerning the allocation of income and losses.

## **2.38. “Nonresidential Improvement”**

“Nonresidential Improvement” means a permanent structure or other fixture constructed or installed on Real Property that is not Residential Real Property.

## **2.39. “Offeror” and “Offeree.”**

A Person initiating a negotiation or exercising an option to buy or sell a Member's Interest under the Agreement is the “Offeror,” and a Person responding to an Offeror is the “Offeree.”

## **2.40. “Ownership Interest”**

“Ownership Interest” means a person's full or partial a business entity, other than the Company, or ownership of real or Personal Property other than the Company's real or Personal Property.

## **2.41. “Partnership Representative”**

“Partnership Representative” means the Person named or otherwise designated by the Members or Managers to act as Partnership Representative under Code §6223 and the Regulations thereunder on each Federal income tax return filed on behalf of the Company for each Fiscal Year, unless the Company is eligible to make, and the Manager acting on behalf of the Company have made, the

election under Code §6221(b) on the Federal income tax return for that Fiscal Year or the Company is not being taxed as a partnership for that Fiscal Year.

#### **2.42. “Percentage Interest”**

“Percentage Interest” means the percentage of each Member’s Interest in the Company stated in the Agreement, as adjusted under the provisions of the Agreement concerning changes in the Member’s Capital Account.

#### **2.43. “Person”**

“Person” means any individual, partnership, limited liability company, corporation, trust, or other entity.

#### **2.1. “Personal Property”**

2.1.1. “Personal Property” is any tangible or intangible property other than Real Property, in which a person may have a full or partial right of ownership, income, or possession, whether current or contingent.

2.1.2. For purposes of this definition, Personal Property does not include money or money’s value held as legal tender, deposited in an account established in a bank or other state or federally regulated financial institution, or payable or receivable by or on behalf of any person.

#### **2.2. “Personal Property Appraisal Report”**

A “Personal Property Appraisal Report” is a written opinion in which a Personal Property Appraiser states an opinion of the value of the Company’s Personal Property.

#### **2.3. “Personal Property Appraiser”**

A “Personal Property Appraiser” may be:

2.3.1. a Disinterested Dual-Licensed Appraiser to conduct public auctions and collect commissions as an auctioneer in the state where the Company’s Personal Property is located; or

2.3.2. a Disinterested owner or employee of a retail or wholesale merchant that engages as a dealer in the sale and purchase of used Personal Property comparable to the Company’s Personal Property.



## **2.4. “Real Property”**

2.4.1. “Real Property,” also known as “real estate,” is land, any structure or manufactured thing permanently attached to land as a “fixture,” and any full or partial right, whether current or contingent, to own or possess land or a fixture, or to receive rental or royalty income concerning the use or possession of land or a fixture.

2.4.2. Although Real Property may include Minerals, provisions of the Agreement concerning Land Appraisals will not include Minerals if any person engages a Mineral Appraiser to issue a Mineral Appraisal Report concurrently with the engagement of a Land Appraiser to issue a Land Appraisal Report.

## **2.5. “Record Date”**

“Record Date” means 5:00 PM Time Zone Time 60 days before the date on which the Members cast their Votes.

## **2.6. “Reg.”**

“Reg.” means regulations promulgated under the Code by the Department of the Treasury of the United States of America.

## **2.7. “Residential Improvement”**

“Residential Improvement” means a permanent structure or other fixture constructed or installed on Residential Real Property.

## **2.8. “Residential Real Property”**

“Residential Real Property” means Real Property improved by the construction or installation of a structure as a fixture for primary use as a single-family residence (a “Residence”), the portion of the Real Property that fully encompasses the area occupied by:

2.8.1. the Residence;

2.8.2. one or more attached or detached structures for storage of vehicles, tools, equipment, and other Personal Property owned or possessed by the occupants of the Residence for personal use;

2.8.3. a sewer line or septic system that receives the Residence’s sewage;

2.8.4. a water line or water well that furnishes water exclusively for the Residence;

2.8.5. portions of electric systems dedicated to furnishing electricity for the Residence;

2.8.6. portions of systems dedicated to furnishing natural gas or liquid propane gas for the Resident; and

2.8.7. the driveway and parking areas used primarily by the occupants of the Residence for egress, ingress, and to park their personal vehicles.

## **2.9. “Selling Member”**

“Selling Member” means a Member or Substituted Member, whose Interest in the Company the Company has an option to purchase under the Agreement.

## **2.10. “Substituted Member”**

“Substituted Member” means any Person admitted to the Company as a Member by a Vote of the Members unless the Agreement provides for the person to be admitted automatically as a Substituted Member.

## **2.11. “Super Majority Vote”**

“Super Majority Vote” means the affirmative Vote of Members having more than 75% of the Votes as of the Record Date.

## **2.12. “Transfer”**

“Transfer” means a change in the ownership of the Member’s Interest in the Company.

## **2.13. “Transferee”**

“Transferee” means a person who has acquired ownership of the Member’s Interest in the Company.

## **2.14. “Transferor”**

“Transferor” means a Member whose Interest in the Company has transferred to another person.

## **2.15. “Unit”**

2.15.1. “Unit” means the right of a Member to cast one Vote in any meeting of Members called and held under the Agreement if the Members have agreed to determine votes by Units in a Units Agreement.

2.15.2. If a Transfer of a Member's Units results in a Transferee having a number of Units that is not a whole number, the numbers of all issued Units will automatically adjust by the proportion having the least common denominator to cause the number of all Units issued to each Member to be a whole number.

2.15.3. Voting by the number of Members' respective Units permits the Members to assign Voting rights among the Members disproportionately to the Members' respective Percentage Interests.

2.15.4. For example, a Member having a 51% Percentage Interest and 30% of the number of Units issued to Members would have 30% of the number of Votes in any decision of Members.

2.15.5. A Member's assignment of Units is subject to the provisions the Agreement concerning Transfers.

## **2.16. "Units Agreement"**

2.16.1. "Units Agreement" means the Agreement or a later supplemental agreement or resolution in which Members agree to determine voting rights by the issuance of Units and specify in the Units Agreement the number of Units distributed to each Member.

2.16.2. If the Company issues Units to the Members, the Members will Vote according to the number of Units issued to each Member.

## **2.17. "Valuation Method for Minerals"**

"Valuation Method for Minerals" is the method that other Articles of the Agreement may incorporate by reference to the provisions of this Section 2.17 to determine values of the Company's Minerals under the following definitions and procedures:

### **2.17.1. Mineral Appraisal for Revaluation**

If the Company owns interests in Minerals and Managers must revalue the Company, the Managers will engage a Mineral Appraiser to issue a Mineral Appraisal Report.

### **2.17.2. Offeror's Mineral Appraisal**

2.17.2.1. The Offeror's notice will state a value of all the Company's Minerals and include a copy of a Mineral Appraisal Report prepared by a Mineral Appraiser engaged by the Offeror (the "Offeror's Mineral Appraiser") concerning all the Company's Minerals.

2.17.2.2. The Offeror's Mineral Appraiser may issue a single Appraisal Report for the Company's share of all Minerals tracts, or multiple separate Appraisal Reports (the "Offeror's Mineral Appraisal"), with a complete copy of each Appraisal Report attached to the Offer.

#### **2.17.3. Offeree's Response to the Offeror's Mineral Appraisal**

2.17.3.1. The Offeree may either accept the Offer without reservation or the Offeree will deliver to the Offeror with a "Notice of Counteroffer" stating an alternative value of the Company's Minerals with a copy of a second Appraisal Report prepared by a Mineral Appraiser engaged by the Offeree (the "Offeree's Mineral Appraiser") concerning all the Company's Minerals.

2.17.3.2. The Offeree's Mineral Appraiser may issue a single Appraisal Report for the Company's share of all Minerals tracts, or multiple separate Appraisal Reports (the "Offeree's Mineral Appraisal"), with a complete copy of each Appraisal Report attached to the Notice of Counteroffer.

#### **2.17.4. Offeror's Response to Offeree's Mineral Appraisal**

2.17.4.1. The Offeror may accept or reject the total value stated in the Offeree's Notice of Counteroffer.

2.17.4.2. If the Offeror rejects total value stated in the Offeree's Notice of Counteroffer, the Offeror and Offeree will direct the Offeror's Mineral Appraiser and Offeree's Mineral Appraiser to coordinate with a third Mineral Appraiser to issue a joint Appraisal Report (the "Joint Mineral Appraisal") to the Offeror and Offeree.

#### **2.17.5. Conclusive Minerals Value**

The total value stated in the final Mineral Appraisal of the Minerals Appraisal Valuation will constitute the "Conclusive Minerals Value" to be used to calculate the portion of the Purchase Price determined by the Minerals Appraisal Valuation.

### **2.18. "Valuation Method for Personal Property"**

"Valuation Method for Personal Property" are the methods that other Articles of the Agreement may incorporate by reference to the provisions of this Section 2.18 to determine values of the Company's Personal Property under the following definitions and procedures:

#### **2.18.1. Appraisal by Dual-Licensed Land Appraiser and Personal Property Appraiser**

2.18.1.1. An individual who is a Land Appraiser and a Personal Property Appraiser (a “Dual-Licensed Appraiser”) may appraise the Company’s Real Property and Personal Property as a Land Appraiser and a Personal Property Appraiser under this Section 2.18.

2.18.1.2. A Dual-Licensed Appraiser may issue a written opinion as a combined Land Appraisal and Personal Property Appraisal if the written opinion distinguishes the Dual-Licensed Appraiser’s opinions of values and methodologies for determining values of the Company’s Real Property from the Dual-Licensed Appraiser’s opinions of values and methodologies for determining values of the Company’s Personal Property.

### **2.18.2. Personal Property Appraisal for Revaluation**

If the Company owns Personal Property and Managers must revalue the Company, the Managers will engage a Personal Property Appraiser to issue a Personal Property Appraisal Report.

### **2.18.3. Offeror’s Personal Property Appraisal**

The Offeror’s notice will state a value of all the Company’s Personal Property and include a copy of a Personal Property Appraisal Report prepared by a Personal Property Appraiser engaged by the Offeror (the “Offeror’s Personal Property Appraiser”) concerning all the Company’s Personal Property, either expressed in a single Appraisal Report for the Company’s share of all Personal Property items, or with one or more of the Personal Property items described in separate Appraisal Reports (the “Offeror’s Personal Property Appraisal”), with a complete copy of each Appraisal Report attached to the Offer.

### **2.18.4. Offeree’s Response to the Offeror’s Personal Property Appraisal**

The Offeree may either accept the Offer without reservation or the Offeree will deliver to the Offeror with a “Notice of Counteroffer” stating an alternative value of the Company’s Personal Property with a copy of a second Appraisal Report prepared by a Personal Property Appraiser engaged by the Offeree (the “Offeree’s Personal Property Appraiser”) concerning all the Company’s Personal Property, either expressed in a single Appraisal Report for the Company’s share of all Personal Property items, or with one or more of the Personal Property items described in separate Appraisal Reports (the “Offeree’s Personal Property Appraisal”), with a complete copy of each Appraisal Report attached to the Notice of Counteroffer.

#### **2.18.5. Offeror's Response to Offeree's Personal Property Appraisal**

The Offeror may accept or reject the total value stated in the Offeree's Notice of Counteroffer. If the Offeror rejects total value stated in the Offeree's Notice of Counteroffer, the Offeror and Offeree will direct the Offeror's Personal Property Appraiser and Offeree's Personal Property Appraiser to coordinate with a third Personal Property Appraiser to issue a joint Appraisal Report (the "Joint Personal Property Appraisal") to the Offeror and Offeree.

#### **2.18.6. Conclusive Personal Property Value**

The total value stated in the final Personal Property Appraisal of the Personal Property Appraisal Valuation will constitute the "Conclusive Personal Property Value" to be used to calculate the portion of the Purchase Price determined by the Personal Property Appraisal Valuation.

### **2.19. "Valuation Method for Real Property"**

"Valuation Method for Real Property" is the method that other Articles of the Agreement may incorporate by reference to the provisions of this Section 2.19 to determine values of the Company's Real Property under the following definitions and procedures:

#### **2.19.1.1. Real Property Appraisal for Revaluation**

If the Company owns Real Property and Managers must revalue the Company, the Managers will engage a Land Appraiser to issue a Land Appraisal Report.

#### **2.19.1.2. Offeror's Land Appraisal**

The Offeror's notice will state a value of all the Company's Real Property and include a copy of a Land Appraisal Report prepared by a Land Appraiser engaged by the Offeror (the "Offeror's Land Appraiser") concerning all the Company's Real Property, either expressed in a single Appraisal Report for the Company's share of all Real Property tracts, or with one or more of the tracts described in separate Appraisal Reports (the "Offeror's Land Appraisal"), with a complete copy of each Appraisal Report attached to the Offer.

#### **2.19.1.3. Offeree's Response to the Offeror's Land Appraisal**

The Offeree may either accept the Offer without reservation or the Offeree will deliver to the Offeror with a "Notice of Counteroffer" stating an alternative value of the Company's Real Property with a copy of a second Appraisal Report prepared by a Land Appraiser engaged by the Offeree (the "Offeree's Land Appraiser") concerning all the Company's

Real Property, either expressed in a single Appraisal Report for the Company's share of all Real Property tracts, or with one or more of the tracts described in separate Appraisal Reports (the "Offeree's Land Appraisal"), with a complete copy of each Appraisal Report attached to the Notice of Counteroffer.

#### **2.19.1.4. Offeror's Response to Offeree's Land Appraisal**

The Offeror may accept or reject the total value stated in the Offeree's Notice of Counteroffer. If the Offeror rejects total value stated in the Offeree's Notice of Counteroffer, the Offeror and Offeree will direct the Offeror's Land Appraiser and Offeree's Land Appraiser to coordinate with a third Land Appraiser to issue a joint Appraisal Report (the "Joint Land Appraisal") to the Offeror and Offeree.

#### **2.19.1.5. Conclusive Real Property Value**

The total value stated in the final Land Appraisal of the Real Property Appraisal Valuation will constitute the "Conclusive Real Property Value" to be used to calculate the portion of the Purchase Price determined by the Real Property Appraisal Valuation.

### **2.20. "Vote"**

"Vote" means Members' voting participation in a decision of Members according to their respective Percentage Interests or numbers of Units. As of the date of the Agreement, Members will Vote by Units.