

# **TOMCAM LLC**

A District of Columbia Limited Liability Company

## **OPERATING AGREEMENT**

**THIS AGREEMENT, AND ANY PRIOR OR SUBSEQUENT COMMUNICATIONS FROM THE COMPANY, ITS AFFILIATES, ADVISORS, OR ANY PROFESSIONAL ASSOCIATED WITH THIS OFFERING, ARE NOT TO BE CONSTRUED AS LEGAL, TAX OR INVESTMENT ADVICE. INVESTORS SHOULD CONSULT WITH, AND RELY ON, THEIR OWN ADVISORS AS TO THE LEGAL, TAX AND/OR ECONOMIC IMPLICATIONS OF THE INVESTMENT AND ITS SUITABILITY FOR SUCH INVESTOR.**

**DUE TO THE RISKS ASSOCIATED WITH THE BUSINESS, AN INVESTMENT IN THE COMPANY IS ONLY SUITABLE FOR INVESTORS WHO CAN AFFORD TO LOSE THEIR ENTIRE INVESTMENT.**

**NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY TAX BENEFITS FROM AN INVESTMENT.**

# TOMCAM LLC

A District of Columbia Limited Liability Company

## OPERATING AGREEMENT

**THIS OPERATING AGREEMENT** (hereinafter referred to as the “Agreement”) is made as of March 6th, 2015 (“Effective Date”) by and among **TOMCAM LLC** a District of Columbia limited liability company (the “Company”) **and the undersigned current Members of the Company**, (hereinafter sometimes referred to as the “Initial Members”), and all of those who shall thereafter be admitted as members and shall become signatories to this Agreement (hereinafter sometimes individually referred to as “Member” and collectively, upon the admission of additional members, as “Members”).

**NOW THEREFORE**, for good and valuable consideration, the Company and the Initial Members, intending to be legally bound, agree as follows:

### **1. Definitions.**

“Act” means the District of Columbia Limited Liability Company Act, as amended from time to time.

“Capital Account” means the account maintained by the Company for each Member to be credited and debited in accordance with this Agreement.

“Capital Contribution” means the Initial Capital Contribution plus any additional cash contributed to the Company by a Member in consideration for Interests issued to that Member.

“Class A Member” means an owner of Interests denoted as Class A Interests, as reflected in the books and records of the Company.

“Class B Member” means an owner of Interests denoted as Class B Interests, as reflected in the books and records of the Company.

“Coaching Board” means the body set up in accordance with Section 12;

“Coaching Board Code of Conduct” means the code of conduct applicable to members of the Coaching Board, posted on equityeats.com as amended from time to time.

“Code” means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

“Company” means TOMCAM LLC.

“Current Capital Account Balance” means, with respect to a Member, an amount equal to such Member’s Capital Contributions less all distributions made to such Member.

“Distributable Cash Flow” means all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any non-cash charges, but less cash funds used to pay current operating expenses and to pay or establish a Reasonable Reserve for future expenses, debt payments (including, without limitation, payments of principal, interest, late fees, and penalties), capital improvements, replacements and taxes as determined by the Manager. Distributable Cash Flow shall be increased by the reduction of any reserve previously established.

“Initial Capital Contribution” means the cash contributed to the Company by a Member in consideration for the Interests issued to that Member.

“Interest” is an ownership interest in the Company. The total number of Interests may be increased by the Company upon admission of additional members or in connection with an increase of a Member’s ownership interest and may be decreased in the event the Company shall acquire any Interest Holder’s Interest in the Company.

“Interest Holder” shall mean the owner of legal or equitable title to a Membership Interest who has not been admitted as a Member.

“Involuntary Resignation” means, with respect to any Member, the occurrence of any of the following events:

- (i) the Member makes an assignment for the benefit of creditors;
- (ii) the Member files a voluntary petition of bankruptcy;
- (iii) the Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;
- (iv) the Member files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
- (v) the Member seeks, consents to, or acquiesces in the appointment of a trustee for, receiver for, or liquidation of the Member or of all or any substantial part of the Member's properties;
- (vi) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in Subsections (i) through (v);
- (vii) any proceeding against the Member seeking reorganization, arrangement,

composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, continues for one hundred twenty (120) days after the commencement thereof, or the appointment of a trustee, receiver, or liquidator for the Member or all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed for one hundred twenty (120) days or, if the appointment is stayed, for one hundred twenty (120) days after the expiration of the stay during which period the appointment is not vacated;

(viii) if the Member is an individual, the Member's death or adjudication by a court of competent jurisdiction as incompetent to manage the Member's person or property;

(ix) if the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust;

(x) if the Member is a partnership or another limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company;

(xi) if the Member is a corporation, the dissolution of the corporation or the revocation of its charter; or

(xii) if the Member is an estate, the distribution by the fiduciary of the estate's entire interest in the Company.

"Manager" means each Person who is listed as a manager of the Company in this Agreement, or who becomes a manager of the Company as herein provided and who is listed as a manager in the books and records of the Company.

"Majority In Interest" means those Members owning Interests that represent more than 50% of the aggregate percentage interests in the Company.

"Membership Rights" means all the rights of a Member in the Company.

"Percentage Interest" means the Interest owned by a Member, divided by the total Interests issued by the Company.

"Person" shall mean a physical person, a partnership, a limited partnership, a limited liability company, a corporation, a trust, a business trust, or any other entity permitted under the laws of the District of Columbia to own and hold personal property or real property.

"Profit or Loss" shall be an amount computed for each fiscal year as of the last day thereof that is equal to the Company's taxable income or loss for such period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), 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 Profit or Loss pursuant to this paragraph shall be added to such taxable income or loss and (b) any

expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Profit or Loss pursuant to this paragraph shall be subtracted from such taxable income or loss.

“Reasonable Reserve” shall mean an amount equal to three months of working capital. Manager shall have the right to withhold an amount equal to \$15,000.00 of cash flow in every month until such time as the Reasonable Reserve is established. Any unused contingency funds raised by the Company prior to opening the events will be rolled into the Reasonable Reserve.

“Regulation” means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

“Restaurant” means the food and beverage service business the Company will own.

“Subscription Agreement” means any agreement between the Company and a Member by which such Member subscribes for Interests.

## **2. Organization.**

The Initial Members hereby organize and shall operate a limited liability company in accordance with the terms and subject to the conditions set forth in this Agreement.

## **3. Name.**

The name of the limited liability company is TOMCAM LLC.

## **4. Purpose.**

The purpose of the Company is to own, develop, operate, and manage any business; make certain investments, conduct any activity related thereto, and to do anything permitted by the laws of the District of Columbia as amended from time to time.

## **5. Term.**

The term of the Company shall begin as of the date of the acceptance of the Articles of Organization of the Company by the Secretary of State for the District of Columbia and shall thereafter have perpetual existence unless terminated by the Member(s). Unless otherwise stated in the Agreement, the death, bankruptcy, withdrawal, insanity, incompetency, temporary or permanent incapacity, expulsion, removal, liquidation, dissolution, reorganization, merger, sale or other change in ownership of a Member shall not dissolve the Company.

## **6. Powers**

The Company shall have and may exercise all powers necessary or convenient to effectuate any or all of the purposes for which the Company is formed.

## **7. Principal Office; Resident Agent.**

The principal office of the Company in the District of Columbia shall be located at 2031 13<sup>th</sup> St NW, #1, Washington, DC 20009. The name and address of the Company's Registered Agent in the District of Columbia is Thomas Welling 2031 13<sup>th</sup> St NW, #1, Washington, DC 20009, as so stated in the Articles of Organization.

## **8. Capital Contributions; Ownership Interests.**

- 8.1 The name of the Initial Members is attached hereto and incorporated herein by reference. The name, class, Capital Contribution and Percentage Interest of each Member are set forth in the books and records of the Company, as amended from time to time.
- 8.2 From and after the date hereof, if all Managers agree, they may, on behalf of the Company accept subscriptions for additional Interests in the Company by execution and delivery of a Subscription Agreement and such other agreements and documents, as a Manager may deem necessary and appropriate. Any such additional Interests will first be offered to existing Members for subscription ("Member Right of First Refusal"). The Managers shall notify the Members of their intention to offer additional Interests ("Member Notice") and will include in the Member Notice the purchase price of the Interests being offered. Members will have fourteen (14) days from the date the Member Notice is sent, to execute and deliver a Subscription Agreement and deliver the purchase price.
- 8.3 If no Members take up the Right of First Refusal and the additional Interests are sold to non-Members, each subscriber will be admitted by the Managers on behalf of all Members as a Class B Member, provided that such subscriber or assignee, as applicable, shall have accepted and adopted all of the terms and provisions of this Agreement. Notwithstanding the foregoing, however, no Person shall become a Member, until such time as the Person has delivered and paid over to Company their entire Initial Capital Contribution. The Managers may reject any Person, or any of the undersigned seeking to be a Member who has not paid and delivered their Initial Capital Contribution to the Company.
- 8.4 After the initial investment from the Class B Members, any additional Interests issued will dilute all Members equally.
- 8.5 No Member shall have the right to receive any return of any portion of their Capital Contribution paid to the Company.

## **9. Loans.**

Loans by a Member to the Company shall not be considered capital contributions for purposes of this Agreement, increase such Member's Capital Account or entitle such Member to any greater share of the net proceeds of the Company than such Member is entitled to under this Agreement.

## **10. Capital Accounts.**

A separate Capital Account shall be maintained for each Member in accordance with Treasury Regulation section 1.704-1(b)(2)(iv), which shall be adjusted annually, unless this Agreement, the acts of the Member(s) in accordance with this Agreement, or the applicable Treasury Regulations require a more frequent adjustment.

## **11. Management.**

- 11.1 The Company shall be managed by one or several Manager(s) who need not be Members. Camila Arango and Tom Wellings are designated to serve as the initial Managers until either resigns or is removed in accordance with Section 11.2 and its successor is approved by a simple majority of the Members based on Interests held.
- 11.2 A Manager that materially breaches the terms of this agreement or any obligations owed to the Members may be removed by a simple majority of the Members based on Interests held.
- 11.3 Subject to the requirement that decisions regarding the acceptance of new Members under Section 8. shall be made jointly, each Manager shall have full and complete, exclusive discretion, power and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer and operate the business and affairs of the Company for the purposes herein stated, and to make all decisions affecting such business and affairs, including, without limitation, for Company purposes, the power to:
  - 11.3.1 enter into agreements and contracts and to give receipts, releases and discharges;
  - 11.3.2 acquire by purchase, lease or otherwise, any real or personal property, tangible or intangible;
  - 11.3.3 enter into one or several management contracts for the management functions related to the Company's business with an aggregate management fee not to exceed 9% of Company's net

profits in a calendar year;

11.3.4 exercise any voting or other rights with respect to companies owned or controlled by Company;

11.3.5 purchase liability and other insurance to protect the Company's properties and business;

11.3.6 borrow money for and on behalf of the Company, and, in connection therewith, execute and deliver instruments authorizing the confession of judgment against the Company;

11.3.7 execute leases or lease modification agreements with respect to any part or all of the assets of the Company;

11.3.8 construct, operate, maintain, finance and improve, and to own, sell, convey, assign, mortgage or lease any real estate and any personal property;

11.3.9 prepay, in whole or in part, refinance, amend, modify or extend any mortgages or deeds of trust which may affect any asset of the Company and in connection therewith to execute for and on behalf of the Company any extensions, renewals or modifications of such mortgages or deeds of trust;

11.3.10 execute any and all other instruments and documents which may be necessary or desirable to carry out the intent and purpose of this Agreement;

11.3.11 make any and all expenditures which the Manager, in their sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities under this Agreement, including, without limitation, all legal, accounting and other related expenses incurred in connection with the organization and financing and operation of the Company;

11.3.12 enter into any kind of activity necessary to, in connection with, or incidental to, the accomplishment of the purposes of the Company;

11.3.13 invest and reinvest Company reserves in short-term instruments or money market funds;

11.3.14 enter into agreements and contracts and to give receipts, releases and discharges for the purchase of inventory only;



- 11.4 Notwithstanding anything to the contrary in this Agreement, if a Manager wishes to exercise any of the authorities granted or permitted to the Managers in this Section which causes the Company to spend, incur a liability or which would otherwise obligate the Company in an amount greater than \$10,000.00 (excluding expenditure on food and beverage supplies), the Manager must seek the approval of the Coaching Board.
- 11.5 A Manager shall be paid a base salary/guaranteed payments equal to no more than \$10,000 above the average salary of a restaurant general manager in Washington D.C. according to the data available on indeed.com. If a Manager ceases to perform services to the Company requiring at least 35 hours of work per week, they shall no longer be entitled to such salary/guaranteed payments.
- 11.6 All current cash flow (including that which will be distributed to Members or forming part of the Reasonable Reserve) will be held by the Company in short-term investments only, meaning investments with maturities of less than twelve (12) months. For the avoidance of doubt, acceptable short-term investments include cash and cash items, government securities and securities of other registered investment companies.

## **12. Coaching Board.**

- 12.1 Upon the initial issuing of Interests to the Class B Members, the Company will put in place a Coaching Board consisting of two (2) representatives of the Manager (the “**Restaurant Representatives**”) and three (3) representatives of the Class B Members (the “**Class B Representatives**”).
- 12.2 The Restaurant Representatives will be chosen by the Manager. The Class B Representatives will consist of a Person selected by each of the three largest Class B Members measured by the size of their Initial Capital Contribution. In the event of a tie, the first to invest at that level will be chosen.
- 12.3 The Coaching Board shall meet monthly or more frequently if deemed necessary by the Restaurant Representatives, in person, or by telecommunication, and shall decide the following:
- 12.3.1 to approve an arrangement in accordance with Section 11.4 above; and
  - 12.3.2 when to release portions of the Initial Capital Contributions to the Company in accordance with achievement of milestones in the

build-out of the Company's business.

- 12.4 Decisions of the Coaching Board will be made by simple majority, other than decisions relating to incurring liabilities over \$10,000 which shall require unanimous approval of the Coaching Board.
- 12.5 The Coaching Board will at all times abide by the Coaching Board Code of Conduct, as amended from time to time.
- 12.6 The Coaching Board shall not be liable, responsible, or accountable, in damages or otherwise, to any Member, or to the Company for any act performed by the Coaching Board in connection with this Section.
- 12.7 The Company shall indemnify the Coaching Board for any act performed by the Coaching Board in connection with this Section.

### **13. Allocations and Distributions.**

#### **13.1 Allocations and Distribution of Cash Flow**

13.1.1 All items of Company income, gain, loss and deduction as determined for book purposes shall be allocated among the Members and credited or debited to their respective Capital Accounts in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv), so as to ensure to the maximum extent possible: (i) that such allocations satisfy the economic effect equivalence test of Treasury Regulations Section 1.704-1(b)(2)(ii)(i); and (ii) that all allocations of items that cannot have economic effect (including credits and nonrecourse deductions) are allocated to the Members in accordance with the Members' interests in the Company, which, unless otherwise required by Code Section 704(b) and the Treasury Regulations promulgated thereunder, shall be in proportion to a Member's Percentage Interest. To the extent possible, items that can have economic effect shall be allocated in such a manner that the balance of each Member's Capital Account at the end of any taxable year (increased by the sum of: (a) such Member's "share of partnership minimum gain" as defined in Treasury Regulations Section 1.704-2(g)(1); and (b) such Member's share of "partner nonrecourse debt minimum gain" as defined in Treasury Regulations Section 1.704-2(i)(5)) would be positive to the extent of the amount of cash that such Member would receive (or would be negative to the extent of the amount of cash that such Member would be required to contribute to the Company) if the Company sold all of its property for an amount of cash equal to the book value (as determined pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)) of such property

(reduced, but not below zero, by the amount of nonrecourse debt to which such property is subject) and all of the cash of the Company remaining after payment of all liabilities (other than nonrecourse liabilities) of the Company were distributed in liquidation immediately following the end of such taxable year in accordance with this Section 13.

13.1.2 Except as otherwise provided in this paragraph or as otherwise required by the Code and the rules and Treasury Regulations promulgated thereunder, a Member's distributive share of income, gain, loss, deduction, or credit for income tax purposes shall be the same as is entered in the Member's Capital Account pursuant to this Agreement. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any asset contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial adjusted asset value. In the event the adjusted asset value of any Company asset is adjusted pursuant to the terms of this Agreement, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its adjusted asset value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder.

13.1.3 Distributable Cash Flow. Distributable Cash Flow for each quarter of a fiscal year of the Company shall be distributed each quarter no later than thirty (30) days after the end of each quarter, as follows:

13.1.3.1 Until such time as the Class B Members have been paid an amount equal to 100% of their Capital Contributions ("First Out Period"), an amount equal to 80.6% of all Distributable Cash Flow shall be distributed to the Class B Members in proportion to their Interests held in the Company and an amount equal to 19.4% of all Distributable Cash Flow shall be distributed to the Class A Members in proportion to their Interests held in the Company.

13.1.3.2 At all times following the First Out Period, all Distributable Cash Flow shall be distributed to the Members and divided among the Members pro rata

and pari passu in accordance with their Interests held in the Company.

13.1.4 An Interest Holder shall receive a distribution of Distributable Cash Flow, which is equal to the percentage of Distributable Cash Flow the Interest Holder's predecessor in interest would have received.

13.1.5 Notwithstanding anything herein to the contrary, in the event that there shall be no distributions of Distributable Cash Flow during any calendar year, however, sufficient revenues have been generated in such calendar year such as to cause any Member of the Company to incur an income tax liability due to such Company revenues, Company shall distribute an amount equal to the tax liability incurred by each such Member with respect to Company's revenues for such calendar year in accordance with Section 13.4.

13.2 Distribution of Proceeds of Sale or Liquidation.

13.2.1 Upon the sale of all or substantially all of the Company's assets or a refinancing of the Company, the proceeds of such sale or refinancing shall be applied:

13.2.1.1 first to settlement costs, attorneys fees, and other such expenses of sale,

13.2.1.2 next the proceeds shall be used to satisfy any and all of the Company's creditors, and

13.2.1.3 thereafter to the extent that any proceeds remain from the sale, to the Interest Holders and Members according to Section 13.1.3

13.2.2 Upon a liquidation and dissolution of the Company, the proceeds of any liquidation of all of the Company's assets shall be paid:

13.2.2.1 first to pay the costs and fees associated with the liquidation of the assets and the winding up of the Company's affairs,

13.2.2.2 next any remaining proceeds of the liquidation shall be paid to any and all of the Company's creditors,

13.2.2.3 next to the extent that any proceeds remain from

the liquidation, to the Class B Members until such time as the Class B Members have been paid pursuant to Section 13.1.3.1 and this Section 13.2.2.3 an amount equal to 100% of their Capital Contribution;

13.2.2.4 next to the extent that any proceeds remain from the liquidation, to the Class A Members until such time as the Class A Members have been paid pursuant to this Section 13.2.2.4 an amount equal to 100% of their Capital Contribution; and

13.2.2.5 thereafter, to the extent that any proceeds remain from the liquidation to the Interest Holders and Members according to Section 13.1.3.

### 13.3 Tax Distribution; Withholding Obligations.

13.3.1 Notwithstanding anything contained in this Section to the contrary, to the extent that any Member has a "Cumulative Tax Shortfall" (as defined below), the Manager shall, subject to Distributable Cash Flow, on an annual basis, distribute to such Members (pro rata, in proportion to their respective Cumulative Tax Shortfalls) an aggregate amount of cash equal to the Cumulative Tax Shortfalls, as and when available (a "Tax Distribution"). A Member's "Cumulative Tax Shortfall" shall mean the amount, if any, by which (i) the aggregate federal, state and local tax liabilities attributable to (A) the aggregate sum of all current and prior allocations of profit, income and gain to such Member exceeds (B) the aggregate sum of all prior allocations of losses and deduction to such Member, reduced by (ii) all current and prior distributions to such Member pursuant to this Section 13. For all purposes of clause (i) above, the assumed combined federal, state and local tax liability of each Member shall be computed based an agreed upon blended tax rate equal to thirty-five percent (35%). All sums distributed to a Member pursuant to this Section shall be credited against distributions otherwise payable to such Member and shall reduce, dollar-for-dollar, any other distributions, which would otherwise be made to such Member.

13.3.2 If and to the extent the Company is required by law (as determined in good faith by the Manager) to make payments ("Tax Payments") with respect to any Member to discharge any legal obligation of the Company or the Managers, including any

obligation pursuant to FATCA, to make payments to any governmental authority with respect to any federal, state, local or foreign tax liability of such Member arising as a result of such Member's interest in the Company, then the amount of any such Tax Payments shall be deemed to be a loan by the Company to such Member, which loan shall: (i) be secured by such Member's interest in the Company, (ii) bear interest and (iii) be payable upon demand. If and to the extent the Company is required to make any Tax Payments with respect to any distribution to a Member, either (i) such Member's proportionate share of such distribution shall be reduced by the amount of such Tax Payments (provided that such Member's Capital Account shall be adjusted for such Member's full proportionate share of the distribution), or (ii) such Member shall pay to the Company prior to such distribution an amount of cash equal to such Tax Payments. Each Member will, as applicable, take such actions as are required to establish to the reasonable satisfaction of the Manager that the Member is (i) not subject to the withholding tax obligations imposed by Section 1471 of the Code and (ii) not subject to withholding tax obligations imposed by Section 1472 of the Code. In addition, each Member will assist the Company and the Manager with any applicable information reporting or other obligation imposed on the Company, the Manager or their respective affiliates, pursuant to FATCA. As used herein, "FATCA" means the Foreign Account Tax Compliance provisions enacted as part of the U.S. Hiring Incentives to Restore Employment Act and codified in Sections 1471 through 1474 of the Code, all rules, regulations and other guidance issued thereunder, and all administrative and judicial interpretations thereof.

#### **14. Rights of Member(s).**

- 14.1 No Member is an agent of the Company solely by virtue of being a Member, and no Member shall have the authority to act for the Company solely by virtue of being a Member. This supersedes any authority granted to the Members pursuant to the Act. Any Member who takes any action or attempts to bind the Company in violation of this Section shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.
- 14.2 The Member(s) shall not be required to make any additional contribution to the Company beyond their Capital Contribution, nor shall the Member(s) be liable for any losses, debts, obligations, or liabilities of the Company beyond the amount of the Member's Capital Account.

- 14.3 Except as otherwise specifically provided in this Agreement, prior to the dissolution of the Company, a Member shall not have the right to resign from the Company or to require the return of the Member's Capital Account.
- 14.4 All voting rights and governance rights of the Company shall be held and exercised solely by the Class A Members. The Class B Members shall have no right to vote at any of the meetings of the Members.
- 14.5 Except as may be otherwise provided herein or agreed to by a Member or Interest Holder, as the case may be, neither a Member nor an Interest Holder shall be bound by, or personally liable for the obligations or liabilities of the Company beyond the amount of the Capital Contributions of such Member or Interest Holder. A Member that receives a distribution (i) in violation of this Agreement or (ii) that is required to be returned to the Company under applicable law shall return such distribution within 30 days after demand therefor by the Manager or any Member. The Manager may in its sole discretion elect to withhold from any distributions otherwise payable to a Member amounts due to the Company from such Member.
- 14.6 The Company shall indemnify, to the extent of Company assets, each Member against any claim of liability asserted by a Person, other than the Company or another Member against a Member solely because the Member is a Member of the Company, except for claims for fraud, gross negligence or an intentional or willful breach of this Agreement. The Company shall advance all sums required to indemnify and hold the Member harmless as provided herein from the initiation of any claim against such Member, subject to acknowledgment in writing by such Member of the obligation to reimburse the Company in the event that, following the entry of a final, non-appealable judgment, it is determined that the Company was not obligated to indemnify such Member pursuant to this Agreement.
- 14.7 The Members are encouraged to frequent the Restaurant as loyal customers would do. Other than Members who are on the Coaching Board, Members are prohibited from engaging with the Restaurant regarding the operations of the Restaurant or the investment the Company has made in it. Members are encouraged to use the online portal provided by EquityEats to make business related suggestions and monitor the status of their investment.
- 14.8 Class B Member Conditional Entertainment Rights.

14.8.1 The Company shall award and honor conditional entertainment

rights to Class B Members. The extent of such rights is dependent on the amount of investment made by the Class B Member. The Class B Members may be asked to provide photographic identification to use such rights at the Restaurant. The conditional entertainment rights available are as follows:

- 14.8.1.1 The Class B Members shall be entitled to free or discounted food and beverage products depending on the amount of capital contributed as stated in Appendix A, subject to availability. Taxes and gratuities may still apply.
- 14.8.1.2 As stated in Appendix A, certain Class B Members shall be entitled to a number of invitations to free baking classes at the Restaurant. All such rights are subject to availability and exclude public holidays.
- 14.8.1.3 As stated in Appendix A, certain Class B Members shall be entitled to call the Restaurant during the day to reserve a loaf of bread for pick-up later that day. All such rights are subject to availability.
- 14.8.1.4 As stated in Appendix A, certain Class B Members shall be entitled to complementary specialty baked goods around the holidays, at the discretion of the managers of the Restaurant.
- 14.8.1.5 As stated in Appendix A, certain Class B Members shall be entitled to access to the VIP lounge at Prequel (918 F St NW) as arranged by the Company.
- 14.8.1.6 The foregoing rights are hereby conditioned upon such Class B Members good conduct and behavior while in the Restaurant. Failure (in the Restaurant operator's reasonable discretion) to maintain conduct and decorum which reflects positively on the Restaurant, to respect or be courteous to staff or other employees of the Restaurant, or loud, lude, or drunken behavior in the Restaurant shall result in a termination of the conditional entertainment rights of such Class B Member.
- 14.8.1.7 The foregoing rights are non-transferable and in the event that a Class B Member sells, assigns, transfers or otherwise encumbers his or her interest



in the Company their outstanding Conditional Entertainment Rights shall cease.

## **15. Investment Representations**

The Agreement is made in reliance upon each Member's representations to the Company which by executing this Agreement each Member hereby confirms:

- 15.1 that its interest in the Company is to be acquired for investment, and not with a view to the sale or distribution of any part thereof, and that it has no present intention of selling, granting participation in, or otherwise distributing the same, and each Member understands that its interest in the Company has not been registered under the Securities Act of 1933, as amended (the "Securities Act") and that any transfer or other disposition of the interest may not be made without registration under the Securities Act or pursuant to an applicable exemption therefrom. Each Member further represents that it does not have any contract, undertaking, agreement, or arrangement with any person to sell, transfer, or grant participations to such person, or to any third person, with respect to its interest in the Company;
- 15.2 if a Class B Member, that such Member has investment no more than is allowed under the District of Columbia-Only Securities Offerings Exemption rules in 26-B DCMR §§ 250 – 256; and
- 15.3 if a Class B Member, that such Member is a resident of the District of Columbia.

## **16. Right to Purchase Interests.**

- 16.1 The Class A Members shall have the right, at any time, in their absolute discretion to purchase, and the Class B Members shall be obligated to sell, some or all of a Class B Member's Interest in the Company, as the Class A Members shall determine ("Right of Purchase") in accordance with this Section.
- 16.2 To exercise the Right of Purchase, the Class A Members shall send written notice to the Class B Member ("Purchase Notice").
- 16.3 The Purchase Notice shall contain the portion of the Class B Member's Interest they wish to purchase and the date upon which the settlement upon the Interest shall take place. The Class B Member shall be obligated to sell the portion of their Interest that the Class A Members wish to purchase. Notwithstanding the foregoing, the Purchase Notice shall not set a settlement date for the Interest prior to the thirtieth (30<sup>th</sup>) day following the date of the Purchase Notice ("Settlement Date").

16.4 The consideration payable for the Interest (or part thereof) will be an amount equal to two times the amount of the Member's Capital Contributions for that Interest (or part thereof). This will be payable to such Member within thirty (30) days following the Settlement Date.

**17. Right to Assign to Employees.**

The Class A Members shall have the right, at any time, in their absolute discretion, to assign or transfer some of their Interests in the Company to employees of the Company in order to incentivize such employees to remain loyal and hard-working. Upon such assignment or transfer, the employee will become a Class A Member.

**18. Transfer, Sale, or Assignment by Member.**

18.1 Other than in accordance with Sections 16 and 17, no Member shall sell, assign, transfer, or otherwise encumber ("Transfer") any of the Member's Interest in the Company, except as provided in this Section. Each Member hereby acknowledges the reasonableness of this prohibition in view of the purposes of the Company and the relationship of the Members. The transfer of any Member's Interest in violation of the prohibition contained in this Section shall be deemed invalid, null and void, and of no force or effect.

18.2 No Person may Transfer all or any portion of or any interest or rights in the Person's Membership Rights or Interest unless the following conditions ("Conditions of Transfer") are satisfied:

18.2.1 The transferor has held his or her Interests for at least nine (9) months (unless the transferee is a resident of the District of Columbia);

18.2.2 The transferor is transferring all of the his or her Interests and is transferring them all to a single Person (for the avoidance of doubt, partial transfers are not permitted, the Company only allows all-or-none transfers);

18.2.3 The Transfer will not require registration of Interests or Membership Rights under any federal or state securities laws;

18.2.4 The transferee delivers to the Company a written instrument agreeing to be bound by the terms of this Agreement and any other instrument the Manager deems necessary or advisable.

18.2.5 The Transfer will not result in the Company losing its classification as a partnership for tax purposes;

18.2.6 The Transfer will not result in the Company being subject to the Investment Company Act of 1940, as amended;

18.2.7 The transferor or the transferee delivers the following information to the Company: (i) the transferee's taxpayer identification number; and (ii) the transferee's initial tax basis in the Transferred Interest; and

18.2.8 The transferor complies with the provisions set forth in Section 18.7.

18.3 If the Conditions of Transfer are satisfied, then a Member or Interest Holder may Transfer all of that Person's Interest. The Transfer of an Interest pursuant to this Section shall not result, however, in the Transfer of any of the transferor's other Membership Rights, if any, and the transferee of the Interest shall have no right to: (i) be admitted as a member by the Manager; (ii) exercise any Membership Rights other than those specifically pertaining to the ownership of an Interest; or (iii) act as an agent of the Company.

18.4 Any Person to whom Membership Rights are attempted to be transferred in violation of this Section shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive distributions from the Company or have any other rights in or with respect to the Membership Rights.

18.5 In order to cover the Manager's bookkeeping and accounting expenses associated with a Transfer, the transferring member shall pay the Managers a fifty dollar (\$50) transfer fee to cover such expenses.

18.6 The Company will only process any authorized Transfer at the end of the calendar quarter during which such Transfer is requested (for example, purposes, a Transfer submitted and approved in February would only be processed and completed by the Company on March 31). The Company will accordingly process authorized Transfers only four (4) times per calendar year.

18.7 Right of First Offer.

18.7.1 If an Interest Holder (a "Transferor") desires to transfer his interest (the "Transferor Interest"), the Transferor shall notify the Company of that desire (the "Transfer Notice"). The Transfer Notice shall describe the Transferor Interest. The Company shall have the option (the "Company Purchase Option") to purchase the Transferor Interest subject to approval by a majority of the Class

A Members. The purchase price (the "Purchase Price") for the Transferor Interest shall be the fair market value thereof as mutually agreed between the Transferor (or his or her successor in interest) and the Manager (the "Agreed Value"), as of the last day of the month immediately preceding the Transfer Notice; *provided* that if such parties cannot agree as to Agreed Value, the purchase price shall be the fair market value of the Transferor Interest as determined by an appraisal (the "Appraised Value") determined by an appraiser with at least five (5) years of experience in the valuation of restaurant businesses, which appraiser shall be elected by mutual agreement by the Manager and the Transferor within twenty-one (21) days of the failure of the parties to agree as to an Agreed Value. The determination of Appraised Value by the appraiser shall be conclusive and binding on the parties. The Transferor and the Manager shall each bear fifty percent (50%) of the costs of the appraiser.

18.7.2 The Company Purchase Option shall be and remain irrevocable for a period (the "Transfer Period") ending at 11:59 P.M., local time at the Company's principal office on the thirtieth (30th) day following the Transfer Notice is given to the Company.

18.7.3 At any time during the Transfer Period, the Company may elect to exercise the Company Purchase Option by giving written notice of its election to the Transferor. The Transferor shall not be deemed a Member for the purpose of voting on whether the Company shall elect to exercise the Company Purchase Option.

18.7.4 If the Company elects to exercise the Company Purchase Option, the Company's notice of its election shall fix a closing date (the "Transfer Closing Date") for the purchase, which shall not be earlier than five (5) days after the date of the notice of election or more than thirty (30) days after the expiration of the Transfer Period.

18.7.5 If the Company elects to exercise the Company Purchase Option, the Purchase Price shall be paid in cash on the Transfer Closing Date.

18.7.6 If the Company fails to exercise the Company Purchase Option during the Transfer Period, the Transferor shall be permitted to offer and sell for a period of ninety (90) days (the "Free Transfer Period") at a price not less than the Purchase Price. If the Transferor does not Transfer the Transferor Interest within the Free Transfer Period, the Transferor's right to Transfer the Transferor Interest pursuant to this Section shall cease and

terminate.

18.7.7 Any Transfer of the Transferor Interest made after the last day of the Free Transfer Period or without strict compliance with the terms, provisions, and conditions of this Section and other terms, provisions, and conditions of this Agreement, shall be null, void, and of no force or effect.

18.8 Drag Along. If the Class A Members approve a Transfer by assignment of all of the Interests of the Company to an unrelated third party, or by merger, consolidation and/or reorganization with an unrelated third party and the purchase price is a fair market value thereof as mutually agreed between a Majority In Interest of the Class B Members and a Majority In Interest of the Class A Members (the “Drag/Tag Along Agreed Value”); *provided* that if such parties cannot agree as to Agreed Value, the purchase price as determined by an appraisal (the “Drag/Tag Along Appraised Value”) determined by an appraiser with at least five (5) years of experience in the valuation of restaurant businesses, which appraiser shall be elected by mutual agreement of a Majority In Interest of the Class B Members and a majority of the Class A Members within 21 days of the failure of the parties to agree as to a Drag/Tag Along Agreed Value (the determination of Drag/Tag Along Appraised Value by the appraiser shall be conclusive and binding on the parties and the Members together shall bear the costs of the appraiser), then the Members shall consent to and raise no objection to the Transfer and shall agree to sell all of their Interests or vote in favor of a merger, consolidation or other reorganization with an unrelated third party (as applicable). Each Member shall use his/her/its best efforts to cooperate in the Transfer of the Company and shall take any and all necessary and desirable actions in connection with the consummation of the Transfer of the Company as are reasonably requested by the Manager.

18.9 Tag Along. If the Class A Members approve a Transfer by assignment of a majority of the Interests of the Class A Members to an unrelated third party, or by merger, consolidation and/or reorganization with an unrelated third party for the Drag/Tag Along Agreed Value, the Manager shall notify the Class B Members and shall cause such third party to purchase the Interests of the Class B Members if it so elects, at the same price and on the same terms and conditions.

## **19. Resignation and Redemption of Membership Interests.**

19.1 Voluntary Resignation. No Member shall have the right or power to voluntarily resign from the Company and force the Company to redeem his Interest.

19.2 Involuntary Resignation. Immediately upon the occurrence of an Involuntary Resignation, the successor of the resigned Member shall thereupon become an Interest Holder but shall not be admitted as a Member by the Manager. The successor Interest Holder shall have all the rights of an Interest Holder but shall not be entitled to receive in liquidation of the Interest, the fair market value of the Member's Interest as of the date the Member involuntarily resigned from the Company.

## **20. Financial statements.**

Once the Restaurant has opened, the Manager shall furnish the Members with quarterly financial reports, giving an indication of the Restaurant's financial health. Such financial reports will not be audited or reviewed by a Certified Public Accountant ("CPA"), and no CPA will express an opinion or conclusion on them. No assurances on these financial reports will be provided by the Company, EquityEats, Inc. or any CPA. The Managers shall be entitled, in their sole discretion to transmit such reports via the Member's dashboard on equityeats.com.

## **21. Intellectual Property**

The intellectual property for the Restaurant will reside with Bluebird Bakery LLC and shall be licensed to the Company accordingly.

## **22. Liability and Indemnification.**

22.1 The Managers shall not be liable, responsible, or accountable, in damages or otherwise, to any Member, or to the Company for any act performed by the Managers with respect to Company matters, except to the extent a court of competent jurisdiction has determined such Manager has committed fraud or gross negligence.

22.2 The Company shall indemnify the Managers for any act performed by the Manager in connection with the operation of the Company to the fullest extent permitted by law and to save and hold them harmless from and in respect of all (i) reasonable fees, costs, and expenses, including, but not limited to, legal fees, paid in connection with or resulting from any claim, action, or demand against the Managers that arise out of or in any way relate to the Company, its properties, business, or affairs and (ii) such claims, actions, and demands and any losses or damages resulting from such claims, actions, and demands, including amounts paid in settlement or compromise (if recommended by attorneys for the Company) of any such claim, action or demand; provided, however, that this indemnity shall not extend to any conduct that has been determined by final adjudication to constitute fraud, willful misconduct, recklessness or gross negligence. Expenses incurred by the Managers in defending a claim or proceeding covered by this Section shall be paid by the Company in advance of the final disposition of such claim or proceeding, provided

that the Manager contractually agrees to repay such amount if it is ultimately determined that the Managers were not entitled to be indemnified.

### **23. Power of Attorney**

Each Member constitutes and appoints any Manager as the Member's true and lawful attorney-in-fact ("Attorney-in-Fact"), and in the Member's name, place and stead, to make, execute, sign, acknowledge, and file:

- (i) all documents (including amendments to the Articles of Organization and to this Agreement and the books and records of the Company) which the Attorney-in-Fact deems appropriate to reflect any amendment, change, or modification of this Agreement (provided that, the same does not materially and adversely affect (1) the rights and obligations of the Members hereunder, or (2) the economic terms of this Agreement);
- (ii) any and all other certificates or other instruments required to be filed by the Company under the laws of the State or of any other state or jurisdiction, including, without limitation, any certificate or other instruments necessary in order for the Company to continue to qualify as a limited liability company under the laws of the state;
- (iii) one or more fictitious or trade name certificates; and
- (iv) all documents which may be required to dissolve and terminate the Company.

### **24. No Member Action for Dissolution.**

No Member shall take any voluntary action that would cause a dissolution of the Company. Each Member hereby waives and renounces his, her or its right to initiate legal action to seek the appointment of a receiver or trustee to liquidate the Company or to seek a decree of judicial dissolution of the Company.

### **25. Limitations on Actions by Members.**

- 25.1 If a Member alleges fraud, bad faith, or willful misconduct on the part of the Company or the Managers, then if such Member expresses a bona fide interest in making a claim against the Company or the Manager (an "Initiating Member"), then the Initiating Member shall deliver to the Company a notice in writing expressing the reasons behind such interest. The Company shall then furnish to each of the Members (i) a copy of such Member's request and (ii) a response from the Company. The Company shall, in such Member communication, request that each Member indicate whether it desires to join the Initiating Member in

pursuing the claim described by the Initiating Member. If Members representing a Super-Majority in Interest indicate an affirmative desire to join with the Initiating Member (the “Designating Members”), then the Company shall furnish to such Designating Members the name, address and email address of each such Designating Member (an “Information Notice”) for the purpose of their selecting a Member Representative (as defined below) as described below. No Member may pursue any remedy with respect to the Company or the Manager unless and until a Super-Majority In Interest indicate a desire to collectively pursue such remedy.

- 25.2 If a group of Designating Members is formed, then the Designating Members shall, within thirty (30) days of the Company’s delivery of the designate a single Member (the “Member Representative”) to represent their interests in connection with such Interests and notify the Company of such designation. After a Member Representative has been designated with respect to such series, no Member other than the Member Representative may pursue any remedy with respect to such claim.
- 25.3 The Member Representative may direct the time, method and place of conducting any proceeding for any remedy against the Company arising in connection with the claim. The Member Representative may, on behalf of all the Designating Members agree to (i) any waiver of an act or omission that brought rise to the claim or (ii) any amendment or waiver of any provision of this Agreement with respect to the claim. When an act, omission, or Agreement provision is so waived, no such waiver shall extend to any subsequent or other act or omission that might give rise to a similar claim, or impair any consequent right.

## **26. Tax Matters**

- 26.1 Tax Returns. The Manager shall cause IRS Form 1065, Schedule K-1 and any other tax information reasonably requested by a Member, to be prepared and delivered to the Members within ninety (90) days after the close of the Company’s fiscal year at the expense of the Company. Notwithstanding anything in this paragraph to the contrary, the obligations under this Section shall commence with the fiscal year during which the initial capital contribution from the Members to the Company occurs.
- 26.2 Tax Matters Partner. The Manager shall be the Company’s tax matters partner under the Code and under any comparable provision of state law. The Manager shall have the right to resign as tax matters partner by giving thirty (30) days’ written notice to each Member. Upon such resignation a successor tax matters partner shall be selected by a Majority In Interest of the Members. The tax matters partner shall employ, at the Company’s expense, experienced tax counsel to represent the Company



in connection with any audit or investigation of the Company by the Internal Revenue Service and in connection with all subsequent administrative and judicial proceedings arising out of such audit. If the tax matters partner is required by law or regulation to incur fees and expenses in connection with tax matters not affecting all the Members, then the Company shall be entitled to reimbursement from those Members on whose behalf such fees and expenses were incurred. The tax matters partner shall keep the Members informed of all administrative and judicial proceedings, as required by Section 6223(g) of the Code, and shall furnish to each Member, if such Member so requests in writing, a copy of each notice or other communication received by the tax matters partner from the Internal Revenue Service, except such notices or communications as are sent directly to such requesting Member by the Internal Revenue Service. To the fullest extent permitted by law, but subject to the limitations and exclusions of Section 22.2, the Company agrees to indemnify the tax matters partner and its agents and save and hold them harmless, from and in respect to all (a) fees, costs and expenses in connection with or resulting from any claim, action, or demand against the tax matters partner, the Manager or the Company that arise out of or in any way relate to the tax matters partner's status as tax matters partner for the Company, and (b) all such claims, actions, and demands and any losses or damages therefrom, including amounts paid in settlement or compromise of any such claim, action, or demand.

## **27. Notifications.**

All notices and communications to be given or otherwise made to a Member shall be deemed to be sufficient if sent by electronic mail to such address as set forth for the Member in the records of the Company. A Member shall send all notices or other communications required to be given hereunder to the Company via email at [twellings1978@gmail.com](mailto:twellings1978@gmail.com). Any such notice or communication shall be deemed to have been delivered and received, if given by the Company to a Member, on the first business day following that on which the electronic mail has been sent (assuming that there is no error in delivery). As used in this Section, "business day" shall mean any day other than a day on which banking institutions in the District of Columbia are legally closed for business. Each Member hereby agrees that the Company may deliver by electronic mail all notices, financial statements, tax reports, valuations, reports, reviews, analyses or other materials, and all other documents, information and communications concerning the affairs of the Company and its investments including (without limitation) information about the Interest.

## **28. Specific Performance.**

The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement by any Member, the Company and/or any party who may be injured (in addition

to any other remedies which may be available to the Company and/or that party) shall be entitled to one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach, provided that no Member shall be entitled to seek specific performance or other equitable remedies in connection with (or to enjoin or interfere with) any decision by the Company decision to pursue, continue or abandon a restaurant.

## **29. Amendment.**

This Agreement sets forth the entire understanding of the parties with respect to its subject matter. It may be altered by the Managers with the written agreement of a Majority in Interest of the Class A Members, provided that any such amendment shall not materially and adversely affect the rights and obligations of the Class B Members and/or the economic terms of this Agreement. All other amendments require the consent of a majority of the Members.

## **30. Governing Law.**

All questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed and interpreted by the internal law, and not the law of conflicts, of the District of Columbia.

## **31. WAIVER OF TRIAL BY JURY.**

**THE PARTIES AGREE TO WAIVE ANY RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION IN CONNECTION WITH THEIR INVESTMENT IN OR THE BUSINESS AND OPERATION OF THE COMPANY.**

## **32. Arbitration**

32.1 Except as otherwise provided in Section 24.3 of this Agreement, any claim, dispute, or controversy of whatever nature arising out of or relating to this Agreement or otherwise related to the Company and its activities, including, without limitation, any action or claim based on tort, contract, or statute (including any claims of breach), or concerning the interpretation, effect, termination, validity, performance and/or breach of this Agreement (“Claim”), shall be resolved by final and binding arbitration (“Arbitration”) before a single arbitrator (“Arbitrator”) selected from and administered by JAMS Inc. (the “Administrator”) in accordance with its then existing comprehensive arbitration rules or procedures. The arbitration shall be held in Washington, DC.

32.2 Depositions may be taken and full discovery may be obtained in any arbitration commenced under this Section. The Arbitrator shall, within fifteen (15) calendar days after the conclusion of the Arbitration hearing, issue a written award and statement of decision describing the essential

findings and conclusions on which the award is based, including the calculation of any damages awarded. The Arbitrator shall be authorized to award compensatory damages, but shall not be authorized (i) to award non-economic damages, such as for emotional distress, pain and suffering or loss of consortium, (ii) to award punitive damages, or (iii) to reform, modify or materially change this Agreement or any other agreements contemplated hereunder; provided, however, that the damage limitations described in parts (i) and (ii) of this sentence will not apply if such damages are statutorily imposed. The Arbitrator also shall be authorized to grant any temporary, preliminary or permanent equitable remedy or relief he or she deems just and equitable and within the scope of this Agreement, including, without limitation, an injunction or order for specific performance.

- 32.3 Each party shall bear its own attorney's fees, costs, and disbursements arising out of the arbitration, and shall pay an equal share of the fees and costs of the Administrator and the Arbitrator; provided, however, the Arbitrator shall be authorized to determine whether a party is substantially the prevailing party, and if so, to award to that substantially prevailing party reimbursement for its reasonable attorneys' fees, costs and disbursements (including, for example, expert witness fees and expenses, photocopy charges, travel expenses, etc.), and/or the fees and costs of the Administrator and the Arbitrator.
- 32.4 By agreeing to this binding arbitration provision, the parties understand that they are waiving certain rights and protections which may otherwise be available if a Claim between the parties were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this section, the right to a jury trial, certain rights of appeal, and a right to invoke formal rules of procedure and evidence.

### **33. Attorney Fees.**

In the event a Member files or initiates any litigation, mediation, arbitration, special proceeding or other proceeding against the Company or a Manager, the prevailing party will be entitled to recover any litigation-related costs and reasonable attorney's fees incurred from the non-prevailing party, provided that the aggregate amount of attorney's fees recoverable will not exceed 200% of the Member's Capital Contributions to the Company.

### **34. Separability of Provisions.**

Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and/or contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, all of which shall continue in full force and effect to the fullest

extent legally permissible.

### **35. Confidentiality**

Each Member agrees to hold in confidence, and not to disclose to any third party without the consent of the Manager, all information disseminated to it by the Company (including, without limitation, the private placement memorandum, this Agreement and all information disseminated by use of a site on the world wide web), such information shall be referred to herein as “Confidential Information” and to use the same degree of care as such Member uses to protect its own confidential information in carrying out the foregoing confidentiality obligation. Each Member acknowledges and agrees that the Manager has advised such Member that (i) the Manager and the Company derive independent economic value from the Confidential Information not being generally known, (ii) the Confidential Information is the subject of reasonable efforts to maintain its secrecy, and (iii) consequently, the Manager considers such Confidential Information to be a trade secret. Except to the extent that any such return would be prohibited by applicable law, each Member agrees that any document constituting or containing any Confidential Information shall be returned to the Company upon the Manager’s request. Notwithstanding the foregoing, no Member shall be required to return (i) any Schedule K-1 delivered by the Company to such Member or (ii) this Agreement.

### **36. Counterparts; Electronic Delivery.**

This Agreement, and any other documents or instruments contemplated hereunder or entered into pursuant hereto, may be executed in two or more counterparts, each of which shall be deemed an original, and all of which, when assembled, shall constitute one and the same document. The signature of any party to any counterpart of this Agreement or such other instrument shall be deemed a signature to, and may be appended to, any other counterpart hereof (or thereof). Delivery of an executed counterpart of this Agreement or any such other instrument) may be delivered electronically, including by facsimile transmission and/or by e-mail delivery of a .PDF scan of such counterpart, and the same shall constitute good and valid execution and delivery for all purposes.

**IN WITNESS WHEREOF**, the undersigned party has executed this Agreement as of the day and year first written above.

**COMPANY:**

TOMCAM LLC

By:  
Name:  
Title:

## STATEMENT OF ACCEPTANCE

Reference is made to the Operating Agreement of TOMCAM LLC (the "Agreement") effective as of the 6th of March 2015, by and among all of the then Members of TOMCAM LLC, a District of Columbia limited liability company (the "Company"), and said Company. As a proposed recipient of a Membership Interest covered by the Agreement, the undersigned hereby agrees that such Membership Interest upon receipt shall remain subject to all of the terms and conditions of the Agreement and all rights and obligations thereunder arising prior to such receipt, that upon such receipt the undersigned shall be deemed automatically to have accepted all of the terms and conditions of the Agreement and that the undersigned shall thereafter be deemed to be a signatory party to the Agreement in the position of one of the Members. It is understood that the executed Statement of Acceptance shall be attached to the Agreement and shall form a part thereof without any further action.

### **Class A Members**

Bluebird Bakery LLC

Date: 3/6/15



By:  
Name: Tom Wellings  
Title: Officer

### **Class B Members:**

Date:

## APPENDIX A

### Conditional Entertainment Rights

In accordance with Section 14.8, the Company will give the following rights to the Class B Members to use at the Restaurant, based on the amount of capital provided by each such Person:

<b>Capital Contribution (\$)</b>	<b>Coffee drink<sup>(1)</sup></b>	<b><u>Name listed on website</u></b>	<b><u>Scoop of soft service ice cream<sup>(1)</sup></u></b>	<b><u>Breakfast pastry<sup>(1)</sup></u></b>	<b><u>Panini<sup>(1)</sup></u></b>	<b><u>Holiday specialty goods<sup>(2)</sup></u></b>	<b><u>Ability to call ahead for bread<sup>(3)</sup></u></b>	<b><u>VIP Lounge at Prequel</u></b>	<b><u>Baking class with chef invites</u></b>
100	N/A	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A
300	1 x \$2 price	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A
500	1 x \$1 price	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1,000	1 x \$1 price	Yes	N/A	N/A	\$3	N/A	N/A	N/A	N/A
2,500	1 free	Yes	\$1	N/A	\$3	N/A	Yes	N/A	2
5,000	1 free	Yes	\$1	\$2	\$3	N/A	Yes	N/A	4
10,000	1 free	Yes	1 free	1 free	\$3	N/A	Yes	Yes	6
25,000	1 free	Yes	1 free	1 free	1 free	Yes	Yes	Yes	15 (private)
50,000	2 free	Yes	1 free	1 free	1 free	Yes	Yes	Yes	15 (private)

(1) Per day the Restaurant is open, limited to a single or double shot of espresso where applicable and subject to availability.

(2) For collection from the Restaurant around holidays as determined by the managers of the Restaurant.

(3) Subject to reasonable availability and orders already received from other Class B Members.