**Banneker Thoroughbred LLC Agreement**

**Dear Partner:**

The following document is the Limited Liability Company agreement that is being used for the creation of the company that will own and manage Banneker. Please review this document in its entirety and contact either Aron Wellman or Kelsey Marshall with questions you may have.

After you have reviewed, please complete the information requested in the **Subscription Agreement** on Page 36 and return to Eclipse Thoroughbred Partners by email or mail.

**To assist with completion of the Subscription Agreement, an example overview is provided below.**

* Type Amount Contributed & Number of Units Purchased (information can be obtained from Payment Instructions)



* Enter Name of Participating Member & Sign
* Insert the Type of Participating Entity if Not an Individual (Company, Trust, Other), the Name of the Individual Responsible & Their Title
* Type the SSS or Tax ID Number of The Participating Member
* Type The Participating Member’s Address Information and Primarily Contact Numbers
* Insert the Ownership Percentage Purchased by the Participating Member (information can be obtained from Payment Instructions)

**OPERATING AGREEMENT**

**for**

**Banneker Thoroughbred LLC**

**A Delaware Limited Liability Company**

This LLC Agreement (”Agreement”) is executed and agreed to by the current member of Banneker Thoroughbred LLC (hereinafter the “Company”) and any individuals or entities hereafter admitted as members to the LLC. The business of the Company shall be to own (in whole or in part), breed and race Banneker, a Dark Bay 2 Year-Old Colt by Not This Time out of Bosserette by Street Boss.

**ARTICLE I: DEFINITIONS**

Capitalized terms used in this Agreement have the meanings specified in this Article or elsewhere in this Agreement and when not so defined shall have the meanings set forth in the Delaware Limited Liability Act.

1.1. Act means the Delaware Limited Liability Company Act, including amendments from time to time.

1.2. Adjusted Capital Contribution is defined in Article IV, Section 4.6.

1.3. Allocable Ownership means the then fair market value of all of the Company Property (as determined by an independent third party appraisal) multiplied by the Percentage Interest of the Member withdrawing or being removed.

1.4. Affiliate of a Member means (1) any Person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Member. The term control (including the terms controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through membership, ownership of voting securities, by contract, or otherwise.

1.5. Agreement means this operating agreement, as originally executed and as amended from time to time.

1.6. Certificate of Formation is defined in the “Act” as applied to this Company.

1.7. Assignee means a person who has acquired a Member’s Economic Interest in the Company, by way of a Transfer in accordance with the terms of this Agreement, but who has not become a Member.

1.8. Assigning Member means a Member who by means of a Transfer has transferred an Economic Interest in the Company to an Assignee.

1.9. Available Cash means all net revenues from the Company’s operations, including net proceeds from all sales, refinancings, and other dispositions of Company property that the Manager, in the Manager’s sole discretion, deems in excess of the amount reasonably necessary for the operating requirements of the Company, including debt reduction and Reserves.

1.10. Book Depreciation means, with respect to any item of Company property for a given fiscal year, a percentage of depreciation or other cost recovery deduction allowable for federal income tax purposes for such item during that fiscal year equal to the result (expressed as a percentage) obtained by dividing (1) the Fair Market Value of that item at the beginning of the fiscal year (or the acquisition date during the fiscal year), by (2) the federal adjusted tax basis of the item at the beginning of the fiscal year (or the acquisition date during the fiscal year). If the adjusted tax basis of an item is zero, the Manager may determine Book Depreciation, provided that he does so in a reasonable and consistent manner.

1.11. Capital Account means, with respect to any Member, the account reflecting the capital interest of the Member in the Company, consisting of the Member’s initial Capital Contribution maintained and adjusted in accordance with Article III, Section 3.3.

1.12. Capital Contribution means, with respect to any Member, the amount of the money and the Fair Market Value of any property, other than money, contributed to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under IRC Section 752) in consideration of a Percentage Interest held by such Member, as determined from time to time.

1.13. Capital Event means a sale or disposition of any of the Company’s capital assets, the receipt of insurance and other proceeds derived from the involuntary conversion of Company property, the receipt of proceeds from a refinancing of Company property, or a similar event with respect to company property or assets.

 1.14. Certificate of Formation means the Certificate of Formation, as amended from time to time, filed for the Company in accordance with the Act.

1.15. Code or IRC means the Internal Revenue Code of 1986, as amended, and any successor provision.

1.16. Company means Banneker Thoroughbred LLC, a Delaware Limited Liability Company.

1.17. Carrying Value means:

(a) With respect to a contributed Property, the fair market value of such Property at the time it was contributed to the Company reduced (but not below zero) by all depreciation, depletion (computed as a separate item of deduction), amortization and cost recovery deductions charged to the Members’ Capital Accounts;

(b) With respect to a Revalued Property, the fair market value of such Property at the time of revaluation, as determined in accordance with ¶3.7 hereof, reduced (but not below zero) by all depreciation, depletion, amortization and cost recovery deductions charged to the Members’ Capital Accounts; and

(c) With respect to any other Company Property, the adjusted basis of such Property for federal income tax purposes, all as of the time of determination.

The Carrying Value of any Property shall be adjusted from time to time.

1.18. Company Property or Property means properties, assets and rights of any type owned by the Company, including accounts receivable and goodwill.

1.19. Economic Interest means a Person’s right to share in the income, gains, losses, deductions, credit or similar items of, and to receive distributions from, the Company, but does not include any other rights of a Member, including the right to vote or to participate in management.

1.20. Encumber means the act of creating or purporting to create an Encumbrance, whether or not perfected under applicable law.

1.21. Encumbrance means, with respect to any Membership Interest, or any element thereof, a mortgage, pledge, security interest, lien, proxy coupled with an interest (other than as contemplated in this Agreement), option, or preferential right to purchase.

1.22. Gross Asset Value means, with respect to any item of property of the Company, the item’s adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any item of property contributed by a

Member to the Company shall be the Fair Market Value of such item of property, as mutually agreed by the contributing Member and the Company;

(b) The Gross Asset Value of any item of Company property contributed

by a Member to the Company shall be the Fair Market Value of such item of

property on the date of distribution; and

(c) The Gross Asset Value of any item of Company property shall be

subject to the adjustments specified in Article IV, Section 4.11.

1.23. Initial Members means Eclipse Thoroughbred Partners.

1.24. Interest means the membership interest or interest of a Member in the Company, including the right to any and all benefits to which such member may be entitled in accordance with the Agreement and the obligations as provided in this Agreement.

1.25. Involuntary Transfer means, with respect to any Membership Interest, or any element thereof, any Transfer or Encumbrance, whether by operation of law, pursuant to court order, foreclosure of a security interest, execution of a judgment or other legal process, or otherwise, including a purported Transfer to or from a trustee in bankruptcy, receiver, or assignee for the benefit of creditors.

1.26. Losses are defined in Article IV, Section 4.2.

1.27. Majority of Members means a Member or Members whose Percentage Interests represent more than 50 percent of the Percentage Interests of all the Members.

1.28. Manager or Managers means the Person(s) named as such in Article II or the Persons who from time to time succeed any Person as a Manager and who, in either case, are serving at the relevant time as a Manager.

1.29. Member means an Initial Member or a Person who otherwise acquires a Membership Interest, as permitted under this Agreement, and who remains a Member. The Members and their respective interests are set forth on the attached and incorporated Exhibit A.

1.30. Membership Interest means a Member’s rights in the Company, collectively, including the Member’s Economic Interest, any right to Vote or participate in management, and any right to information concerning the business and affairs of the Company.

1.31. Net Cash Receipts means all of the Company’s liquid funds in excess of the amount set aside for reserves, exclusive of the proceeds of capital contributions or borrowed funds.

1.32 Net Positive Cash Flow means the time at which all distributions made to the Members equals or exceeds the amount of all Capital Contributions made to the Company by the Members.

1.33. Notice means a written notice required or permitted under this Agreement. A notice shall be deemed given or sent when deposited, as certified mail for overnight delivery, postage and fees prepaid, in the United States mails; when delivered to Federal Express, United Parcel Service, DHL, WorldWide Express, or Airborne Express, for overnight delivery, charges prepaid or charged to the sender’s account; when personally delivered to the recipient; when transmitted by electronic means, and such transmission is electronically confirmed as having been successfully transmitted; or when delivered to the home or office of a recipient in the care of a person whom the sender has reason to believe will promptly communicate the Notice to the recipient.

1.34. Percent of the Members means the specified total of Percentage Interests of all the Members.

1.35. Percentage Interest means a fraction, expressed as a percentage, the numerator of which is the total of a Member’s Capital Account and the denominator of which is the total of all Capital Accounts of all Members.

1.36. Person means an individual, partnership, limited partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

1.37. Profits and Losses are defined in Article IV, Section 4.2.

1.38. Proxy has the meaning set forth in the “Act”. A Proxy may not be transmitted orally.

1.39. Regulations (Reg) means the income tax regulations promulgated by the United States Department of the Treasury and published in the Federal Register for the purpose of interpreting and applying the provisions of the Code, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.

1.40. Required Interest means one or more Members entitled to vote having among them more than fifty percent (50%) of the total outstanding Units.

1.41. Reserves means the aggregate of reserve accounts that the Manager, in the Manager’s sole discretion, deems reasonably necessary to meet accrued or contingent liabilities of the Company, reasonably anticipated operating expenses, and working capital requirements.

1.42. Revalued Property means any Property, the Carrying Value of which has been adjusted in accordance with ¶3.7(a) or (b).

1.43. Sharing Ratio means the percentage that each Member’s Unit’s bear to all outstanding Units which shall not be diluted except as otherwise provided in this Agreement.

1.44. Successor in Interest means an Assignee, a successor of a Person by merger or otherwise by operation of law, or a transferee of all or substantially all of the business or assets of a Person.

1.45. Tax item means each item of income, gain, loss, deduction, or credit of the Company.

1.46. Tax Matters Partner means such Person as may be designated under Article VI, Section 6.6.

1.47. Thoroughbred means race Banneker, a Dark Bay 2 Year-Old Colt by Not This Time out of Bosserette by Street Boss.

1.48. Transfer means, with respect to a Membership Interest or any element of a Membership Interest, any sale, assignment, gift, Involuntary Transfer, Encumbrance, or other disposition of such a Membership Interest or any element of such Membership Interest, directly or indirectly, other than an Encumbrance that is expressly permitted under this Agreement.

1.49. Triggering Event is defined in Article VIII, Section 8.4.

1.50. Unit means an Interest representing the Member’s initial Capital Contribution to the Company.

1.51. Unrealized Gain attributable to any item of Company Property means, as of the date of determination, the excess, if any, of (a) the fair market value of such Property (as determined under ¶3.7 hereof) as of such date, over (b) the Carrying Value of such Property as of such date (prior to any adjustment to be made pursuant to ¶3.7 as of such date).

1.52. Unrealized Loss attributable to any item of Company Property means, as of the date of determination, the excess, if any, of (a) the Carrying Value of such Property as of such date (prior to any adjustment to be made pursuant to ¶3.7 as of such date), over (b) the fair market value of such Property (as determined under ¶3.7) as of such date.

1.53. Vote means a written consent or approval, a ballot cast at a meeting, or a voice vote.

1.54. Voting Interest means, with respect to a Member, the right to Vote or participate in management and any right to information concerning the business and affairs of the Company provided under the Act, except as limited by the provisions of this Agreement. A Member’s voting Interest shall be directly proportional to that Member’s Percentage Interest.

1.55 Whenever the term appraiser is used in this agreement it shall mean unrelated to and unaffiliated with the Manager and recognized in the industry as a knowledgeable appraiser of thoroughbreds with at least 10 years of experience.

**ARTICLE II: CERTIFICATE OF FORMATION**

2.1. Formation. The Company has been organized as a Delaware limited liability company under and pursuant to the Act and the filing of the Certificate of Formation for the Company with the Delaware Secretary of State. The rights and obligations of the Members shall be as set forth in the Act except as the Certificate of Formation or this Agreement expressly provides otherwise. In the event of a conflict between the terms of this Agreement and the terms of the Certificate of Formation, the terms of the Certificate of Formation shall prevail.

2.2. Name of Company. The name of the Company shall be Banneker Thoroughbred LLC**.** All Company business shall be conducted in that name or such other name as the Manager or Members shall select from time to time in compliance with all applicable laws. Eclipse Thoroughbred Partners is the initial Manager and Managing Member of the Company.

2.3. Registered Office and Registered Agent and Principal Office. The registered office of the Company required by the Act to be maintained in Delaware shall be the office of the initial registered agent named in the Certificate of Formation or such other office as the Members may designate from time to time in the manner provided by law. The registered agent of the

Company in Delaware shall be the initial registered agent named in the Certificate of Formation or such other Person or Persons as the Members may designate from time to time in the manner provided by law. The principal office of the Company shall be at 702 Chafee Lane SW Aiken, SC 29801, or such other place as the Members may designate from time to time, and the Company shall maintain records there as required by the Act.

2.4. Agent for Service of Process. The initial agent for service of process on the Company shall be National Registered Agents, Inc., whose address is at 1209 Orange Street Wilmington, DE 19801. The Manager may from time to time change the Company’s agent for service of process.

2.5. Business Purposes. The Company will be formed for the purposes of engaging in the business of the ownership and operation of horse purchasing, training, selling and all related activities.

2.6. Limited Liability Company. The Members intend the Company to be a limited liability company under the Act, classified as a partnership for federal and, to the maximum extent possible, state income taxes. Neither the Manager nor any Member shall take any action inconsistent with the express intent of the parties to this Agreement.

2.7. Term of Company’s Existence. The Company commenced its existence on the date of issuance of its Certificate of Formation and shall continue in existence until such time as may be determined in accordance with the terms of this Agreement.

2.8. Entity Declaration. The Company shall not be a general partnership, a limited partnership or a joint venture, and no Member shall be considered a partner or joint venture of or with any other Member, for any purposes other than for federal, state and local tax purposes, and this Agreement shall not be construed otherwise.

2.9. Initial Manager and Managing Member. Eclipse Thoroughbred Partners is the initial Manager and Managing Member of the Company.

**ARTICLE III: CAPITAL AND CAPITAL CONTRIBUTIONS**

3.1. Initial Capital Contribution. The initial Member shall make a Capital Contributions to the Company in unencumbered property in the form of the interest owned by the initial Member in the Thoroughbred as set forth in the attached and incorporated Exhibit A. The Initial Member represents that it is the sole owner of its interest in the Thoroughbred; that it has the full right and authority to contribute its interest in the Thoroughbred; that it has the full right and authority to contribute its interest to the Company; that the contribution of its interest does not violate the terms of any other agreement to which the Initial member is a party, and that the interest in the Thoroughbred will be received by the Company free and clear of all claims, liens and encumbrances.

3.2 Payment of Expenses: Each member shall be obligated to promptly pay such proportion of all charges, costs, expenses, incurred in connection with the acquisition, importation, keep, board, maintenance, care, and handling of the Thoroughbred, including shipping, as well as other expenses incidental to the formation and operation of the Company, including, but not limited to accounting, legal fees, taxes, licenses, insurance, etc., pro rated according to the Member’s Sharing Ratios. Approximately thirty days after subscribing, each Member will receive an initial invoice of expenses so long as estimated expense were not collected from each Member at the time of the company’s formation. Thereafter, Company expenses normally will be billed quarterly; however, they may be billed monthly or as needed to pay for required expenses. In the event that any Member shall not pay its share of the Thoroughbred’s expenses when called upon to do so and after at least thirty (30) days have elapsed from notice of the amount due, the Member shall be deemed to be in default of this Agreement. In the event of default, the Member will be notified in writing and given an additional ten (10) days to cure such default. If no cure occurs, the other Members shall have the right to purchase the defaulting Member’s interest in the Company at the fair market value of the Member’s interest, which shall be valued by an independent appraiser, and Company may offset any amount owed against the proceeds of such sale. Upon formation of the Company, it is agreed upon that Member shall make a pro rata contribution to the “Blue Moon: Eclipse Aftercare” initiative, which has been formed for the purpose of assuring the health and safety of the Thoroughbred. The Company shall make a contribution of $500 at the outset of the Company’s formation, with each Member to be responsible for its pro rata portion of the payment. Manager agrees to make a matching contribution to “Blue Moon: Eclipse Aftercare,” in an equivalent $500 amount to the contribution made by the Company.

3.3. Capital Accounts. An individual Capital Account for each Member shall be maintained in accordance with the requirements of Reg. 1.704-1(b)(2)(iv) and adjusted in accordance with the following provisions:

(a) A Member’s Capital Account shall be increased by that Member’s

Capital Contributions, that Member’s share of Profits, and any items in the nature of income or gain that are specially allocated to that Member pursuant to Article IV.

(b) A Member’s Capital Account shall be increased by the amount of any Company liabilities assumed by that Member subject to and in accordance with the provisions of Reg. 1.704-1(b)(2)(iv)(c).

(c) A Member’s Capital Account shall be decreased by (a) the amount of

cash distributed to that Member, (b) the Fair Market Value of any property of the

Company so distributed, net of liabilities secured by such distributed property that

the distributee Member is considered to assume or to be subject to under IRC

Section 752; and (c) the amount of any items in the nature of expenses or losses

that are specially allocated to that Member pursuant to Article IV.

(d) A Member’s Capital Account shall be reduced by the Member’s share

 of any expenditures of the Company described in IRC Section 705(a)(2)(B) or

 which are treated as IRC Section 705(a)(2)(B) expenditures pursuant to Reg.

Section 1.704-1(b)(2)(iv)(1), including syndication expenses and losses

nondeductible under IRC Sections 267(a)(1) or 707(b)).

(e) If any Economic Interest (or portion thereof) is transferred, the

transferee of such Economic Interest or portion shall succeed to the transferor’s

Capital Account attributable to such interest or portion.

(f) The principal amount of a promissory note that is not readily traded on

an established securities market and that is contributed to the Company by the

maker of the note shall not be included in the Capital Account of any Person until

the Company makes a taxable disposition of the note or until (and to the extent)

principal payments are made on the note, all in accordance with Reg. Section

1.704-1(b)(2)(iv)(d)(2).

(g) Each Member’s Capital Account shall be increased or decreased as

necessary to reflect a revaluation of the Company’s property assets in accordance

 with the requirements of Reg. Sections 1.704-1(b)(2)(iv)(f) and 1.704-1(b)(2)

(Iv)(g), including the special rules under Reg. Section 1.704-1(b)(4), as applicable.

The provisions of this Agreement respecting the maintenance of Capital Accounts

are intended to comply with Reg. Section 1.704-1(b) and shall be interpreted and

applied in a manner consistent with those Regulations.

3.4. Withdrawals. A Member shall not be entitled to withdraw any part of the Member’s Capital Contribution or to receive any distributions, whether of money or property, from the Company except as provided in this Agreement.

3.5. Interest. No interest shall be paid on Capital Contributions or on the balance of a Member’s Capital Account.

3.6. Loans by Members. Any Member may, but is not obligated to, loan to the Company such sums as the Members determine to be appropriate for the conduct of the Company’s business. Any such loans shall be made at an interest rate and upon other terms and for such maturities as the Members determine are commercially reasonable.

3.7. Revaluation of Capital Accounts Upon Occurrence of Certain Events.

 (a) Contributions. In accordance with the provisions of Treas. Reg. 1.704-1(b)(2)(iv)(f) if, after the initial capital is contributed pursuant to ¶3.1, money or property in other than a de minimis amount is contributed to the Company in exchange for an Interest, the Capital Accounts of the Members and Carrying Values of all Company Property (determined immediately prior to such issuance) shall be adjusted to reflect the Unrealized Gain or Loss attributable to each such Company Property as if such Unrealized Gain or Unrealized Loss had been recognized on a sale of each such item of Company Property immediately prior to such issuance and had been allocated to the Members in accordance with Article 4. In determining the Unrealized Gain or Unrealized Loss, the fair market value of Company Property shall be as determined pursuant to ¶11.3(d), below.

 (b) Distributions. In accordance with the provisions of Treas. R Reg. 1.704-1(b)(2)(iv)(f), if money or Company Property in other than a de minimus amount is distributed to a Member in exchange for all or part of an Interest, the Capital Accounts of the Members and the Carrying Values of all Company Property (determined immediately prior to such distribution) shall be adjusted to reflect the Unrealized Gain or Unrealized Loss attributable to each item of Company Property as if such Unrealized Gain or Unrealized Loss had been recognized on a sale of each such item of Company Property immediately prior to such distribution and had been allocated to the Members in accordance with Article 4. In determining the Unrealized Gain or Unrealized Loss, the fair market value of the distributed Property shall be as determined by the Members.

3.8. Priority of Return. Except as otherwise expressly provided in this Agreement, no Member shall have priority over any other Member with respect to the return of a Capital Contribution or distributions or allocations of income, gain, losses, deductions, credits, or items thereof.

3.9. No Certificates of Ownership. The respective Interests of the Members in the Company are not required to be represented by any certificate or document other than this Agreement.

**ARTICLE IV: ALLOCATIONS AND DISTRIBUTIONS**

4.1. Allocation of Profits and Losses. Except as otherwise provided herein, the {Profits of the Company and all items of Company income, gain, or credit shall be allocated, for Company book purposes and for tax purposes, to the Members in proportion to the Member’s Sharing Ratio. Losses of the Company and all items of loss or deduction shall be allocated to a Member in accordance with the Member’s Percentage Interest (including payments to the Manager under 4.17 and 5.5 hereof)..

4.2 Profits and Losses, Defined. As used in this Agreement, Profits and Losses means, for each fiscal year or other period specified in this Agreement, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with IRC Section 703(a), including all Tax Items required to be states separately pursuant to IRC Section 703(a)(1), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax

and not otherwise taken into account in computing Profits or Losses shall be

added to such taxable income or loss;

(b) Any expenditures of the Company described in IRC Section 705(a)(2)(B)

or treated as IRC Section 705(a)(2)(B) expenditures pursuant to Reg. Section

1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Profits or

Losses shall be subtracted from such taxable income or shall increase such loss;

(c) Gain or loss resulting from any disposition of Company property with

respect to which gain or loss is recognized for federal income tax purposes shall

be computed by reference to the Fair Market Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Fair

Market Value;

(d) In lieu of depreciation, amortization, and other cost recovery

deductions taken into account in computing such taxable income or loss, there

shall be taken into account Book Depreciation for such fiscal year or other

period, computed in accordance with the definition of Book Depreciation above.

(e) Notwithstanding the foregoing provisions of this Section 4.2, any items

of income, gain, loss, or deduction that are specially allocated shall not be taken into

account in computing Profits or Losses under Section 4.1.

 4.3-4.5 (Reserved)

4.6. Allocation of Profits from Capital Events. In any fiscal year of the Company, Profits in excess of Losses of the Company resulting from a Capital Event in that fiscal year shall be allocated to the Members in accordance with each Member’s Sharing Ratio.

4.7. Allocations of Losses from Capital Events. In any fiscal year of the Company, Losses in excess of Profits of the Company, resulting from a Capital Event in that fiscal year, shall be allocated to the Members with positive Capital Accounts, in proportion to their positive Capital Account balances, until no Member has a positive Capital Account. For this purpose, Capital Accounts shall be reduced by the adjustments set forth in Reg Sections 1.704-1(b)(2)

(ii)(d)(4), (5) and (6).

4.8. Allocations Respecting Asset Distributions. Any unrealized appreciation or unrealized depreciation in the values of Company property distributed in kind to Members shall be deemed to be Profits or Losses realized by the Company immediately prior to the distribution of the property and such Profits or Losses shall be allocated to the Capital Accounts in the same proportions as Profits are allocated under Section 4.1. Any property so distributed shall be treated as a distribution to the Members to the extent of the Fair Market Value of the property, less the amount of any liability secured by and related to the property. Nothing contained in this Agreement is intended to treat or cause such distributions to be treated as sales for value. For the purposes of this Section 4.8, unrealized appreciation or unrealized depreciation shall mean the difference between the Fair Market Value of such property and the Company’s federal adjusted tax basis for such property.

4.9. Allocations Respecting Contributed Property. Any item of income, gain, loss, or deduction with respect to any property (other than cash) that has been contributed by a Member to the capital of the Company, or that has been revalued pursuant to the provisions of Article III< Section 3.3(g), and that is required or permitted to be allocated to such Member for income tax purposes under IRC Section 704(c) in order to take into account the variation between the tax basis of such property and its Fair Market Value at the time of its contribution, shall be allocated solely for income tax purposes in the manner required or permitted under IRC Section 704(c) using the traditional method described in Reg Section 1.704-3(b), except that any other method allowable under applicable Regulations may be used for any contribution of property with respect to which there is agreement among the contributing Member and the Manager (and, if the Manager and the contributing Member are Affiliates, a Majority of Members who are not Affiliates of the Manager).

4.10. Allocations Between Assignor and Assignee. In the case of a Transfer of an Economic Interest during any fiscal year of the Company, the Assigning Member and Assignee shall each be allocated Profits or Losses based on the number of days each held the Economic Interest during that fiscal year. If the Assigning Member and Assignee agree to a different proration and advise the Manager of the agreed proration before the date of Transfer, Profits or Losses from a Capital Event during that fiscal year shall be allocated to the holder of the Interest on the day such Capital Event occurred. If an Assignee makes a subsequent assignment, said Assignee shall be considered an Assigning Member with respect to the subsequent Assignee for purposes of the aforesaid allocations.

4.11. Revaluation of Company Assets.

(a) The Gross Asset Value of all Company property shall be adjusted as

of the following times: (1) the acquisition of an interest in additional interest in

the Company by any new or existing Member in exchange for more than a

de minimis Capital Contribution; (2) the distribution of money or other property

(other than a de minimis amount) by the Company to a Member as consideration

for an Economic Interest in the Company, and (3) the liquidation of the Company

within the meaning of Reg Section 1.704-1(b)(2)(ii)(g), provided, however, that

adjustments under clauses (1) and (2) above shall be made only in the event of a

revaluation of Company property under Article III, Section 3.3(g) in accordance

with Reg Section 1.704-1(b)(2)(iv)(f);

(b) The Gross Asset Value of Company property shall be increased or

decreased to reflect adjustments to the adjusted tax basis of such property

pursuant to IRC Section 732, IRC Section 733, or IRC Section 743, subject to the

limitations imposed by IRC Section 755 and Reg Section 1.704-(b)(2)(iv)(m); and

(c) If the Gross Asset Value of an item of property has been determined or

adjusted pursuant to Article I, Section 22 or Paragraph (a) of (b) of this Section

4.11, such Gross Asset Value shall be adjusted by the Book Depreciation, if any,

taken into account with respect to such property for purposes of computing Profits

and Losses.

4.12. Compliance With Law and Regulations. It is the intent of the Members that each Member’s allocated share of Company Tax Items be determined in accordance with this Agreement to the fullest extent permitted by IRC Sections 704(b) and 704(c). Notwithstanding anything to the contrary contained in this Agreement, if the Company is advised that, as a result of the adoption of new or amended regulations pursuant to IRC Sections 7 04(b) and 704(c), or the issuance of authorized interpretations, the allocations provided in this Agreement are unlikely to be respected for federal income tax purposes, the Manager is hereby granted the power to amend the allocation provisions of this Agreement, on advice of accountants and legal counsel, to the minimum extent necessary to cause such allocation provisions to be respected for federal income tax purposes.

4.13. Available Cash From Business Operations. All Available Cash, other than revenues or proceeds from a Capital Event or the dissolution of the Company, shall be distributed among the Members in the same manner as Profits are allocated herein. The parties intend that Available Cash shall be distributed as soon as practicable following the Manager’s determination that such cash is available for distribution. The parties acknowledge that no assurances can be given with respect to when or whether said cash will be available for distributions to the Members.

4.14. Available Cash from Capital Events. All Available Cash resulting from a Capital Event (as distinguished from normal business operations or the dissolution of the Company) shall be distributed to the Members in accordance with their respective Percentage Interests as soon as practicable following the Manager's determination that such cash is available for distribution.

4.15. Noncash Proceeds. If the proceeds from a sale or other disposition of an item of Company property consist of property other than cash, the value of that property shall be determined by the Manager. If such noncash proceeds are subsequently reduced to cash, such cash shall be taken into account by the Manager in determining Available Cash and the Manager shall determine whether such cash has resulted from operations or from a Capital Event.

4.16. Liquidating Proceeds. Notwithstanding any other provisions of this Agreement to the contrary, when there is a distribution in liquidation of the Company, or when any Member’s interest is liquidated, all items of income and loss first shall be allocated to the Members’ Capital Accounts under this Article IV, and other deductions to the Member’s Capital Accounts shall be made before the final distribution is made. The final distribution to the Members shall be made as provided in Article X, Section 10.2(d) of this Agreement. The provisions of this Section 4.16 and Article X, Section 10.2(d) shall be construed in accordance with the requirements of Reg. Section 1.704-1(b)(2)(ii)(b)(2).

4.17. Managing Member’s Incentive Payment. In addition to the Manager’s administrative fee and any distributions which the Managing Member may be entitled to from time to time by virtue of the Managing Member’s Membership Interest, at the time the Company achieves Net Positive Cash Flow, the Managing Member also shall be entitled to receive an incentive payment equal to ten percent (10%) of said Net Positive Cash Flow payable from time to time as distributions are made to the Members. The right to incentive payments is vested with Eclipse Thoroughbred Partners upon formation of the Company and shall continue notwithstanding any change in the Managing Member for any reason other than gross negligence. In the event that the Company should sell a portion or all of its' interest for breeding purposes (stallion duty), the Managing Member shall be entitled to negotiate in good faith for Lifetime Breeding Right(s), which shall become the property of Managing Member.

**ARTICLE V: MANAGEMENT**

5.1. Management. The Company shall be managed by a Managing Member who shall thereby have a fiduciary responsibility to the Company and the other Members as required by the Act and as provided for by any other applicable common law of the state of Delaware. The initial Managing member shall be ECLIPSE THOROUGHBRED PARTNERS. The Managing member shall have the responsibility for making all routine decisions regarding the Company and the racing career of the Thoroughbred. In the event the Company owns less than one hundred percent (100%) of the Thoroughbred, the Managing member shall have the sole authority to enter into such agreements as may be necessary between or among the Company and the other co-owner or co-owners, and the Managing Member shall have sole authority to act for the Company with regard to decisions concerning the Thoroughbred which may, from time to time, need to be made by the co-owners. Notwithstanding the foregoing, nothing in this paragraph shall be construed to relieve the Managing Member from any obligation imposed elsewhere in this Agreement to consult with or take a vote of the Members.

 5.2. Replacement of Managing Member. The Managing Member can be replaced upon the vote of the Members holding a Required Interest. In the event Members holding a Required Interest vote to remove a Managing Member, in addition to any other compensation then due, the outgoing managing member shall receive payment from the Company of a sum equal to five percent (5%) of the Thoroughbred’s fair market value on the date of the vote to replace the outgoing Managing Member. Said five percent payment shall be in lieu of the commission contemplated in this Agreement. In order to determine the fair market value of the Thoroughbred for the purpose of calculating the payment required by this paragraph, the Company shall have the Thoroughbred appraised at the Company’s expense pursuant to the manner prescribed below. In the event the Members shall vote to replace the Managing Member, such election shall be without prejudice to the Managing Member’s ownership interest, if any, and shall be without prejudice to the compensation due the outgoing Managing Member, and the termination of said outgoing Managing Member’s power and authority to act shall not be effective unless or until such time as all such compensation then due has been delivered to the outgoing Managing Member.

5.3. The Members are not required to hold meetings, and decisions may be reached through one or more informal consultations followed by agreement among ECLIPSE THOROUGHBRED PARTNERS and a Majority of Members, provided that all Members are consulted (although all Members need not be present during a particular consultation), or by a written consent signed by a Members holding a majority interest. In the event that Members wish to hold a formal meeting (a Meeting) for any reason, the following procedures shall apply:

(a) Majority of Members in any combination may call a Meeting of the Members by giving Notice of the time and place of the Meeting at least 48 hours prior to the time of the holding of the Meeting. The Notice need not specify the purpose of the Meeting, or the location if the Meeting is to be held at the principal executive

office of the Company.

(b) Majority of Members in any combination shall constitute a quorum for the transaction of business at any Meeting of the Members.

(c) The transactions of the Members at any Meeting, however called or

noticed, or wherever held, shall be as valid as though transacted at a Meeting

duly held after call and Notice if a quorum is present and if, either before or

after the Meeting, each Member not present signs a written waiver of Notice,

a consent to the holding of the Meeting, or an approval of the minutes of the

Meeting.

(d) Any action required or permitted to be taken by the Members under

the Agreement may be taken with consent in writing to such action of a Majority of Members individually or collectively,

(e) Members may participate in the Meeting through the use of a

conference telephone or similar communications equipment, provided that all

Members participating in the Meeting can hear one another.

(f) The Members shall keep or cause to be kept with the books and records

of the Company full and accurate minutes of all Meetings, Notices, and waivers

of Notices of Meetings, and all written consents in lieu of Meetings.

 (g) When, in the Managing Member’s sole discretion, there exists an emergency situation (e.g. a health issue affecting the Thoroughbred or an economic situation that threatens to financially impact the Company), the Managing Member may exercise its business judgment and act without prior consent of the Members, or the Managing Member may conduct a telephonic vote of the Company’s Members concerning the emergency. In such an event, the Managing member within a period of seventy-two (72) hours or less will be required to mail to all Members the results of such telephonic vote. The holders of a Required Interest must be notified of the telephonic vote in order for a telephonic vote to be effective.

5.4. Time Devoted to the Company. It is acknowledged that the Members have other business interests to which the Members devote part of the Members’ time. The Member shall devote such time to the conduct of the business of the Company as the Members holding a majority of interest deem necessary.

5.5 Administrative Fee. In addition to any distributions which the Managing Member may be entitled from time to time by virtue of the Managing Member’s Membership Interest and in addition to incentive payments made to the Managing Member, the Managing Member also shall be entitled to administration fees. The administration fees shall include a monthly fee established by the Managing Member (currently $600 per month) and which can be increased by the Managing Member from time to time not to exceed a 25% increase in any calendar year.

5.6. Officers. The Company President shall be ARON WELLMAN who shall also serve in the capacity of all other requisite officers in accordance with provisions of the Act of the State of Delaware. The President shall attend any Meetings of Members called pursuant to Section 5.2(a)-(g).

5.7. Title to Assets. All assets of the Company, whether real or personal, shall be held in the name of the Company.

5.8. Bank. All funds of the Company shall be deposited in one or more accounts with one or more recognized financial institutions in the name of the Company, at such locations as shall be determined by the Manager. Withdrawal from such accounts shall require the signature of ARON WELLMAN or such person or persons as he may designate.

**ARTICLE VI: ACCOUNTS AND ACCOUNTING**

6.1. Accounts. Complete books of account of the Company’s business, in which each Company transaction shall be fully and accurately entered, shall be kept at the Company’s principal executive office and at such other locations as the Manager shall determine from time to time and shall be open to inspection and copying on reasonable Notice by any Member or the Member’s authorized representatives during normal business hours. The costs of such inspection and copying shall be borne by the Member.

6.2. Accounts. Financial books and records of the Company shall be kept on the accrual method of accounting, which shall be the method of accounting followed by the Company for federal income tax purposes. The financial statements of the Company shall be appropriate and adequate for the Company’s business and for carrying out the provisions of this Agreement. The fiscal year of the Company shall be January 1 through December 31.

6.3. Records. At all times during the terms of existence of the Company, and beyond that term if the Manager deems it necessary, the Manager shall keep or cause to be kept the books of account referred to in Section 6.2, together with:

(a) A current list of the full name and last known business or residence

address of each Member, together with the Capital Contribution and the share in

Profits and Losses of each Member;

(b) A current list of the full name and business or residence address of

each Manager;

(c) A copy of the Certificate of Formation, as amended;

(d) Copies of the Company’s federal, state, and local income tax or

information returns and reports, if any, for the six most recent taxable years;

(e) An original executed copy or counterparts of this Agreement, as amended;

(f) Any powers of attorney under which the Articles of Organization or

any amendments to said articles were executed;

(g) Financial statements of the Company for the six most recent fiscal

years; and

(h) The books and records of the Company as they relate to the

Company’s internal affairs for the current and past four fiscal years.

If the Manager deems that any of the foregoing items shall be kept beyond the term of existence of the Company, the repository of said items shall be as designated by the Manager.

6.4. Financial Statements. At the end of each fiscal year the books of the Company shall be closed and examined and statements reflecting the financial condition of the Company and its Profits or Losses shall be prepared, and a report thereon shall be issued by the Company’s certified public accountants. Copies of the financial statements shall be given to all Members. In addition, all Members shall receive not less frequently than at the end of each calendar quarter, copies of such financial statements regarding the previous calendar quarter, as may be prepared in the ordinary course of business, by the Manager or accountants selected by the Manager. The Manager shall deliver to each Member, within 120 days after the end of the fiscal year of the Company, a financial statement that shall include:

(a) A balance sheet and income statement, and a statement of changes in

the financial position of the Company as of the close of the fiscal year;

(b) A statement showing the Capital Account of each Member as of the

close of the fiscal year and the distributions, if any, made to each Member during

the fiscal year. Members representing at least 30 percent of the Members, by

number, may request interim balance sheets and income statements, and may, at

their own discretion and expense, obtain an audit of the Company books by

certified public accountants selected by them; provided, however, that not more

than one such audit shall be made during any fiscal year of the Company.

6.5. Income Tax Returns. Within 90 days after the end of each taxable year of the Company the Manager shall send to each of the Members all information necessary for the Members to complete their federal and state income tax or information returns and a copy of the Company’s federal, state, and local income tax or information returns for such year.

6.6 Tax Matters Partner. ARON WELLMAN or Eclipse Thoroughbred Partners shall act as Tax Matters Partner of the Company pursuant to IRC Section 6231(a)(7); provided, however that if neither of them is a Member of the Company, the Manager shall select a Member to serve as Tax Matters Partner.

6.7. Authority to be Exercised by Tax Matters Partner. The Tax Matters Partner is hereby authorized to do the following:

(a) Keep the Members informed of administrative and judicial proceedings

for the adjustment of Company items (as defined in IRC Section 6232(a)(3)) at the

Company level, as required under IRC Section 6231(g) and the implementing

Regulations;

(b) Enter into settlement agreements under IRC Section 6224(c)(3) and

applicable Regulations with the Internal Revenue Service or the Secretary of the

Treasury (the Secretary) with respect to any tax audit or judicial review, in which

agreement the Tax Matters Partner may expressly state that such agreement shall

bind the other Members, except that such settlement agreement shall not bind any

Member who (within the time prescribed under the Code and Regulations) files a

statement with the Secretary providing that the Tax Matters Partner shall not have

the authority to enter into a settlement agreement on behalf of such Member;

(c) On receipt of a notice of a final Company administrative adjustment, to

file a petition for readjustment of the Company items with the Tax Court, the

District Court of the United States for the district in which the Company’s

principal place of business is located, or the United States Court of Federal

Claims, all as contemplated under IRC Section 6226(a) and applicable Regulations;

(d) File requests for administrative adjustment of Company items on

Company tax returns under IRC Section 627(b) and applicable Regulations, and,

to the extent such requests are not allowed in full, file a petition for adjustment

with the Tax Court, the District Court of the United States for the district in which

the Company’s principal place of business is located, or the United States Court

of Federal Claims, all as contemplated under IRC Section 6228(a); and

(e) To take any other action on behalf of the Members or the Company in

connection with any administrative or judicial tax proceeding to the extent

permitted by law or regulations, including retaining tax advisers (at the expense of the

Company) to whom the Tax Matters Partner may delegate such rights and duties as

deemed necessary and appropriate.

**ARTICLE VII: MEMBERSHIP MEETINGS, VOTING, INDEMNITY**

7.1. Members and Voting Rights. There shall be only one class of membership and no Member shall have any rights or preferences in addition to or different from those possessed by any other Member. Each Member shall Vote in proportion to the Member’s Percentage Interest as of the governing record date, determined in accordance with Section 7.2. If a Member has assigned all or part of the Member’s Economic Interest to a person who has not been admitted as a Member, the Assigning Member shall Vote in proportion to the Percentage Interest that the Assigning Member would have had, if the assignment had not been made.

Without limiting the foregoing, all of the following acts shall require the unanimous Vote of the Members:

1. A compromise of the obligation of a Member to make a Capital

Contribution under Article III.

7.2. Record Dates. The record date for determining the Members entitled to receive Notice of any meeting, to Vote, to receive any distribution, or to exercise any right to respect of any other lawful action, shall be the date set by the Manager or by a Majority of Members, provided that such record date shall not be more than 60, or less than ten calendar days prior to the date of the meeting and not more than 60 calendar days prior to any other action. In the absence of any action setting a record date, the record date shall be determined in accordance with Corp C Section 17104(k).

7.3. Membership Certificates. The Company may, but shall not be required, to issue certificates evidencing Membership Interests (Membership Interest Certificates) to Members of the Company. Once Membership Interest Certificates have been issued, they shall continue to be issued as necessary to reflect current Membership Interests held by Members. Membership Interest Certificates shall be in such form as may be approved by the Manager, shall be manually signed by the Manager, and shall bear conspicuous legends evidencing the restrictions on Transfer and the purchase rights of the Company and Members set forth in Article VIII. All issuances, reissuances, exchanges, and other transactions in Membership Interests involving Members shall be recorded in a permanent ledger as part of the books and records of the Company.

7.4. Meetings: Call, Notice and Quorum. Meetings of the Members may be called at any time by the Manager, or by Members representing more than 50 percent of the Interests of the Members for the purpose of addressing any matters on which the Members may Vote. If a meeting of the Members is called by the Members, Notice of the call shall be delivered to the Manager. Meetings may be held at the principal executive office of the Company or at such other location as may be designated by the Manager. Following the call of a meeting, the Manager shall give Notice of the meeting not less than two, or more than 60 calendar days prior to the date of the meeting to all Members entitled to Vote at the meeting. The Notice shall state the place, date, and hour of the meeting and the general nature of business to be transacted. No other business may be transacted at the meeting. A quorum at any meeting of Members shall consist of a Majority of Members, represented in person or by Proxy. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of a sufficient number of Members to leave less than a quorum, if the action taken, other than adjournment, is approved by the requisite Percentage of Members as specified in this Agreement or the Act.

7.5. Adjournment of Meetings. A meeting of Members at which a quorum is present may be adjourned to another time or place and any business which might have been transacted at the original meeting may be transacted at the adjourned meeting. If a quorum is not present at an original meeting, that meeting may be adjourned by the Vote of a majority of Voting Interests represented either in person or by Proxy. Notice of the adjourned meeting need not be given to Members entitled to Notice if the time and place of the adjourned meeting are announced at the meeting at which the adjournment is taken, unless (a) the adjournment is for more than 45 days, or (b) after the adjournment, a new record date is fixed for the adjourned meeting. In the situations described in clauses (a) and (b), Notice of the adjourned meeting shall be given to each Member of record entitled to Vote at the adjourned meeting.

7.6. Waiver of Notice. The transactions of any meeting of Members, however called and noticed, and wherever held, shall be as valid as though consummated at a meeting duly held after regular call and Notice, if (a) a quorum is present at that meeting, either in person or by Proxy, and (b) either before or after the meeting, each of the persons entitled to Vote, not present in person or by Proxy, signs either a written waiver of Notice, a consent to the holding of the meeting, or an approval of the minutes of the meeting. Attendance of a Member at a meeting shall constitute waiver of Notice, unless the Member objects, at the beginning of the meeting, to the transaction of any business on the ground that the meeting was not lawfully called or convened. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be described in the Notice of the meeting and not so included, if the objection is expressly made at the meeting.

7.7. Proxies. At all meetings of Members, a Member may Vote in person or by Proxy. Such Proxy shall be filed with the Manager before or at the time of the meeting, and may be filed by facsimile transmission to the Manager at the principal executive office of the Company or such other address as may be given by the Manager to the Members for such purposes.

7.8. Participation in Meetings by Conference Telephone. Members may participate in a meeting through use of conference telephone or similar communications equipment, provided that all Members participating in such meeting can hear one another. Such participation shall be deemed attendance at the meeting.

7.9. Action by Members Without a Meeting. Any action that may be taken at any meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by Members having not less than the minimum number of Votes that would be necessary to authorize or take that action at a meeting at which all Members entitled to Vote thereon were present and voted. If the Members are requested to consent to a matter without a meeting, each Member shall be given Notice of the matter to be voted upon in the manner described in Section 7.4. Any action taken without a meeting shall be effective when the required minimum number of Votes have been received. Prompt Notice of the action taken shall be given to all Members who have not consented to the action.

7.10. No Agency. No Member acting solely in the capacity of a Member is an agent of the Company, nor can any Member acting solely in the capacity of a Member bind the Company or execute any instrument on behalf of the Company. Accordingly, each Member shall indemnify, defend, and save harmless each other Member and the company from and against any and all loss, cost, expense, liability or damage arising from or out of any claim based upon any action by such Member in contravention of the first sentence of this Section 7.10.

**ARTICLE VIII: TRANSFERS OF MEMBERSHIP INTERESTS**

8.1. No Right to Withdraw. A Member may not withdraw from the Company without the written consents of the Manager or a majority of the remaining Members. Withdrawal shall not release a Member from any obligations and liabilities under this Agreement accrued or incurred prior to the effective date of withdrawal. A withdrawing Member shall have only the rights of a holder of an Economic Interest in the Company in respect of the Member’s Membership Interest in the Company. Unless the Manager or all remaining Members consent to such withdrawal, the withdrawing Member shall not be entitled to a distribution of its Economic Interest until the dissolution and liquidation of the Company. For purposes of this Section 8.1, the term Economic Interest shall not mean or include any right to share in the income, Gains, Losses, deductions, credits, or similar items of the Company attributable to any period following withdrawal, or any right to information concerning the business and affairs of the Company, except as provided in the Act.

8.2. Restrictions on Transfer. Except as expressly provided in this Agreement, a Member shall not transfer any part of the Member’s Membership Interest in the Company, whether now owned, or later acquired, unless (a) the Manager or the other Members by majority approve the transferee’s admission to the Company as a Member upon such Transfer and (b) the Membership Interest to be transferred, when added to the total of all other Membership Interests in the preceding 12 months, will not cause the termination of the Company under the Code. No Member may Encumber or permit or suffer any Encumbrance of all or any part of the Member’s Membership Interest in the Company unless such Encumbrance has been approved in writing by the Manager. Such approval may be granted or withheld in the Manager’s sole discretion. Any Transfer or Encumbrance of a Membership Interest without such approval shall be void. Notwithstanding any other provision of this Agreement to the contrary, a Member who is a natural person may transfer all or any portion of his or her Membership Interest to any revocable trust created for the benefit of the Member, or any combination between or among the Member, the Member’s spouse, and the Member’s issue, provided that the Member retains a beneficial interest in the trust and all of the Voting Interest included in such Membership Interest. A Transfer of a Member’s beneficial interest in such trust, or failure to retain such Voting Interest, shall be deemed a Transfer of a Membership Interest.

8.3. Right of First Refusal. If a Member wishes to transfer any or all of the Member’s Membership Interest in the Company pursuant to a Bona Fide Offer (as defined below), the Member shall give Notice to the Manager at least three (3) days in advance of the proposed sale or Transfer, indicating the terms of the Bona Fide Offer and the identity of the offeror. The Company and the Manager shall have the first option to purchase the Membership Interest proposed to be transferred at the price and on the terms provided in this Agreement. If the price for the Membership Interest is other than cash, the fair value in dollars of the price shall be as established in good faith by the Company. For purposes of this Agreement, Bona Fide Offer means an offer in writing setting forth all relevant terms and conditions of purchase from an offeror who is ready, willing and able to consummate the purchase and who is not an Affiliate of the selling Member. For three (3) days after the Notice is given, the Company and the Manager shall have the right to purchase the Membership Interest offered, on the terms stated in the Notice, for the lesser of (a) the price stated in the Notice (or the price plus the dollar value of noncash consideration, as the case may be) and (b) the price determined under the appraisal procedures set forth in Section 8.8.

If the Company and the Manager do not exercise the right to purchase all of the Membership Interest, then, with respect to the portion of the Membership Interest that the Company or the Manager do~~es~~ not elect to purchase, that right shall be given to the other Members for an additional two 2 day period, beginning on the day that the Manager’s and Company’s right to purchase expires and the Manager gives notice of the offer to the other Members. Each of the other Members shall have the right to purchase, on the same terms, a part of the interest of the offering Member in the proportion that the Member’s Percentage Interest bears to the total Percentage Interests of all of the Members who choose to participate in the purchase; provided, however, that the Company, the Manager and the participating Members may not, in the aggregate, purchase less than the entire interest to be sold by the offering Member. If the Company, the Manager and the other Members do not exercise their rights to purchase all of the Membership Interest, the offering Member may, within 15 days from the date the Notice is given and on the terms and conditions stated in the Notice, sell or exchange that Membership Interest to the offeror named in the Notice. Unless the requirements of Section 8.2 are met, the offeree under this section shall become an Assignee, and shall be entitled to receive only the share of Profits or other compensation by way of income and the return of Capital Contribution to which the assigning Member would have been entitled.

8.4. Triggering Events. On the happening of any of the following events (Triggering Events) with respect to a Member, the Company and the other Members shall have the option to purchase the Membership Interest in the Company of such Member (Selling Member) at the price and on the terms provided in Section 8.8 of this Agreement:

(a) The death, incapacity, bankruptcy, or withdrawal of a Member, or the

winding up and dissolution of a corporate Member, or merger or other corporate

reorganization of a corporate Member as a result of which the corporate Member

does not survive as an entity.

(b) The failure of a Member to make the Member’s Capital Contribution

pursuant to the provisions of Article III of this Agreement.

(c) The occurrence of any other event that is, or that would cause, a

Transfer in contravention of this Agreement.

Each Member agrees to promptly give Notice of a Triggering Event to all other Members.

8.5. Marital Dissolution or Death of Spouse. Notwithstanding any other provisions of this Agreement:

(a) If, in connection with the divorce or dissolution of the marriage of a

Member, any court issues a decree or other that transfers, confirms, or awards a

Membership Interest, or any portion thereof, to that Member’s spouse (an

Award), then, notwithstanding that such transfer would constitute an

unpermitted Transfer under this Agreement, that Member shall have the right to

purchase from his or her former spouse the Membership Interest, or portion

thereof, that was so transferred, and such former spouse shall sell the Membership

Interest or portion thereof to that Member at the price set forth below in Section

8.8 of this Agreement, If the Member has failed to consummate the purchase

within 180 days after the court award (the Expiration Date), the Company and the

other Members shall have the option to purchase from the former spouse the

Membership Interest or portion thereof pursuant to Section 8.6 of this Agreement;

provided that the option period shall commence on the later of (1) the day

following the Expiration Date, or (2) the date of actual Notice of the Award.

(b) If, by reason of the death of a spouse of a Member, any portion of a

Membership Interest is transferred to a Transferee other than (1) that Member or

(2) a trust created for the benefit of that Member (or for the benefit of that

Member and any combination between or among the Member and the Member’s

issue) in which the Member is the sole Trustee and the Member, as Trustee or

individually possesses all of the Voting Interest included in that Membership

Interest, then the Member shall have the right to purchase the Membership

Interest or portion thereof from the estate or other successor of his or her deceased

spouse or Transferee of such deceased spouse, and the estate, successor, or

Transferee shall sell the Membership Interest or portion thereof at the price set

forth in Section 8.8 of this Agreement. If the Member has failed to consummate

the purchase within 180 days after the date of death (the Expiration Date), the

Company and the other Members shall have the option to purchase from the estate

or other successor of the deceased spouse the Membership Interest or portion

thereof pursuant to Section 8.6 of this Agreement; provided that the option period

shall commence on the later of (1) the day following the Expiration Date, or (2) the

date of actual Notice of the death.

8.6. Option Periods. On the receipt of Notice by the Manager and the other Members as contemplated by Sections 8.1, 8.3, and 8.5, and on receipt of actual Notice of any Triggering Event as determined in good faith by the Manager (the date of such receipt s hereinafter referred to as the Option Date), the Manager shall promptly cause a Notice of the occurrence of such a Triggering Event to be sent to all Members, and the Company shall have the option, for a period ending 30 calendar days following the determination of the purchase price as provided in Section 8.8, to purchase the Membership Interest in the Company to which the option relates, at the price and on the terms set forth in Section 8.8 of this Agreement,, and the other Members, pro rata in accordance with their prior Membership Interests in the Company, shall then have the option, for a period of 30 days thereafter, to purchase the Membership Interest in the Company not purchased by the Company, on the same terms and conditions as apply to the Company. If all other Members do not elect to purchase the entire remaining Membership Interest in the Company, then the Members electing to purchase shall have the right, pro rata in accordance with their prior Membership Interest in the Company, to purchase the additional Membership Interest in the Company available for purchase. The transferee of the Membership Interest in the Company that is not purchased shall hold such Membership Interest in the Company subject to all of the provisions of this Agreement.

8.7. Nonparticipation of Interested Member. Neither the Member whose interest is subject to purchase under this Article, nor such Member’s Affiliate, shall participate in any Vote or discussion of any matter pertaining to the disposition of the Member’s Membership Interest in the Company under this Agreement.

8.8. Option Purchase Price. The purchase price of the Membership Interest that is the subject of an option under Section 8.6 shall be the Fair Option Price of the interest as determined under this Section 8.8. Fair Option Price means the cash price that a willing buyer would pay to a willing seller when neither is acting under compulsion and when both have reasonable knowledge of the relevant facts on the Option Date. Each of the selling and purchasing parties shall use his, her, or its best efforts to mutually agree upon the Fair Option Price. If the parties are unable to so agree within 30 days of the Option Date, the selling party shall appoint, within 40 days of the Option Date, one appraiser, and the purchasing party shall appoint within 40 days of the Option Date, one appraiser. The two appraisers shall within a period of five additional days, agree upon and appoint an additional appraiser. The three appraisers shall, within 60 days after the appointment of the third appraiser, determine the Fair Option Price of the Membership Interest in writing and submit their report to all the parties.

The Fair Option Price shall be determined by disregarding the appraiser’s valuation that diverges the greatest from each of the other two appraisers’ valuations, and the arithmetic mean of the remaining two appraisers’ valuations shall be the Fair Option Price. Each purchasing party shall pay for the services of the appraiser selected by it, plus one half of the fee charged by the third appraiser, and one half of all other costs relating to the determination of Fair Option Price. The Fair Option Price as so determined shall be payable in cash.

8.9. Substituted Member. Except as expressly permitted under Section 8.2, a prospective transferee (other than an existing Member) of a Membership Interest may be admitted as a Member with respect to such Membership Interest (Substituted Member) only (a) on the unanimous Vote of the other Members in favor of the prospective transferee’s admission as a Member, and (b) on such prospective transferee executing a counterpart of this Agreement as a party hereto. Any prospective transferee of a Membership Interest shall be deemed an Assignee, and, therefore, the owner of only an Economic Interest until such prospective transferee has been admitted as a Substituted Member. Except as otherwise permitted in the Act, any such Assignee shall be entitled only to receive allocations and distributions under this Agreement with respect to such Membership Interest and shall have no right to Vote or exercise any rights of a Member until such Assignee has been admitted as a Substituted Member. Until the Assignee becomes a Substituted Member, the Assigning Member will continue to be a Member and to have the power to exercise an rights and powers of a Member under this Agreement, including the right to Vote in proportion to the Percentage Interest that the Assigning Member would have had in the event that the assignment had not been made.

8.10. Duties of Substituted Member. Any person admitted to the Company as a Substituted Member shall be subject to all the provisions of this Agreement that apply to the Member from whom the Membership Interest was assigned, provided, however, that the assigning Member shall not be released from liabilities as a Member solely as a result of the assignment, both with respect to obligations to the Company and to third parties, incurred prior to the assignment.

8.11. Securities Laws. The initial sale of Membership Interests in the Company to the Initial Members has not been qualified or registered under the securities laws of any state, including California, or registered under the Securities Act of 1933, in reliance upon exemptions from the registration provisions of those laws. Notwithstanding any other provision of this Agreement, Membership Interests may not be Transferred unless registered or qualified under applicable state and federal securities law unless, in the opinion of legal counsel satisfactory to the Company, such qualification or registration is not required. The Member who desires to transfer a Membership Interest shall be responsible for all legal fees incurred in connection with said opinion.

**ARTICLE IX: RACING AND BREEDING MATTERS**

9.1. Delivery of Thoroughbred. As of the date of the initial execution of this Agreement, the Thoroughbred will be in New York to be trained by Jack Sisterson or another trainer of similar ability and experience until such time as Members holding a Required Interest may vote to replace the trainer with another individual of similar ability and experience. In the event the Thoroughbred is shipped to another location at a future date, the costs incurred will be at the expense of the Members.

9.2 Racing and Breeding Management. The Managing Member or its designee shall be responsible for ensuring that the Company complies with the various state racing requirements, and shall act as the Company’s authorized agent for all racing purposes, and shall receive and disburse funds on behalf of the Company. The Managing Member shall be responsible for the day-to-day business activities of the Thoroughbred. All trophies won by the Thoroughbred will be the property of the Managing Member. If the Managing Member deems it a necessity in order to be able to fulfill any statutory obligation and/or visit the horse, or attend a race or otherwise to provide evaluation on an ongoing basis, the partnership shall reimburse the Managing Member for any expenses incurred by it in the formation, operation and management of the partnership.

9.3 Further Obligations of Members. The specific obligations of the Members shall be as provided in this Agreement, and shall include the following:

 a. Each Member agrees to obtain a racing license in all jurisdictions in which the Thoroughbred may race, as may be required in the future, at his own expense. In addition to individual licenses, certain racing jurisdictions require for entities to obtain a multiple owner’s license, which shall be deemed c Company expense. Any member’s willing failure to obtain necessary licenses shall constitute a default under this Agreement.

 b. No Member shall take any action which shall interfere with the Company’s racing activities or the operations of the Company.

 c. Each Member agrees to execute and complete any and all documents which may be reasonably required in racing the Thoroughbred anywhere in the world or regarding the affairs of the Company. In the event that any member refuses, for any reason, to fulfill the obligations of this Agreement, as set forth herein, then said Member shall be in material breach of the Agreement.

 d. The remedy for breach of the Agreement, if not cured within three (3) business days after written notice of breach sent by certified mail, return receipt, or by messenger signed by the breaching party, shall be that the breaching Member hereby irrevocably agrees to sell his interest in the Company to the Company or the Managing Member at an agreed price, or if a price cannot be agreed upon, at the adjusted fair market value of the Members’ interest in the Company, as defined hereafter. Fair market value of the Member’s interest is hereby agreed to be equal to the Member’s net Capital Account, adjusted for the Member’s Profits and/or Losses to the date of sale and the increase or decrease in the fair market value of the Thoroughbred multiplied by the Member’s sharing ratio, less any amounts owed to the Company by the breaching Member. The fair market value of the Thoroughbred shall be the average value determined by three independent appraisers selected by the Managing Member. Fair market value will be determined at the time of breach or at the time the Thoroughbred is sold, at the Company’s election. Any payment thereupon due shall be paid to the breaching Member out of any net earnings of the Thoroughbred, or ten (10) days after the Thoroughbred has been sold. The Company, in order to recover delinquent syndicate expense monies owed by any Member who is in default, may elect to sue the defaulting Member in small claims or any other appropriate court, and by purchasing an interest in the Company, each Member hereby consents and submits to the personal jurisdiction of any state or federal court with jurisdiction over any city in which the Managing Member maintains an office. In the event of any sort of legal action between the Company or Managing Member and any non-managing Member, the prevailing party shall be entitled to recover its costs and fees, including attorneys’ fees, from the non-prevailing party.

9.4 Sale of the Thoroughbred, Termination or Modification of Agreement. This Agreement and the Company may not be terminated, canceled, altered, amended or modified in any manner or respect, nor may the Company’s ownership interest in the Thoroughbred be sold, without the written consent of a Required Interest of the Units. In the event Members holding a Required Interest vote to sell the Company’s ownership interest in the Thoroughbred, or any portion of said interest, the Company will pay the Managing Member a commission equal to five percent (5%) of the sale price.

9.5 Insurance. The Company shall not be responsible for maintaining mortality insurance on the Thoroughbred. In the event mortality insurance is maintained on the Thoroughbred, it shall be the responsibility of each Member to pay for his respective ownership interest for the policy maintained. And, in the event the Thoroughbred runs in a claiming race, the policy being maintained shall automatically reflect the claiming price as the amount the Thoroughbred is insured for as opposed to the original amount. Liability insurance shall be bought by the Company in order to provide coverage in the event of an accident involving the Thoroughbred occurring to parties other than stable employees or Members. Each Member may elect whether to obtain additional insurance at its own expense.

**ARTICLE X: DISSOLUTION AND WINDING UP**

10.1 Events of Dissolution. The Company shall be dissolved upon the first to occur of the following events:

(a) The written agreement of a Majority of Members to dissolve the

Company.

(b) The sale or other disposition of substantially all of the Thoroughbred.

(c) Entry of a decree of judicial dissolution under the Act.

 (d) Any event which makes it unlawful or impossible to carry on the Company’s business.

 (e) The death, expulsion, retirement, resignation, withdrawal, dissolution or bankruptcy of a Member, or any other event which terminates the membership of a Member in the Company, unless within ninety (90) days after the Company receives notice of such event there is one or more Remaining Member(s) and a required Interest of the Remaining Members agree in writing to continue the business of the Company.

 10.2 Winding Up. On the dissolution of the Company, the Company shall engage in no further business other than that necessary to wind up the business and affairs of the Company. The Managers who have not wrongfully dissolved the Company or, if there is no such Manager, the Members, shall wind up the affairs of the Company. The Delegates winding up the affairs of the Company shall give Notice of the commencement of winding up by mail to all known creditors and claimants against the Company whose addresses appear in the records of the Company. After paying or adequately providing for the payment of all known debts of the Company (except debts owing to Members), the remaining assets of the Company sh all be distributed or applied in the following order:

(a) To pay the expenses of liquidation.

(b) To the establishment of reasonable reserves by the Delegate for

contingent liabilities or obligations of the Company. Upon the Delegate’s

determination that such reserves are no longer necessary, said reserves shall

be distributed as provided in this Section 9.2.

(c) To repay outstanding loans to Members. If there are insufficient funds

to pay such loans in full, each Member shall be repaid in the ratio that the

Member’s loan, together with interest accrued and unpaid thereon, bears to

the total of all such loans from Members, including all interest accrued and unpaid

thereon. Such repayment shall first be credited to unpaid principal and the

remainder shall be credited to accrued and unpaid interest.

(d) To and among the Members in accordance with final capital accounts.

10.3. Deficits. Each Member shall look solely to the assets of the Company for the return of the Member’s investment, and if the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the investment of each Member, such Member shall have no recourse against any other Members for indemnification, contribution, or reimbursement, except as specifically provided in this Agreement.

10.4 Deficit Capital Accounts. Notwithstanding anything to the contrary contained in this Agreement, and notwithstanding any custom or rule of law to the contrary, the deficit, if any, in the Capital Account of any member upon dissolution of the Company shall not be an asset of the Company and such Member shall not be obligated to contribute such amount to the Company to bring the balance of such member’s capital account to zero. Instead, such deficit capital accounts shall be eliminated through a “qualified income offset” as describe in Treas. Reg. 1.704-1(b)(2)(ii)(d).

10.5 Articles of Dissolution. On completion of the distribution of Company Property as provided herein, the Company shall be thereby terminated, and the Managing Member shall authorize the filing of Articles of Dissolution with the Secretary of State, cancel any other filings made and take such other actions as may be necessary to terminate the Company.

**ARTICLE XI: NONCOMPETITION AND CONFIDENTIALITY**

11.1. Noncompetition; Confidential Information. Each Member hereby covenants with the Company and each other Member that on the Transfer of the Member’s Membership Interest, whether voluntary, involuntary, by operation of law, or by reason of any provision of this Agreement, the Member will not, directly or indirectly, through an Affiliate or otherwise, in the United States of America, or elsewhere where the Company conducts its business, for a period of two (2) years following the date of the Transfer, (a) enter into any agreement or understanding, written or oral, relating to the services of any employee of the Company, (b) solicit the business of, enter into any agreement, written or oral, or otherwise deal with any customers of the Company, who were such at the time of the Transfer, or (c) use or disclose in any manner any Confidential Information. Nothing in this Section shall prevent a Member from investing in other entities or individuals forming entities to own thoroughbreds.

11.2. Defined. Confidential Information means all trade secrets, know-how, customer lists, pricing policies, operational methods, programs, and other business information of the Company created, developed, produced, or otherwise arising before the date of the Transfer.

11.3. Injunction. Each Member hereby stipulates that a breach of the provisions of this Article XI will result in irreparable damage and injury to the Company for which no money damages cold adequately compensate it. If the Member breaches the provisions of this Agreement, in addition to all other remedies to which the Company may be entitled, and notwithstanding the provisions of Article XII, Section 1.2, the Company shall be entitled to an injunction to enforce the provisions of this Agreement, to be issued by any court of competent jurisdiction, to enjoin and restrain the Member and each and every Person concerned or acting in concert with the Member from the continuance of such breach. Each Member expressly waives any claim or defense that an adequate remedy at law might exist for any such breach.

11.4. Interpretation. If the provisions contained herein shall be deemed to exceed the time or geographic limits or any other limitation imposed by applicable law in any jurisdiction, then such provision shall be deemed reformed in such jurisdiction to the maximum extent permitted by applicable law.

**ARTICLE XII: INDEMNIFICATION AND ARBITRATION**

12.1. Indemnification. The Company shall have the power to indemnify any Person who was or is a party, or who is threatened to be made a party, to any Proceeding by reason of the fact that such Person was or is a Member, Manager, officer, employee, or other agent of the Company, or was or is serving at the request of the Company as a director, officer, employee, or other Agent of another limited liability company, corporation, partnership, joint venture, trust. or other enterprise, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by such Person in connection with such proceeding, if such Person acted in good faith and in a manner that such Person reasonably believed to be in the best interests of the Company and, in the case of a criminal proceeding, such Person had no reasonable cause to believe that the Person’s conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner that such Person reasonably believed to be in the best interests of the Company, or that the Person had reasonable cause to believe that the Person’s conduct was unlawful.

To the extent that an agent of the Company has been successful on the merits in defense of any Proceeding, or in defense of any claim, issue, or matter in any such Proceeding, the agent shall be indemnified against expenses actually and reasonably incurred in connection with the Proceeding. In all other cases, indemnification shall be provided by the Company only if authorized in the specific case by a Majority Interest of Members. Agent’, as used in this Section 12.1, shall include a trustee or other fiduciary of a plan, trust, or other entity or arrangement described in Corporations Code Section 207(f). Proceeding, as used in this Section 1.1, means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative. Expenses of each Person indemnified under this Agreement actually and reasonably incurred in connection with the defense or settlement of a proceeding may be paid by the Company in advance of the final disposition of such proceeding, as authorized by the Managers who are not seeking indemnification or, if there are none, by a Majority Interest of the Members, upon receipt of an undertaking by such Person to repay such amount unless it shall ultimately be determined that such Person is entitled to be indemnified by the Company. Expenses, as used in this Section 1.1, includes, without limitation, attorney fees and expenses of establishing a right to indemnification, if any, under this Section 1.1.

12.2. Arbitration. Any action to enforce or interpret this Agreement, or to resolve disputes with respect to this Agreement as between the Company and a Member, or between or among the Members, shall be settled by arbitration in accordance with the rules of the American Arbitration Association. Arbitration shall be the exclusive dispute resolution process in the State of Delaware, but arbitration shall be a nonexclusive process elsewhere. Any party may commence arbitration by sending a written demand for arbitration to the other parties. Such demand shall set forth the nature of the matter to be resolved by arbitration. The Manager shall select the place or arbitration. The substantive law of the State of Delaware shall be applied by the arbitrator to the resolution of the dispute. The parties shall share equally all initial costs of arbitration. The prevailing party shall be entitled to reimbursement of attorney fees, costs, and expenses incurred in connection with this arbitration. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered upon any such decision in accordance with applicable law in any court having jurisdiction thereof. The arbitrator (if permitted under applicable law) or such court may issue a writ of execution to enforce the arbitrator’s decision.

**ARTICLE XIII: ATTORNEY-IN-FACT AND AGENT**

13.1. Power of Attorney. Each Member, by execution of this Agreement, irrevocably constitutes and appoints each Manager and any of them acting alone as such Member’s true and lawful attorney-in-fact and agent, with full power and authority in such Member’s name, place, and stead to execute, acknowledge, and deliver, and to file or record in any appropriate public office: (a) any certificate or other instrument that may be necessary, desirable, or appropriate to qualify the Company as a limited liability company or to transact business as such in any jurisdiction in which the Company conducts business; (b) any certificate or amendment to the Company’s Certificate of Formation or to any certificate or other instrument that may be necessary, desirable, or appropriate to reflect an amendment approved by the Members in accordance with the provisions of this Agreement; (c) any certificates or instruments that may be necessary, desirable, or appropriate to reflect the dissolution and winding up of the Company; and (d) any certificates necessary to comply with the provisions of this Agreement. This power of attorney will be deemed to be coupled with an interest and will survive the Transfer of the Member’s Economic Interest. Notwithstanding the existence of this power of attorney, each Member agrees to join in the execution, acknowledgment, and delivery of the instruments referred to above if requested to do so by a Manager. This power of attorney is a limited power of attorney and does not authorize any Manager to act on behalf of a Member except as described in this Article XIII.

**ARTICLE XIV: GENERAL PROVISIONS**

14.1 Counterpart Executions. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Multiple signature pages may be appended to one (1) copy of the Agreement. Furthermore, electronically reproduced signatures will be treated as originals for all purposes.

14.2 Governing Law; Severability. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Delaware. If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in effect.

14.3 Parties Bound. This Agreement shall be binding upon the Members and their respective successors, permitted assigns, heirs, devisees, legal representatives, executors and administrators.

14.4 Strict Construction. It is the intent of the Members upon execution hereof that this Agreement shall be deemed to have been prepared by all of the parties to the end that no Member shall be entitled to the benefit of any favorable interpretation or construction of any term or provision hereof under any rule or law.

14.5 Partition. Each member irrevocably waives any right that it may have to maintain any action for partition with respect to Company Property.

14.6 Headings. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

14.7 Pronouns. All pronouns shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the Person or Persons may require.

14.8 Effect or Waiver or Consent. A waiver or consent, express or implied, to or of any breach of default by any Person in the performance by that Person of its obligations hereunder or with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person. Failure on the part of a Person to complain of any act or to declare any Person in default hereunder, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default.

14.9 Further Assurances. Each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and the transactions contemplated herein.

14.10 Indemnification for Breach. To the fullest extent permitted by law, each Member shall indemnify the Company and each other Member and hold all of them harmless from and against all losses, costs, liabilities, damages and expenses (including, without limitation, costs of suit and attorneys’ fees) they may incur on account of any material breach by that member of this Agreement.

14.11 Disclosure and Waiver of Conflicts. In connection with the preparation of this Agreement, the Members acknowledge and agree that: (i) the attorney that prepared this Agreement(“Attorney”) acted as legal counsel to the Company; (ii) the Members have been advised by the Attorney that the interests of the Members may be opposed to each other and, accordingly, the Attorney’s representation of the Company may not be in the best interests of the Members; and (iii) each of the Members has been advised by the Attorney to retain separate legal counsel. Notwithstanding the foregoing, the Members (i) desire the Attorney to represent the Company; (ii) acknowledge that they have been advised to retain separate counsel and, if they have not done so, have waived their right to do so; and (iii) jointly and severally forever waive any claim that the Attorney’s representation of the Company constitutes a conflict of interest.

14.12. Entire Agreement. This Agreement constitutes the whole and entire agreement of the parties with respect to the subject matter of this Agreement, and it shall not be modified or amended in any respect except by a written instrument executed by all the parties. This Agreement replaces and supersedes all prior written and oral agreements by and among the Members and Managers or any of them.

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Agreement on the day and year first above written.

Banneker Thoroughbred LLC

Member: ECLIPSE THOROUGHBRED PARTNERS Address for Notice

 712 Chafee Lane SW

 Aiken, SC 29801

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ARON WELLMAN, President

ECLIPSE THOROUGHBRED PARTNERS

**SUBSCRIPTION AGREEMENT**

**\_\_\_\_\_\_\_\_\_\_\_\_\_**

IN WITNESS WHEREOF, the undersigned has read the complete terms of the LLC Agreement of Banneker Thoroughbred LLC (the “Company”) and acknowledges receipt of a true and complete copy of same, and agreeing to be bound to those terms, has hereby executed this Subscription Agreement on\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, for the acquisition from ECLIPSE THOROUGHBRED PARTNERS of a membership interest in the Company which owns a 60% interest in the Thoroughbred and which interest is free and clear of any and all liens and encumbrances of every nature or description. It is further understood and agreed that any Units not sold shall be retained by ECLIPSE THOROUGHBRED PARTNERS.

 Commitment Amount: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Number of Units: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name of Member: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Total Number of Units 100

Total Carrying Value $465,000

 If the subscribing Member is an entity rather than an individual, please indicate the type of entity, and the name and capacity of the individual signing on behalf of the entity:

Type of Entity: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* If Limited liability company please Enter tax classification:

(C Corporation, S Corporation, Partnership, or Individual/sole proprietor or single member LLC): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name of Signatory: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Capacity: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Social Security No.

 Or EIN of Subscriber: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(If a Single Member LLC or Grantor Trust, please provide the SSN of Beneficial owner. If applicable, provide the EIN as well.)

Mailing Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Daytime telephone # \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Home address, if different

 from mailing address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Upon due execution of this Subscription Agreement and payment of the commitment Amount, subscriber hereto shall be admitted as a Member of the Company holding the Units noted above, which represent a Percentage Interest equal to a \_\_\_\_ membership interest in the Company.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Subscriber

Confirmed and Agreed to:

ECLIPSE THOROUGHBRED PARTNERS,

as Managing Member

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Aron Wellman, President

“EXHIBIT A”