AGENDA
Timnath Liquor Board Meeting
6:00 PM - Tuesday, December 10, 2019
4750 Signal Tree Drive, Timnath, Colorado

1. CALL TO ORDER AND ROLL CALL

2. BUSINESS
   2.a. Approval of the Backyard Bird Chicken and Donuts Hotel and Restaurant Liquor License Application
       Staff Report - Pdf byb application
       Presented by: Milissa Peters-Garcia

3. ADJOURNMENT

DISCLAIMER
ADA Disclaimer: The Town of Timnath will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. If you need reasonable accommodation please notify us 24 hours in advance of the service, program or activity. Please call 970-224-3211 (TTY: Dial 711 or 800-659-3656 for Relay Colorado assistance).
TO: Timnath Liquor Board  
FROM: Milissa Peters-Garcia  
DATE OF MEETING: December 10, 2019  
TITLE / SUBJECT: Approval of the Backyard Bird Chicken and Donuts Hotel and Restaurant Liquor License Application

DESCRIPTION
Approval of the Backyard Bird Chicken and Donuts Hotel and Restaurant Liquor License Application

SUMMARY
The Backyard Bird Chicken and Donuts, to be located at 4650 Signal Tree Drive, Building A, Suite 1900, has applied for a Hotel and Restaurant Liquor License with concurrent review.

A hotel and restaurant liquor license allows for "On-Premises" consumption of beer, wine and spirits within the diagrammed premises, including outdoor patio areas.

KEY POINTS
The applicants have provided a completed application, approved background checks and provided all of the required documentation.

Staff has received unofficial approval from the State through their concurrent review of the application.

RECOMMENDED MOTION
Staff recommends approval of the Backyard Bird Chicken and Donuts Hotel and Restaurant liquor license

ATTACHMENTS
Application and documentation
Colorado Liquor
Retail License Application

☐ New License ☑ New Concurrent ☐ Transfer of Ownership ☐ State Property Only

• All answers must be printed in black ink or typewritten
• Applicant must check the appropriate box(es)
• Applicant should obtain a copy of the Colorado Liquor and Beer Code: www.colorado.gov/enforcement/liquor

1. Applicant is applying as an: ☐ Individual ☑ Limited Liability Company ☐ Association or Other
   ☐ Corporation ☐ Partnership (includes Limited Liability and Husband and Wife Partnerships)

2a. Trade Name of Establishment (DBA)
Backyard Bird Chicken & Donuts, LLC

2b. State Sales Tax Number
33276427-0000

2c. Business Telephone
(855) 735-6058

3. Address of Premises (specify exact location of premises, include street/lot numbers)
4650 Signal Tree Dr. Building A, Suite 1900

Timnath
City
Larimer
County
Windsor
City or Town
CO
State
80547
ZIP Code

5. Email Address
backyardbirdco@gmail.com

6. If the premises currently has a liquor or beer license, you must answer the following questions:

Present Trade Name of Establishment (DBA)
Backyard Bird Chicken & Donuts

City
Timnath
County
Larimer
State
CO
ZIP Code
80547

Section A Nonrefundable Application Fees
☐ Application Fee for New License $1,550.00
☐ Application Fee for Transfer $1,550.00

Section B Liquor License Fees
☐ Add Optional Premises to H & R $100.00 X Total
☐ Add Sidewalk Service Area $75.00
☐ Arts License (City) $308.75
☐ Arts License (County) $308.75
☐ Beer and Wine License (City) $351.25
☐ Beer and Wine License (County) $436.25
☐ Brew Pub License (City) $750.00
☐ Brew Pub License (County) $750.00
☐ Campus Liquor Complex (City) $500.00
☐ Campus Liquor Complex (County) $500.00
☐ Campus Liquor Complex (State) $500.00
☐ Club License (City) $308.75
☐ Club License (County) $308.75
☐ Distillery Pub License (City) $750.00
☐ Distillery Pub License (County) $750.00
☐ Hotel and Restaurant License (City) $500.00
☐ Hotel and Restaurant License (County) $500.00
☐ Hotel and Restaurant License w/o 28 opt premises (City) $600.00
☐ Hotel and Restaurant License w/o 28 opt premises (County) $600.00
☐ Liquor-Licensed Drugstore (City) $227.50
☐ Liquor-Licensed Drugstore (County) $312.50
☐ Lodging & Entertainment - LAE (City) $500.00
☐ Lodging & Entertainment - LAE (County) $500.00

Questions? Visit: www.colorado.gov/enforcement/liquor for more information
Do not write in this space - For Department of Revenue use only

Liability Information

License Account Number Liability Date License Issued Through (Expiration Date) Total $
**Application Documents Checklist and Worksheet**

**Instructions:** This checklist should be utilized to assist applicants with filing all required documents for licensure. All documents must be properly signed and correspond with the name of the applicant exactly. All documents must be typed or legibly printed. Upon final state approval the license will be mailed to the local licensing authority. Application fees are nonrefundable. Questions? Visit: www.colorado.gov/enforcement/liquor for more information

<table>
<thead>
<tr>
<th>Items submitted, please check all appropriate boxes, completed or documents submitted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. Applicant information</strong></td>
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<tr>
<td>☐ A. Applicant/Licensee identified</td>
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<tr>
<td>☐ B. State sales tax license number listed or applied for at time of application</td>
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<tr>
<td>☐ C. License type or other transaction identified</td>
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<td>☐ D. Return originals to local authority (additional items may be required by the local licensing authority)</td>
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<tr>
<td>☐ E. All sections of the application need to be completed</td>
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| **II. Diagram of the premises** |
| ☐ A. No larger than 8 1/2" X 11" |
| ☐ B. Dimensions included (does not have to be to scale). Exterior areas should show type of control (fences, walls, entry/exit points, etc.) |
| ☐ C. Separate diagram for each floor (if multiple levels) |
| ☐ D. Kitchen - identified if Hotel and Restaurant |
| ☐ E. Bold/Outlined Licensed Premises |

| **III. Proof of property possession (One Year Needed)** |
| ☐ A. Deed in name of the applicant (or) matching question #2 date stamped / filed with County Clerk |
| ☐ B. Lease in the name of the applicant (or) (matching question #2) |
| ☐ C. Lease assignment in the name of the applicant with proper consent from the landlord and acceptance by the applicant |
| ☐ D. Other agreement if not deed or lease. (matching question #2) |

| **IV. Background information (DR 8404-I) and financial documents** |
| ☐ A. Complete DR 8404-I for each principal (individuals with more than 10% ownership, officers, directors, partners, members) |
| ☐ B. Fingerprints taken and submitted to the appropriate Local Licensing Authority through an approved state vendor. Do not complete fingerprint cards prior to submitting your application. |

| The Vendors are as follows: |
| IdentoGO – https://enroll.identogo.com/ |
| Phone: 844-539-5339 (toll-free) |
| IdentoGO FAQs: https://www.colorado.gov/pacific/cbi/identification-faqs |
| Colorado Fingerprinting – http://www.coloradofingerprinting.com |
| Appointment Scheduling Website: http://www.coloradofingerprinting.com/cabs/ |
| Phone: 720-292-2722 Toll Free: 833-224-2227 |
| ☐ C. Purchase agreement, stock transfer agreement, and/or authorization to transfer license |
| ☐ D. List of all notes and loans (Copies to also be attached) |

| **V. Sole proprietor/husband and wife partnership (if applicable)** |
| ☐ A. Form DR 4879 |
| ☐ B. Copy of State issued Driver's License or Colorado Identification Card for each applicant |

| **VI. Corporate applicant information (if applicable)** |
| ☐ A. Certificate of Incorporation |
| ☐ B. Certificate of Good Standing |
| ☐ C. Certificate of Authorization if foreign corporation (out of state applicants only) |

| **VII. Partnership applicant information (if applicable)** |
| ☐ A. Partnership Agreement (general or limited), |
| ☐ B. Certificate of Good Standing |

| **VIII. Limited Liability Company applicant information (if applicable)** |
| ☐ A. Copy of articles of organization |
| ☐ B. Certificate of Good Standing |
| ☐ C. Copy of Operating Agreement (if applicable) |
| ☐ D. Certificate of Authority if foreign LLC (out of state applicants only) |

<p>| <strong>IX. Manager registration for Hotel and Restaurant, Tavern, Lodging &amp; Entertainment, and Campus Liquor Complex licenses when included with this application</strong> |
| ☐ A. $75.00 fee |
| ☐ B. Individual History Record (DR 8404-I) |
| ☐ C. If owner is managing, no fee required |</p>
<table>
<thead>
<tr>
<th>Name</th>
<th>Type of License</th>
<th>Account Number</th>
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</thead>
</table>

7. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years?  
   - Yes
   - No

8. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):  
   - a. Been denied an alcohol beverage license?  
   - b. Had an alcohol beverage license suspended or revoked?  
   - c. Had interest in another entity that had an alcohol beverage license suspended or revoked?  

If you answered yes to 8a, b or c, explain in detail:  

9. Has a liquor license application (same license class) that was located within 500 feet of the proposed premises, been denied within the preceding two years?  
   - Yes
   - No

10. Are the premises to be licensed within 500 feet, of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?  
   - Yes
   - No

Waiver by local ordinance?  
   - Yes
   - No

Other:  

11. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (> 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.  
   - Yes
   - No

12. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (< 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.  
   - Yes
   - No

13. a. For additional Retail Liquor Store only. Was your Retail Liquor Store License issued on or before January 1, 2016?  
   - Yes
   - No

13. b. Are you a Colorado resident?  
   - Yes
   - No

14. Has a liquor or beer license ever been issued to the applicant (including any of the partners if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)?  
   - Yes
   - No

If yes, identify the name of the business and list any current financial interest in said business including any loans to or from a licensee.

15. Does the applicant, as listed on line 2 of this application, have legal possession of the premises by ownership, lease or other arrangement?  
   - Ownership
   - Lease
   - Other (Explain in Detail)

If leased, list name of landlord and tenant, and date of expiration, exactly as they appear on the lease:

<table>
<thead>
<tr>
<th>Landlord</th>
<th>Tenant</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Expires</td>
</tr>
</tbody>
</table>

b. Is a percentage of alcohol sales included as compensation to the landlord?  
   - Yes
   - No

c. Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shall show the bar, brery, walk, partitions, entrance, exit and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11".

16. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) will lend or give money, inventory, furniture or equipment to or for use in this business, or who will receive money from this business? Attach a separate sheet if necessary.

<table>
<thead>
<tr>
<th>Last Name</th>
<th>First Name</th>
<th>Date of Birth</th>
<th>FEIN or SSN</th>
<th>Interest/%age</th>
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</table>

Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.

17. Optional Premises or Hotel and Restaurant Licenses with Optional Premises:  
   - Has a local ordinance or resolution authorizing optional premises been adopted?  
     - Yes
     - No

Number of additional Optional Premise areas requested. (See license fee chart)

18. For the addition of a Sidewalk Service Area per Regulation 47-307(A)(4), include a diagram of the service area and documentation received from the local governing body authorizing use of the sidewalk. Documentation may include but is not limited to a statement of use, permit, easement, or other legal permissions.

19. Liquor Licensed Drugstore (LLDS) applicants, answer the following:  
   a. Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant’s LLDS premise?  
     - Yes
     - No

If "yes" a copy of license must be attached.
<table>
<thead>
<tr>
<th>Name</th>
<th>Type of License</th>
<th>Account Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Backyard Bird Chicken &amp; Donuts</td>
<td>Hotel &amp; Restaurant</td>
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</table>

20. Club Liquor License applicants answer the following: Attach a copy of applicable documentation
   a. Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or artistic purpose and not for pecuniary gain? [ ] [ ]
   b. Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic, fraternal organization or society, but not for pecuniary gain? [ ] [ ]
   c. How long has the club been incorporated? [ ] [ ]
   d. Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above? [ ] [ ]

21. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following:
   a. Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)

22. Campus Liquor Complex applicants answer the following:
   a. Is the applicant an institution of higher education? [ ] [ ]
   b. Is the applicant a person who contracts with the institution of higher education to provide food services? [ ] [ ]
   c. If "yes" please provide a copy of the contract with the institution of higher education to provide food services.

23. For all on-premises applicants:
   a. Hotel and Restaurant, Lodging and Entertainment, Tavom License and Campus Liquor Complex, the Registered Manager must also submit an Individual History Record
   b. For all Liquor Licensed Dealers (LLDS) the Permitted Manager must also submit an Manager Permit Application

Last Name of Manager | First Name of Manager | Matthew
--- | --- | ---

24. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? [ ] [ ]

25. Related Facility - Campus Liquor Complex applicants answer the following:
   a. Is the related facility located within the boundaries of the Campus Liquor Complex? [ ] [ ]
   b. If yes, please provide a map of the geographical location within the Campus Liquor Complex.

Last Name of Manager | First Name of Manager | Matthew
--- | --- | ---

26. Tax Information:
   a. Has the applicant, including its manager, partners, officer, director, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business? [ ] [ ]
   b. Has the applicant, including its manager, partners, officer, director, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S? [ ] [ ]

27. If applicant is a corporation, partnership, association or limited liability company, applicant must list all Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% or more in the applicant. All persons listed below must also attach form DR 8404-I (Individual History Record), and make an appointment with an approved State Vendor through their website. See application checklist, Section IV, for details.

<table>
<thead>
<tr>
<th>Name</th>
<th>Home Address, City &amp; State</th>
<th>DOB</th>
<th>Position</th>
<th>% Owned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matthew Smith</td>
<td>6434 Cloudburst Ave. Timnath, CO</td>
<td>05/03/79</td>
<td>Owner</td>
<td>50%</td>
</tr>
<tr>
<td>Nicole Smith</td>
<td>6434 Cloudburst Ave. Timnath, CO</td>
<td>02/22/82</td>
<td>Owner</td>
<td>50%</td>
</tr>
</tbody>
</table>

** If applicant is owned 100% by a parent company, please list the designated principal officer on above.
** If total ownership percentage disclosed here does not total 100%, applicant must check this box.
** Applicant confirms that no individual other than those disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Article 3 or 5, C.R.S.
<table>
<thead>
<tr>
<th>Name: Backyard Bird Chicken &amp; Donuts</th>
<th>Type of License: Hotel &amp; Restaurant</th>
<th>Account Number</th>
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</thead>
<tbody>
<tr>
<td><strong>Oath Of Applicant</strong></td>
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<tr>
<td>I declare under penalty of perjury</td>
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<td>in the second degree that this</td>
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<td>application and all attachments are</td>
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<td>true, correct, and complete to the</td>
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<td>best of my knowledge. I also</td>
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<td>acknowledge that it is my</td>
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<td>responsibility and the</td>
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<td>responsibility of my agents</td>
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<td>and employees to comply with the</td>
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<td>provisions of the Colorado Liquor</td>
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<td>or Beer Code which affect my</td>
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<td>license.</td>
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| Authorized Signature: Matthew Smith | Printed Name and Title: Matthew Smith | Date: 11/02/19 |

<table>
<thead>
<tr>
<th>Report and Approval of Local Licensing Authority (City/County)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application filed with local authority: 11/4/19</td>
</tr>
<tr>
<td>Date of local authority hearing (for new license applicants, cannot be less than 30 days from date of application): 12/30/19</td>
</tr>
</tbody>
</table>

The Local Licensing Authority Hereby Affirms that each person required to file DR 8404.1 (Individual History Record) or a DR 8000 (Manager Permit) has been:

- [ ] Fingerprinted
- [ ] Subject to background investigation, including NCIC/NCIC check for outstanding warrants

That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license.

(Choose One)

- [ ] Date of inspection or anticipated date
- [ ] Will conduct inspection upon approval of state licensing authority

- [ ] Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000?
- [ ] Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 10,000?

NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.

- [ ] Does the Liquor-Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period?

The foregoing application has been examined, and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 44, Article 4 or 3, C.R.S., and Liquor Rules. Therefore, this application is approved.

Local Licensing Authority for: Town of Timnath

<table>
<thead>
<tr>
<th>Signature</th>
<th>Print</th>
<th>Title</th>
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Telephone Number: 970-324-3611

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<th>Town, City</th>
<th>County</th>
<th>Date</th>
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<td>Name</td>
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</tr>
<tr>
<td>Backyard Bird Chicken &amp; Donuts</td>
<td>Hotel &amp; Restaurant</td>
<td></td>
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</tbody>
</table>

**Oath Of Applicant**

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.

**Authorized Signature**

Nicole Smith, Owner

**Report and Approval of Local Licensing Authority (City/County)**

Date application filed with local authority: 11/4/19

Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application): 12/10/19

The Local Licensing Authority hereby affirms that each person required to file DR 8404 or Individual History Record) or a DR 8000 (Manager Permit) has been:

- [ ] Fingerprinted
- [ ] Subject to background investigation, including NCIC/OCIC check for outstanding warrants

That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of liquor code provisions affecting their class of license.

(Check One)

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**Local Licensing Authority for Town of Timnath**

Signature

Phone Number: 970-224-3211

County

Signature

Print

Title

Date
Tax Check Authorization, Waiver, and Request to Release Information

I, Matthew Smith, am signing this Tax Check Authorization, Waiver and Request to Release Information (hereinafter "Waiver") on behalf of Backyard Bird Chicken & Donuts LLC (the "Applicant/Licensee") to permit the Colorado Department of Revenue and any other state or local taxing authority to release information and documentation that may otherwise be confidential, as provided below. If I am signing this Waiver for someone other than myself, including on behalf of a business entity, I certify that I have the authority to execute this Waiver on behalf of the Applicant/Licensee.

The Executive Director of the Colorado Department of Revenue is the State Licensing Authority, and oversees the Colorado Liquor Enforcement Division as his or her agents, clerks, and employees. The information and documentation obtained pursuant to this Waiver may be used in connection with the Applicant/Licensee’s liquor license application and ongoing licensure by the state and local licensing authorities. The Colorado Liquor Code, section 44-3-101. et seq. ("Liquor Code"), and the Colorado Liquor Rules, 1 CCR 203-2 ("Liquor Rules"), require compliance with certain tax obligations, and set forth the investigative, disciplinary and licensure actions the state and local licensing authorities may take for violations of the Liquor Code and Liquor Rules, including failure to meet tax reporting and payment obligations.

The Waiver is made pursuant to section 39-21-113(4), C.R.S., and any other law, regulation, resolution or ordinance concerning the confidentiality of tax information, or any document, report or return filed in connection with state or local taxes. This Waiver shall be valid until the expiration or revocation of a license, or until both the state and local licensing authorities take final action to approve or deny any application(s) for the renewal of the license, whichever is later. Applicant/Licensee agrees to execute a new waiver for each subsequent licensing period in connection with the renewal of any license, if requested.

By signing below, Applicant/Licensee requests that the Colorado Department of Revenue and any other state or local taxing authority or agency in the possession of tax documents or information, release information and documentation to the Colorado Liquor Enforcement Division, and is duly authorized employees, to act as the Applicant’s/Licensee’s duly authorized representative under section 39-21-113(4), C.R.S., solely to allow the state and local licensing authorities, and their duly authorized employees, to investigate compliance with the Liquor Code and Liquor Rules. Applicant/Licensee authorizes the state and local licensing authorities, their duly authorized employees, and their legal representatives, to use the information and documentation obtained using this Waiver in any administrative or judicial action regarding the application or license.

Name (Individual/Business) Backyard Bird Chicken & Donuts LLC

Social Security Number/Tax Identification Number

Address 4650 Signal Tree Dr. Building A, Suite 1900

City Timnath

State CO

Zip 80547

Home Phone Number 858-735-6058

Business/Work Phone Number 858-735-6058

Printed name of person signing on behalf of the Applicant/Licensee Matthew Smith

Applicant/Licensee’s Signature (signature authorizing the disclosure of confidential tax information) [Signature]

Date signed 11/02/19

Privacy Act Statement

Providing your Social Security Number is voluntary and no right, benefit or privilege provided by law will be denied as a result of refusal to disclose it. § 7 of Privacy Act, 5 USC § 552a (note).
**Individual History Record**

To be completed by the following persons, as applicable: sole proprietors; general partners regardless of percentage ownership, and limited partners owning 10% or more of the partnership; all principal officers of a corporation, all directors of a corporation, and any stockholder of a corporation owning 10% or more of the outstanding stock; managing members or officers of a limited liability company, and members owning 10% or more of the company; and any intended registered manager of Hotel and Restaurant, Tavern and Lodging and Entertainment class of retail license

Notice: This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by "N/A". Any deliberate misrepresentation or material omission may jeopardize the license application. (Please attach a separate sheet if necessary to enable you to answer questions completely)

<table>
<thead>
<tr>
<th>1. Name of Business</th>
<th>Home Phone Number</th>
<th>Cellular Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Backyard Bird Chicken &amp; Donuts LLC</td>
<td></td>
<td>858-735-6058</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Your Full Name (last, first, middle)</th>
<th>3. List any other names you have used</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smith, Matthew, Paul</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4. Mailing address (if different from residence)</th>
<th>Email Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><a href="mailto:backyardbirdoop@gmail.com">backyardbirdoop@gmail.com</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5. List current residence address. Include any previous addresses within the last five years. (Attach separate sheet if necessary)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street and Number</td>
</tr>
<tr>
<td>Current</td>
</tr>
<tr>
<td>Previous</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6. List all employment within the last five years. Include any self-employment. (Attach separate sheet if necessary)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Employer or Business</td>
</tr>
<tr>
<td>Next Door Tapas &amp; Drink</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>7. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Relative</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>8. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or loaned money, furniture, fixtures, equipment or inventory to any licensee? (If yes, answer in detail.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Yes</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>9. Have you ever received a violation notice, suspension, or revocation for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the United States? (If yes, explain in detail.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Yes</td>
</tr>
</tbody>
</table>
### Individual History Record

To be completed by the following persons, as applicable: sole proprietors; general partners regardless of percentage ownership, and limited partners owning 10% or more of the partnership; all principal officers of a corporation, all directors of a corporation, and any stockholder of a corporation owning 10% or more of the outstanding stock; managing members or officers of a limited liability company, and members owning 10% or more of the company; and any intended registered manager of Hotel and Restaurant, Tavern and Lodging and Entertainment class of retail license.

#### Notice:
This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by "N/A". Any deliberate misrepresentation or material omission may jeopardize the license application. (Please attach a separate sheet if necessary to enable you to answer questions completely.

<table>
<thead>
<tr>
<th>Name of Business</th>
<th>Home Phone Number</th>
<th>Cell Phone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Backyard Bird Chicken</td>
<td>858-735-7082</td>
<td>858-735-7082</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name and Relationship to You</th>
<th>Position Held</th>
<th>Name of Licensee</th>
</tr>
</thead>
</table>

#### 5. List current residence address. Include any previous addresses within the last five years. (Attach separate sheet if necessary)

<table>
<thead>
<tr>
<th>Current Address</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>6434 Cloudburst Ave.</td>
<td>06/10/14</td>
<td>11/04/19</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Previous Address</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>8228 Sardinia Rd.</td>
<td>03/21/09</td>
<td>06/10/14</td>
</tr>
</tbody>
</table>

#### 6. List all employment within the last five years. Include any self-employment. (Attach separate sheet if necessary)

<table>
<thead>
<tr>
<th>Name of Employer or Business</th>
<th>Address (Street, Number, City, State, Zip)</th>
<th>Position Held</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>University of California San Diego</td>
<td>9500 Gilman Dr. La Jolla, CA 92039</td>
<td>ADMIN OFCR 2</td>
<td>12/17/02</td>
<td>11/04/19</td>
</tr>
</tbody>
</table>

#### 7. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry.

<table>
<thead>
<tr>
<th>Name of Relative</th>
<th>Relationship to You</th>
<th>Position Held</th>
<th>Name of Licensee</th>
</tr>
</thead>
</table>

#### 8. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or loaned money, furniture, fixtures, equipment or inventory to any licensee? (If yes, answer in detail.)

- [ ] Yes
- [x] No

#### 9. Have you ever received a violation notice, suspension, or revocation for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the United States? (If yes, explain in detail.)

- [ ] Yes
- [x] No
## Articles of Organization

filed pursuant to § 7-90-301 and § 7-80-204 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name of the limited liability company is **Backyard Bird Chicken and Donuts, LLC**.

   (The name of a limited liability company must contain the term or abbreviation "limited liability company", "limited liability co.", "Ltd" liability co.", "limited", "L.L.C.", "l.l.c.", or "Ltd". See §7-90-601. C.R.S.)

   *(Caution: The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)*

2. The principal office address of the limited liability company’s initial principal office is

<table>
<thead>
<tr>
<th>Street address</th>
<th>4650 Signal Tree Drive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building A, Unit 1900</td>
<td>CO 80547</td>
</tr>
<tr>
<td>Timnath</td>
<td>United States</td>
</tr>
</tbody>
</table>

   *(Street number and name or Post Office Box information)*

   *(City)* (State) *(ZIP/Postal Code)*

   *(Province - if applicable)* *(Country)*

3. The registered agent name and registered agent address of the limited liability company’s initial registered agent are

   **Name** (if an individual)

   Smith Matthew Paul

   *(Last)* *(First)* *(Middle)* *(Suffix)*

   or

   **Name** (if an entity)

   *(Caution: Do not provide both an individual and an entity name.)*

   **Street address**

   4650 Signal Tree Drive

   *(Street number and name)*

   Building A, Unit 1900

   *(City)* *(State) *(ZIP/Postal Code)*

   *(Province - if applicable)* *(Country)*

   **Mailing address** (leave blank if same as street address)

   *(Street number and name or Post Office Box information)*

   *(City)* *(State) *(ZIP/Postal Code)*

   *(Province - if applicable)* *(Country)*

   **ARTORG, LLC**
4. The true name and mailing address of the person forming the limited liability company are

Name
(if an individual)
Smith
Matthew
Paul

(or)
(if an entity)
(Caution: Do not provide both an individual and an entity name.)
Mailing address
4650 Signal Tree Dr.
Building A, Unit 1900
Timnath

(City)
CO
80547

(State)
(ZIP/Postal Code)
United States

(if the following statement applies, adopt the statement by marking the box and include an attachment)
☐ The limited liability company has one or more additional persons forming the limited liability company and the name and mailing address of each such person are stated in an attachment.

5. The management of the limited liability company is vested in

☐ one or more managers.

or

☒ the members.

6. (The following statement is adopted by marking the box.)

☒ There is at least one member of the limited liability company.

7. (If the following statement applies, adopt the statement by marking the box and include an attachment.)

☐ This document contains additional information as provided by law.

8. (Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)

(if the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)

The delayed effective date and, if applicable, time of this document is/are

(mm/dd/yyyy hour:minute am/pm)

Notice:
Cauing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.
This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

9. The true name and mailing address of the individual causing the document to be delivered for filing are

<table>
<thead>
<tr>
<th>Smith</th>
<th>Matthew</th>
<th>Paul</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Last)</td>
<td>(First)</td>
<td>(Middle)</td>
</tr>
<tr>
<td>4650 Signal Tree Drive</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building A, Unit 1900</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Timnath</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CO 80547</td>
<td></td>
<td></td>
</tr>
<tr>
<td>United States</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(If the following statement applies, adopt the statement by mark the box and include an attachment.)

☐ This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

Disclaimer:
This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user’s legal, business or tax advisor(s).
OFFICE OF THE SECRETARY OF STATE  
OF THE STATE OF COLORADO  

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Backyard Bird Chicken and Donuts, LLC

is a Limited Liability Company

formed or registered on 10/07/2019 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20191810230.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 10/31/2019 that have been posted, and by documents delivered to this office electronically through 11/03/2019 @ 17:29:04.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 11/03/2019 @ 17:29:04 in accordance with applicable law. This certificate is assigned Confirmation Number 11891544.

[Seal]

Jena Griswold
Secretary of State of the State of Colorado

End of Certificate

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, http://www.sos.state.co.us/CorpCertificateSearchCriteria.do by entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."
Operating Agreement
of
Backyard Bird Chicken and Donuts, LLC

This Operating Agreement (this "Agreement") is entered into this 21 day of October, 2019 by and among the signatories hereto.

Explanatory Statement

The parties have agreed to organize and operate a limited liability company in accordance with the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the parties, intending legally to be bound, agree as follows:

Section I
Defined Terms

The following capitalized terms shall have the meanings specified in this Section I. Other terms are defined in the text of this Agreement; and, throughout this Agreement, those terms shall have the meanings respectively ascribed to them.

"Act" means the Colorado Limited Liability Company Act, as amended from time to time.

"Adjusted Capital Account Deficit" means, with respect to any Interest Holder, the deficit balance, if any, in the Interest Holder's Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments:

(i) the deficit shall be decreased by the amounts which the Interest Holder is obligated to restore pursuant to Section 4.4.2, or is deemed obligated to restore pursuant to Regulation Sections 1.704-1(g)(i) and (i)(5) (i.e., the Interest Holder's Share of Minimum Gain and Member Minimum Gain); and

(ii) the deficit shall be increased by the items described in Regulation Section 1.704-1(b)(2)(i)(d)(4), (5), and (6).

"Adjusted Capital Balance" means, as of any day, an Interest Holder's total Capital Contributions less all amounts actually distributed to the Interest Holder pursuant to Sections 4.2.3.4.1 and 4.4 hereof. If any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Adjusted Capital Balance of the transferor to the extent the Adjusted Capital Balance relates to the Interest transferred.

"Affiliate" means, with respect to any Member, any Person: (i) which owns directly or indirectly more than 50% of the voting interests in the Member; or (ii) in which the Member
owns directly or indirectly more than 50% of the voting interests; or (iii) in which more than
50% of the voting interests are owned directly or indirectly by a Person who has a relationship
with the Member described in clause (i) or (ii) above.

"Agreement" means this Agreement, as amended from time to time.

"Capital Account" means the account maintained by the Company for each Interest
Holder in accordance with the following provisions:

(i) an Interest Holder’s Capital Account shall be credited with the Interest
Holder’s Capital Contributions, the amount of any Company liabilities assumed by the Interest
Holder (or which are secured by Company property distributed to the Interest Holder), the
Interest Holder’s allocable share of Profit and any item in the nature of income or gain specially
allocated to such Interest Holder pursuant to the provisions of Section IV (other than Section
4.3.3); and

(ii) an Interest Holder’s Capital Account shall be debited with the amount of
money and the fair market value of any Company property distributed to the Interest Holder, the
Interest Holder’s allocable share of Loss, and any item in the nature of expenses or losses
specially allocated to the Interest Holder pursuant to the provisions of Section IV (other than
Section 4.3.3).

If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall
succeed to the Capital Account of the transferor to the extent the Capital Account is attributable
to the transferred Interest. If the book value of Company property is adjusted pursuant to Section
4.3.3, the Capital Account of each Interest Holder shall be adjusted to reflect the aggregate
adjustment in the same manner as if the Company had recognized gain or loss equal to the
amount of such aggregate adjustment. It is intended that the Capital Accounts of all Interest
Holders shall be maintained in compliance with the provisions of Regulation Section 1.704-1(b),
and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be
interpreted and applied in a manner consistent with that Regulation.

"Capital Contribution" means the total amount of cash and the fair market value of any
other assets contributed (or deemed contributed under Regulation Section 1.704-1(b)(2)(iv)(d))
to the Company by a Member, net of liabilities assumed or to which the assets are subject.

"Capital Proceeds" means the gross receipts received by the Company from a Capital
Transaction.

"Capital Transaction" means any transaction not in the ordinary course of business
which results in the Company’s receipt of cash or other consideration other than Capital
Contributions, including, without limitation, proceeds of sales or exchanges or other dispositions
of property not in the ordinary course of business, financings, refinancings, condemnations,
recoveries of damage awards, and insurance proceeds.
“Cash Flow” means all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any noncash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements and replacements as determined by the General Managers. Cash Flow shall not include Capital Proceeds, but shall be increased by the reduction of any reserve previously established.


“Company” means the limited liability company formed in accordance with this Agreement.

“CSOS” means the Colorado Secretary of State.

“Family” means a Member’s spouse, lineal ancestors, or descendants by birth or adoption, siblings, and trusts for the exclusive benefit of a Member or any of the foregoing individuals.

“General Managers” are the Persons designated as such in Section V.

“Interest Holder” means any Person who holds a Membership Interest, whether as a Member or as an unadmitted assignee of a Member.

“Member” means each Person signing this Agreement and any Person who subsequently is admitted as a member of the Company.

“Member Loan Nonrecourse Deductions” means any Company deductions that would be Nonrecourse Deductions if they were not attributable to a loan made or guaranteed by a Member within the meaning of Regulation Section 1.704-2(i).

“Member Minimum Gain” has the meaning set forth in Regulation Section 1.704-2(i) for “partner nonrecourse debt minimum gain.”

“Membership Interest” means a Person’s share of the Profits and Losses of, and the right to receive distributions from, the Company.

“Membership Rights” means all of the rights of a Member in the Company, including a Member’s: (i) Membership Interest; (ii) right to inspect the Company’s books and records; and (iii) right to participate in the management of and vote on matters coming before the Company.

“Minimum Gain” has the meaning set forth in Regulation Section 1.704-2(d). Minimum Gain shall be computed separately for each Interest Holder in a manner consistent with the Regulations under Code Section 704(b).

“Negative Capital Account” means a Capital Account with a balance of less than zero.
“Nonrecourse Deductions” has the meaning set forth in Regulation Section 1.704-2(b)(1). The amount of Nonrecourse Deductions for a taxable year of the Company equals the net increase, if any, in the amount of Minimum Gain during that taxable year, determined according to the provisions of Regulation Section 1.704-2(e).

“Nonrecourse Liability” has the meaning set forth in Regulation Sections 1.704-2(b)(3) and 1.752-1(a)(2).

“Percentage” means, as to a Member, the percentage set forth after the Member’s name on Exhibit A, as amended from time to time, and as to an Interest Holder who is not a Member, the Percentage of the Member whose Membership Interest has been acquired by such Interest Holder, to the extent the Interest Holder has succeeded to that Member’s Membership Interest.

“Person” means and includes any individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

“Positive Capital Account” means a Capital Account with a balance greater than zero.

“Profit” and “Loss” means, for each taxable year of the Company (or other period for which Profit or Loss must be computed) the Company’s taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

(i) all items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss;

(ii) any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss;

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

(iv) gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes;

(v) in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and

(vi) notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 4.3 hereof shall not be taken into account in computing Profit or Loss.
“Regulation” means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

“Resignation” means a Member’s dissociation with the Company by means other than by a Transfer.

“Transfer” means, when used as a noun, any voluntary sale, hypothecation, pledge, assignment, attachment, or other transfer, and, when used as a verb, means, voluntarily to sell, hypothecate, pledge, assign, or otherwise transfer.

Section II
Formation and Name; Office; Purpose; Term

2.1. Organization. The parties shall organize a limited liability company pursuant to the Act and the provisions of this Agreement and, for that purpose, have caused Articles of Organization to be prepared and filed for record with the CSOS.

2.2. Name of the Company. The name of the Company shall be “Backyard Bird Chicken and Donuts, L.L.C.” The Company may do business under that name and under any other name or names upon which the General Managers select. If the Company does business under a name other than that set forth in its Articles of Organization, then the Company shall file a trade name certificate as required by law.

2.3. Purpose. The Company is organized solely to own, manage, and otherwise deal in and with a restaurant and to do any and all things necessary, convenient, or incidental to that purpose.

2.4. Term. The term of the Company shall begin upon the acceptance of the Articles of Organization by the CSOS and shall continue in existence in perpetuity, unless its existence is terminated pursuant to Section VII of this Agreement.

2.5. Principal Office. The principal office of the Company in the State of Colorado shall be located at 4650 Signal Tree Drive, Building A, Unit 1900, Timnath, CO 80547 or at any other place which the General Managers select.

2.6. Registered Agent. The name and address of the Company’s registered agent in the State of Colorado shall be Matthew Paul Smith, 4650 Signal Tree Drive, Building A, Unit 1900, Timnath, CO 80547.

2.7. Members. The name, present mailing address, and Percentage of each Member are set forth on Exhibit A.
Section III
Members; Capital; Capital Accounts

3.1. Initial Capital Contributions. Upon the execution of this Agreement, the Members shall contribute to the Company cash in the amounts respectively set forth on Exhibit A.

3.2. Additional Capital Contributions.

3.2.1. If the General Managers at any time or from time to time determine that the Company requires additional Capital Contributions, then the General Managers shall give notice to each Interest Holder of (i) the total amount of additional Capital Contributions required, (ii) the reason the additional Capital Contribution is required, (iii) each Interest Holder’s proportionate share of the total additional Capital Contribution (determined in accordance with this Section), and (iv) the date each Interest Holder’s additional Capital Contribution is due and payable, which date shall be thirty (30) days after the notice has been given. The total additional Capital Contribution which the General Managers may require the Interest Holders to contribute during the term of this Agreement shall not exceed $1,000.00 in the aggregate. An Interest Holder’s proportionate share of the total additional Capital Contribution shall be equal to the product obtained by multiplying the Interest Holder’s Percentage and the total additional Capital Contribution required. An Interest Holder’s proportionate share shall be payable in cash or by certified check.

3.2.2. Except as provided in Section 3.2.1, no Interest Holder shall be required to contribute any additional capital to the Company, and no Member shall have any personal liability for any obligations of the Company.

3.2.3. If an Interest Holder fails to pay when due all or any portion of any Capital Contribution, the General Managers shall request the nondefaulting Interest Holders to pay the unpaid amount of the defaulting Interest Holder’s Capital Contribution (the “Unpaid Contribution”). To the extent the Unpaid Contribution is contributed by any other Interest Holder, the defaulting Interest Holder’s Percentage shall be reduced and the Percentage of each Interest Holder who makes up the Unpaid Contribution shall be increased, so that each Interest Holder’s Percentage is equal to a fraction, the numerator of which is that Interest Holder’s total Capital Contribution and the denominator of which is the total Capital Contributions of all Interest Holders. The General Managers shall amend Exhibit A accordingly. This remedy is in addition to any other remedies allowed by law or by this Agreement.

3.3. No Interest on Capital Contributions. Interest Holders shall not be paid interest on their Capital Contributions.

3.4. Return of Capital Contributions. Except as otherwise provided in this Agreement, no Interest Holder shall have the right to receive the return of any Capital Contribution.

3.5. Form of Return of Capital. If an Interest Holder is entitled to receive a return of a Capital Contribution, the Interest Holder shall not have the right to receive anything other than cash in return of the Interest Holder’s Capital Contribution.
3.6. Capital Accounts. A separate Capital Account shall be maintained for each Interest Holder.

3.7. Loans. Any Member may, at any time, make or cause a loan to be made to the Company in any amount and on those terms upon which the Company and the Member agree.

Section IV
Profit, Loss, and Distributions

4.1. Distributions of Cash Flow and Allocations of Profit or Loss Other Than Capital Transactions.

4.1.1. Profit or Loss Other Than from a Capital Transaction. After giving effect to the special allocations set forth in Section 4.3, for any taxable year of the Company, Profit or Loss (other than Profit or Loss resulting from a Capital Transaction, which Profit or Loss shall be allocated in accordance with the provisions of Sections 4.2.1 and 4.2.2) shall be allocated to the Interest Holders in proportion to their Percentages.

4.1.2. Cash Flow. Cash Flow for each taxable year of the Company shall be distributed to the Interest Holders in proportion to their Percentages no later than seventy-five (75) days after the end of the taxable year.

4.2. Distributions of Capital Proceeds and Allocation of Profit or Loss from Capital Transactions.

4.2.1. Profit. After giving effect to the special allocations set forth in Section 4.3, Profit from a Capital Transaction shall be allocated as follows:

4.2.1.1. If one or more Interest Holders has a Negative Capital Account, to those Interest Holders, in proportion to their Negative Capital Accounts, until all of those Negative Capital Accounts have been reduced to zero.

4.2.1.2. Any Profit not allocated pursuant to Section 4.2.1.1 shall be allocated to the Interest Holders in proportion to, and to the extent of, the amounts distributable to them pursuant to Sections 4.2.3.4.1 and 4.2.3.4.3.

4.2.1.3. Any Profit in excess of the foregoing allocations shall be allocated to the Interest Holders in proportion to their Percentages.

4.2.2. Loss. After giving effect to the special allocations set forth in Section 4.3, Loss from a Capital Transaction shall be allocated as follows:

4.2.2.1. If one or more Interest Holders has a Positive Capital Account, to those Interest Holders, in proportion to their Positive Capital Accounts, until all Positive Capital Accounts have been reduced to zero.
4.2.2. Any Loss not allocated to reduce Positive Capital Accounts to zero pursuant to Section 4.2.2.1 shall be allocated to the Interest Holders in proportion to their Percentages.

4.2.3. Capital Proceeds. Capital Proceeds shall be distributed and applied by the Company in the following order and priority:

4.2.3.1. to the payment of all expenses of the Company incident to the Capital Transaction; then

4.2.3.2. to the payment of debts and liabilities of the Company then due and outstanding (including all debts due to any Interest Holder); then

4.2.3.3. to the establishment of any reserves which the General Managers deem necessary for liabilities or obligations of the Company; then

4.2.3.4. the balance shall be distributed as follows:

4.2.3.4.1. to the Interest Holders in proportion to their Adjusted Capital Balances, until their remaining Adjusted Capital Balances have been paid in full;

4.2.3.4.2. if any Interest Holder has a Positive Capital Account after the distributions made pursuant to Section 4.2.3.4.1 and before any further allocation of Profit pursuant to Section 4.2.1.3, to those Interest Holders in proportion to their Positive Capital Accounts; then

4.2.3.4.3. the balance, to the Interest Holders in proportion to their Percentages.

4.3. Regulatory Allocations.

4.3.1. Qualified Income Offset. No Interest Holder shall be allocated Losses or deductions if the allocation causes an Interest Holder to have an Adjusted Capital Account Deficit. If an Interest Holder receives (1) an allocation of Loss or deduction (or item thereof) or (2) any distribution, which causes the Interest Holder to have an Adjusted Capital Account Deficit at the end of any taxable year, then all items of income and gain of the Company (consisting of a pro rata portion of each item of Company income, including gross income and gain) for that taxable year shall be allocated to that Interest Holder, before any other allocation is made of Company items for that taxable year, in the amount and in proportions required to eliminate the excess as quickly as possible. This Section 4.3.1 is intended to comply with, and shall be interpreted consistently with, the "qualified income offset" provisions of the Regulations promulgated under Code Section 704(b).

4.3.2. Minimum Gain Chargeback. Except as set forth in Regulation Section 1.704-2(f)(2), (3), and (4), if, during any taxable year, there is a net decrease in Minimum Gain, each Interest Holder, prior to any other allocation pursuant to this Section IV, shall be specially
allocated items of gross income and gain for such taxable year (and, if necessary, subsequent taxable years) in an amount equal to that Interest Holder's share of the net decrease of Minimum Gain, computed in accordance with Regulation Section 1.704-2(g)(2). Allocations of gross income and gain pursuant to this Section 4.3.2 shall be made first from gain recognized from the disposition of Company assets subject to nonrecourse liabilities (within the meaning of the Regulations promulgated under Code Section 752), to the extent of the Minimum Gain attributable to those assets, and thereafter, from a pro rata portion of the Company's other items of income and gain for the taxable year. It is the intent of the parties hereto that any allocation pursuant to this Section 4.3.2 shall constitute a “minimum gain chargeback” under Regulation Section 1.704-2(f).

4.3.3. Contributed Property and Book-Ups. In accordance with Code Section 704(c) and the Regulations thereunder, as well as Regulation Section 1.704-1(b)(2)(iv)(d)(3), income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the Interest Holders so as to take account of any variation between the adjusted basis of the property to the Company for federal income tax purposes and its fair market value at the date of contribution (or deemed contribution). If the adjusted book value of any Company asset is adjusted as provided herein, subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take account of any variation between the adjusted basis of the asset for federal income tax purposes and its adjusted book value in the manner required under Code Section 704(c) and the Regulations thereunder.

4.3.4. Code Section 754 Adjustment. To the extent an adjustment to the tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases basis), and the gain or loss shall be specially allocated to the Interest Holders in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Regulations.

4.3.5. Nonrecourse Deductions. Nonrecourse Deductions for a taxable year or other period shall be specially allocated among the Interest Holders in proportion to their Percentages.

4.3.6. Member Loan Nonrecourse Deductions. Any Member Loan Nonrecourse Deduction for any taxable year or other period shall be specially allocated to the Interest Holder who bears the risk of loss with respect to the loan to which the Member Loan Nonrecourse Deduction is attributable in accordance with Regulation Section 1.704-2(b).

4.3.7. Guaranteed Payments. To the extent any compensation paid to any Member by the Company, including any fees payable to any Member pursuant to Section 5.3 hereof, is determined by the Internal Revenue Service not to be a guaranteed payment under Code Section 707(c) or is not paid to the Member other than in the Person's capacity as a Member within the meaning of Code Section 707(a), the Member shall be specially allocated
gross income of the Company in an amount equal to the amount of that compensation, and the Member’s Capital Account shall be adjusted to reflect the payment of that compensation.

4.3.8. Unrealized Receivables. If an Interest Holder’s Interest is reduced (provided the reduction does not result in a complete termination of the Interest Holder’s Interest), the Interest Holder’s share of the Company’s “unrealized receivables” and “substantially appreciated inventory” (within the meaning of Code Section 751) shall not be reduced, so that, notwithstanding any other provision of this Agreement to the contrary, that portion of the Profit otherwise allocable upon a liquidation or dissolution of the Company pursuant to Section 4.4 hereof which is taxable as ordinary income (recaptured) for federal income tax purposes shall, to the extent possible without increasing the total gain to the Company or to any Interest Holder, be specially allocated among the Interest Holders in proportion to the deductions (or basis reductions treated as deductions) giving rise to such recapture. Any questions as to the aforesaid allocation of ordinary income (recapture), to the extent such questions cannot be resolved in the manner specified above, shall be resolved by the General Managers.

4.3.9. Withholding. All amounts required to be withheld pursuant to Code Section 1446 or any other provision of federal, state, or local tax law shall be treated as amounts actually distributed to the affected Interest Holders for all purposes under this Agreement.

4.4. Liquidation and Dissolution.

4.4.1. If the Company is liquidated, the assets of the Company shall be distributed to the Interest Holders in accordance with the balances in their respective Capital Accounts, after taking into account the allocations of Profit or Loss pursuant to Sections 4.1 or 4.2, if any, and distributions, if any, of cash or property, if any, pursuant to Sections 4.1 and 4.2.3.

4.4.2. No Interest Holder shall be obligated to restore a Negative Capital Account.

4.5. General.

4.5.1. Except as otherwise provided in this Agreement, the timing and amount of all distributions shall be determined by the General Managers.

4.5.2. If any assets of the Company are distributed in kind to the Interest Holders, those assets shall be valued on the basis of their fair market value, and any Interest Holder entitled to any interest in those assets shall receive that interest as a tenant-in-common with all other Interest Holders so entitled. Unless the Members otherwise agree, the fair market value of the assets shall be determined by an independent appraiser who shall be selected by the General Managers. The Profit or Loss for each unsold asset shall be determined as if the asset had been sold at its fair market value, and the Profit or Loss shall be allocated as provided in Section 4.2 and shall be properly credited or charged to the Capital Accounts of the Interest Holders prior to the distribution of the assets in liquidation pursuant to Section 4.4.
4.5.3. All Profit and Loss shall be allocated, and all distributions shall be made to the Persons shown on the records of the Company to have been Interest Holders as of the last day of the taxable year for which the allocation or distribution is to be made. Notwithstanding the foregoing, unless the Company’s taxable year is separated into segments, if there is a Transfer during the taxable year, the Profit and Loss shall be allocated between the original Interest Holder and the successor on the basis of the number of days each was an Interest Holder during the taxable year; provided, however, the Company’s taxable year shall be segregated into two or more segments in order to account for Profit, Loss, or proceeds attributable to a Capital Transaction or to any other extraordinary nonrecurring items of the Company.

4.5.4. The General Managers are hereby authorized, upon the advice of the Company’s tax counsel, to amend this Article IV to comply with the Code and the Regulations promulgated under Code Section 704(b); provided, however, that no amendment shall materially affect distributions to an Interest Holder without the Interest Holder’s prior written consent.

Section V
Management: Rights, Powers, and Duties

5.1. Management.

5.1.1. General Managers. The Company shall be managed by two General Managers, who may, but need not, be a Member. The number of Manager(s) shall be increased or decreased by the vote or consent of the Members. Nicole Smith and Matthew Smith are hereby designated to serve as the initial General Managers.

5.1.2. General Powers. The General Managers shall each have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company in its ordinary course for the purposes herein stated, and to make all decisions affecting such business and affairs, including, without limitation, for Company purposes, the power to:

5.1.2.1. acquire by purchase, lease, or otherwise, any real or personal property, tangible or intangible;

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

5.1.2.3. sell, dispose, trade, or exchange Company assets in the ordinary course of the Company’s business;

5.1.2.4. enter into agreements and contracts and to give receipts, releases and discharges;

5.1.2.5. purchase liability and other insurance to protect the Company’s properties and business;
5.1.2.6. borrow money for and on behalf of the Company, and, in connection therewith, execute and deliver instruments authorizing the confession of judgment against the Company;

5.1.2.7. execute or modify leases with respect to any part or all of the assets of the Company;

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

5.1.2.9. execute any and all other instruments and documents which may be necessary or in the opinion of the General Managers desirable to carry out the intent and purpose of this Agreement, including, but not limited to, documents whose operation and effect extend beyond the term of the Company;

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

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

5.1.2.12. invest and reinvest Company reserves in short-term instruments or money market funds.

5.1.3. Extraordinary Transactions. Notwithstanding anything to the contrary in this Agreement, the General Managers shall not undertake any of the following without the approval of all the Members:

5.1.3.1. any Capital Transaction; and

5.1.3.2. the Company's engaging in business in any jurisdiction which does not provide for the registration of limited liability companies.

5.1.4. Limitation on Authority of Members.

5.1.4.1. No Member is an agent of the Company solely by virtue of being a Member, and no Member has authority to act for the Company solely by virtue of being a Member.

5.1.4.2. Any Member who takes any action or binds the Company in violation of this Section 5.1 shall be solely responsible for any loss and expense incurred by the
Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

5.2. Meetings of and Voting by Members.

5.2.1. A meeting of the Members may be called at any time by the General Managers or by those Members holding at least ten percent (10%) of the Percentages then held by Members. Meetings of Members shall be held at the Company's principal place of business or at any other place designated by the Persons calling the meeting. Not less than ten (10) nor more than fifty (50) days before each meeting, the Persons calling the meeting shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the time, place, and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting the Member signs a waiver of the notice which is filed with the records of Members’ meetings, or is present at the meeting in person or by proxy and fails to object to the lack of notice. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person or by proxy of Members holding more than fifty percent (50%) of the Percentages then held by Members constitutes a quorum. A Member may vote either in person or by written proxy signed by the Member or by the Member's duly authorized attorney-in-fact.

5.2.2. Except as otherwise provided in this Agreement, the affirmative vote of Members holding more than fifty percent (50%) of the Percentages then held by Members present at a meeting at which there is a quorum shall be required to approve any matter coming before the Members.

5.2.3. An annual meeting shall be held each year at such time and place as the General Managers shall fix. Notice shall be given to the Members in accordance with Section 5.2.1.

5.2.4. Any action required or permitted to be taken at a Members’ meeting may be taken without a meeting if the action is taken by consent of all of the Members entitled to vote on the action. The action must be evidenced by one or more written consents describing the action to be taken, signed by all the Members entitled to vote on the action, and delivered to the Company for inclusion in the minutes. The record date for determining Members entitled to take action without a meeting is the first date a Member signs the consent to such action.

5.3. Personal Services

5.3.1. No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the General Managers, no Member shall perform services for the Company or be entitled to compensation for services performed for the Company.

5.3.2. Unless approved by Members holding 100% of the Percentages then held by Members, the General Managers shall not be entitled to compensation for services performed for the Company. However, upon substantiation of the amount and purpose thereof, the General
Managers shall be entitled to reimbursement for expenses reasonably incurred in connection with the activities of the Company.

5.4. *Duties of Parties.*

5.4.1. (1) A General Manager elected pursuant to this Operating Agreement shall perform his or her duties as a manager in good faith, in a manner he or she reasonably believes to be in the best interests of the limited liability company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Person who so performs his duties shall not have any liability by reason of being or having been a General Manager of the Company.

(2) In performing his duties, a General Manager shall be entitled to rely on information, opinions, reports, or statements of the following persons or groups unless he has knowledge concerning the matter in question that would cause such reliance to be unwarranted:

(a) One or more employees or other agents of the Company whom the manager reasonably believes to be reliable and competent in the matters presented;

(b) Any attorney, public accountant, or other person as to matters which the General Manager reasonably believes to be within such person’s professional or expert competence; or

(c) A committee upon which he does not serve, duly designated in accordance with a provision of the Articles of this Organization or this Agreement, as to matters within its designated authority, which committee the General Manager reasonably believes to merit confidence.

Section 7-108-501 of the Colorado Business Corporation Act (entitled “conflicting interest transaction”) shall apply to contracts or other transactions between the Company and any of its General Managers or committee members and any other entity in which any of its General Managers or committee members is a director or has a material financial interest; provided that references therein to the “corporation” shall be deemed to be to the Company, references to a “director” shall be deemed to be to the General Managers, references to “shareholders” shall be deemed to be to “Members,” and references to the “board of directors” shall be to the “Management Committee,” if one is appointed.

5.5. *Liability and Indemnification.*

5.5.1. The General Managers shall not be liable, responsible, or accountable, in damages or otherwise, to any Member or to the Company for any act performed by the General Managers within the scope of the authority conferred on the General Managers by this Agreement, except for actions or omissions constituting fraud, gross negligence, or an intentional breach of this Agreement or applicable law.
5.5.2. the Company shall indemnify the General Managers for any act performed by the General Managers within the scope of the authority conferred on the General Managers by this Agreement, except for actions or omissions constituting fraud, gross negligence, or an intentional breach of this Agreement or applicable law. The Company shall promptly notify the Members whenever the General Managers have been so indemnified by the Company.

5.6. Power of Attorney.

5.6.1. Grant of Power. Each Member constitutes and appoints the General Managers as the Member’s true and lawful attorney-in-fact (“Attorney-in-Fact”), and in the Member’s name, place and stead, to make, execute, sign, acknowledge, and file:

5.6.1.1. one or more articles of organization;

5.6.1.2. all documents (including amendments to articles of organization) which the Attorney-in-Fact deems appropriate to reflect any amendment, change, or modification of this Agreement;

5.6.1.3. any and all other certificates or other instruments required to be filed by the Company under the laws of the State of Colorado or of any other state or jurisdiction, including, without limitation, any certificate or other instruments necessary in order for the Company to continue to qualify as a limited liability company under the laws of the State of Colorado;

5.6.1.4. one or more fictitious or trade name certificates; and

5.6.1.5. all documents which may be required to dissolve and terminate the Company and to cancel its articles of organization.

5.6.2. Irrevocability. The foregoing power of attorney is irrevocable and is coupled with an interest, and, to the extent permitted by applicable law, shall survive the death or disability of a Member. It also shall survive the Transfer of an Interest, except that if the transferee is approved for admission as a Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the Attorney-in-Fact to execute, acknowledge and file any documents needed to effectuate the substitution. Each Member shall be bound by any representations made by the Attorney-in-Fact acting in good faith pursuant to this power of attorney, and each Member hereby waives any and all defenses which may be available to contest, negate or disaffirm the action of the Attorney-in-Fact taken in good faith under this power of attorney.

Section VI
Transfer of Interests and Withdrawals of Members

6.1. Transfers. No Person may Transfer all or any portion of or any interest or rights in the Person’s Membership Rights or Membership Interest.
6.2. Transfers to Affiliates and Family. Notwithstanding anything set forth in this Agreement to the contrary, any Member may at any time, and from time to time, Transfer all, or any portion of, or any interest or rights in, the Member’s Membership Interest or Membership Rights to (i) any other Member, (ii) any member of the Member’s Family, or (iii) any Affiliate of the Member. Any such Transferee shall be admitted as a Member and shall be entitled to exercise the rights of a Member.

6.3. Resignation. No Member shall have the right or power to Resign from the Company.

6.4. Death of a Member. Notwithstanding anything set forth in this Agreement to the contrary, upon the death of a Member that Member’s Membership Rights shall pass to and immediately vest in the surviving Member.

Section VII
Dissolution, Liquidation, and Termination of the Company

7.1. Events of Dissolution. The Company shall be dissolved upon the happening of any of the following events:

7.1.1. when the period fixed for its duration in Section 2.4 has expired;

7.1.2. upon the unanimous written agreement of the Members; or

7.1.3. upon the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a Member or the occurrence of any other event which terminates the continued membership of a Member in the Company, unless the General Manager(s) and a majority of the remaining Members (in number and voting interest), within ninety (90) days after the event or occurrence, elect to continue the business of the Company.

7.2. Liquidating Trustee. If the Company is dissolved, the General Managers shall act as liquidating trustee. The General Managers shall liquidate and reduce to cash the assets of the Company as promptly as is consistent with obtaining a fair value thereof and, unless otherwise required by law, shall apply and distribute the proceeds of liquidation, as well as any other Company assets, first, to the payment of creditors of the Company, including Interest Holders who are creditors, in satisfaction of the liabilities of the Company; then to Interest Holders in satisfaction of any distributions of Cash Flow or Capital Proceeds; and then to the Interest Holders in accordance with Section 4.4.

7.3. Filing of Statement of Intent to Dissolve and Articles of Dissolution. If the Company is dissolved pursuant to Section 7.1, the General Managers shall promptly file a Statement of Intent to Dissolve with the CSOS. After the affairs of the Company are wound up pursuant to Section 7.2, the General Managers shall promptly execute and file Articles of Dissolution with the CSOS. If there is no General Manager, then the Articles of Cancellation shall be filed by the remaining Members; if there are no remaining Members, the Articles shall be filed by the last Person to be a Member; if there is neither a General Manager, remaining Members, or a Person
who last was a Member, the Articles shall be filed by the legal or personal representatives of the Person who last was a Member.

Section VIII
Books, Records, Accounting, and Tax Elections

8.1. Bank Accounts. All funds of the Company shall be deposited in a bank account or accounts maintained in the Company’s name. The General Managers shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

8.2. Books and Records. The General Managers shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of transactions with respect to the conduct of the Company’s business. The books and records shall be maintained in accordance with sound accounting practices and shall be available at the Company’s registered office for inspection and copying at the reasonable request, and at the expense, of any member during ordinary business hours. Without limiting any of the foregoing, the General Managers shall keep or cause to be kept at the registered office the following:

8.2.1. A current list of the full name and last known business, residence, or mailing address of each Member and Manager, both past and present;

8.2.2. A copy of the articles of organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

8.2.3. Copies of the Company’s federal, state, and local income tax returns and reports, if any, for the three most recent years;

8.2.4. Copies of any currently effective Agreement, copies of any writings regarding contributions of members or members’ liability therefor, and copies of any financial statements of the Company for the three most recent years;

8.2.5. Minutes of any meeting of the Members;

8.2.6. A statement prepared and certified as accurate by the General Managers which describes:

8.2.6.1. The amount of cash and a description and statement of the agreed value of the other property or services contributed by each Member and which each Member has agreed to contribute in the future;

8.2.6.2. The times at which events on the happening of which any additional contributions agreed to be made by each Member are to be made;
8.2.6.3. The time at which or the events on the happening of which a Member may terminate his membership in the Company and the amount of, or the method of determining, the distribution to which he may be entitled respecting his membership interest and the terms and conditions of the termination and distribution;

8.2.6.4. Any right of a Member to receive distributions which include a return of all or any part of a Member’s Contribution;

8.2.7. Any written consents obtained from Members acting in lieu of a meeting pursuant to Section 5.2.4.

8.3. Annual Accounting Period. The annual accounting period of the Company shall be its taxable year. The Company’s taxable year shall be selected by the General Managers, subject to the requirements and limitations of the Code.

8.4. Reports. Within seventy-five (75) days after the end of each taxable year of the Company, the General Managers shall cause to be sent to each Person who was a Member at any time during the taxable year then ended: (i) an annual compilation report, prepared by the Company’s independent accountants in accordance with standards issued by the American Institute of Certified Public Accountants; and (ii) a report summarizing the fees and other remuneration paid by the Company to any Member, the General Managers, or any Affiliate in respect of the taxable year. In addition, within seventy-five (75) days after the end of each taxable year of the Company, the General Managers shall cause to be sent to each Person who was an Interest Holder at any time during the taxable year then ended, that tax information concerning the Company which is necessary for preparing the Interest Holder’s income tax returns for that year. At the request of any Member, and at the Member’s expense, the General Managers shall cause an audit of the Company’s books and records to be prepared by independent accountants for the period requested by the Member.

8.5. Tax Matters Partner. The General Managers shall be the Company’s tax matters partner (“Tax Matters Partner”). The Tax Matters Partner shall have all powers and responsibilities provided in Code Section 6221, et seq. The Tax Matters Partner shall keep all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Partner. The Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Tax Matters Partner in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Partner may not compromise any dispute with the Internal Revenue Service without the approval of the Members.

8.6. Tax Elections. The General Managers shall have the authority to make all Company elections permitted under the Code, including, without limitation, elections of methods of depreciation and elections under Code Section 754. The decision to make or not make an election shall be at the General Managers’ sole and absolute discretion.
8.7, **Title to Company Property.** All real and personal property acquired by the Company shall be held and owned, and conveyance made, by the Company in its name.

**Section IX**

**General Provisions**

9.1, **Assurances.** Each Member shall execute all such certificates and other documents and shall do all such filing, recording, publishing and other acts as the General Managers deem appropriate to comply with the requirements of law for the formation and operation of the Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the property of the Company.

9.2, **Notifications.** Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a "notice") required or permitted under this Agreement must be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, return receipt requested. Any notice to be given hereunder by the Company shall be given by the General Managers. A notice must be addressed to an Interest Holder at the Interest Holder’s last known address on the records of the Company. A notice to the Company must be addressed to the Company’s principal office. A notice delivered personally will be deemed given only when acknowledged in writing by the person to whom it is delivered. A notice that is sent by mail will be deemed given three (3) business days after it is mailed. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees.

9.3, **Specific Performance.** The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party who may be injured (in addition to any other remedies which may be available to that party) shall be entitled to one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

9.4, **Complete Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement among the Members. It supersedes all prior written and oral statements, agreements or understandings including any prior representation, statement, condition, or warranty. Except as expressly provided otherwise herein, this Agreement may not be amended without the written consent of all of the Members.

9.5, **Applicable Law.** All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law relating to conflicts of laws, of the State of Colorado.
9.6. *Section Titles.* The headings herein are inserted as a matter of convenience only, and
do not define, limit, or describe the scope of this Agreement or the intent of the provisions
hereof.

9.7. *Binding Provisions.* This Agreement is binding upon, and inures to the benefit of, the
parties hereto and their respective heirs, executors, administrators, personal and legal
representatives, successors, and permitted assigns.

9.8. *Jurisdiction and Venue.* Any suit involving any dispute or matter arising under this
Agreement may only be brought in the United States District Court for the District of Colorado
or any Colorado State Court having jurisdiction over the subject matter of the dispute or matter.
All Members hereby consent to the exercise of personal jurisdiction by any such court with
respect to any such proceeding.

9.9. *Terms.* Common nouns and pronouns shall be deemed to refer to the masculine,
feminine, neuter, singular and plural, as the identity of the Person may in the context require.

9.10. *Separability of Provisions.* Each provision of this Agreement shall be considered
separable; and if, for any reason, any provision or provisions herein are determined to be invalid
and contrary to any existing or future law, such invalidity shall not impair the operation of or
affect those portions of this Agreement which are valid.

9.11. *Counterparts.* This Agreement may be executed simultaneously in two or more
counterparts, each of which shall be deemed an original and all of which, when taken together,
constitute one and the same document. The signature of any party to any counterpart shall be
deemed a signature to, and may be appended to, any other counterpart.

9.12. *Estoppel Certificate.* Each Member shall, within ten (10) days after written request
by any Member or the General Managers, deliver to the requesting Person a certificate stating, to
the Member’s knowledge, that: (a) this Agreement is in full force and effect; (b) this Agreement
has not been modified except by any instrument or instruments identified in the certificate; and
(c) there is no default hereunder by the requesting Person, or if there is a default, the nature and
extent thereof. If the certificate is not received within that ten (10)-day period, the General
Managers shall execute and deliver the certificate on behalf of the requested Member, without
qualification, pursuant to the power of attorney granted in Section 5.6.

IN WITNESS WHEREOF, the parties have executed, or caused this Agreement to be
executed, under seal, as of the date set forth hereinabove.

**MEMBERS:**

Nicole Smith

Matthew Smith
Backyard Bird Chicken and Donuts, LLC  
Operating Agreement  

Exhibit A  
List of Members, Capital and Percentages

<table>
<thead>
<tr>
<th>Name and Address</th>
<th>Initial Cash Capital Contribution</th>
<th>Percentages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nicole Smith</td>
<td>$</td>
<td>50%</td>
</tr>
<tr>
<td>6434 Cloudburst Avenue</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Timnath, CO 80547</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Matthew Smith</td>
<td>$</td>
<td>50%</td>
</tr>
<tr>
<td>6434 Cloudburst Avenue</td>
<td></td>
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<tr>
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</table>