
From: "Penny Leavy-Hoglund" <penny@hbgary.com>
To: <bob@hbgary.com>; <rich@hbgary.com>
Cc: <ted@hbgary.com>; <aaron@hbgary.com>
Sent: Friday, January 22, 2010 7:58 PM
Attach: HBGary Federal Operating Agreement_V13_FINAL_1 22 10.pdf
Subject: FW: HBGary Federal LLC Operating Agreement draft 11

Please review and sign

-----Original Message-----

From: Maheen Sadruddin [mailto:maheen@delahousayelaw.com]
Sent: Friday, January 22, 2010 3:13 PM
To: Angela De La Housaye; penny@hbgary.com
Subject: RE: HBGary Federal LLC Operating Agreement draft 11

Penny,

Attached is the clean version of the most recent OA.

Please let me know if you have questions.

Thank you,

Maheen S. Sadruddin
Paralegal
maheen@delahousayelaw.com
925/944-3300

De La Housaye & Associates
A Law Corporation
www.delahousayelaw.com

Walnut Creek - San Francisco - Los Angeles

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-----Original Message-----

From: Angela De La Housaye
Sent: Friday, January 22, 2010 2:18 PM
To: 'penny@hbgary.com'
Cc: Maheen Sadruddin
Subject: Re: HBGary Federal LLC Operating Agreement draft 11

Yes. I thought it was sent. Let me have Maheen send it now.

----- Original Message -----

From: Penny Leavy <penny@hbgary.com>
To: Angela De La Housaye
Sent: Fri Jan 22 14:02:35 2010
Subject: Re: HBGary Federal LLC Operating Agreement draft 11

OK, is this done yet?

On Thu, Jan 21, 2010 at 4:13 PM, Angela De La Housaye
<angela@delahousayelaw.com> wrote:

> That's good. let me have Maheen finalize it and get a clean original to
> you to have everyone sign. Please provide us a copy of signed document.

>

> C. Angela De La Housaye, Esq.

>

> angela@delahousayelaw.com

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> -----Original Message-----

> From: Penny Hoglund [mailto:penny@hbgary.com]
> Sent: Thursday, January 21, 2010 4:08 PM
> To: Angela De La Housaye
> Subject: FW: HBGary Federal LLC Operating Agreement draft 11
> Importance: High

>

>

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> -----Original Message-----

> From: John L. Cox, CPA [mailto:johncoxcpa@verizon.net]
> Sent: Thursday, January 21, 2010 3:50 PM
> To: 'Penny Hoglund'
> Subject: RE: HBGary Federal LLC Operating Agreement draft 11
> Importance: High

>

> See suggested wording on Page 2.

>

> John L. Cox, CPA
> 12107 Faith Lane
> Bowie, Maryland 20715
> (240) 949-6022 Voice
> (866) 750-1973 Fax

>

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> -----Original Message-----

> From: Penny Hogle [mailto:penny@hbgary.com]
> Sent: Thursday, January 21, 2010 6:14 PM
> To: 'John L. Cox, CPA'
> Subject: FW: HBGary Federal LLC Operating Agreement draft 11

>

> See angelas comments, if OK, they we can go final

>

> -----Original Message-----

> From: Angela De La Housaye [mailto:angela@delahousayelaw.com]
> Sent: Thursday, January 21, 2010 2:58 PM
> To: Penny Hogle
> Cc: Maheen Sadruddin
> Subject: RE: HBGary Federal LLC Operating Agreement draft 11

>

> Penny,

> Attached is the new draft. I agree with John's comments, can you have
> him take a look at this (unless you want me to send it to him directly).
> I added his verbiage re the contribution of a partner and added more
> language re replenishment of a deficit in a capital account. If he
> wants more language or thinks it should be different, have him insert
> the language as it's tax related now.
> I'm attaching this draft. Let me know if we can go final with this
> language. (also Maheen needs to finish the corp work, so let me know
> if you have an EIN< and if so, what it is (we need the SS4 form).)
> Thanks.

>

> C. Angela De La Housaye, Esq.

>

> angela@delahousayelaw.com

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> De La Housaye & Associates

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> A Law Corporation

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> www.delahousayelaw.com

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> -----Original Message-----

> From: Penny Hogle [mailto:penny@hbgary.com]
> Sent: Thursday, January 21, 2010 12:54 PM
> To: Angela De La Housaye
> Subject: FW: HBGary Federal LLC Operating Agreement
> Importance: High

>

> See John's comments, other than that I agree with them and let's finalize.
> I would think the wording he suggested works

>

> -----Original Message-----

> From: John L. Cox, CPA [mailto:johncoxcpa@verizon.net]
> Sent: Thursday, January 21, 2010 12:51 PM
> To: 'Penny Leavy'
> Subject: RE: HBGary Federal LLC Operating Agreement
> Importance: High

>

> Penny,

>

> My apologies. I thought I emailed comments to you last night at 7:30pm.
> See attached comments on pages 2 and 25.

>

> John L. Cox, CPA
> 12107 Faith Lane
> Bowie, Maryland 20715
> (240) 949-6022 Voice
> (866) 750-1973 Fax

>

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> -----Original Message-----

> From: Penny Leavy [mailto:penny@hbgary.com]
> Sent: Thursday, January 21, 2010 2:46 PM
> To: John L. Cox, CPA
> Subject: Re: HBGary Federal LLC Operating Agreement

>

> status on this? I Really need it

>

> On Wed, Jan 20, 2010 at 1:39 PM, John L. Cox, CPA

> <johncoxcpa@verizon.net>

> wrote:

>> I will review shortly and get back with you.

>>

>> John L. Cox, CPA
>> 12107 Faith Lane
>> Bowie, Maryland 20715
>> (240) 949-6022 Voice
>> (866) 750-1973 Fax

>>

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>> delete the message. Thank

> you.

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>>
>> -----Original Message-----
>> From: Penny Leavy [mailto:penny@hbgary.com]
>> Sent: Wednesday, January 20, 2010 4:34 PM
>> To: John L. Cox, CPA
>> Subject: Fwd: HBGary Federal LLC Operating Agreement

>> Are changes OK? I need to get this signed to fund bank account

>> ----- Forwarded message -----
>> From: Angela De La Housaye <angela@delahousayelaw.com>
>> Date: Wed, Jan 20, 2010 at 1:21 PM
>> Subject: HBGary Federal LLC Operating Agreement
>> To: Penny Leavy <penny@hbgary.com>

>> Hello, Penny;

>> I am attaching the revised Operating Agreement. Please re-read the
>> highlighted section, and refer to the comment section in the margin.
>> I'd like to confirm that the capital account deficit language we have
>> is sufficient.

>> Also, as an aside, the time to prepare and revise this is capped at
>> the quote we gave you, but due to revisions and information outside
>> of our control, the revising and calculations caused time allocated
>> to this
> project
>> to exceed by more than double the estimate. (The original OA you
>> forwarded was not sufficient and we did not use that one).

>> I have honored our original flat fee, of course.

>> Angela

>> C. Angela De La Housaye, Esq.

>> angela@delahousayelaw.com

>> 925/944-3300

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>> Penny C. Leavy

>> HBGary, Inc.

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> Penny C. Leavy

> HBGary, Inc.

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Penny C. Leavy
HBGary, Inc.

OPERATING AGREEMENT FOR HB GARY FEDERAL, LLC

THIS OPERATING AGREEMENT (“Agreement”) is entered into as of January 10, 2010 by and among Penelope Christine Leavy an individual (“Leavy”), with a business address located at HBGary Federal, LLC, 3604 Fair Oaks Blvd., Suite 250, Sacramento, California, 95864; HB Gary, Inc., a California Corporation (“HB Gary, Inc.”), Aaron Barr, an individual (“Barr”), residing at 1223 Potomac School Road, McLean, Virginia, 22101; Ted Vera, an individual (“Vera”), residing at 874 Legend Oak Drive, Fountain, Colorado, 80817; Nina Stark, an individual (“Stark”), residing at 7212 Chestnut Street, Chevy Chase, Maryland, 20815; and Richard Cummings, an individual (“Cummings”), residing at 12573 Mountain Road, Lovettsville, Virginia, 20180. All of the Members shall be referred to collectively as “Members” and individually as “Member.”

A. The Members have formed a limited liability company under the Beverly-Killea Limited Liability Company Act. The Articles of Organization of the Company filed with the California Secretary of State on December 15, 2009 are hereby adopted and approved by the Members.

B. The Members enter into this Agreement to form and to provide for the governance of the Company and the conduct of its business, and to specify their relative rights and obligations.

NOW THEREFORE, the Members agree as follows:

ARTICLE I: DEFINITIONS

Capitalized terms used in this Agreement have the meanings specified in this Article or elsewhere in this Agreement and when not so defined shall have the meanings set forth in California Corporations Code section 17001.

1.1. “Act” means the Beverly-Killea Limited Liability Company Act California Corporations Code §§17000-17705), including amendments from time to time.

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

1.3. “Agreement” means this operating agreement, as originally executed and as amended from time to time.

1.4. “Articles of Organization” is defined in Corporations Code section 17001(b), as applied to this Company.

OPERATING AGREEMENT FOR HB GARY FEDERAL, LLC

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

1.6. “Assigning Member” means a Member who, by means of a Transfer, has transferred an Economic Interest in the Company to an Assignee.

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

1.8. “Book Value” of an asset shall mean, as of any particular date, the value at which the asset is properly reflected on the books and records of the Company as of such date in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations. The Book Value of initial contributed capital (see Exhibit B) is its carryover basis. Carryover basis is defined as the adjusted basis of the asset in the hands of the Member prior to the contribution of the asset. To the extent a partnership takes a carryover basis in any "contributed intangible" (i.e., an intangible contributed to the partnership in a contribution to which IRC Section 721 applies), such carryover basis is amortizable only in the hands of the partnership if it was amortizable in the hands of the transferor. The partnership’s basis in the contributed property (inside basis) is equal to the contributing partner’s adjusted basis. IRC section 723. The contributing partner’s adjusted basis in its partnership interest is increased by the adjusted basis in the contributed property. Intangibles created by the contributing partner, as opposed to purchased intangibles, are not amortizable in the hands of the contributing partner. Therefore these intangibles’ book value is a carryover basis, that is, the adjusted basis in the hands of the contributing partner prior to contribution to the partnership. The Book Values of all Company assets shall be adjusted to equal their respective fair market values, as reasonably determined by the Members, as of the following times: (i) the acquisition of any additional interest in the Company by any new or existing Member in exchange for more than a de minimis Additional Capital Contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company assets, including money, if, as a result of such distribution, such Member’s interest in the Company is reduced; and (iii) the termination of the Company for Federal income tax purposes pursuant to Section 708(b)(1)(B) of the Code.

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

1.10. “Capital Contribution” means, with respect to any Member, the amount of the money and the Fair Market Value of any property (other than money) contributed to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take “subject to” under IRC section 752) in consideration of a Percentage Interest held by such Member. A Capital Contribution shall not be deemed a loan.

OPERATING AGREEMENT FOR HB GARY FEDERAL, LLC

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

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

1.13. “Company” means the company named in Article II, Section 2.2 of this Agreement.

1.14. “Corporations Code” (“Corp C”) means the California Corporations Code.

1.15. “Depreciation” shall mean, for each Fiscal Year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period; provided, however, that if the Book Value of an asset differs from its adjusted basis for Federal income tax purposes at the beginning of any such year or other period, Depreciation shall be an amount that bears the same relationship to the Book Value of such asset as the depreciation, amortization, or other cost recovery deduction computed for tax purposes with respect to such asset for the applicable period bears to the adjusted tax basis of such asset at the beginning of such period, or if such asset has a zero adjusted tax basis, Depreciation shall be an amount determined under any reasonable method selected by the Members.

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

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

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

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

(a) The initial Gross Asset Value of any item of property contributed by a Member to the Company shall be the fair market value of such property, as mutually agreed by the contributing Member and the Company;

(b) The Gross Asset Value of any item of Company property distributed to any Member shall be the fair market value of such item of property on the date of distribution; and

(c) The Gross Asset Value of any item of Company property shall be subject to the adjustments specified in this Operating Agreement.

OPERATING AGREEMENT FOR HB GARY FEDERAL, LLC

1.20. “Initial Members” means those Persons whose names are set forth in the first sentence of this Agreement. A reference to an “Initial Member” means any of the Initial Members.

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

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

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

1.24. “Member” means an Initial Member or a Person who otherwise acquires a Membership Interest, as permitted under this Agreement, and who remains a Member.

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

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

1.27. “Percent of the Members” means the specified total of Percentage Interests of all the Members.

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

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

1.30. “Profit” and “Loss” shall mean, for each Fiscal Year, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Section 703(a) of

OPERATING AGREEMENT FOR HB GARY FEDERAL, LLC

the Code (provided that for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(i) 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 provision shall be added to such taxable income or Loss;

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

(iii) Book Gain or Book Loss from a Capital Transaction shall be taken into account in lieu of any tax gain or tax loss recognized by the Company by reason of such Capital Transaction; and

(iv) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year, computed as provided in this Agreement.

If the Company's taxable income or loss for such Fiscal Year, as adjusted in the manner provided above, is a positive amount, such amount shall be the Company's Profit for such Fiscal Year; and if a negative amount, such amount shall be the Company's Loss for such Fiscal year.

1.31. "Proxy" has the meaning set forth in the first paragraph of Corp C §17001(ai). A Proxy may not be transmitted orally.

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

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

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

1.35. "Tax Item" means each item of income, gain, loss, deduction, or credit of the Company.

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

OPERATING AGREEMENT FOR HB GARY FEDERAL, LLC

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

1.38. “Triggering Event” is defined in Article VIII, Section 8.4.

1.39. “Vote” means a written consent or approval, a ballot cast at a meeting, or a voice vote.

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

ARTICLE II: ARTICLES OF ORGANIZATION

2.1. The Articles of Organization were filed with the California Secretary of State on December 15, 2009 File Number 200935110092. A copy of the Articles of Organization as filed is attached to this Agreement as Exhibit A.

2.2. The name of the Company is HB Gary Federal, LLC.

2.3. The principal executive office of the Company shall be at 3604 Fair Oaks Blvd., Sacramento, California 95864, or such other place or places as may be determined by the Managers from time to time.

2.4. The initial agent for service of process on the Company shall be C. Angela De La Housaye, whose address is 1655 North Main Street, Suite 260, Walnut Creek, California 94596. The Managers may from time to time change the Company’s agent for service of process.

2.5. The Company will be formed for the purpose of creating technology for enterprises.

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

2.7. The term of existence of the Company shall commence on the effective date of filing of Articles of Organization with the California Secretary of State, and shall continue until terminated by the provisions of this Agreement or as provided by law.

2.8. The names, percentage of interest held, amount paid for the interest held of the Initial Member, and the contributed initial capital are as set forth in Exhibit B.

2.9. The name(s) and business address(es) of the Managers are as follows:

OPERATING AGREEMENT FOR HB GARY FEDERAL, LLC

Name	Address
Penelope Christine Leavy	1294 Terracina Drive El Dorado Hills, California 95762
HB Gary Inc.	3941 Park Drive Suite 20-305 El Dorado Hills, California 95762
Aaron Barr	1223 Potomac School Road, McLean, Virginia, 22101
Ted Vera	874 Legend Oak Drive, Fountain, Colorado, 80817
Nina Stark	7212 Chestnut Street, Chevy Chase, Maryland, 20815
Richard Cummings	12573 Mountain Road Lovettsville, Virginia, 20180

2.10. The Members shall be the Managers of the Company.

ARTICLE III: CAPITAL AND CAPITAL CONTRIBUTIONS

3.1. Each Member shall contribute to the capital of the Company as the Member’s initial Capital Contribution the money and property specified in Exhibit B. The initial Fair Market Value of each item of contributed property (net of liabilities secured by such property) that the Company is considered to assume or to take “subject to” under IRC section 752, is also set forth in Exhibit B, together with the description and amount of these liabilities. If a Member fails to make the initial Capital Contributions specified in this Section within ninety (90) days after the effective date of this Agreement, that Member’s entire Membership Interest shall terminate, and that Member shall indemnify and hold the Company and the other Members harmless from any Loss, cost, or expense, including reasonable attorney fees caused by the failure to make the initial Capital Contribution.

3.2. No Member shall be required to make any additional Capital Contributions, except as outlined in this Operating Agreement as the Initial Capital Contribution (which may be paid quarterly until paid in full). No Member may voluntarily make any additional Capital Contribution.

3.3. The Managers may determine from time to time that Capital Contributions in addition to the Members’ initial Capital Contributions are needed to enable the Company to conduct its business. On making such a determination, the Managers shall give notice to all Members in writing at least 90 days before the date on which such additional Capital Contribution is due. The Notice shall set forth the amount of additional Capital Contribution needed, the purpose for which it is needed, and the date by which the Members shall contribute. Each Member shall be required to make an additional Capital Contribution in an amount that bears the same proportion

OPERATING AGREEMENT FOR HB GARY FEDERAL, LLC

to the total additional Capital Contribution that such Member's Capital Account balance bears to the total Capital Account balances of all Members. No Member may voluntarily make any additional Capital Contribution.

3.4. If a Member fails to make an additional Capital Contribution required under Section 3.2 above within 30 days after it is required to be made (a Defaulting Member), the Manager shall within five days after said failure notify each other Member (a Nondefaulting Member) in writing of the total amount of Defaulting Member Capital Contributions not made (the Additional Capital Shortfall), and shall specify a number of days within which each Nondefaulting Member may make that additional Capital Contribution. If the total amount of Additional Capital Shortfall is not contributed, the Manager may use any reasonable method to provide Members the opportunity to make additional Capital Contributions, until the Additional Capital Shortfall is as fully contributed as possible. Following the Nondefaulting Members' making of such additional Capital Contributions, each Member's Percentage Interest shall be adjusted to reflect the ratio that the Member's Capital Account bears to the total Capital Accounts of all of the Members.

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

(a) A Member's Capital Account shall be increased by that Member's Capital Contributions, that Member's share of Profits, and any items in the nature of income or gain that are specially allocated to that Member pursuant to Article IV.

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

(c) A Member's Capital Account shall be decreased by (a) the amount of cash distributed to that Member; (b) the Fair Market Value of any property of the Company so distributed, net of liabilities secured by such distributed property that the distributee Member is considered to assume or to be subject to under IRC section 752; and (c) the amount of any items in the nature of expenses or Losses that are specially allocated to that Member pursuant to Article IV.

(d) A Member's Capital Account shall be reduced by the Member's share of any expenditures of the Company described in IRC section 705(a)(2)(B) or which are treated as IRC section 705(a)(2)(B) expenditures pursuant to Reg section 1.704-1(b)(2)(iv)(i) (including syndication expenses and losses nondeductible under IRC sections 267(a)(1) or 707(b)).

(e) Each Member's Capital Account shall be increased or decreased as necessary to reflect a revaluation of the Company's property assets in accordance with the requirements of the Reg. Code.

OPERATING AGREEMENT FOR HB GARY FEDERAL, LLC

3.6. No interest shall be paid on Capital Contributions or on the balance of a Member's Capital Account.

3.7. A Member shall not be bound by, or be personally liable for, the expenses, liabilities, or obligations of the Company except as otherwise provided in the Act or in this Agreement.

ARTICLE IV: PROFIT ALLOCATION

4.1 Normal Allocations. Except as otherwise provided by this Article 4, the Profit and Loss of the Company for each Fiscal Year (or portion thereof) shall be determined as of the end of each such Fiscal Year (or portion thereof) and shall be allocated among the Members in proportion to their respective Company Interests.

4.2 Special Allocations Pursuant to Section 704(c). Notwithstanding the foregoing provisions of this Article, pursuant to the requirements of Section 704(c) of the Code and any Treasury Regulations promulgated thereunder, income, gain, loss and deduction with respect to any asset contributed to the Company by any Member shall be allocated, for tax purposes only, among the Members so as to take account of the variation between the adjusted tax basis of such asset to the Company and its Book Value computed in accordance with the definition of Book Value set forth in Article 1. In accordance with the Treasury Regulations promulgated under Section 704(b) of the Code, in the event the Book Value of any Company asset is subsequently adjusted in accordance with the last sentence of such definition of Book Value, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted tax basis of the asset to the Company and its Book Value in the same manner as under Code Section 704(c) and any Treasury Regulations promulgated thereunder.

4.3 Section 754 Election. Upon the request of any Member, the Company shall elect, pursuant to Section 754 of the Code, to adjust the basis of Company property as permitted and provided in Sections 734 and 743 of the Code. Such election shall be effective solely for Federal (and, if applicable, state and local) income tax purposes and shall not result in any adjustment to the Book Value of any Company asset or to the Members' Capital Accounts (except as provided in Treasury Regulations Section 1.704-1(b)(2)(iv)(m) or in the determination or allocation of Profit or Loss for purposes other than such tax purposes.

4.4 Qualified Allocations. It is the intention of the Members that this Agreement provide for "qualified allocations" within the meaning of Section 168(h)(6)(B) of the Code and any Treasury Regulations promulgated thereunder, and the Members agree that all interpretations of this Agreement shall be made accordingly. The Members hereby further agree to enter into such amendments to this Agreement as either Member may from time to time reasonably propose to ensure that this Agreement continues to provide for such "qualified allocations", provided that, in all instances, such amendments shall be drafted in such manner as shall most equitably distribute among the Members any adverse economic consequences resulting therefrom.

4.5 Partnership Minimum Gain Chargeback. Notwithstanding any other provision of this Article 4, in the event there is a net decrease in "partnership minimum gain" during a Fiscal Year, the Members shall be allocated items of income and gain in accordance with Section

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1.704-2(f) of the Treasury Regulations. For purposes of this Article 4, the term “partnership minimum gain” shall have the meaning given such term in Section 1.704-2(b)(2) of the Treasury Regulations, and any Member’s share of partnership minimum gain shall be determined in accordance with Section 1.704-2(g)(1) of the Treasury Regulations. This Section 5.5 is intended to comply with the minimum gain chargeback requirement of Section 1.704-2(f) of the Treasury Regulations and shall be interpreted and applied in a manner consistent therewith.

4.6 Partner Nonrecourse Debt. Notwithstanding any other provision of this Article 4, to the extent required by Section 1.704-2(i) of the Treasury Regulations, any items of income, gain, deduction and loss of the Company that are attributable to a nonrecourse debt of the Company that constitutes “partner nonrecourse debt” as defined in Section 1.704-2(b)(4) of the Treasury Regulations (including chargebacks of partner nonrecourse debt minimum gain) shall be allocated in accordance with the provisions of Section 1.704-2(i) of the Treasury Regulations.

4.7 Alternate Test for Economic Effect/Qualified Income Offset. No allocation shall be made pursuant to this Article 4 to the extent that it shall cause or increase a deficit balance in any Member’s Capital Account (in excess of such Member’s obligation (including any deemed obligation under Treasury Regulations), if any, to restore a deficit in its Capital Account) as of the end of the Fiscal Year to which such allocation relates. In making the foregoing determination, a Member’s Capital Account shall be reduced by the amounts described in Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations. Any Member who unexpectedly receives an adjustment, allocation or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations shall be allocated items of income and gain in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, such deficit balance as quickly as possible. This Section 5.7 is intended to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted and applied in a manner consistent therewith.

ARTICLE V: MANAGEMENT

5.1. The business of the Company shall be managed by the Managers named in Article II, Section 2.9, or a successor Managers selected in the manner provided in Article V, Section 5.3. Except as otherwise set forth in this Agreement, all decisions concerning the management of the Company’s business shall be made by the Managers.

5.2. The Managers shall serve until the earlier of (1) the Manager’s resignation, retirement, death, or disability; (2) the Manager’s removal by the Members; and (3) the expiration of the Manager’s term as Manager, if a term has been designated by a Majority of Members. A new Manager shall be appointed by a Majority of Members on the occurrence of any of the foregoing events.

5.3. Each Manager shall be appointed by a Majority of Members for (a) a term expiring with the appointment of a successor, or (b) a term expiring at a definite time specified by a Majority of Members in connection with such an appointment. A Manager who is not also a Member may be removed with or without cause at any time by action of a Majority of Members.

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5.4. The Manager, who shall be the President of the Company, shall have the powers and duties described in Section 5.8 hereof and such other powers and duties as may be prescribed in this Agreement or by the Members. Notwithstanding the foregoing, the Manager shall not take any of the following actions on behalf of the Company unless a Majority of Members has consented to the taking of such action.

- (a) Any act that would make it impossible to carry on the ordinary business of the Company;
- (b) The dissolution of the Company;
- (c) The disposition of all or a substantial part of the Company's assets not in the ordinary course of business;
- (e) The incurring of any debt not in the ordinary course of business;
- (f) A change in the nature of the principal business of the Company;
- (g) The incurring of any contractual obligation or the making of any capital expenditure with a total cost of more than \$5,000.00;
- (h) The filing of a petition in bankruptcy or the entering into of an arrangement among creditors; and
- (i) The entering into, on behalf of the Company, of any transaction constituting a "reorganization" within the meaning of Corp C §17600.

5.5. Actions of the Managers shall be taken at meetings or as otherwise provided in this Section 5.5 by a majority. No regular meetings of the Managers must be held. The President or any two Managers may call a meeting of the Managers by giving Notice of the time and place of the meeting at least 48 hours prior to the time of the holding of the meeting. The Notice need not specify the purpose of the meeting, nor the location if the meeting is to be held at the principal executive office of the Company.

A majority of Managers shall constitute a quorum for the transaction of business at any meeting of the Managers.

The transactions of the Managers at any meeting, however called or noticed, or wherever held, shall be as valid as though transacted at a meeting duly held after call and notice if a quorum is present and if, either before or after the meeting, each Manager not present signs a written waiver of notice or a consent to the holding of such meeting or an approval of the minutes of such meeting.

Any action required or permitted to be taken by the Managers under this Agreement may be taken without a meeting if a majority of the Managers individually or collectively consent in writing to such action.

Managers may participate in the meeting through the use of a conference telephone or similar communications equipment, provided that all Managers participating in the meeting can hear one another.

The Managing Member, or President/CEO if one is named, shall keep or cause to be kept with the books and records of the Company full and accurate minutes of all meetings, notices and waivers of notices of meetings, and all written consents to actions of the Managers.

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5.6. It is acknowledged that the Managers have other business interests to which the Managers devotes part of the Managers' time. The Managers shall devote such time to the conduct of the business of the Company as the Managers, in the particular Manager's own good faith and discretion, deems necessary.

5.7. The Managers shall be entitled to compensation for the Managers' services as determined by the Members, and to reimbursement for all expenses reasonably incurred by the Managers in the performance of the Managers' duties.

5.8. The Company shall have a President, who shall be a Manager. The President shall be the chief executive officer of the Company and shall have general supervision of the business and affairs of the Company, shall preside at all meetings of Members and of Managers, and shall have such other powers and duties usually vested in a chief executive officer. A Majority of the Members may provide for additional officers of the Company, may alter the powers and duties of the President, and shall establish the powers and duties of all other officers and the compensation of all Company officers.

5.9. The Managers shall cause all assets of the Company, whether real or personal, to be held in the name of the Company.

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

ARTICLE VI: ACCOUNTS AND ACCOUNTING

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

6.2. Financial books and records of the Company shall be kept on the cash method of accounting, which shall be the method of accounting followed by the Company for federal income tax purposes. The financial statements of the Company shall be prepared in accordance with generally accepted accounting principles and shall be appropriate and adequate for the Company's business and for carrying out the provisions of this Agreement. The fiscal year of the Company shall be January 1 through December 31.

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

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- (a) A current list of the full name and last known business or residence address of each Member, together with the Capital Contribution and the share in Profits and losses of each Member;
- (b) A current list of the full name and business or residence address of each Manager;
- (c) A copy of the Articles of Organization, as amended;
- (d) Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;
- (e) An original executed copy or counterparts of this Agreement, as amended;
- (f) Any powers of attorney under which the Articles of Organization or any amendments to said articles were executed;
- (g) Financial statements of the Company for the six most recent fiscal years; and
- (h) The books and Records of the Company as they relate to the Company's internal affairs for the current and past four fiscal years.

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

6.4. At the end of each fiscal year the books of the Company shall be closed and examined and statements reflecting the financial condition of the Company and its Profits or losses shall be prepared, and a report thereon shall be issued by the Company's certified public accountants. Copies of the financial statements shall be given to all Members.

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

6.6. A designated Manager shall act as Tax Matters Partner of the Company pursuant to IRC section 6231(a)(7).

ARTICLE VII: MEMBERSHIP-MEETINGS, VOTING, INDEMNITY

7.1. There shall be only one class of membership and no Member shall have any rights or preferences in addition to or different from those possessed by any other Member except as specifically provided for in Article IV. Members shall have the right and power to appoint, remove, and replace Managers and officers of the Company and the right to Vote on all other matters with respect to which this Agreement or the Act requires or permits such Member action. Each Member shall Vote in proportion to the Member's Percentage Interest as of the governing record date, determined in accordance with Section 7.2. If a Member has assigned all or part of the Member's Economic Interest to a person who has not been admitted as a Member, the Assigning Member shall Vote in proportion to the Percentage Interest that the Assigning Member would have had, if the assignment had not been made.

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

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- (a) The Transfer of a Membership Interest and the admission of the Assignee as a Member of the Company;
- (b) Any amendment of the articles of organization or this Agreement; and
- (c) A compromise of the obligation of a Member to make a Capital Contribution under Article III.

7.2. The Company may, but shall not be required, to issue certificates evidencing Membership Interests (Membership Interest Certificates) to Members of the Company. Once Membership Interest Certificates have been issued, they shall continue to be issued as necessary to reflect current Membership Interests held by Members.

7.3. Meetings of the Members may be called at any time by the Manager, or by Members representing more than 10 percent of the Interests of the Members for the purpose of addressing any matters on which the Members may Vote. If a meeting of the Members is called by the Members, Notice of the call shall be delivered to the Manager. Meetings may be held at the principal executive office of the Company or at such other location as may be designated by the Manager. Following the call of a meeting, the Manager shall give Notice of the meeting not less than ten, or more than 60 calendar days prior to the date of the meeting to all Members entitled to Vote at the meeting. The Notice shall state the place, date, and hour of the meeting and the general nature of business to be transacted. No other business may be transacted at the meeting. A quorum at any meeting of Members shall consist of a Majority of Members, represented in person or by Proxy.

7.4. At all meetings of Members, a Member may Vote in person or by Proxy. Such Proxy shall be filed with the Manager before or at the time of the meeting, and may be filed by facsimile transmission to the Manager at the principal executive office of the Company or such other address as may be given by the Manager to the Members for such purposes. Members may participate in a meeting through use of conference telephone or similar communications equipment, provided that all Members participating in such meeting can hear one another. Such participation shall be deemed attendance at the meeting.

7.5. Any action that may be taken at any meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by Members having not less than the minimum number of Votes that would be necessary to authorize or take that action at a meeting at which all Members entitled to Vote thereon were present and voted.

ARTICLE VIII: TRANSFERS OF MEMBERSHIP INTERESTS

8.1. A Member may withdraw from the Company at any time by giving Notice of withdrawal to the Managers at least 180 calendar days before the effective date of withdrawal. Withdrawal shall not release a Member from any obligations and liabilities under this Agreement accrued or incurred before the effective date of withdrawal. A withdrawing Member shall divest the

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Member's entire Membership Interest before the effective date of withdrawal in accordance with and subject to the provisions of this Article VIII.

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

8.3. If a Member wishes to transfer any or all of the Member's Membership Interest in the Company pursuant to a Bona Fide Offer (as defined below), the Member shall give Notice to all other Members at least 30 days in advance of the proposed sale or Transfer, indicating the terms of the Bona Fide Offer and the identity of the offeror. The Company and the other Members shall have the option to purchase the Membership Interest proposed to be transferred at the price and on the terms provided in this Agreement. If the price for the Membership Interest is other than cash, the fair value in dollars of the price shall be as established in good faith by the Company. For purposes of this Agreement, "Bona Fide Offer" means an offer in writing setting forth all relevant terms and conditions of purchase from an offeror who is ready, willing, and able to consummate the purchase and who is not an Affiliate of the selling Member. For 30 days after the Notice is given, the Company shall have the right to purchase the Membership Interest offered, on the terms stated in the Notice, for the lesser of (a) the price stated in the Notice (or the price plus the dollar value of noncash consideration, as the case may be) and (b) the price determined under the appraisal procedures set forth in Section 8.8.

If the Company does not exercise the right to purchase all of the Membership Interest, then, with respect to the portion of the Membership Interest that the Company does not elect to purchase, that right shall be given to the other Members for an additional 30-day period, beginning on the day that the Company's right to purchase expires. Each of the other Members shall have the right to purchase, on the same terms, a part of the interest of the offering Member in the proportion that the Member's Percentage Interest bears to the total Percentage Interests of all of the Members who choose to participate in the purchase; provided, however, that the Company and the participating Members may not, in the aggregate, purchase less than the entire interest to be sold by the offering Member.

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If the Company and the other Members do not exercise their rights to purchase all of the Membership Interest, the offering Member may, within 90 days from the date the Notice is given and on the terms and conditions stated in the Notice, sell or exchange that Membership Interest to the offeror named in the Notice. Unless the requirements of Section 8.2 are met, the offeror under this section shall become an Assignee, and shall be entitled to receive only the share of Profits or other compensation by way of income and the return of Capital Contribution to which the assigning Member would have been entitled.

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

(a) The death, incapacity, bankruptcy, or withdrawal of a Member, or the winding up and dissolution of a corporate Member, or merger or other corporate reorganization of a corporate Member as a result of which the corporate Member does not survive as an entity.

(b) The failure of a Member to make the Member's Capital Contribution pursuant to the provisions of Article III of this Agreement.

(c) The occurrence of any other event that is, or that would cause, a Transfer in contravention of this Agreement.

Each Member agrees to promptly give Notice of a Triggering Event to the Managers.

8.5. Notwithstanding any other provisions of this Agreement:

(a) If, in connection with the divorce or dissolution of the marriage of a Member, any court issues a decree or order that transfers, confirms, or awards a Membership Interest, or any portion thereof, to that Member's spouse (an "Award"), then, notwithstanding that such transfer would constitute an unpermitted Transfer under this Agreement, that Member shall have the right to purchase from his or her former spouse the Membership Interest, or portion thereof, that was so transferred, and such former spouse shall sell the Membership Interest or portion thereof to that Member at the price set forth below in Section 8.8 of this Agreement. If the Member has failed to consummate the purchase within 180 days after the court award (the Expiration Date), the Company and the other Members shall have the option to purchase from the former spouse the Membership Interest or portion thereof pursuant to Section 8.6 of this Agreement; provided that the option period shall commence on the later of (1) the day following the Expiration Date, or (2) the date of actual notice of the Award.

(b) If, by reason of the death of a spouse of a Member, any portion of a Membership Interest is transferred to a Transferee other than (1) that Member or (2) a trust created for the benefit of that Member (or for the benefit of that Member and any combination between or among the Member and the Member's issue) in which the Member is the sole Trustee and the Member, as Trustee or individually possesses all of the Voting Interest included in that Membership Interest, then the Member shall have the right to purchase the Membership Interest or portion thereof from the estate or other successor of his or her deceased spouse or Transferee

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of such deceased spouse, and the estate, successor, or Transferee shall sell the Membership Interest or portion thereof at the price set forth in Section 8.8 of this Agreement. If the Member has failed to consummate the purchase within 180 days after the date of death (the Expiration Date), the Company and the other Members shall have the option to purchase from the estate or other successor of the deceased spouse the Membership Interest or portion thereof pursuant to Section 8.6 of this Agreement; provided that the option period shall commence on the later of (1) the day following the Expiration Date, or (2) the date of actual notice of the death.

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

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

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

The Fair Option Price shall be determined by disregarding the appraiser's valuation that diverges the greatest from each of the other two appraisers' valuations, and the arithmetic mean of the remaining two appraisers' valuations shall be the Fair Option Price. Each purchasing party

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shall pay for the services of the appraiser selected by it, plus one half of the fee charged by the third appraiser, and one half of all other costs relating to the determination of Fair Option Price. The Fair Option Price as so determined shall be payable in cash.

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

ARTICLE IX: DISSOLUTION AND WINDING UP

9.1. The Company shall be dissolved upon the first to occur of the following events:

- (a) The written agreement of all Majority of Members to dissolve the Company.
- (b) The sale or other disposition of substantially all of the Company's assets.
- (c) Entry of a decree of judicial dissolution under Corporations Code section 17351.

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

- (a) To pay the expenses of liquidation.
- (b) To the establishment of reasonable reserves by the Delegate for contingent liabilities or obligations of the Company. Upon the Delegate's determination that such reserves are no longer necessary, said reserves shall be distributed as provided in this Section 9.2.
- (c) To repay outstanding loans to Members. If there are insufficient funds to pay such loans in full, each Member shall be repaid in the ratio that the Member's loan, together with interest accrued and unpaid thereon, bears to the total of all such loans from Members, including all interest accrued and unpaid thereon. Such repayment shall first be credited to unpaid principal and the remainder shall be credited to accrued and unpaid interest.
- (d) Among the Members with Positive Capital Account Balances.

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9.3. Each Member shall look solely to the assets of the Company for the return of the Member's investment, and if the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the investment of each Member, such Member shall have no recourse against any other Members for indemnification, contribution, or reimbursement, except as specifically provided in this Agreement, and as specifically provided in Section 9.4.

9.4. To the extent that any Member's Capital Account is negative, upon dissolution or termination of the Membership, for any reason, then that Member shall be required to replenish the Capital account on or before the dissolution or termination event. Additionally, no Member's distribution or profit allocatin shall be paid if that Member's Capital Account remains at a deficit. The Member shall be required to replenish his or her account so that there is no deficit remaining prior to any such distribution of profits.

ARTICLE X: INDEMNIFICATION AND ARBITRATION

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

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

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ARTICLE XI: ATTORNEY-IN-FACT AND AGENT

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

ARTICLE XII: GENERAL PROVISIONS

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

12.2. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

12.4. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, and permitted successors and assigns.

12.5. Whenever used in this Agreement, the singular shall include the plural and the plural shall include the singular, and the neuter gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning of this Agreement may require.

OPERATING AGREEMENT FOR HB GARY FEDERAL, LLC

12.6. The parties to this Agreement shall promptly execute and deliver any and all additional documents, instruments, notices, and other assurances, and shall do any and all other acts and things, reasonably necessary in connection with the performance of their respective obligations under this Agreement and to carry out the intent of the parties.

12.7. Except as provided in this Agreement, no provision of this Agreement shall be construed to limit in any manner the Members in the carrying on of their own respective businesses or activities.

12.8. Except as provided in this Agreement, no provision of this Agreement shall be construed to constitute a Member, in the Member's capacity as such, the agent of any other Member.

12.9. Each Member represents and warrants to the other Members that the Member has the capacity and authority to enter into this Agreement.

12.10. The article, section, and paragraph titles and headings contained in this Agreement are inserted as matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions.

12.11. This Agreement may be altered, amended, or repealed only by a writing signed by all of the Members.

12.12. Time is of the essence of every provision of this Agreement that specifies a time for performance.

12.13. This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement.

[Signatures on Following Page]

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

Penelope Christine Leavy
Managing Member

HB Gary, Inc.

OPERATING AGREEMENT FOR HB GARY FEDERAL, LLC

Member

By: _____

Penelope Christine Leavy
Its: President

Aaron Barr
Managing Member, Chief Executive Officer

Ted Vera
Managing Member, President

Nina Stark
Managing Member

Richard Cummings
Managing Member

EXHIBIT A

Articles of Organization are attached as Exhibit A.

OPERATING AGREEMENT FOR HB GARY FEDERAL, LLC

EXHIBIT B

**CAPITAL CONTRIBUTION
CONTRIBUTED INITIAL CAPITAL**

Member	Interest Holder's Percentage	Amount Paid (\$ Amount – Matches Pro Rata %)
Penelope Christine Leavy	48%	\$50,000.00
HB Gary, Inc.	15%	\$15,624.99
Aaron Barr	14%	Intangible Contribution: See attached Schedule 1
Ted Vera	14%	Intangible Contribution: See attached Schedule 1
Nina Stark	7%	\$7,291.66
Richard Cummings	2%	\$2,083.33

**BALANCE OF INITIAL FUNDING AS LOAN PAYMENT TO COMPANY:
[DUE OVER THE COURSE OF THE FIRST CALENDAR YEAR PER MEMBER]**

Member	Total Loan to Entity	Quarterly Loan Repayment due April 1, 2010	Quarterly Loan Repayment due July 1, 2010	Quarterly Loan Repayment due October 1, 2010
Penelope Christine Leavy	\$117,039.99	\$39,013.33	\$39,013.33	\$39,013.33
HB Gary, Inc.	\$36,575.01	\$12,191.67	\$12,191.67	\$12,191.67
Nina Stark	\$17,068.35	\$5,689.45	\$5,689.45	\$5,689.45
Richard Cummings	\$4,876.71	\$1,625.57	\$1,625.57	\$1,625.57

SCCHEDULE 1 to EXHIBIT B

Certain Members are granted capital account interest because of the intangible assets, training, contacts and experience they bring to HB Gary Federal LLC. These intangible assets are described below. Each Member contributing intangible assets and/or accepting interest for the asset they contribute, understands and acknowledges that they will be responsible for any individual tax implications resulting from such contribution.

INTANGIBLE CONTRIBUTIONS

Member	Total Member Percentage	Contribution
Aaron Barr	14%	Intangible Asset
Ted Vera	14%	Intangible Asset

Goodwill: Ted Vera & Aaron Barr maintain relationships with numerous Government officials within the Department of Defense (DOD), and Intelligence Community (IC) including the Departments of the Army, Navy, Air Force, DNI, CIA, NSA, DIA, and DOE. Additionally, they maintain relationships with senior level management of major defense contractors including Northrop Grumman, SAIC, Lockheed Martin, General Dynamics, Mantech, Palantir, CSC, and Raytheon. Their relationships and reputations with these customers will result in continued patronage through HBGary Federal LLC.

Workforce in place: Ted Vera & Aaron Barr come to HBGary Federal LLC as an assembled workforce with specific experience, education, and training that will enable them to conduct business with Government customers. Ted and Aaron have been working together since 2001 for major defense contractors. Both have served as Program Managers for US Government projects and have over 200 hours of specialized DoD contractor training.

Information Base: Ted Vera & Aaron Barr maintain customer lists and personal contact information for numerous senior Government Officials and senior leadership at Defense Contractor companies that represent high value customer targets for HBGary Federal LLC. Contacts include personnel from the Departments of the Army, Navy, Air Force, DNI, CIA, NSA, DIA, and DOE and executive level management of major defense contractors including Northrop Grumman, SAIC, Lockheed Martin, General Dynamics, Mantech, Palantir, CSC, and Raytheon.

Know how: Ted Vera & Aaron Barr have extensive knowledge and experience with Government contracting processes, procedures, and regulations relating to providing classified support in accordance with Federal Acquisition Regulations (FAR). Additionally, they possess knowledge of customer strategic goals, budgets and procurement processes. Ted and Aaron have successfully managed government contracts and internal research and development programs in excess of \$25 million.

Government Licenses & Permits: Ted Vera & Aaron Barr possess Top Secret security clearances with special access. Qualifying for this level of Government security clearance generally takes 12-18 months. These qualifications are required to conduct business with specific DoD and IC customers. Having them in place will enable HBGary Federal LLC to conduct business providing classified support.