

## **Froogal Savings LLC - OPERATING AGREEMENT**

### **KEY POINTS:**

For those of you that don't have hours to spend reading the entire agreement.

- Froogal Inc. is the parent company of Froogal Savings LLC
- Froogal Inc. is a financial technology firm that builds wealth management software for individuals and financial planners to allow for better outcomes.
- Froogal Savings LLC is a pooled fund of member's liquid savings
- Froogal Inc. is the Fund Manager of the Froogal Savings LLC fund
- All funds managed by Froogal Inc., on behalf of Froogal Savings LLC, are restricted to placement in federally insured deposit and/or brokerage accounts (FDIC, NCUA, DIF, SIPC) at all times.
- The purpose of the Froogal Savings LLC fund is to hold member's pooled savings and to maximize interest income
- By adding money to your Froogal account you are purchasing membership credit (ownership) in Froogal Savings LLC
- All cash-movement occurring on the Froogal Inc. savings platform is considered a "Transfer" of membership credits between LLC owners
- "Rewards points" are earned by Froogal Savings LLC members based on daily ownership percentage, represented by account balance
- "Rewards point" value and distribution is at the sole discretion of Froogal Inc.
- All interest earned on Froogal Savings LLC member funds at FDIC-insured banks is considered fee income to the fund manager, Froogal Inc.
- Froogal Inc. is not a bank
- Froogal Savings LLC is not a bank

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### **1 LIMITED LIABILITY OPERATING AGREEMENT Of Froogal Savings LLC**

THIS OPERATING AGREEMENT (the "Agreement") is revised as of the 1st day of April 1, 2020, by the Members of Froogal Savings LLC (the "Company" or "Fund").

#### **1. FORMATION**

##### **1.1 Definitions.**

Capitalized terms used in this Agreement have the meanings specified in Section 4 below.

##### **1.2 Name.**

The name of the limited liability company is Froogal Savings LLC.

### 1.3 Formation.

The Fund was organized as a North Carolina limited liability company on September 26, 2019 pursuant to filing the Certificate of Formation with the Secretary of State of North Carolina.

### 1.4 Principal Place of Business.

The principal place of business of the Fund shall be 222 South Church Street, Suite 100, Charlotte, North Carolina 28204, or such other place or places as the Manager may from time to time determine.

1.5 Registered Office and Registered Agent. The Fund's initial registered office shall be at 222 South Church Street, Suite 100, Charlotte, North Carolina 28204, and the name of the initial registered agent is Kale Pasch at the same address.

### 1.6 Term.

The Fund will be indefinite.

### 1.7 Name of Each Member.

The name of each Member, as amended from time to time and maintained in the Fund's records are hereby incorporated by reference.

### 1.8 Effect of Inconsistencies with the Act.

To the extent that the rights or obligations of any Member are different by reason of any provision of this Agreement than they would be in the absence of Froogal Savings LLC - OPERATING AGREEMENT such provisions, this Agreement shall, to the extent permitted by the Act, control.

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## 2. PURPOSE AND BUSINESS OF THE COMPANY

The purpose and business of the Fund will be to generate returns by placing member assets into interest-bearing, insured deposit accounts and/or interest bearing, insured brokerage accounts.

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### **3. CAPITAL AND CONTRIBUTIONS**

#### **3.1 Initial Capital Contributions.**

The initial capital of the Fund shall be the amount set forth by the Manager as of the Effective Date for the Beta product launch.

#### **3.2 Membership Units.**

The interest of each Member in the capital and profits of the Fund will be in the form of Membership Units. Each Unit shall represent a contribution to the capital of the Fund in an amount equal to the price paid per Unit.

The Fund will sell Membership Units at a fixed “Unit Price”.

The initial Unit Price will be \$1.00.

The fund will allow for fractional units.

Investors who wish to purchase Units must complete the web platform sign-up process and provide other such documentation as is deemed appropriate by the Manager.

Upon receipt of capital contribution, the Fund will immediately deposit Investor funds into an insured deposit account and/or insured brokerage account (the “Operating Account”), the date of which shall be the “Deposit Date.”

Rewards points begin to accrue once they are received into the Operating account.

Units can be purchased at any point.

#### **3.3 Capital Accounts.**

An individual capital account (a “Capital Account”) shall be established and maintained for each Member in accordance with the following: (a) There shall be credited to each Member’s Capital Account: (i) the amount of any money paid by such Member for the purchase of Units in the Fund; and (i) such Member’s share of the income and gain (and all items thereof) of the Fund (including income or gain exempt from federal income tax and income and gain described in Treasury Regulation §1.704-1(b)(2)(iv)(g), but excluding income and gain described in Treasury Regulation §1.704-1(b)(4)(i)). (b)

There shall be charged against each Member's Capital Account: (i) the amount of capital distributed to such Member by the Fund; (ii) such Member's share of expenditures of the Fund described in IRC §705(a)(2)(B).

It is the intent of the Members of the Fund that the provisions of this Agreement relating to the establishment and maintenance of Capital Accounts comply with the requirements of Treasury Regulation §1.704-1(b)(2)(iv) or any successor provision, and that such provisions are interpreted and applied in a manner consistent with such Treasury Regulation or successor provision.

### 3.4 Adoption of this Agreement.

Each person acquiring Units from the Fund shall be admitted as a Member and shall, by written instrument in form and substance acceptable to the Manager, accept, adopt and be bound by the terms and provisions of this Agreement, and such person shall each execute and deliver such other instruments as the Manager reasonably deems necessary or appropriate to effect, and as a condition to, such acquisition of Units.

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## 4. DEFINITIONS

The following terms shall have the meaning ascribed to them below when used elsewhere in this Operating Agreement with the initial letter capitalized.

"Affiliates" shall mean, but shall not be limited to, Froogal Inc, as well as other entities in which a principal of Manager is a principal or member.

"Agreement" means this Operating Agreement.

"AUM" means total Fund Assets under Management. AUM shall be determined by the Manager in its sole discretion.

"Capital Account" shall have the meaning set forth in Section 3.3 hereof.

"Capital Contribution" shall mean the total price paid for Units issued.

"Carried Interest" shall have the meaning set forth in Section 5.4.

"Code" means the Internal Revenue Code of 1986, as amended.

"Critical Elements" shall have the meaning set forth in Section 10.2(g).

“Distributions” means amounts which from time to time are distributed to holders of Units, at the Manager’s discretion, but subject to the limitations on discretion set forth in this Agreement.

“Distributable Cash” means at the time of determination by the Manager, cash generated from the Fund’s Assets and other operations of the Fund after payment of or provision for the following expenses (a) Fund Expenses, and (b) such amounts as the Manager deems reasonable in order to provide for any anticipated, contingent or unforeseen expenditures or liabilities of the Fund. Distributable Cash shall be determined without regard to (i) capital contributions made by Members. Distributable Cash shall be determined by the Manager in its sole discretion.

“Effective Date” shall mean the first day of the quarter following the date of transfer of an Investor’s funds into the Fund’s operating account.

“Fund Assets” or “Assets” means any and all assets of the Fund including all deposit and brokerage account holdings.

“Fund Expenses” includes but is not limited to Fund organizational costs, costs for tax return preparation, financial statement preparation and/or audits, legal fees and costs, filing, licensing, or other governmental fees, other third party audits, loan fees and servicing fees, Fund administration costs and any other expenses associated with operation of the Fund or management of its Assets.

Fund Expenses may be direct costs, or allocated costs reimbursable to third parties or entities (including Manager or Affiliates).

“Indemnified Parties” shall have the meaning set forth in Section 10.8.

“Manager” means Froogal Inc., a Delaware C-Corp, and thereafter, any other individual or entity selected by the Members pursuant to the terms of this Agreement.

“Member” shall mean any person or entity holding Units who has been approved by the Manager and is a party to this Operating Agreement.

“Management Fee” means the fee payable to the Manager by the Fund, as set forth in Section 10.3.

“Ownership Interest” means, for each Member, that percentage which is obtained by dividing the Units held by the Member by the total of all Units held by all the Members.

“Record Date” shall have the meaning set forth in Section 9.5.

“Reinvestment” shall have the meaning set for in Section 5.4.

“Substitute Member” shall mean a Member who acquires its Units from another Member, at the approval of the Manager.

“Transfer” shall have the meaning set forth in Section 11.2(a).

“Treasury Regulation” means the United States Treasury Regulations.

“Unit” or “Units” shall have the meaning set forth in the Overview.

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## **5. ALLOCATIONS AND DISTRIBUTIONS**

### **5.1 Allocation of Profits and Losses.**

Each item of Fund income, deduction, or credit for each day will be allocated among the Members in proportion to their Ownership Interest.

### **5.2 Use of Cash Flow; Rewards Points.**

Subject to the Fund’s performance and sufficient cash flow, the Manager intends to pay the Rewards Points to the Members on a daily basis.

The Manager has the right, in its sole discretion, to withhold a Distribution if distributing Rewards Points would not, in the Manager’s discretion, be in the best interests of the Fund.

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## **6. BOOKS OF ACCOUNT, RECORDS, AND REPORTS**

### **6.1 Books and Records.**

At the Fund’s principal place of business, the Manager shall maintain the Fund’s books and records, a register showing a current and past list of the full names and last known addresses of its Members, a copy of its Articles of Organization and all amendments thereto; a copy of this Agreement and all amendments thereto, along with a copy of any prior Agreements no longer in effect, a copy of the Fund’s federal, state, and local tax returns and reports, if any, for the three most recent years, and a copy of any financial statements of the Fund for the three most recent years.

Each Member shall have access thereto at all reasonable times and upon reasonable advance notice to the Manager. The Manager shall keep proper and complete records and books of

account, entering fully and accurately all transactions and other matters relative to the Fund's business as are usually entered into records and books of account maintained by persons engaged in businesses of a like character.

The Manager intends to maintain the books and records in full accordance with generally accepted accounting principles; however, it may choose an alternate method of accounting reasonably acceptable in its sole discretion.

The Manager shall consistently maintain the books and records on the accrual basis (except in circumstances where it determines that the cash or income tax basis of accounting will be in the best interest of the Fund).

Except with respect to matters as to which the Manager is granted discretion hereunder, the opinion of the Fund's certified public accountants shall be final and binding with respect to all disputes as to computations and determinations required under this Agreement.

## 6.2 Financial Statements; Reports.

Manager, or a third party retained by Manager will prepare the Fund's tax returns. The Manager shall prepare quarterly financial statements.

The Fund will provide the Members with a statement of their Units in the Fund within approximately 90 days following the close of the last quarter of each taxable year, as well as through periodic statements and newsletters.

In addition, as soon as practicable following the close of each taxable year, the Fund will provide the Members with information for their use in preparing documents required to be filed under federal income tax laws and other federal laws.

The cost for any such report shall be borne by the Fund.

## 6.3 Tax Matters.

(a) Tax Elections. The Manager shall, without any further consent of the Members being required, make any and all elections for federal, state, local, and foreign tax purposes, file any tax returns, and execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Fund and the Members.

Manager is specifically authorized to act as the "Tax Matters Member" under the Code and in any similar capacity under state or local law.

(b) Tax Classification.

The Manager shall take such action as may be required under the Code and the Treasury Regulations to cause the Fund to be taxable as a partnership for federal and state income tax purposes.

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## **7. FISCAL YEAR**

The Fund's taxable year will initially end on the 31st day of December in each year. The Manager may change the taxable year or the fiscal year at any time.

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## **8. COMPANY FUNDS**

The Fund's available cash will be placed in one or more accounts at a federally or state insured financial institution. Each such account will consist of investments that are immediately liquid, and that, in the Manager's judgment, are sufficiently safe while attempting to produce a yield (if any) on the Fund's cash.

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## **9. MEMBER MEETINGS**

### **9.1 Meetings.**

The Manager shall hold at least one meeting annually for the Members. In addition, a meeting of Members shall be held: (a) if it is called by the Manager; or (b) if Members holding at least 60% of the issued Units on the Record Date (as defined below) sign, date, and deliver to the Manager's principal office a written request for the meeting, describing the purpose or purposes for which it is to be held. In either case, the Manager shall call a meeting by providing written notice to the Members (in the case of a Member requested meeting, within 10 days after receipt of the request from Members) stating the purpose of the meeting, and the date, time, and place of the meeting. Such meeting shall be held at a time and place designated by the Manager not less than 15 days or more than 60 days after the Manager's written notice to the Members. All meetings of Members shall be held at the principal office of the Fund or any other place specified in the Notice of Meeting.

### **9.2 Proxies.**



A Member may be represented at a meeting in person or by written proxy. A proxy shall be in writing executed by the Member and filed with the Manager before the commencement of the meeting. The Manager may specify the persons who can be appointed as a proxy.

### 9.3 Voting.

On each matter requiring action by the Members, each Member may vote the Member's Ownership Interest. Except as otherwise stated in the Certificate of Formation or this Agreement, a matter submitted to a vote of the Members shall be deemed approved if it receives the affirmative vote of 60% of the Ownership Interest.

### 9.4 Action by Ballot Without Meeting.

Any action required or permitted to be taken by the Members at a meeting may be taken without a meeting by ballot in writing, describing the action taken, signed by 60% of the Members. The Manager only, in Manager's discretion, may call for an action by ballot without meeting by delivering to the Members the ballot together with a description of the proposed action and by requiring that the ballot be returned within a specified number of days, which shall not be less than 15 or more than 60, after the date the ballots are mailed. If a Member does not return the Member's ballot within the required period of time, the Member shall be deemed to have voted against the proposed action.

### 9.5 Record Date.

The persons entitled to notice of and to vote at a Members meeting or by ballot, and their respective Ownership Interest, shall be determined as of the Record Date for the meeting or the ballot. The Record Date for a meeting shall be a date selected by the Manager not earlier than 60 days or less than 10 days before the meeting or the date the ballots are mailed, (the "Record Date"). If the Manager does not specify a Record Date for a meeting or ballot, the Record Date shall be the date on which notice of the meeting or ballot was first mailed or otherwise transmitted to the Members.

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## 10. POWERS, RIGHTS, FEE, AND DUTIES OF THE MANAGER

### 10.1 Authority.

The Fund shall be managed by one Manager. The initial Manager shall be Froogal Inc.. The Manager has the exclusive authority to manage the operations and affairs of the Fund and to make all decisions regarding the business of the Fund. The Manager has all of the rights and

powers of a Manager as provided in the Act, this Agreement, and as otherwise provided by law. Any action of the Manager shall constitute the act of and bind the Fund.

## 10.2 Powers.

The Manager has the right, power, and authority to do on behalf of the Fund all things, which in its sole judgment are necessary, proper, or desirable to carry out its duties and responsibilities. Such powers include, but are not limited to the following, intended as examples of such powers: (a) Choice of insured-depository institution; (b) The right, power, and authority to determine operating fee charged and Rewards Point distribution; (c) Employ and dismiss from employment any and all employees, agents, independent contractors, managers, brokers, attorneys, and accountants; (d) To modify this Agreement, other than as to Critical Elements or those items set forth in Section 14 (Amendments), at its discretion; provided, however, that within 30 days of modifying this Agreement, the Manager will inform the Members of such a change. If a majority of Members (as determined by Ownership Interests) object to such a change within 60 days of the modification, the modification shall be deemed null and void as of the date the majority of Ownership Interests has objected to the modification. For purposes of this Agreement, "Critical Elements" shall mean the following: 1. The purpose of the Fund, including the investment strategy (which shall specifically exclude from Critical Elements any decision making concerning individual Fund Assets, Asset allocations, and/or modifications to the underwriting guidelines which shall at all times remain in the sole discretion of the Manager); 2. The fee structure and compensation being paid to the Manager and/or Affiliates (if such compensation is increased); 3. The mechanisms for replacement and/or removal of the Manager and the selection of a replacement Manager; 4. Changes to the liquidity structure of the Fund, 5. Any amendment requiring the written consent of Members holding at least 60% of the Membership Units, as provided for in Section 15.1; and 6. Voting rights of the Members.

## 10.3 Management Fees and Additional Compensation to Manager and Affiliates.

### Asset Management Fee.

On an on-going basis, the Manager or its designated affiliate(s) will receive an annual fee equal to the aggregate deposit account interest rate earned on total aggregate capital commitments.

## 10.4 Time and Effort.

The Manager shall devote such time to the Fund business as it deems necessary, in its sole discretion, to manage and supervise the Fund business and affairs in an efficient manner.

Nothing herein precludes employment of any agent or third party (at Fund expense) to manage or provide other services subject to the control of the Manager.

#### 10.5 Independent Activities of the Manager.

The Manager is not required to manage the Fund as its sole and exclusive function. The Manager has business interests and engages in activities other than those relating to the Fund. The pursuit of such ventures by the Manager and/or Affiliates, even if competitive with the business of the Fund, shall not be deemed wrongful or improper or a violation of any fiduciary duties by the Manager. Notwithstanding the foregoing, if the Manager receives an opportunity to invest in or manage or in any way benefit from an opportunity that is competitive with or similar to Assets in which the Fund ordinarily might invest, the Manager shall grant the Fund such opportunity prior to taking such opportunity for itself, on the same terms and conditions as the opportunity was presented to the Manager.

#### 10.6 Permitted Transactions.

The validity of any transaction, agreement, or payment involving the Fund and the Manager or an Affiliate or principal of the Manager which is otherwise permitted by the terms of this Agreement shall not be affected by the relationship between the Fund and the Manager or an Affiliate or principal of the Manager.

#### 10.7 Liability to the Fund.

To the greatest extent permitted by law, neither the Manager nor any director, officer, agent, employee, or owner of the Manager shall be liable, responsible, or accountable in damages or otherwise to the Fund or any Member for any action taken or failure to act on behalf of the Fund within the scope of the authority conferred on the Manager by this Agreement or by law unless such act or omission was performed or omitted fraudulently or in bad faith.

#### 10.8 Indemnity of the Manager.

To the greatest extent permitted by law, the Fund shall indemnify and hold harmless the Manager and each owner, director, officer, employee, and agent of the Manager (herein the "Indemnified Parties") against and from any personal loss, expense, damage, or injury suffered or sustained by the Manager by reason of any acts, omission, or alleged acts or omissions arising out of its activities on behalf of the Fund or in furtherance of the interests of the Fund, including but not limited to any judgment, award, settlement, reasonable attorney fees, and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding, or claim and including any payments made by the Manager to any of the Indemnified Parties if the acts, omissions, or alleged acts or omissions upon which the actual or threatened action, proceeding, or claim is based were for a purpose reasonably believed to be in the best interests of the Fund, and were not performed or omitted fraudulently or in bad faith by the Indemnified Parties and were not in violation of the Manager's fiduciary obligations to the Fund. Any indemnification shall only be from the assets of the Fund. Notwithstanding the foregoing, neither the Manager nor any owner, director, officer, employee, or agent of the

Manager shall be indemnified for any loss or damage incurred by them in connection with any judgment entered in or settlement of any lawsuit involving allegations that federal or state securities laws were violated by the Manager or by any such person in connection with the offer or sale of Units unless: (a) where the lawsuit is not settled, the person seeking indemnification successfully defends that lawsuit; and (b) indemnification is specifically approved by a court of law.

#### 10.9 Prohibited Acts.

Anything in this Agreement to the contrary notwithstanding, the Manager shall not cause or permit the Fund to: (a) reimburse the Manager for expenses incurred or for salaries of its officers except as otherwise expressly provided in this Agreement; (b) pay for any services performed by the Manager, except as permitted herein; nor receive any rebate or give up in connection with Fund activities, nor participate in reciprocal business arrangements which circumvent this provision;

#### 10.10 Power of Attorney.

Each Member who executes a signature page to this Agreement thereby irrevocably constitutes and appoints the Manager, with full power of substitution, as its true and lawful attorney-in-fact, in its name, place, and stead to execute, acknowledge, swear to, verify, deliver, file, and publish, if necessary: (a) this Agreement; (b) all amendments, alterations, or changes to this Agreement, including amendments admitting a substituted or additional Member, if otherwise authorized under this Agreement; (c) all instruments which effect a change in the Fund or a change in this Agreement; (d) all certificates or other instruments necessary to qualify or maintain the Fund as a limited liability company in which the Members have limited liability in the jurisdictions(s) where the Fund may conduct business; and (e) all instruments necessary to effect a dissolution, termination, and liquidation of the Fund and cancellation of this Agreement when such dissolution, termination, liquidation, or cancellation is otherwise provided in this Agreement; provided, however, that the Manager shall not use this power of attorney to take any actions that have the effect of changing a Critical Element without the Member's consent. This power of attorney is deemed coupled with an interest and shall survive the death or disability of a Member or the assignment or transfer of all or any part of the interest of such Member in the Fund until the transferee or assignee shall have become a substituted Member and shall have executed such instruments as the Manager deems necessary to bind such transferee or assignee under the terms of this Agreement as it may hereafter be amended. The Manager may exercise this power of attorney for each Member by listing all of the Members and executing any instrument with a single signature of the Manager acting as attorney-in-fact for all of them.

#### 10.12 Key Man Provision.

Kale Pasch is considered an integral part of the Fund's investments and operations (a "Key Man"). If Mr. Pasch were to leave the Manager, die, or become permanently disabled, the Manager's ability to continue the management of the Fund could be materially and adversely affected. Upon the death or permanent disability of Mr. Pasch, the Members shall have the right to approve a replacement Key Man by majority vote for a period of up to one year. If no replacement Key Man is appointed by the Members within the maximum one year period, the Fund, at Manager's option shall permanently cease to make new investments and shall proceed with an orderly liquidation of its Assets.

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## **11. REDEMPTION AND TRANSFER OF UNITS BY MEMBERS**

11.1 Members will have the right to request a Redemption at any time provided that the Member notifies the Manager through the Froogal website's "Withdraw Funds" feature.

The Manager shall have no obligation to grant any particular Redemption request and shall retain sole discretion as to whether or not to redeem any Unit, however; will endeavor to manage the Fund in such a way as to accommodate requests as consistently as possible.

11.2 Restrictions on Transfer of Interests.

(a) Member "Transfers" may occur if they are deemed satisfactory in form and substance to the Manager, to the effect that such Transfer would not result in any adverse legal or regulatory consequences to the Fund or any Member under the Investment Company Act of 1940, the Investment Advisers Act of 1940.

(b) Section 11.2(a) shall not apply to a Transfer by a Member to a person that acquires such Member's Units by reason of the death or legal incapacity of such Member.

Each Member hereby agrees that it will not Transfer all or any fraction of its Membership Units, except as permitted by this Agreement.

(c) In no event, shall all or any part of a Member's Membership Units be transferred to a minor or a person who is incapacitated, except in trust or by will or intestate succession.

11.3 Assignees.

(a) The Fund shall not recognize for any purpose any purported Transfer of all or any part of the Units of a Member, unless the provisions of Section 11.2 shall have been complied with and there shall have been filed with the Fund a dated notice of such Transfer, in a form satisfactory to the Manager, executed and acknowledged by both the transferor or such transferor's legal

representative and the transferee, and such notice (i) contains the acceptance by the transferee of all the terms and provisions of this Agreement and such transferee's agreement to be bound hereby, and (ii) represents that such Transfer was made in accordance with all applicable laws, rules and regulations. (b) Unless and until an Assignee becomes a Substitute Member, such Assignee shall have no rights with respect to such Units other than those rights with respect to allocations and distributions. (c) Any Member which shall Transfer all of its Units shall cease to be a Member upon, but only upon, the admission of a Substitute Member in such Member's stead. (d) Notwithstanding anything to the contrary contained in this Agreement, both the Fund and the Manager shall be entitled to treat a Member transferring all or any part of its Units as the absolute owner thereof in all respects, and shall incur no liability for distributions made in good faith to such Member, until such time as a Substitute Member is admitted in such Member's stead in respect thereof.

#### 11.4 Substitute Members.

(a) No Member shall have the right to substitute a transferee of all or any part of such Member's Units in its place, except as provided in Section 11.2.

Any such transferee of Unit(s) (whether pursuant to a voluntary or involuntary Transfer) shall be admitted to the Fund as a Substitute Member only (i) with the consent of the Manager granted at its sole discretion, (ii) by satisfying the requirements of Sections 11.2 and 11.3(a), and (iii) upon the receipt of all necessary consents of governmental and regulatory authorities.

Persons who become Substitute Members pursuant to Section 11.2(b) need not comply with clause (i) of the preceding sentence. (b) Each transferee of all or part of a Member's Membership Units, as a condition to its admission as a Substitute Member, shall execute and acknowledge such instruments, in form and substance satisfactory to the Manager, as the Manager reasonably deems necessary or desirable to effectuate such admission and to confirm the agreement of such person to be bound by all the terms and provisions of this Agreement with respect to the Membership Units acquired. All reasonable expenses, including attorneys' fees, incurred by the Fund in this connection shall be borne by such person.

#### 11.5 Bankruptcy or Incapacity of a Member.

In the event of the bankruptcy or incapacity of a Member, the Fund shall not be dissolved, and the Member's trustee in bankruptcy or other legal representative shall have only the rights of a transferee of the right to receive Fund distributions applicable to the Units of such bankrupt or incapacitated Member as provided herein.

Any Transfer to or from such trustee in bankruptcy or legal representative shall be subject to the provisions of this Agreement.

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## **12. UNILATERAL REDEMPTION BY FUND OR MANAGER**

### **12.1 Redemption by Manager or Fund.**

Notwithstanding anything contained in the Operating Agreement to the contrary, the Manager or the Fund shall have the right to unilaterally redeem (cash out) a Member's investment by providing thirty (30) days' notice to the Member.

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## **13. DISSOLUTION OF THE COMPANY**

### **13.1 Dissolution.**

The Fund will continue indefinitely until a date on which the Fund has liquidated all of its Fund Assets, or earlier upon the occurrence of any of the following events: (a) The disposition of all assets of the Fund and disbursement of all cash to the Members; (b) The dissolution of the Manager, bankruptcy of the manager, or withdrawal from the Fund of the Manager when an approved replacement is not obtained within a period of 90 days of such dissolution or bankruptcy or one year after the withdrawal of the Manager in the case of withdrawal.

Upon dissolution of the Fund, except due to withdrawal of the Manager where a substitute Manager is elected by the Members within 90 days of such dissolution, the Fund will be liquidated and the proceeds of liquidation will be applied as follows: 1. Return of Member's capital.

### **13.2 Bankruptcy.**

A bankruptcy of a Manager shall be deemed to have occurred upon the DLP happening of any of the following: (a) the Manager files an application for or consents to, the appointment of a trustee or receiver of its assets; (b) the Manager files a voluntary petition in bankruptcy or files a pleading in any court of record admitting in writing its inability to pay its debts as they become due; (c) the Manager makes a general assignment for the benefit of creditors; (d) the Manager files an answer admitting the material allegations of, or consents to, or defaults in answering a bankruptcy petition filed against it; or (e) any court of competent jurisdiction enters an order, judgment or decree adjudicating the Manager a debtor or appointing a trustee or receiver of its assets, if such order, judgment or decree continues unstayed and in effect for such period of 60 days.

### 13.3 Liquidation.

If the Fund dissolves, the Manager (or if the Manager has become bankrupt or terminated, then a liquidator or a liquidation committee selected by the holders of a majority of the then issued Units) shall commence to wind up the affairs of the Fund and to liquidate its investments.

### 13.4 No Recourse to Assets or Members.

Each Member shall look solely to the Assets of the Fund for all Distributions with respect to the Fund and its Capital Contribution thereto and share of profits or losses thereof, and shall have no recourse thereto (upon dissolution or otherwise) against any Member or the Manager or its principals, Affiliates, agents, or employees. No Member shall have any right to demand or receive property other than cash upon dissolution and termination of the Fund.

### 13.6 Termination.

Upon the completion of the liquidation of the Fund and the distribution of all Fund funds, the Fund shall terminate and the Manager shall have the authority to execute and record the Certificate of Cancellation of the Fund and any other documents required to effectuate the dissolution and termination of the Fund.

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## 14. NOTICES

All notices, requests, demands, and other communications given or required to be given hereunder shall be in writing and personally delivered or sent by electronic mail (e-mail).

To the Member: To the address shown on the attached signature page

To the Manager:

team@froogal.us

Notice may be given by email or facsimile to any party having an email account or facsimile machine compatible with the email service or facsimile machine of the party sending the notice. Any notice given by email or facsimile shall be deemed delivered when received by the email service or facsimile machine of the receiving party if received before 5:00 p.m. (Eastern Time) on the business day received, or if received after 5:00 p.m. (Eastern Time), or if emailed or faxed on a day other than a business day (i.e., a Saturday, Sunday, or legal holiday), then such



notice shall be deemed delivered on the next following business day. The transmittal confirmation receipt produced by the facsimile machine of the sending party or the email read confirmation shall be prima facie evidence of such receipt. Any party may change its address email address or facsimile number for purposes of this Section by giving notice to the other party. If a “copy party” is designated, service of notice shall not be deemed given to the designated party unless and until the “copy party” is also given such notice in accordance with this Section.

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## **15. AMENDMENTS**

### **15.1 Amendments Requiring Consent.**

Except as otherwise provided herein (and explicitly excluding the powers granted to the Manager to modify this Agreement pursuant to Section 10.2), this Agreement is subject to amendment only with the written consent of the Members holding a majority of the Membership Units; provided, however, that no amendment to this Agreement may: (a) without the consent of each affected Member, modify the limited liability of a Member; (b) alter the interest of any Member in respect of Fund income, or amend or modify any portion of Sections 3 and 5 without the consent of each Member adversely affected by such amendment or modification; provided, however, that the admission, withdrawal, or substitution of Members in accordance with this Agreement shall not constitute such an alteration, amendment, or modification; (c) amend or modify any provision of Section 11 in a manner that would further restrict the transferability of a Member's Interest without the consent of all of the Members; (d) amend any provision hereof which requires the consent, action, or approval of a specified Ownership Interest of the Members without the consent of such specified Ownership Interest of the Members; (e) amend this Section 15.1 without the consent of all of the Members; or without the consent of Manager, modify any of the provisions of Sections 5 or 10 of this Agreement.

### **15.2 Amendments Not Requiring Consent.**

In addition to any amendments otherwise authorized hereby (including the powers granted to the Manager to modify this Agreement pursuant to Section 10.2), this Agreement may be amended from time to time by the Manager: (i) to add to the representations, duties, or obligations of the Manager or surrender any right or power granted to the Manager; (ii) to cure any ambiguity or correct or supplement any provisions hereof which may be inconsistent with any other provision hereof or correct any printing, stenographic, or clerical errors or omissions; (iii) to provide for the admission, withdrawal, or substitution of Members in accordance with this Agreement; (iv) to amend the maintained list of Member, any necessary information regarding any Member, and to add and delete Members or Substitute Members; (v) to delete or add any provisions of this Agreement required to be so deleted or added by applicable law or by a securities law commissioner or similar such official or in order to qualify for a private placement

exemption; and (vi) to reflect any change in the amount of the Capital Contribution of any Member in accordance with this Agreement; provided, however, that no amendment shall be adopted pursuant to this Section 14.2 if such amendment would alter or result in the alteration of, the limited liability of the Members or the status of the Fund as a Fund for federal income tax purposes. The power of attorney granted pursuant to Section 10.12 may be used by the Manager to execute on behalf of a Member any document evidencing or effecting an amendment adopted in accordance with this Section 14.2.

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## **16. GENERAL**

### **16.1 Waiver of Partition.**

The Members agree that the Fund properties are not and will not be suitable for partition. Accordingly, each Member hereby irrevocably waives any and all rights that it may have to maintain any action for partition of any Fund Assets.

### **16.2 Entire Agreement.**

This Agreement constitutes the entire agreement among the parties. It supersedes any prior agreement or understanding among them, and it may not be modified or amended in any manner other than set forth herein.

### **16.3 Law.**

This Agreement and the rights of the parties hereunder shall be governed and interpreted in accordance with the laws of the State of North Carolina.

### **16.4 Binding Effect.**

Except as herein otherwise specifically provided this Agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, heirs, administrators, executors, successors, and assigns.

### **16.5 Variations in Pronouns.**

Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns in either masculine, feminine, or neuter gender shall include masculine, feminine, and neuter.

### **16.6 Captions.**

Captions are inserted only as a convenience and in no way, define, limit or extend the scope or intent of any provision hereof.

#### 16.7 Validity.

If any provision of this Agreement, or application of a provision to any person or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to other persons or circumstances, shall not be affected thereby.

#### 16.8 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. This Agreement may contain more than one counterpart of the signature page and it may be executed by the affixing of signatures of each of the Members to one of such counterpart signature pages; all counterpart signature pages shall be read as the one and they shall have the same force and effect as though all of the signers signed a single signature page.

#### 16.9 Confidentiality.

Each Member agrees, as set forth below, with respect to any information pertaining to the Fund or any Fund Asset that is provided to such Member pursuant to this Agreement or otherwise (collectively "Confidential Matter"), to treat as confidential all such information, together with any analyses, studies, or other documents or records prepared by such Member, its Affiliates, or any representative or other person acting on behalf of such Member (collectively its "Authorized Representatives"), which contain or otherwise reflect or are generated from Confidential Matters, and will not permit any of its Authorized Representatives to, disclose any Confidential Matter, provided that any Member (or its Authorized Representative) may disclose any such information: (a) as has become generally available to the public; (b) as may be required or appropriate in any report, statement, or testimony submitted to any governmental authority having or claiming to have jurisdiction over such Member (or its Authorized Representative) but only that portion of the data and information which, in the written opinion of counsel for such Member or Authorized Representative is required or would be required to be furnished to avoid liability for contempt or the imposition of any other material judicial or governmental penalty or censure; (c) as may be required or appropriate in response to any summons or subpoena or in connection with any litigation; or (d) as to which the Manager has consented in writing.

Notwithstanding anything herein to the contrary, any Member (and any employee, representative, or other agent of such Member) may disclose to any and all persons, without limitation of any kind, such Member's U.S. federal income tax treatment and the U.S. federal income tax structure of the transactions contemplated hereby relating to such Member and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. However, no disclosure of any information relating to such tax treatment or tax structure may be made to the extent nondisclosure is reasonably necessary in order to comply with applicable securities laws.

#### 16.10 Counsel.

Each Member acknowledges and agrees that any law firm or counsel retained by the Manager in connection with the organization of the Fund, the offering of Units, the management and operation of the Fund, or any dispute between the Manager and any Member is acting as counsel to the Manager and as such does not represent or owe any duty to such Member or to the Members as a group.

16.11 Attorney Fees. In the event of any legal action in connection with this Agreement (whether at law or in equity), the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred therein, including attorney fees and costs on appeal. The term "legal action" shall be deemed to include any action commenced in any court of general or limited jurisdiction as well as any proceeding in the bankruptcy courts of the United States and arbitration proceedings. The term "costs" includes, but is not limited to, reasonable attorney fees, deposition costs (discovery or otherwise), witness fees (expert or otherwise), title expenses (search or policy), and any and all other out-of-pocket expenses as may be allowed by the court or arbitrator.

IN WITNESS, WHEREOF, this Agreement has been duly executed by the parties on the day and year set forth at the beginning of this Agreement.

MANAGER: FROOGAL INC.

By: Kale Pasch, Managing Member