

# OPERATING AGREEMENT BY THE MEMBERS OF TURTLE FARM COHOUSING COMMUNITY, LLC

## ARTICLE I ORGANIZATION OF THE COMPANY

1.01 Formation. The parties to this Agreement have agreed to the formation and are Members of Turtle Farm Cohousing Community, LLC, a limited liability company organized under the provisions of the Iowa Act. A certificate of organization has been filed with the Iowa Secretary of State. The Managers may take such further actions as they deem necessary to permit the Company to conduct business as a limited liability company in any other jurisdiction.

1.02 Principal Office. The principal office of the Company shall be at 7260 N.W. 58<sup>th</sup> Street, Johnston, Iowa 50131 or such place as may be designated from time to time by the Managers. The Managers may establish additional places of business for the Company.

1.03 Business of the Company. The business of the Company is to create a diverse, sustainable Cohousing Community and such other business activities associated with the community.

## ARTICLE II MEMBERS

2.01 Initial Members. The names and addresses of the Members of the Company are as follows:

	<u>Member</u>	<u>Address</u>
1.	Nancy L. Rambo	6520 Del Matro Avenue, Windsor Heights, Iowa 50311
2.	Donald K. Bustell	6520 Del Matro Avenue, Windsor Heights, Iowa 50311
3.	Angela Tedesco	7260 N.W. 58 <sup>th</sup> Street, Johnson, Iowa 50131
4.	John Tedesco	7260 N.W. 58 <sup>th</sup> Street, Johnson, Iowa 50131

2.02 Additional Members.

(a) Membership is by household. A household becomes a Member upon the payment of a \$100 capital contribution. A renewal fee of \$1- is due on the anniversary of the Member's joining date.

(b) A person other than a Transferee shall become a Member of the Company upon (i) the unanimous consent of the Members; (ii) payment of the agreed upon Capital Contribution to the Company by the person; and (iii) the person signing an addendum to this Agreement agreeing to be bound to its terms.

(c) A Transferee becomes a Member upon the (i) unanimous consent of the Members other than the transferor-Member and (ii) the Transferee signing an addendum to this Agreement agreeing to be bound to its terms.

(d) A Member who has transferred his or her entire Transferable Interest ceases to be a Member once the Transferees of his or her entire Transferable Interest become Members.

(e) Changes to the names and addresses of the Members and the names and addresses of new Members shall be identified by an addendum to this Operating Agreement.

(f) A person shall become a Member if, within ninety consecutive days after the Company ceases to have any Members, all of the following occur:

(1) The last person to have been a Member, or the legal representative of that person, designates a person to become a Member; and

(2) The designated person consents to become a Member.

2.03 Liability for Required Contributions. A Member is liable to the Company for his or her Capital Contribution.

A person's obligation to make a contribution to the Company is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the Company.

2.04 Additional Capital; Limitation. Other than the contributions of the Members set forth in Section 2.01 and new Members as provided in Section 2.02, no Member shall be required to make any additional contributions to the capital of the Company nor be obligated to restore any negative Capital Account as defined in Section 4.01. No Member shall have any liability to the Company, to the other Members, or to the creditors of the Company on account of any deficit balance in such Member's Capital Account except to the extent such deficit arises from the failure of the Member to contribute the full amount of his or her Capital Contribution which he or she was obligated to contribute. No Member shall be entitled to interest on any Capital Contribution or on such Member's Capital Account.

2.05 Member Authority Limited. A Member is not an agent of the Company solely by reason of being a Member. Unless expressly authorized to do so by the Managers, no Member shall have any power or authority to bind the Company in any way or to render it financially liable for any purpose.

2.06 Liability of Members. The debts, obligations, or other liabilities of the Company, whether arising in contract, tort, or otherwise, belong solely to the Company and do not become the debts, obligations, or liabilities of a Member solely by reason of the Member acting as a Member provided, however, that each Member shall guarantee all indebtedness of the Company in the same proportion as each Member's percentage share of profits and losses.

### **ARTICLE III MANAGEMENT OF THE COMPANY**

#### 3.01 Management by Managers.

(a) The Company is manager-managed by Managers appointed by the vote of 75% of the Members. The initial Managers shall be Angela Tedesco, John Tedesco, Nancy Rambo and Donald Bustell. The conduct of the Company's business and the management of its affairs will be exercised and conducted solely by the Managers and those persons designated by the Managers in accordance with this Agreement.

However, the Managers must receive the prior unanimous consent of the Members to do any of the following:

- (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the Company's property, with or without the goodwill, outside the ordinary course of the Company's business;
- (2) Approve a merger, conversion, or domestication involving the Company;
- (3) Undertake any other act outside the ordinary course of the Company's business; or
- (4) Amend this Agreement.

(b) Each Manager shall hold office until his or her death, incapacity, resignation, or removal. A person need not be a Member to be a Manager, but the dissociation of a Member who is also a Manager removes the person as a Manager. If a person who is both a Manager and a Member ceases to be a Manager, that cessation does not by itself dissociate the person as a Member.

A Manager may resign upon thirty (30) days prior written notice to the other Members. The Members may elect a new Manager to replace the resigning Manager at a meeting called for that purpose within thirty (30) days of delivery of the notice of resignation by such Manager.

A Manager may be removed as a Manager at any time with or without cause by a vote of 75% of the Members.

3.02 Officers. The Managers may appoint themselves or other individuals (whether or not employees or Members of the Company) as officers of the Company, which may include, but shall not be limited to, any one or more of the following: (1) a President; (2) one or more Vice Presidents; (3) a Secretary; and (4) a Treasurer.

The Managers may delegate day-to-day management responsibilities to any such officers, as determined by the Managers from time to time, and such officers shall have the authority to contract for, negotiate on behalf of and otherwise represent the interests of the Company as so authorized by the Managers. Unless the Managers decide otherwise, if the title is one commonly used for officers of a business corporation formed under the Iowa Business Corporation Act, the assignment of such title shall constitute the delegation to such individual of the authority and duties that are normally associated with that office and that are set forth in the contract or resolution appointing such officer or officers, subject, however, to any specific delegation of authority and duties or specific restriction on the authority and duties as may be made under or set forth in any such contract or resolution. In all events, the officers shall be subject to the direction and control of the Managers. Such delegation by the Managers shall not cause any Manager to cease to be a Member or Manager of the Company.

If the Managers determine to appoint one or more officers for the Company, each such officer shall hold office until his or her death, resignation, or removal.

An officer may resign at any time by delivering notice to the Managers. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

Any officer may be removed by the Managers at any time, with or without cause, but such right of removal shall be without prejudice to and subject to the contract rights, if any, of the person so removed.

3.03 Fiduciary Duties. Subject to the limitations set forth in Section 3.04 herein, the Managers and officers owe to the Company and the Members the fiduciary duties of loyalty and care stated in subsections (a) and (b).

(a) The duty of loyalty of a Manager or officer includes all of the following duties:

(1) To account to the Company and to hold as trustee for it any property, profit, or benefit derived by the Manager or officer regarding any of the following:

- (A) In the conduct or winding up of the Company's activities;
- (B) From a use of the Company's property; and
- (C) From the appropriation of a Company opportunity.

(2) To refrain from dealing with the Company in the conduct or winding up of the Company's activities as or on behalf of a person having an interest adverse to the Company.

(3) To refrain from competing with the Company in the conduct of the Company's activities before the dissolution of the Company.

(b) A Manager or officer shall discharge his or her duties under this Agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(c) All of the Members may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(d) A Member does not have any fiduciary duty to the Company or to any other Member solely by reason of being a Member.

3.04 Managers and Officers Have No Exclusive Duty to Company. Neither a Manager nor an officer, solely by reason of being a Manager or officer, shall be required to manage the Company as his or her sole and exclusive function, and a Manager or officer may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of any Manager or officer or to the income or proceeds derived therefrom. Notwithstanding anything herein to the contrary, the Member of the Company shall not engage in residential construction unless such activity is done as a business activity of the Company. Said residential construction shall be considered a business opportunity of the Company.

3.05 Statements of Authority. The Managers are authorized on behalf of the Company to deliver to the Iowa Secretary of State for filing a statement of authority. The statement may provide with respect to any Manager or officer, the authority, or limitations on the authority, of all persons holding the position to do any of the following:

(a) Execute an instrument transferring real property held in the name of the Company; and

(b) Enter into other transactions on behalf of, or otherwise act for or bind, the Company.

3.06 Use of Professionals. In exercising their powers, the Managers may rely upon and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, or document believed by them to be genuine and to have been signed or prepared by another Manager, Member, officer or employee of the Company, or by any other person (including legal counsel, accountants, and other experts), as to matters the Managers reasonably believe such person is a competent and reliable source for the information. Reliance on any opinion of an independent counsel, accountant or expert whom the Managers reasonably believe is a competent and reliable source for the information shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by the Managers in good faith and in accordance with such opinion.

3.07 Expenses and Salary. The Managers shall be reimbursed by the Company for their reasonable expenses incurred in connection with the performance of their duties and may receive such other compensation as determined by the Members from time to time.

3.08 Liability Limitation and Indemnification of the Managers and Officers.

(a) A Manager or officer shall not be personally liable to the Company or the Members for money damages for any action taken, or any failure to take any action, except liability for any of the following:

- (1) A breach of the duty of loyalty;
- (2) A financial benefit received by the Manager or officer to which the Manager or officer is not entitled;
- (3) An improper distribution under Section 4.05(b) of this Agreement;
- (4) Intentional infliction of harm on the Company or a Member; or
- (5) An intentional violation of criminal law.

(b) Any Manager or officer shall be defended, indemnified, and held harmless by the Company from and against any and all losses, claims, damages, liabilities, settlements and other amounts arising from any and all claims (including reasonable legal fees and expenses), demands, actions, suits or proceedings (civil, criminal, administrative or investigative), in which he or she may be involved, as a party or otherwise, by reason of his or her management of the Company, whether or not he or she continues to be Manager or officer at the time any such liability or expense is paid or incurred; provided that neither the Manager nor the officer shall be entitled to the foregoing indemnification if a court of competent jurisdiction determined that such losses, claims, damages, liabilities, expenses, or such other amounts resulted primarily from

either his or her (1) gross negligence or willful misconduct or (2) a breach of his or her fiduciary duties set forth in § 3.03 of this Agreement. The termination of a proceeding by judgment, order, settlement or conviction upon a plea of *nolo contendere*, or its equivalent, shall not, of itself, create any presumption that such losses, claims, damages, liabilities, expenses, or such other amounts resulted primarily from the gross negligence or willful misconduct of the Manager or officer, or that the conduct giving rise to such liability was not in the best interest of the Company. The Company shall indemnify any Manager or officer who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by or in the right of the Company to procure a judgment in its favor by reason of the fact that such Manager or officer is or was an agent of the Company, against any losses, claims, damages, liabilities, settlements, expenses, legal fees or any other amounts incurred by such Manager or officer in connection with the defense or settlement of such action; provided that the Manager or officer shall not be entitled to the foregoing indemnification if a court of competent jurisdiction shall have determined that any such losses, claims, damages, liabilities, expenses or such other amounts resulted primarily from (1) the gross negligence or willful misconduct or (2) a breach of his or her fiduciary duties set forth in § 3.03 of this Agreement. The Company shall advance a Manager or officer any expenses (including, without limitation, reasonable legal fees and expenses) incurred as a result of any claim, demand, action, suit or proceeding referred to in this paragraph (b) provided that (1) the legal action, suit, etc. relates to the performance of duties or services by the Manager or officer on behalf of the Company; and (2) the Manager or officer gives a full recourse promissory note to the Company for the amounts of such advances payable in the event that the Manager or officer is determined to be not entitled to indemnification under this Agreement.

(c) The indemnification provided by paragraph (b) of this Section 3.08 shall not be deemed to be exclusive of any other rights to which the Managers or officers may be entitled under any agreement, as a matter of law, in equity or otherwise, and shall continue as to the Managers or officers who have ceased to have an official capacity and shall inure to the benefit of the heirs, personal administrators, executors, successors and assigns of the Managers or officers.

(d) Any indemnification pursuant to this section will be payable only from the assets of the Company.

(e) The Company may purchase and maintain insurance on behalf of a Member or Manager against liability asserted against or incurred by the Member or Manager in that capacity or arising from that status.

#### **ARTICLE IV ALLOCATIONS AND DISTRIBUTIONS**

##### 4.01 Capital Accounts.

(a) A capital account (a “Capital Account”) shall be established for each Member. Each Capital Account will be increased by (i) the amount of money contributed by such Member to

the Company; (ii) the Gross Asset Value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code); and (iii) the Net Profits allocated to the Member. Each Capital Account will be decreased by (i) the amount of money or, to the extent permissible under Treasury Regulations § 1.704-1(b)(2)(iv)(e)(2), notes distributed to such Member by the Company; (ii) the Gross Asset Value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under § 752 of the Code); and (iii) the amount of Net Losses allocated to such Member.

(b) In the event a Member transfers a Transferable Interest, the Capital Account associated with such transfer shall become the Capital Account of the Transferee to the extent it relates to the Transferable Interest.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 4.01 is intended, and shall be construed, so as to comply with the requirements of § 704(b) of the Code and the Treasury Regulations, and in the event there exists any inconsistency, the Code and the Treasury Regulations shall control.

4.02 Allocation of Net Profits and Net Losses. Except as provided in Section 4.03, the Net Profits and Net Losses of the Company for each Fiscal Year shall be allocated among the Members in accordance with Section 2.01 of this Agreement and among new Members as provided in relevant addendum to this Agreement.

4.03 Regulatory Allocations. The Capital Accounts of the Members are to be maintained in accordance with the Code and the Treasury Regulations, including without limitation the alternative test for economic effect set forth in Treasury Regulations § 1.704-1(b)(2)(ii)(d) and the minimum gain chargeback provisions of Treasury Regulations § 1.704-2, but nothing in this Agreement is intended to create a deficit restoration obligation or otherwise impose personal liability on a Member for a deficit in his or her Capital Account. Without limiting the generality of the foregoing:

(a) If any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations §§ 1.704-1(b)(2)(ii)(d)(4), (5), or (6), which create or increase a deficit in its Adjusted Capital Account, then items of the Company's income and gain for such year and, if necessary, for subsequent years shall be specially credited to the Adjusted Capital Account of the Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit in the Adjusted Capital Account as quickly as possible, provided that an allocation pursuant to this Section 4.03(a) shall be made only if and to the extent that such Member would have a deficit Adjusted Capital Account after all other allocations provided for in this Section 4.03 have been made as if Section 4.03(a) were not in this Agreement. It is the intent that this section be interpreted to comply with the alternate test for economic effect set forth in Treasury Regulations § 1.704-1(b)(2)(ii)(d).

(b) In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement, if any, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of §§ 1.704-2(g)(1) and 1.704-2(i)(5) of the Treasury Regulations, each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 4.05(b) shall be made only if and to the extent that such Member would have a deficit Adjusted Capital Account in excess of such sum after all other allocations provided for in this Section 4.05 have been made as if Section 4.05(a) and this Section 4.05(b) were not in this Agreement.

(c) Except as otherwise provided in § 1.704-2(f) of the Treasury Regulations, and notwithstanding any other provision of this subsection, if there is a net decrease in partnership minimum gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in partnership minimum gain, determined in accordance with Treasury Regulation § 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with §§ 1.704-2(f)(6) and 1.704-2(j)(2) of the Treasury Regulations. This subsection is intended to comply with the minimum gain chargeback requirement in § 1.704-2(f) of the Treasury Regulations and shall be interpreted consistently therewith.

(d) Except as otherwise provided in § 1.704-2(i)(4) of the Treasury Regulations, and notwithstanding any other provision of this subsection, if there is a net decrease in partner nonrecourse debt minimum gain attributable to a partner nonrecourse debt during any Fiscal Year, each Member who has a share of the partner nonrecourse debt minimum gain attributable to such partner nonrecourse debt, determined in accordance with § 1.704-2(i)(5) of the Treasury Regulations, shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in partner nonrecourse debt minimum gain attributable to such partner nonrecourse debt, determined in accordance with Treasury Regulation § 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with §§ 1.704-2(i)(4) and 1.704-2(j)(2) of the Treasury Regulations. This Section is intended to comply with the minimum gain chargeback requirement in § 1.704-2(i)(4) of the Treasury Regulations and shall be interpreted consistently therewith.

(e) Nonrecourse deductions for any Fiscal Year shall be specially allocated among the Members in proportion to their respective Transferable Interest in the Company.

(f) Any partner nonrecourse deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the partner nonrecourse debt to which such partner nonrecourse deductions are attributable in accordance with Treasury Regulation § 1.704-2(i)(1).

(g) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code § 734(b) or Code § 743(b) is required, pursuant to Treasury Regulation § 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Member in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.

(h) Notwithstanding the provisions of Section 4.02, the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Members so that, to the extent possible, without violating the requirements giving rise to the Regulatory Allocations, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this subsection (h) shall only be made with respect to allocations pursuant to subsection (g) hereof to the extent the Managers reasonably determines that such allocations will otherwise be inconsistent with the economic agreement among the Members.

(i) The Managers shall have reasonable discretion, with respect to each Fiscal Year, to (i) apply the provisions of subsection (h) hereof in whatever order is likely to minimize the economic distortions that might otherwise result from the Regulatory Allocations, and (ii) divide all allocations pursuant to subsection (h) hereof among the Members in a manner that is likely to minimize such economic distortions.

(j) In the event that any debt of the Company is properly characterized as equity for U.S. federal income tax purposes, the holder of such debt shall be treated for purposes of maintaining Capital Accounts and for U.S. federal income tax purposes as a “partner”; Net Profit and Net Loss shall be computed without deducting any amount that would have been treated as interest if the debt had been properly classified as “debt” for U.S. federal income tax purposes; and the amount that otherwise would have been so deducted shall instead be specially allocated to holder of such recharacterized debt.

4.04 Tax Allocations. The Company’s net taxable income or loss (and each item of income, gain, loss or deduction comprising such net taxable income or loss), as determined for federal income tax purposes, shall be allocated among the Members in the same proportions as the corresponding items of “book” income, gain, loss and deduction are allocated pursuant to Sections 4.02 and 4.03 hereof. Notwithstanding the foregoing sentence, federal income tax items

relating to (a) any property contributed to the Company if there was as of immediately following the contribution a difference between the Gross Asset Value of such property and the Company's adjusted tax basis in such property and (b) any property revalued pursuant to Section 10.09(d) of this Agreement if as of immediately following such revaluation there was a difference between the Gross Asset Value of such property and the Company's adjusted tax basis in such property, shall be allocated among the Members in accordance with § 704(c) of the Code and Treasury Regulations §§ 1.704-1(b)(2)(iv)(f) and (g), 1.704-1(b)(4)(i) and 1.704-3 to take into account the difference between the Gross Asset Value and the adjusted tax basis of such property.

#### 4.05 Distribution of Cash and Other Property.

(a) Nonliquidating Distributions. After establishing reserves for current and future Company obligations (as determined in the reasonable discretion of the Managers), and such other Company investments and expenditures as determined by the Managers, money and other property available for distribution may, as determined by the Managers, be distributed from time to time to the Members. Any such distributions made by the Company before its dissolution and winding up must be in equal shares among any person owning a Transferable Interest, except to the extent necessary to comply with any charging order in effect under Iowa Code § 489.503.

Other than as provided above, a person does not have a right to a distribution. A Member's dissociation does not entitle the Member to a distribution.

A Member does not have a right to demand or receive a distribution from the Company in any form other than money. The Company may distribute an asset in kind if each part of the asset is fungible with each other part and each Member receives a percentage of the asset equal in value to the Member's share of distributions. Distributed assets shall be valued at their Gross Asset Value for purposes of the distribution and shall be treated for financial accounting purposes as if sold at their Gross Asset Value immediately prior to the distribution, with any resulting profits or losses allocated among the Members per their interests in such profits or losses.

If a Member or Transferee becomes entitled to receive a distribution, the Member or Transferee has the status of, and is entitled to all remedies available to, a creditor of the Company with respect to the distribution. The Company's indebtedness to a Member incurred by reason of a distribution made in accordance with this section is at parity with the Company's indebtedness to its general, unsecured creditors.

(b) Limitation upon Distributions. The Company shall not make a distribution if after the distribution any of the following applies:

- (1) The Company would not be able to pay its debts as they become due in the ordinary course of the Company's activities;

(2) The Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the Company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of Members whose preferential rights are superior to those of persons receiving the distribution; or

(3) The payment of the distribution would be a default by the Company under any agreement for borrowed money by the Company, whether after notice, lapse of time or otherwise.

(c) The Company may base a determination that a distribution is not prohibited under subsection (b) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(d) Except as otherwise provided in subsection (f), the effect of a distribution under subsection (b) is measured as follows:

(1) In the case of a distribution by purchase, redemption, or other acquisition of a Transferable Interest in the Company, as of the date money or other property is transferred or debt incurred by the Company.

(2) In all other cases, as follows:

(A) The date that distribution is authorized, if the payment occurs within one hundred twenty days after that date.

(B) The date that payment is made, if the payment occurs more than one hundred twenty days after the distribution is authorized.

(e) The Company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection (b) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to Members under this section. If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(f) In subsection (b) "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

## **ARTICLE V TRANSFER OF TRANSFERABLE INTERESTS; NEW MEMBERS**

5.01 Buy-Sell Agreement. Membership interests in this Company shall be subject to a Buy-Sell Agreement.

5.02 Transferable Interest. A Transferable Interest is personal property. A Member may transfer his or her Transferable Interest, in whole or in part. The transfer:

- (a) Does not cause a Member's dissociation or a dissolution and winding up of the Company's activities;
- (b) Does not entitle the Transferee to do any of the following:
  - (1) Participate in the management or conduct of the Company's activities; or
  - (2) Except as otherwise provided in subsection (h), have access to records or other information concerning the Company's activities.
- (c) A Transferee has the right to receive, in accordance with the transfer, distributions to which the Member would otherwise be entitled.
- (d) In a dissolution and winding up of the Company, a Transferee is entitled to an account of the Company's transactions only from the date of dissolution.
- (e) The Company need not give effect to a Transferee's rights under this article until the Company has notice of the transfer.
- (f) Unless expelled by the unanimous consent of the other Members or until the Transferee becomes a Member, a Member who transfers his or her entire Transferable Interest retains the rights of a Member, other than the interest in distributions transferred, and retains all duties and obligations of a Member.
- (g) When a Member transfers a Transferable Interest to a person who becomes a Member with respect to the transferred interest, the Transferee is liable for the Member's obligations to make his or her Capital Contribution under the terms of this Agreement and for receipt of any improper distributions, known to the Transferee when the Transferee becomes a Member.
- (h) If a Member dies, the deceased Member's personal representative or other legal representative may exercise the rights of a Transferee provided in Iowa Code § 489.502(3), and, for the purposes of settling the estate, the rights of a current Member under Iowa Code § 489.410.
- (i) Notwithstanding anything herein to the contrary, a Transferable Interest shall not be held for more than ninety (90) days without the holder of said Transferable Interest becoming

a Member or the Transferable Interest being repurchased by the Company pursuant to the Buy-Sell Agreement.

## **ARTICLE VI VOTING, QUORUM, AND MEETINGS OF MEMBERS**

6.01 Voting Rights. Each Member shall have one vote. Any action of the Members shall be by a vote of 75% of the Members.

6.02 Meetings. Meetings of the Members may be called from time to time by the Managers or by a majority of the Members. A difference arising among Members as to matters upon which the Members are required or permitted to take action shall be decided by a majority of the Members.

6.03 Place of Meetings. The Managers may designate any place as the place of any Member meeting. If the Managers do not designate the place for a Member meeting, the Member meeting shall be held at the Company's principal office.

6.04 Notice. Written notice indicating the date, time, place, and purpose of all Member meetings shall be delivered to each Member not less than ten (10) days before the date of the meeting.

6.05 Meeting of All Members. Subject to Section 6.13, if every Member is present at any meeting, even without notice, such meeting shall be valid and Members may take any action required or permitted to be taken at a Member meeting.

6.06 Record Date. The record date for purposes of determining the Members entitled to notice of or vote at any Member meeting shall be the date on which the notice is mailed.

6.07 Quorum. A majority of the Members represented in person or by proxy, shall constitute a quorum for purposes of transacting business at a meeting of the Members.

6.08 Amending this Agreement. The unanimous consent of the Members is required in order to amend this Agreement.

6.09 Proxies. A Member may vote in person or by proxy, provided any proxy is executed in writing by the Member. Any such proxy must be filed with the Managers before or at the time of the meeting. No proxy shall be valid after six months of its execution.

6.10 Action by Members Without a Meeting. Any action required or permitted to be taken at a Member meeting may be taken without a meeting and without notice if the action is taken by all Members and if each Member signs a written consent describing the action to be taken and delivered to the Managers for filing with the Company records. The record date for

determining which Members may take action without a meeting shall be the date the first Member signs a written consent. Action taken under this Section shall be effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date.

6.11 Participation By Other Means. Members may participate in any Member meeting by any means of communication method that allows all Members participating therein to simultaneously hear each other. Participating in such a meeting shall constitute attendance at such meeting.

6.12 Member Representative. Any non-individual Member shall designate one individual to act as the exclusive representative of the Member for all purposes related to the Company, including, without limitation, for purposes of participation of the Member in all Member meetings, the voting by the Member and the execution of any written consent evidencing action of the Members taken without a meeting. A Member may change the identity of the Member's representative at any time and from time to time, in the Member's sole discretion, but shall provide written notice thereof to the Managers.

6.13 Waiver.

(a) A Member may waive any notice required by this Agreement before or after the date and time stated in the notice. The waiver must be in writing, be signed by the Member entitled to the notice, and be delivered to the Managers.

(b) A Member's attendance at a meeting: (i) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting or promptly upon the Member's arrival objects to holding the meeting or transacting business at the meeting, and (ii) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

## **ARTICLE VII RECORDS; FINANCIAL AND FISCAL AFFAIRS; TAX REPORTING**

7.01 Records and Accounting.

(a) The books of account of the Company shall be maintained at the Company's principal office. The Company shall maintain correct and proper books and records, entering fully and properly all Company transactions, as reasonably determined by the Managers.

(b) Upon request, for any purpose reasonably related to the Member's interest as a Member, the Managers will furnish a copy of such information as is required by the Iowa Act to a Member or his, her, or its representative; provided, however, that the information furnished to the

Member will not, in any event, be used for commercial purposes unrelated to the business operations of the Company. Any Member may inspect and copy or obtain from the Managers the financial records of the Company and its tax returns. A Member shall give the Managers at least five (5) business days prior written notice for any inspection and copying permitted pursuant to this subsection by the Member or its authorized attorney or agent.

7.02 Tax Information. The Managers will cause to be delivered, as soon as practical after the end of each Fiscal Year of the Company, to the Members and persons who were Members during such Fiscal Year (as well as to all persons treated as partners for U.S. federal income tax purposes) all information concerning the Company necessary to enable such Member or other person to prepare his, her, or its Federal and state income tax returns for such Fiscal Year, including a statement indicating such person's share of Net Profits, Net Losses, deductions, and credits for such Fiscal Year for Federal and state income tax purposes, and the amount of any distribution made to or for the account of such person during such Fiscal Year pursuant to this Agreement.

7.03 Tax Returns. The Managers shall cause income tax returns for the Company to be prepared and timely filed in accordance with applicable law.

7.04 Elections.

(a) The Managers may elect to adjust the basis of the Company assets for federal income tax purposes in accordance with § 754 of the Code in the event of a distribution of Company property as described in § 734 of the Code or a transfer by any Member as described in § 743 of the Code.

(b) The Managers, in their discretion, at any time and from time to time may also make such other tax elections as they deem necessary or desirable.

7.05 Interim Closing of the Books. There shall be an interim closing of the books of account of the Company (i) at any time a taxable year of the Company shall end pursuant to the Code, and (ii) at any other time determined by the Managers to be required by good accounting practice or otherwise appropriate under the circumstances.

7.06 Tax Matters Partner. The Manager shall be the "Tax Matters Partner" within the meaning of Code § 6231(a)(7) and is authorized to exercise the functions of a Tax Matters Partner under the Code. He shall be reimbursed for all reasonable expenses associated with its duties as Tax Matters Partner.

## **ARTICLE VIII DISSOLUTION**

8.01 Events Causing Dissolution. The Company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

- (a) the consent of all the Members;
- (b) the passage of 90 consecutive days during which the Company has no Members;
- (c) on application by a Member, the entry by a district court of an order dissolving the Company on the grounds that the conduct of all or substantially all of the Company's activities is unlawful; or it is not reasonably practicable to carry on the Company's activities in conformity with its Certificate and this Agreement certificate; or
- (d) on application by a Member or Transferee, the entry by a district court of an order dissolving the Company on the grounds that the Managers in control of the Company have acted, are acting, or will act in a manner that is illegal or fraudulent; or have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant. In a proceeding brought under this subsection (d), the court may order a remedy other than dissolution.

8.02 Distribution of Assets in Winding Up Company.

- (a) In winding up its activities, the Company must apply its assets to discharge its obligations to creditors, including Members who are creditors.
- (b) After the Company complies with subsection (a), any surplus must be distributed in the following order, subject to any charging order in effect under Iowa Code § 489.503:
  - (1) to each person owning a Transferable Interest that reflects Capital Contributions made by a Member and not previously returned, an amount equal to the value of the unreturned Capital Contributions; and
  - (2) in equal shares to each person owning a Transferable Interest.
- (c) If the Company does not have sufficient surplus to comply with subsection (b)(1), any surplus must be distributed among the owners of Transferable Interests in proportion to the value of their respective unreturned Capital Contributions.
- (d) All distributions made under subsections (b) and (c) must be paid in money.

8.03 Business After Dissolution. After dissolution, the Company shall not engage in any business except that necessary to wind up the Company's affairs pursuant to Iowa Code § 489.702 and to protect the value of and distribute the Company's assets.

8.04 Net Profits and Net Losses During Winding Up. Net Profits and Net Losses earned or incurred during the course of the winding up of the Company shall be credited or debited to the Members in the same proportion as before dissolution.

8.05 Management of the Company After Dissolution. The Managers shall continue to manage the Company after dissolution.

8.06 Winding Up. Upon dissolution each Member shall look solely to the assets of the Company for the return of its Capital Account. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return to the Capital Account of each Member, such Member shall have no recourse against other Members, in their capacity as such. Further, no Member shall be required to restore any deficit in his, her or its Capital Account and such deficit shall not be treated as an asset of the Company. The winding up of the affairs of the Company and the distribution of its assets shall be conducted exclusively by the Managers, who are hereby authorized to take all actions necessary to accomplish such distribution, including without limitation, selling any Company assets the Managers deem necessary or appropriate to sell.

## **ARTICLE IX DEFINITIONS**

As used in this Agreement, the following terms shall have the following meanings:

9.01 “Adjusted Capital Account” shall mean, with respect to each Member, the Member’s Capital Account as adjusted by the items described in §§ 1.704-2(g)(1), 1.704-2(i)(5) and 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

9.02 “Agreement” shall mean this Operating Agreement, as originally executed or as amended, modified, supplemented or restated from time to time.

9.03 “Capital Account” shall have the meaning ascribed to it in Section 4.01 of this Agreement.

9.04 “Capital Contribution” shall mean in the case of any Member as of any date of determination, the aggregate amount of cash and fair market value of any non-cash property (net of any liabilities assumed by the Company or secured by such property) that such Member shall be credited with contributing, directly or by assignment, to the Company on or prior to such date.

9.05 “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time and any successor statute or subsequent codification or recodification of the federal income tax laws of the United States.

9.06 “Company” shall mean Turtle Farm Cohousing Community, LLC, as such limited liability company may from time to time be constituted.

9.07 “Iowa Act” shall mean the Iowa Revised Uniform Limited Liability Company Act, Chapter 489 of the Iowa Code, as amended.

9.08 “Fiscal Year” shall mean the twelve-month period ending December 31.

9.09 “Gross Asset Value” shall mean, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the Managers;

(b) The Gross Asset Value of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Managers, as of the following times: (i) the contribution of more than *de minimus* additional capital by any new Member or existing Member; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of property as consideration for the Member’s Capital Contribution; and (iii) the liquidation of the Company within the meaning of § 1.704-1(b)(2)(ii)(g) of the Treasury Regulations; provided, however, that adjustments pursuant to the preceding clauses (i) and (ii) shall be made only if the Managers determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members;

(c) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution, as determined by the Managers; and

(d) The Gross Asset Values of Company assets shall be increased or decreased, as the case may be, to reflect any adjustments to the adjusted basis of such assets pursuant to § 734(b) or § 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to § 1.704-1(b)(2)(iv)(m) of the Treasury Regulations; provided, however, that Gross Asset Values shall not be adjusted pursuant to clause (d) to the extent that the Managers determines that an adjustment pursuant to this clause (d) is not necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to of this Agreement, such Gross Asset Value shall thereafter be adjusted by the depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

9.10 “Managers” shall mean the persons appointed pursuant to Section 3.01.

9.11 “Member” shall mean a person who at any given time is a Member of the Company.

9.12 “Net Profits” shall mean, for each Fiscal Year, the net taxable income of the Company determined in accordance with the income tax basis method of accounting and as reported, separately and in the aggregate, as appropriate, on the Company’s information return filed for United States federal income tax purposes, less any expenditures not deductible in computing the Company’s taxable income and not properly chargeable to capital account under § 705(a)(2)(B) of the Code plus any tax-exempt income of the Company; adjusted in the event that the Gross Asset Value of any asset differs from its adjusted tax basis to compute gain or loss and depreciation or amortization in respect of such property by reference to such Gross Asset Value; and adjusted, in the event that any asset is revalued pursuant to Section 9.09(b) or (d), to include as gain or loss the net increase or decrease in the Gross Asset Value of the asset.

9.13 “Net Losses” shall mean, for each Fiscal Year, the net taxable loss of the Company determined in accordance with the income tax basis method of accounting and as reported, separately and in the aggregate, as appropriate, on the Company’s information return filed for United States federal income tax purposes, plus any expenditures not deductible in computing the Company’s taxable income and not properly chargeable to capital account under § 705(a)(2)(B) of the Code less any tax-exempt income of the Company; adjusted in the event that the Gross Asset Value of any asset differs from its adjusted tax basis to compute gain or loss and depreciation or amortization in respect of such property by reference to such Gross Asset Value; and adjusted, in the event that any asset is revalued pursuant to Section 9.09(b) or (d), to include as gain or loss the net increase or decrease in the Gross Asset Value of the asset.

9.14 “Regulatory Allocations” shall mean the allocations pursuant to Section 4.03(a) through (j) of this Agreement.

9.15 “Transferable Interest” shall mean the right, as originally associated with a person's capacity as a Member, to receive distributions from the Company in accordance with this Agreement, whether or not the person remains a Member or continues to own any part of the right.

9.16 “Transferee” shall mean a person to which all or part of a Transferable Interest has been transferred, whether or not the transferor is a Member.

9.17 “Treasury Regulations” shall mean the regulations of the United States Department of the Treasury pertaining to the income tax, as from time to time in force.

## **ARTICLE X MISCELLANEOUS**

10.01 Notices. Any notice, offer, consent or other communication required or permitted to be given or made hereunder shall be in writing and will be deemed to have been sufficiently delivered (a) three business days after the date mailed by certified mail, return receipt requested, postage prepaid, or (b) when delivered by a nationally recognized overnight delivery service (receipt requested) or (c) when delivered personally to the party (or an officer of the party) to

whom the same is directed, or (d) when the electronic transmission of electronic mail or fax is successfully completed.

10.02 Possible Restrictions. Notwithstanding anything to the contrary contained in this Agreement, in the event of (a) the enactment (or imminent enactment) of any legislation, (b) the publication of any temporary or final regulation by the United States Department of the Treasury, (c) any ruling by the Internal Revenue Service or (d) any judicial decision that, in any such case, in the opinion of counsel for the Company, would result in the taxation of the Company as an association taxable as a corporation or would otherwise result in the Company being taxed as an entity for federal income tax purposes, then the Managers may impose such restrictions as may be required, in the opinion of counsel, to prevent the Company for Federal income tax purposes from being taxed as an association taxable as a corporation or otherwise as an entity, including, without limitation, making any amendments to this Agreement as the Managers in its sole discretion may determine to be necessary or appropriate to impose such restrictions.

10.03 Governing Law; Successors. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa and, subject to the restrictions on transferability set forth in this Agreement, shall bind and inure to the benefit of the heirs, executors, personal representatives, successors and assigns of the Members. The rights and liabilities of the Members under this Agreement shall be as provided by Iowa law.

10.04 Entire Agreement. This Agreement is the sole operating agreement of the Company and constitutes the entire agreement among the parties relating to its subject matter; this Agreement supersedes any prior agreements or understandings between the parties, oral or written relating to its subject matter, all of which are hereby canceled. This Agreement may not be modified or amended except in writing with the unanimous consent of the Members.

10.05 Headings, etc. The Article and Section headings in this Agreement are inserted for convenience of reference only and shall not affect interpretation of this Agreement. Whenever the context shall require, each term stated in either the singular or plural shall include the singular and the plural, and masculine or neuter pronouns shall include the masculine, the feminine and the neuter.

10.06 No Waiver. No failure or delay on the part of any Member in exercising any rights under this Agreement, or in insisting on strict performance of any covenant or condition contained in this Agreement, shall operate as a waiver of any of such Member's rights hereunder.

10.07 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

10.08 Assignment. Other than Transferable Interests, no assignment of any rights or delegation of any obligations provided for in this Agreement shall be made by any Member without the prior written consent of the other Members.

10.09 No Reliance. No third party is entitled to rely on any of the representations, warranties, and agreements of the Members contained in this Agreement; and the Members assume no liability to any third party because of any such reliance.

**IN WITNESS WHEREOF**, all of the Members have executed this Agreement effective as of the \_\_\_ day of \_\_\_\_\_, 2009.

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Nancy Rambo

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Donald Bustell

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Angela Tedesco

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John Tedesco