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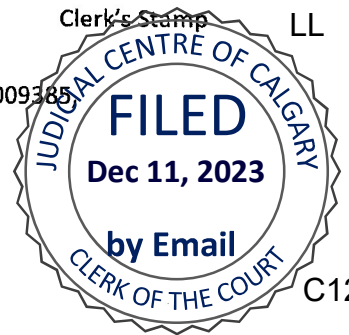
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COURT

COURT OF KING'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE

CALGARY



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C120723

Dec 12, 2023  
COM

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
RSC 1985, C B-3 AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE  
A PROPOSAL OF ATHABASCA MINERALS INC., AMI SILICA INC.,  
AMI AGGREGATES INC., AMI ROCKCHAIN INC., TERRASHIFT  
ENGINEERING LTD., 2132561 ALBERTA LTD., and 2140534  
ALBERTA LTD.

APPLICANTS

ATHABASCA MINERALS INC., AMI SILICA INC., AMI  
AGGREGATES INC., AMI ROCKCHAIN INC., TERRASHIFT  
ENGINEERING LTD., 2132561 ALBERTA LTD., and 2140534  
ALBERTA LTD.

DOCUMENT

**AFFIDAVIT**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

Field LLP  
400 – 444 – 7 Avenue SW  
Calgary AB T2P 0X8  
Lawyer: Douglas Nishimura  
Phone Number: (403) 260-8500  
Fax Number: (403) 264-7084  
Email Address: dnishimura@fieldlaw.com  
File No. 77794-5

**AFFIDAVIT OF TODD ERICKSON  
(Sworn December 8<sup>th</sup>, 2023)**

I, Todd Erickson of the Village of Hixton, in the State of Wisconsin, MAKE OATH AND SAY THAT:

1. I am the Corporate Development Officer with JMAC Resources Inc., a subsidiary of JMAC Energy Services, LLC ("JMAC"). JMAC is a contracting counter-party and first secured creditor of Athabasca Minerals Inc. ("AMI") as well as being a secured creditor of several of AMI's

subsidiaries. As such, I have personal knowledge of the facts deposed to hearing in which case I believe the same to be true.

2. All capitalized terms herein not otherwise defined shall have the same meaning as those defined in Affidavit No. 1 of John David Churchill sworn on December 6, 2023 (the "Churchill Affidavit"), filed in the within proceedings.
3. I have had the opportunity to review the Churchill Affidavit. As set out in paragraph 68 therein, JMAC and AMI each own 50% of the membership interest of AMI Silica LLC ("AMIS LLC") and are further each entitled to appoint half of the members of the board of governors of AMIS LLC. The relationship between JMAC and AMI, with respect to AMIS LLC, is governed by the operating agreement of AMI Silica LLC adopted by the members of AMI Silica LLC as of July 19, 2021 (the "Operating Agreement"), a copy of which is attached hereto and marked as Exhibit "A". The Operating Agreement contains provisions which require JMAC and AMI to fund cash calls by AMIS LLC and the Operating Agreement also requires that AMI offer JMAC a right of first refusal ("ROFR") in the event AMI desires to sell all or any portion of its "Membership Interest" or "Economic Interest" in AMIS LLC (as both of those of terms are defined in the Operating Agreement) to a third party purchaser. The Operating Agreement is governed by the laws of the State of North Dakota. The ROFR is referred to in the Stalking Horse Term Sheet, attached as Exhibit P to the Churchill Affidavit, and in paragraph 15 of the SISP, attached as Exhibit Q to the Churchill Affidavit.
4. Shortly after termination of the Arrangement Agreement, AMI advised JMAC that it and the Corporate Guarantors were entering into formal proposal proceedings under the *Bankruptcy and Insolvency Act* (Canada). Through legal counsel, JMAC was also advised that AMI intended to enter into the SISP and would seek a stalking horse bidder for that process. JMAC indicated that it was prepared to act as the stalking horse bidder.
5. At this time, JMAC was also aware, through its management of AMIS LLC, that AMIS LLC would soon be making its usual cash call to JMAC and AMI to fund on-going operations. JMAC was aware that AMI could not finance or fund the cash call under its existing cash flows, and that AMI would require interim financing. JMAC advised AMI that, as AMI's first secured creditor, JMAC did not

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wish to be primed and that, accordingly, it was prepared to act as interim financier to AMI under debtor in possession financing.

- 6. AMI and JMAC immediately engaged in negotiations with respect to the SISP, stalking horse bidder, and interim financing terms. In doing so, JMAC has made it clear that it was not waiving any its rights under the Operating Agreement, including with respect to the ROFR. Ultimately, JMAC and AMI agreed to the terms reflected in the Interim Financial Term Sheet and Stalking Horse Term Sheet attached as Exhibits O and P, respectively, to the Churchill Affidavit.
- 7. I am not physically present before a Notary Public but was linked with one via video technology and followed the process for remote commissioning of affidavits as specified in the Notice to the Profession and Public NPP#2020-02 dated March 25, 2020 for the purpose of swearing this Affidavit.

SWORN BEFORE ME at the City of Calgary )  
 in the Province of Alberta, this 8<sup>th</sup> day of )  
 December, 2023. )  
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 \_\_\_\_\_  
 TODD ERICKSON

\_\_\_\_\_  
 A Notary Public in and for Alberta

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THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT  
OF TODD ERICKSON.

SWORN BEFORE ME THIS 8th DAY OF DECEMBER,  
2023.

OPERATING AGREEMENT  
OF  
AMI SILICA LLC

\_\_\_\_\_  
A Notary Public in and for Alberta

ARTICLE I

DEFINITIONS

The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

(a) "Articles of Organization" shall mean the Articles of Organization of AMI SILICA LLC as filed with the Secretary of State of North Dakota as the same may be amended from time to time.

(b) "Board of Governors" or "Board" shall mean the board of governors of the Company.

(c) "Capital Account" as of any given date shall mean the Capital Contribution to the Company by a Member as adjusted up to the date in question pursuant to Article VIII.

(d) "Capital Contribution" shall mean any contribution to the capital of the Company in cash or property by a Member whenever made. "Initial Capital Contribution" shall mean the initial contribution to the capital of the Company pursuant to this Operating Agreement.

(e) "Capital Interest" shall mean the proportion that a Member's positive Capital Account bears to the aggregate positive Capital Accounts of all Members whose Capital Accounts have positive balances as may be adjusted from time to time. For purposes of the exercise of voting rights under the North Dakota Act and this Operating Agreement, only voting membership interests shall be included within the definition of a Capital Interest under this Operating Agreement unless otherwise indicated. Each Member's Capital Interest as of the date hereof is specified on the attached Exhibit A and which may be adjusted from time to time pursuant to this Operating Agreement or under the North Dakota Act.

(f) "Code" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

(g) "Company" shall refer to AMI SILICA LLC.

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(h) "Deficit Capital Account" shall mean with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the taxable year, after giving effect to the following adjustments:

(i) credit to such Capital Account any amount which such Member is obligated to restore under Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations, as well as any addition thereto pursuant to the next to last sentence of Sections 1.704-2(g)(1) and (i)(5) of the Treasury Regulations, after taking into account thereunder any changes during such year in partnership minimum gain (as determined in accordance with Section 1.704-2(d) of the Treasury Regulations) and in the minimum gain attributable to any partner nonrecourse debt (as determined under Section 1.704-2(i)(3) of the Treasury Regulations); and

(ii) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

This definition of Deficit Capital Account is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(e) and 1.704-2, and will be interpreted consistently with those provisions.

(i) "Distributable Cash" means all cash, revenues and funds received by the Company from Company operations, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred incident to the normal operation of the Company's business; (iii) such Reserves as the Board of Governors deem reasonably necessary to the proper operation of the Company's business.

(j) "Economic Interest" shall mean a Member's or Economic Interest Owner's share of one or more of the Company's Net Profits, Net Losses and distributions of the Company's assets pursuant to this Operating Agreement and the North Dakota Act, but shall not include any right to participate in the management or affairs of the Company, including the right to vote on, consent to or otherwise participate in any decision of the Members or Board of Governors.

(k) "Economic Interest Owner" shall mean the owner of an Economic Interest who is not a Member.

(l) "Entity" shall mean any general partnership, limited partnership, limited liability partnership, limited liability limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

(m) "Fiscal Year" shall mean the Company's fiscal year, which shall be the year ending on December 31.

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(n) "Gifted Member" shall mean any Member or Economic Interest Owner who gifts, bequeaths or otherwise transfers for no consideration (by operation of law or otherwise, except with respect to bankruptcy) all or any part of its Membership Interest or Economic Interest.

(o) "Governors" shall mean one or more governors. References to the Governors in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be.

(p) "Majority Interest" shall mean one or more Interests of Members which taken together exceed 50% of the aggregate of all Capital Interests. For purposes of the exercise of voting rights under the North Dakota Act and this Operating Agreement, only voting membership interests shall be included within the definition of a Majority Interest under this Operating Agreement unless otherwise indicated.

(q) "Member" shall mean each of the parties who execute a counterpart of this Operating Agreement as a Member and each of the parties who may hereafter become Members. If a Person is a Member immediately prior to the purchase or other acquisition by such Person of an Economic Interest, such Person shall have all the rights of a Member with respect to such purchased or otherwise acquired Membership Interest or Economic Interest, as the case may be.

(r) "Membership Interest" shall mean a Member's entire interest in the Company including such Member's Economic Interest and the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Operating Agreement and the North Dakota Act.

(s) "North Dakota Act" shall mean the North Dakota Uniform Limited Liability Company Act at N.D.C.C. 10-32.1-01, et seq.

(t) "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with the accounting principles employed under the acceptable method of accounting at the close of each fiscal year on the Company's information tax return filed for federal income tax purposes.

(u) "Operating Agreement" shall mean this Operating Agreement as originally executed and as amended from time to time.

(v) "Persons" shall mean any individual or Entity, and the heirs, personal representatives, legal representatives, successors, and assigns of such "Person" where the context so permits.

(w) "Reserves" shall mean, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed

sufficient by the Governors for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

(x) "Selling Member" shall mean any Member or Economic Interest Owner which sells, assigns, or otherwise transfers for consideration all or any portion of its Membership Interest or Economic Interest.

(y) "Transferring Member" shall collectively mean a Selling Member and a Gifting Member.

(z) "Treasury Regulations" shall include proposed, temporary and final regulations promulgated under the Code in effect as of the date of filing the Articles of Organization and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.

## ARTICLE II

### FORMATION OF COMPANY

2.01 Formation; Articles of Amendment. On June 2, 2021, Trevor A. Hunter of CROWLEY FLECK PLLP organized a North Dakota limited liability company by executing and delivering Articles of Organization to the North Dakota Secretary of State in accordance with and pursuant to the North Dakota Act. On July 19, 2021, Trevor A. Hunter of CROWLEY FLECK PLLP executed and delivered Articles of Amendment to the North Dakota Secretary of State in accordance with and pursuant to the North Dakota Act, which were filed on July 19, 2021.

2.02 Name. The name of the Company is **AMI SILICA LLC**.

2.03 Principal Executive Office. The principal executive office of the Company is 1505 North Miller Street, Suite 260, Wenatchee, Washington 98801. The Company may locate its principal executive office at any other place or places as the Governors may from time to time deem advisable.

2.04 Registered Office and Registered Agent. The Company's registered agent in the State of North Dakota is Corporation Service Company and its registered office is at the office of its registered agent at 1709 North 19th Street, Suite 3, Bismarck, North Dakota 58501. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the North Dakota Secretary of State pursuant to the North Dakota Act.

2.05 Term. The term of the Company shall be perpetual from the date of filing of Articles of Organization with the Secretary of State of the State of North Dakota, unless the

Company is earlier dissolved in accordance with either the provisions of this Operating Agreement or the North Dakota Act.

### ARTICLE III

#### **BUSINESS OF COMPANY**

3.01 Permitted Businesses. The business of the Company shall be for any lawful business purpose or purposes pursuant to Section 10-32.1-07(2) of the North Dakota Uniform Limited Liability Company Act, and said business of the Company shall include the power:

(a) to accomplish any lawful business whatsoever, or which shall at any time appear conducive to or expedient for the protection or benefit of the Company and its assets;

(b) to exercise all other powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the North Dakota Act; and

(c) to engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

### ARTICLE IV

#### **NAMES AND ADDRESSES OF MEMBERS AND MEMBERS UNITS, CLASSIFICATIONS**

4.01 Authorized Membership Units. The Company shall be authorized to create and issue up to 250,000 Membership Units. This shall include 250,000 Voting Membership Units and 0 Nonvoting Membership Units.

4.02 Initial Ownership of Membership Units. The Membership Units currently owned by each current member are contained on Exhibit A.



## ARTICLE V

### RIGHTS AND DUTIES OF BOARD OF GOVERNORS

5.01 General Powers. All limited liability company powers shall be exercised by or under authority of and the business and affairs of the Company shall be managed under the direction of the Board of Governors except as may be otherwise provided in the Articles of Organization, the Operating Agreement, or by law.

5.02 Duties. A Governor shall perform his duties as a Governor, including his duties as a member of any committee of the Board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing his duties, a Governor is entitled to rely on information, opinions, reports, or statements, including financial statements or other financial data, in each case prepared or presented by:

- (a) one or more officers or employees of the Company whom the Governor reasonably believes to be reliable and competent in the matters presented;
- (b) counsel, public accountants, or other persons as to matters that the Governor reasonably believes to be within such person's professional or expert competence; or
- (c) a committee of the Board upon which he does not serve, duly designated, as to matters within its designated authority, which committee the Governor reasonably believes to merit confidence.

A Governor may not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs his duties has no liability by reason of being or having been a Governor of the Company.

5.03 Number, Tenure, and Qualifications. The number of Governors of the Company shall be four (4). A Governor shall serve until the earlier of: (i) expiration of the Governor's term which shall be three (3) years; or (ii) his or her death, resignation, removal, or disqualification. Any Governor subject to removal under this Section shall not be entitled to vote for or against such Governor's removal. No Governor shall be subject to term limits. Governors need not be residents of the State of North Dakota or members of the Company. Governors shall be elected by the Members of the Company as of the date hereof as follows:

- (a) As long as JMAC Energy Services L.L.C. or its successor(s), holds at least 50.0% of the Membership Interest of the Company, it shall be entitled to elect two (2) of the four (4) total Governors.



- (b) As long as Athabasca Materials Inc., or its successor(s), holds at least 50.0% of the Membership Interest of the Company, it shall be entitled to elect two (2) of the four (4) total Governors.

5.04 Regular Meetings. A regular meeting of the Board of Governors or any committee designated thereby shall be held without other notice than this Section, immediately after and at the same place as, the annual meeting of the members. The Board of Governors may provide, by resolution, the time and place, either within or without the State of North Dakota, for the holding of additional regular meetings without other notice than such resolution. Members of the Board of Governors or any committee designated thereby may participate in a meeting of the Board or a committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means constitutes presence in person at a meeting.

5.05 Special Meetings. Special meetings of the Board of Governors or any committee designated thereby, may be called by or at the request of the President or any Governor. The person or persons authorized to call special meetings of the Board of Governors or any committee designated thereby may fix any place, either within or without the State of North Dakota, as the place for holding any special meeting of the Board of Governors called by them.

5.06 Notice. Notice of any special meeting shall be given at least two (2) days previous thereto by written notice delivered personally or mailed to each Governor at his business address, or by electronic mail (when directed to an electronic mail address at which a Governor has consented to receive notice at such address) or by telegram. If mailed, such notice shall be deemed to be delivered three (3) days after having been deposited in the United States mail, so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any Governor may waive notice of any meeting. The attendance of a Governor at a meeting shall constitute a waiver of notice of such meeting, except where a Governor attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Governors need be specified in the notice or waiver of notice of such meeting.

5.07 Quorum. A majority of the number of Governors fixed by Section 5.03 hereof shall constitute a quorum for the transaction of business at any meeting of the Board of Governors, but if less than such majority is present at a meeting, a majority of the Governors present may adjourn the meeting from time to time without further notice.

5.08 Manner of Acting. The act of the majority of the Governors present at a meeting at which a quorum is present shall be the act of the Board of Governors ("Board Consent").

5.09 Action Without a Meeting. Any action required or permitted to be taken by the Board of Governors or a committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Governors, or all of the members of the committee.

5.10 Vacancies and Removals. Any vacancy (however created) in the Board of Governors may be filled by the applicable Member as set forth in the subparts of Section 5.03 hereof. Any Governorship to be filled by reason of the removal of one or more Governors by the Members may be filled by election by the Members at the meeting at which the Governor or Governors are removed, but in accordance with the subparts of Section 5.03 hereof. At a meeting called expressly for that purpose, any Governor or the entire Board of Governors may be removed, with or without cause, by a vote of the Majority Interest.

5.11 Resignation. A Governor may resign at any time by delivering written notification thereof to the President or Secretary of the Company. Resignation shall become effective upon its acceptance by the Board of Governors; provided, however, that if the Board of Governors has not acted thereon within ten (10) days from the date of its delivery, the resignation shall upon the tenth day be deemed accepted.

5.12 Compensation. By resolution of the Board of Governors, each Governor shall be paid his necessary expenses, if any, of attendance at each meeting of the Board of Governors and may be paid a stated salary as Governor or a fixed sum for attendance at each meeting of the Board of Governors or both. No such payment shall preclude any Governor from serving the Company in any other capacity and receiving compensation therefor.

5.13 Presumption of Assent. A Governor of the Company who is present at a meeting of the Board of Governors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Governor who voted in favor of such action.

5.14 Liability of Governors. In addition to any other liabilities, a Governor who votes for or assents to any distribution contrary to law or contrary to any restrictions contained in the Articles of Organization or in the Operating Agreement shall, unless he complies with the standard provided in this Article for the performance of the duties of the Governors, be liable to the Company, jointly and severally with all other Governors so voting or assenting, for the amount or the value of such distribution in excess of the amount of such distribution which could have been made without a violation of law or any restrictions in the Articles of Organization or the Operating Agreement. Any Governor against whom a claim shall be asserted under or pursuant to this Section for the making of a distribution and who shall be held liable thereon shall be entitled to contribution from the members who accepted or received any such distribution, knowing such distribution to have been made in violation of law or any restrictions in the Articles of Organization or Operating Agreement, in proportion to the amounts received by them respectively. Any Governor against whom a claim shall be asserted under or pursuant to this Section shall be entitled to contribution from any other Governors who voted for or assented to the action upon which the claim is asserted and who did not comply with the standard provided in this Article for the performance of the duties of a Governor.



5.15 Conflict of Interest. No contract or other transaction between the Company and one or more of its Governors or any other company, firm, association, or entity in which one or more of the Governors of the Company are governors or officers or are financially interested is either void or voidable because of such relationship or interest or because such Governor or Governors are present at the meeting of the Board of Governors or a committee thereof which authorizes, approves, or ratifies such contract or transaction or because his or their votes are counted for such purposes if:

- (a) the fact of such relationship or interest is disclosed or known to the Board of Governors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested Governors;
- (b) the fact of such relationship or interest is disclosed or known to the members entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent, in which vote or consent such interested Governors may participate to the extent that they are also members; or
- (c) the contract or transaction is fair and reasonable to the Company.

Common or interested Governors may be counted in determining the presence of a quorum at a meeting of the Board of Governors or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

## ARTICLE VI

### RIGHTS AND DUTIES OF OFFICERS

6.01 Number. The officers of the Company shall be a President, a Vice President, a Secretary, and a Treasurer, each of whom shall be elected by a vote of the Board of Governors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by a majority vote of the Board of Governors. Any two or more offices may be held by the same person, except for President and a Vice President, if any.

6.02 Election and Term of Office. The officers of the Company to be elected by the Board of Governors shall be elected annually by the Board of Governors at the first meeting of the Board of Governors held after each annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

6.03 Removal. Any officer or agent may be removed by a majority vote of the Board of Governors whenever in its judgment the best interests of the Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

6.04 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by a majority vote of the Board of Governors for the unexpired portion of the term.

6.05 Resignation. Any officer may resign at any time by delivering written notification thereof to the President or Secretary of the Company. Resignation shall become effective upon its acceptance by the Board of Governors; provided, however, that if the Board of Governors has not acted thereon within ten (10) days from the date of its delivery, the resignation shall upon the tenth day be deemed accepted.

6.06 President. The President shall be the principal executive officer of the Company and, subject to the supervision and control of the Board of Governors, shall have general active management of the business of the Company. He shall, when present, preside at all meetings of the members and of the Board of Governors. He may sign, with the Secretary or any other officer of the Company thereunto authorized by the Board of Governors, certificates for membership interests of the Company and deeds, mortgages, bonds, contracts, or other instruments which the Board of Governors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Governors or by these Bylaws to some other officer or agent of the Company, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Governors from time to time. The President shall vote all interests owned by the Company in another Company, corporation, or other entity, unless the Board of Governors expressly delegates the authority to vote such interests to some other officer or person.

6.07 Vice President. In the absence of the President or in the event of his death, inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice President may sign, with the Secretary or any other officer of the Company thereunto authorized by the Board of Governors, certificates for membership interests of the Company; and shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Governors.

6.08 Secretary. The Secretary shall:

- (a) keep the minutes of the proceedings of the members and of the Board of Governors in one or more books provided for that purpose;
- (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;



- (c) be custodian of the corporate records and of the seal of the Company and see that the seal of the Company is affixed to all documents the execution of which on behalf of the Company under its seal is duly authorized;
- (d) keep a register of the post office address of each member and assignee of financial rights, if any, which shall be furnished to the Secretary by such member or assignee of financial rights, as applicable;
- (e) sign with the President, or a Vice President, certificates for membership interests of the Company, as authorized by the resolution of the Board of Governors;
- (f) have general charge of the membership interest transfer books of the Company; and
- (g) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Governors.

6.09 Treasurer. The Treasurer shall:

- (a) have charge and custody of and be responsible for all funds and securities of the Company;
- (b) receive and give receipts for moneys due and payable to the Company from any source whatsoever, and deposit all such moneys in the name of the Company in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article VII of these Bylaws;
- (c) pay all local, state, and federal tax obligations and liabilities of the Company as they come due; and
- (d) in general, perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Governors or the North Dakota Act.

If required by the Board of Governors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Governors shall determine.

6.10 Salaries. The salaries of the officers shall be fixed from time to time by the Board of Governors and no officer shall be prevented from receiving such salary by reason of the fact that he is also a Governor of the Company.

6.11 Indemnity of the Governors, Officers, Employees and Other Agents. The Company shall indemnify the governors and officers and make advances for expenses to the maximum extent permitted under Section 10-32.1-40 of the North Dakota Act. The Company shall indemnify its

employees and other agents who are not governors and officers to the fullest extent permitted by law, provided that such indemnification in any given situation is approved by the Majority Interest.

## ARTICLE VII

### RIGHTS AND OBLIGATIONS OF MEMBERS

7.01 Limitation of Liability. Each Member's liability shall be limited as set forth in this Operating Agreement, the North Dakota Act and other applicable law.

7.02 Company Debt Liability. A Member will not be personally liable for any debts or losses of the Company beyond his respective Capital Contributions and any obligation of the Member under Sections 9.01 or 9.02 hereof to make Capital Contributions, except as provided in Section 7.07 hereof herein or as otherwise required by law.

7.03 List of Members. Upon written request of any Member, the President shall provide a list showing the names, addresses and Membership Interests and Economic Interests of all Members.

7.04 Approval of Sale of All Assets. The Members shall have the right, by the affirmative vote of Members holding at least two-thirds of all voting Capital Interests to approve the sale, exchange, or other disposition of all, or substantially all, of the Company's assets (other than in the ordinary course of the Company's business) which is to occur as part of a single transaction or plan.

7.05 Company Books. In accordance with Section 10.09 hereof, the Board of Governors shall maintain and preserve, during the term of the Company, and for six (6) years thereafter, all accounts, books, and other relevant Company documents. Upon reasonable request, each Member and Economic Interest Owner shall have the right, during ordinary business hours, to inspect and copy such Company documents at the requesting Member's and Economic Interest Owner's expense.

7.06 Priority and Return of Capital. Except as may be expressly provided in Article X, no Member or Economic Interest Owner shall have priority over any other Member or Economic Interest Owner, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

7.07 Liability of a Member to the Company.



(a) A Member who rightfully receives the return in whole or in part of its contribution (as defined in Section 10-32.1-28 of the North Dakota Act) is nevertheless liable to the Company only to the extent now or hereafter provided by the North Dakota Act.

(b) A Member who receives a distribution made by the Company which is either in violation of this Operating Agreement or the North Dakota Act, is liable to the Company for a period of six years after such distribution for the amount of the distribution.

## ARTICLE VIII

### MEETINGS OF MEMBERS

8.01 Annual Meeting. The annual meeting of the Members shall be held on the first Monday in July or at such other time as shall be determined by resolution of the Members, commencing with the year 2021, for the purpose of the transaction of such business as may come before the meeting.

8.02 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or the Board of Governors or by any Member or Members holding at least 10% of the voting Capital Interests.

8.03 Place of Meetings. The Members may designate any place, either within or outside the State of North Dakota, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the Company in the State of North Dakota.

8.04 Notice of Meetings. Except as provided in Section 8.05 hereof, written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than 10 nor more than 30 days before the date of the meeting, either personally or by mail, by or at the direction of the President or the Board of Governors or person calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Company, with postage thereon prepaid.

8.05 Meeting of all Members. If all of the Members shall meet at any time and place, either within or outside of the State of North Dakota, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

8.06 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose,



the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

8.07 Quorum. Members holding at least fifty percent (50.0%) of all Capital Interests, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Capital Interests so represented may adjourn the meeting from time to time for a period not to exceed 60 days without further notice. However, if the adjournment is for more than 60 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

8.08 Manner of Acting. If a quorum is present, the affirmative vote by the Majority Interest shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the North Dakota Act, by the Articles of Organization, or by this Operating Agreement ("Member Consent"). Unless otherwise expressly provided herein or required under applicable law, Members who have an interest (economic or otherwise) in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon any such matter and their Capital Interest, vote or consent, as the case may be, shall be counted in the determination of whether the requisite matter was approved by the Members.

8.09 Proxies. At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

8.10 Action by Members Without a Meeting. Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote and delivered to the Secretary of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

8.11 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.



## ARTICLE IX

### CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS

9.01 Members' Capital Contributions. Each Member has contributed such amount as is set forth in Exhibit A hereto as its share of the Initial Capital Contribution.

9.02 Additional Contributions. Except as set forth in Section 9.01 hereof, no Member shall be required to make any Capital Contributions. To the extent approved by a majority vote of the Board of Governors, from time to time, the Members may be permitted to make additional Capital Contributions if and to the extent they so desire, and if by a majority vote of the Board of Governors it is determined that such additional Capital Contributions are necessary or appropriate in connection with the conduct of the Company's business (including without limitation, expansion or diversification) ("Additional Capital Contribution"). Once an Additional Capital Contribution has been approved by the Board, the Board shall deliver to each Member a notice ("Additional Capital Call Notice") of the date ("Additional Contribution Date") and the Additional Capital Contribution amount to the Members. Upon receipt of an Additional Capital Call Notice, a Member shall have the sole discretion either (i) to deliver to the Board such Member's pro-rata portion of each such Additional Capital Contribution according to such Member's Capital Interest or (ii) to decline to participate in the Additional Capital Contribution.

9.03 Delinquent Capital Contributions/Adjustment of Capital Interest. In the event that a Member notifies the Board of Governors that the Member will not make such Member's Additional Capital Contribution, or such Member does not make such Member's full Additional Capital Contribution by the Additional Contribution Date, then, with respect to such Additional Capital Call Notice, the other Members shall have the right, but not the obligation, to contribute an amount equal to the non-paying Member's portion of the Additional Capital Contribution. If more than one Member chooses to make such Additional Capital Contribution, and such Members do not otherwise agree on the amount each will contribute, then they will contribute a pro-rata portion of such Additional Capital Contribution according to their relative Capital Interest. For purposes of clarity, a Member's decision not to make such Member's Additional Capital Contribution is not a breach of this Agreement and shall not give rise to a claim against such Member by the Company or the other Members. The only effect of a Member's decision not to make such Member's Additional Capital Contribution shall be adjustment of the Member's Capital Interest pursuant to this Section 9.03 hereof. The Capital Interest of each Member shall be re-determined following each Additional Capital Contribution so that each Member's Capital Interest is equal to the ratio that such Member's aggregate Capital Contributions (calculated following each Additional Capital Contribution) bears to the aggregate Capital Contributions of all Members (calculated following each Additional Capital Contribution) to reflect their total Capital Contributions through such date, and Exhibit A shall be amended accordingly.

9.04 Capital Accounts.

(a) A separate Capital Account will be maintained for each Member. Each Member's Capital Account will be increased by (1) the amount of money contributed by such Member to the Company; (2) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to Section 752 of the Code); (3) allocations to such Member of Net Profits and Net Losses; and (4) allocations to such Member of income described in Section 705(a)(1)(B) of the Code. Each Member's Capital Account will be decreased by (1) the amount of money distributed to such Member by the Company; (2) the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to Section 752 of the Code); (3) allocations to such Member of expenditures described in Section 705(a)(2)(B) of the Code; and (4) allocations to the account of such Member of Company loss and deduction as set forth in the Treasury Regulations, taking into account adjustments to reflect fair market value.

(b) In the event of a permitted sale or exchange of a Membership Interest or an Economic Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest or Economic Interest in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 9.04 is intended to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. If in the opinion of the Company's accountants the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 9.04 should be modified in order to comply with Section 704(b) of the Code and the Treasury Regulations thereunder, then notwithstanding anything to the contrary contained in the preceding provisions of this Section 9.04, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

(d) Upon liquidation of the Company (or any Member's Membership Interest or Economic Interest Owner's Economic Interest), liquidating distributions will be made in accordance with the positive Capital Account balances of the Members and Economic Interest Owners, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs. Liquidation proceeds will be paid within sixty days of the end of the taxable year (or, if later, within 120 days after the date of the liquidation). The Company may offset damages for breach of this Operating Agreement by a Member or Economic Interest Owner whose interest is liquidated (either upon the withdrawal of the Member or the liquidation of the Company) against the amount otherwise distributable to such Member.

(e) Except as otherwise required in the North Dakota Act (and subject to Sections 9.01 and 9.02 hereof), no Member or Economic Interest Owner shall have any liability to restore all or any portion of a deficit balance in such Member's or Economic Interest Owner's Capital Account.



9.05 Withdrawal or Reduction of Members' Contributions to Capital.

(a) A Member shall not receive out of the Company's property any part of its Capital Contribution until all liabilities of the Company, except liabilities to Members on account of their Capital Contributions, have been paid or there remains property of the Company sufficient to pay them.

(b) A Member, irrespective of the nature of its Capital Contribution, has only the right to demand and receive cash in return for its Capital Contribution.

**ARTICLE X**

**ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS, AND REPORTS**

10.01 Allocations of Profits and Losses from Operations. The Net Profits and Net Losses of the Company for each fiscal year will be allocated in proportion to the Capital Accounts of the Members.

10.02 Special Allocations to Capital Accounts. Notwithstanding Section 10.01 hereof:

(a) No allocations of loss, deduction and/or expenditures described in Section 705(a)(2)(B) of the Code shall be charged to the Capital Account of any Member if such allocation would cause such Member to have a Deficit Capital Account. The amount of the loss, deduction and/or Code Section 705(a)(2)(B) expenditure which would have caused a Member to have a Deficit Capital Account shall instead be charged to the Capital Accounts of any Members which would not have Deficit Capital Accounts as a result of the allocation, in proportion to their respective Capital Contributions, or, if no such Members exist, then to the Members in accordance with their interests in Company profits pursuant to Section 10.01 hereof.

(b) In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Treasury Regulations, which create or increase a Deficit Capital Account of such Member, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially credited to the Capital Account of such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Deficit Capital Account so created as quickly as possible. It is the intent that this Section 10.02(b) be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

(c) In the event any Member would have a Deficit Capital Account at the end of any Company taxable year which is in excess of the sum of any amount that such Member is

obligated to restore to the Company under Treasury Regulations Section 1.704-1(b)(2)(ii)(c) and such Member's share of minimum gain as defined in Section 1.704-2(g)(1) of the Treasury Regulations), the Capital Account of such Member shall be specially credited with items of Membership income (including gross income) and gain in the amount of such excess as quickly as possible.

(d) Notwithstanding any other provision of this Section 10.02, if there is a net decrease in the Company's minimum gain as defined in Treasury Regulation Section 1.704-2(d) during a taxable year of the Company, then, the Capital Accounts of each Member shall be allocated items of income (including gross income) and gain for such year (and if necessary for subsequent years) equal to that Member's share of the net decrease in Company minimum gain. This Section 10.02(d) is intended to comply with the minimum gain chargeback requirement of Section 1.704-2 of the Treasury Regulations and shall be interpreted consistently therewith. If in any taxable year that the Company has a net decrease in the Company's minimum gain, if the minimum gain chargeback requirement would cause a distortion in the economic arrangement among the Members and it is not expected that the Company will have sufficient other income to correct that distortion, the Board of Governors may in their discretion (and shall, if requested to do so by a Member) seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Treasury Regulation Section 1.704-2(f)(4).

(e) Items of Company loss, deduction and expenditures described in Section 705(a)(2)(B) which are attributable to any nonrecourse debt of the Company and are characterized as partner (Member) nonrecourse deductions under Section 1.704-2(i) of the Treasury Regulations shall be allocated to the Members' Capital Accounts in accordance with said Section 1.704-2(i) of the Treasury Regulations.

(f) Beginning in the first taxable year in which there are allocations of "nonrecourse deductions" (as described in Section 1.704-2(b) of the Treasury Regulations) such deductions shall be allocated to the Members in accordance with, and as a part of, the allocations of Company profit or loss for such period.

(g) In accordance with Section 704(c)(1)(A) of the Code and Section 1.704-1(b)(2)(iv)(d)(3) of the Treasury Regulations, if a Member contributes property with a fair market value that differs from its adjusted basis at the time of contribution, income, gain, loss and deductions with respect to the property shall, solely for federal income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company and its fair market value at the time of contribution.

(h) Pursuant to Section 704(c)(1)(B) of the Code, if any contributed property is distributed by the Company other than to the contributing Member within seven years of being contributed, then, except as provided in Section 704(c)(2) of the Code, the contributing Member shall be treated as recognizing gain or loss from the sale of such property in an amount equal to the gain or loss that would have been allocated to such Member under Section 704(c)(1)(A) of the Code if the property had been sold at its fair market value at the time of the distribution.



(i) In the case of any distribution by the Company to a Member or Economic Interest Owner, such Member or Economic Interest Owner shall be treated as recognizing gain in an amount equal to the lesser of:

(1) the excess (if any) of (A) the fair market value of the property (other than money) received in the distribution over (B) the adjusted basis of such Member's Membership Interest or Economic Interest Owner's Economic Interest in the Company immediately before the distribution reduced (but not below zero) by the amount of money received in the distribution, or

(2) the Net Precontribution Gain (as defined in Section 737(b) of the Code) of the Member or Economic Interest Owner. The Net Precontribution Gain means the net gain (if any) which would have been recognized by the distributee Member or Economic Interest Owner under Section 704(c)(1)(B) of the Code if all property which (1) had been contributed to the Company within five years of the distribution, and (2) is held by the Company immediately before the distribution, had been distributed by the Company to another Member or Economic Interest Owner. If any portion of the property distributed consists of property which had been contributed by the distributee Member or Economic Interest Owner to the Company, then such property shall not be taken into account under this Section 10.02(i) and shall not be taken into account in determining the amount of the Net Precontribution Gain. If the property distributed consists of an interest in an entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such entity after such interest had been contributed to the Company.

(j) In connection with a Capital Contribution of money or other property (other than a de minimis amount) by a new or existing Member or Economic Interest Owner as consideration for an Economic Interest or Membership Interest, or in connection with the liquidation of the Company or a distribution of money or other property (other than a de minimis amount) by the Company to a retiring Member or Economic Interest Owner as consideration for an Economic Interest or Membership Interest, the Capital Accounts of the Members shall be adjusted to reflect a revaluation of Company property (including intangible assets) in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f). If under Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations, Company property that has been revalued is properly reflected in the Capital Accounts and on the books of the Company at a book value that differs from the adjusted tax basis of such property, then depreciation, depletion, amortization and gain or loss with respect to such property shall be shared among the Members in a manner that takes account of the variation between the adjusted tax basis of such property and its book value, in the same manner as variations between the adjusted tax basis and fair market value of property contributed to the Company are taken into account in determining the Members' shares of tax items under Section 704(c) of the Code.

(k) All recapture of income tax deductions resulting from sale or disposition of Company property shall be allocated to the Member or Members to whom the deduction that gave

rise to such recapture was allocated hereunder to the extent that such Member is allocated any gain from the sale or other disposition of such property.

(l) Any credit or charge to the Capital Accounts of the Members pursuant to Sections 10.02(b), (c) and/or (d) hereof shall be taken into account in computing subsequent allocations of profits and losses pursuant to Section 10.01 hereof, so that the net amount of any items charged or credited to Capital Accounts pursuant to Sections 10.01 and 10.02 hereof shall to the extent possible, be equal to the net amount that would have been allocated to the Capital Account of each Member pursuant to the provisions of this Article IX if the special allocations required by Sections 10.02(b), (c) and/or (d) hereof had not occurred.

10.03 Distributions. Except as provided in Section 9.04(d), all distributions of cash or other property shall be made to the Members as follows:

Except as provided in Section 10.04 hereof, all distributions of Distributable Cash and property shall be made at such time as determined by the Board of Governors. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to this Section 10.03.

10.04 Limitation Upon Distributions. No distribution shall be declared and paid unless, after the distribution is made, the assets of the Company are in excess of all liabilities of the Company, except liabilities to Members on account of their contributions.

10.05 Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis using the accrual method of accounting. It is intended that the Company will elect those accounting methods which provide the Company and the Members with the greatest tax benefits.

10.06 Interest On and Return of Capital Contributions. No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution, except as otherwise specifically provided for herein.

10.07 Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.

10.08 Accounting Period. The Company's accounting period shall be the calendar year.

10.09 Records, Audits, and Reports. At the expense of the Company, the Board of Governors shall maintain records and accounts of all operations and expenditures of the Company. At a minimum, the Company shall keep at its principal executive office of the Company the following records:



(a) A current list of the full name and last known business, residence, or mailing address of each Member, Economic Interest Owner, Officer, and Governor, both past and present;

(b) A copy of the Articles of Organization of the Company and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

(c) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the four most recent years;

(d) Copies of the Company's currently effective written Operating Agreement, copies of any writings permitted or required with respect to a Member's obligation to contribute cash, property or services, and copies of any financial statements of the Company for the three most recent years;

(e) Minutes of every annual, special, and court-ordered meeting;

(f) Any written consents obtained from Members for actions taken by Members without a meeting.

10.10 Returns and Other Elections. The President shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. The President shall timely file with the North Dakota State Tax Commissioner the Company's annual North Dakota return.

All elections permitted to be made by the Company under federal or state laws shall be made by the President in his/her sole discretion, provided that the President shall make any tax election requested by the Majority Interest.

## ARTICLE XI

### TRANSFERABILITY

11.01 General. Except as otherwise specifically provided herein neither a Member nor an Economic Interest Owner shall have the right to:

(a) sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration (collectively, "sell"),





(b) gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy) all or any part of its Membership Interest or Economic Interest.

#### 11.02 Right of First Refusal.

(a) In the event a Selling Member desires to sell all or any portion of its Membership Interest or Economic Interest in the Company to a third party purchaser, the Selling Member shall first obtain from such third party purchaser a bona fide written offer to purchase such interest, stating the terms and conditions upon which the purchase is to be made and the consideration offered therefor. The Selling Member shall give written notification to the remaining Members, by certified mail or personal delivery, of its intention to so transfer such interest, furnishing to the remaining Members a copy of the aforesaid written offer to purchase such interest.

(b) The remaining Members, and each of them shall, on a basis pro rata to their Capital Interests (voting having a right of first refusal as to voting and non-voting having a right of first refusal as to non-voting) or on a basis pro rata to the Capital Interests of those remaining Members exercising their right of first refusal, have the right to exercise a right of first refusal to purchase all (but not less than all) of the interest proposed to be sold by the Selling Member upon the same terms and conditions as stated in the aforesaid written offer to purchase by giving written notification to the Selling Member, by certified mail or personal delivery, of their intention to do so within twenty (20) days after receiving written notice from the Selling Member. The failure of all the remaining Members (or any one or more of them) to so notify the Selling Member of their desire to exercise this right of first refusal within said twenty (20) day period shall result in the termination of the right of first refusal and the Selling Member shall be entitled to consummate the sale of its interest in the Company, or such portion of its interest, if any, with respect to which the right of first refusal has not been exercised, to such third party purchaser.

In the event the remaining Members (or any one or more of the remaining Members) give written notice to the Selling Member of their desire to exercise this right of first refusal and to purchase all of the Selling Member's interest in the Company which the Selling Member desires to sell upon the same terms and conditions as are stated in the aforesaid written offer to purchase, the remaining Members shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within twenty (20) days after receipt of written notification from the Selling Member of the third party offer to purchase.

(c) In the event of either the purchase of the Selling Member's interest in the Company by a third party purchaser or the gift of an interest in the Company (including an Economic Interest), and as a condition to recognizing one or more of the effectiveness and binding nature of any such sale or gift and (subject to Section 11.03 hereof, below) substitution of a new Member as against the Company or otherwise, the remaining Members may require the Selling Member or Gifting Member and the proposed purchaser, donee or successor-in-interest, as the case may be, to execute, acknowledge and deliver to the remaining Members such instruments of transfer, assignment and assumption and such other certificates, representations and documents.



and to perform all such other acts which the remaining Members may deem necessary or desirable to:

(i) constitute such purchaser as a Member, donee or successor-in-interest as such;

(ii) confirm that the person desiring to acquire an interest or interests in the Company, or to be admitted as a Member, has accepted, assumed and agreed to be subject and bound by all of the terms, obligations and conditions of the Operating Agreement, as the same may have been further amended (whether such Person is to be admitted as a new Member or will merely be an Economic Interest Owner);

(iii) preserve the Company after the completion of such sale, transfer, assignment, or substitution under the laws of each jurisdiction in which the Company is qualified, organized or does business;

(iv) maintain the status of the Company as a partnership for federal tax purposes; and

(v) assure compliance with any applicable state and federal laws including securities laws and regulations.

(d) Any sale or gift of a Membership Interest or Economic Interest or admission of a Member in compliance with this Article XI shall be deemed effective as of the last day of the calendar month in which the remaining Members' consent thereto was given, or, if no such consent was required pursuant to Section 11.02(e) hereof, then on such date that the donee or successor-in-interest complies with this Article. The Selling Member agrees, upon request of the remaining Members, to execute such certificates or other documents and perform such other acts as may be reasonably requested by the remaining Members from time to time in connection with such sale, transfer, assignment, or substitution. The Selling Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article XI.

(e) Subject to Section 11.03(c) hereof, a Transferring Member may gift all or any portion of its Membership Interest and Economic Interest without regard to Sections 11.02(a) and (b) hereof provided that the donee or other successor-in-interest (collectively, "donee") complies with Section 11.02(c) hereof and further provided that the donee is either the Gifting Member's spouse, former spouse, or lineal descendent (including adopted children). In the event of the gift of all or any portion of a Gifting Member's Membership Interest or Economic Interest to one or more donees who are under 25 years of age, one or more trusts shall be established to hold the gifted interest(s) for the benefit of such donee(s) until all of the donee(s) reach the age of at least 25 years.

#### 11.03 Transferee Not Member in Absence of Unanimous Consent.

(a) Notwithstanding anything contained herein to the contrary (including, without limitation, Section 11.02 hereof), if all of the remaining Members do not approve by unanimous written consent the proposed sale or gift of the Transferring Member's Membership Interest or Economic Interest to a transferee or donee which is not a Member immediately prior to the sale or gift, then the proposed transferee or donee shall have no right to participate in the management of the business and affairs of the Company or to become a Member. The transferee or donee shall be merely an Economic Interest Owner. No transfer of a Member's interest in the Company (including any transfer of the Economic Interest or any other transfer which has not been approved by unanimous written consent of the Members) shall be effective unless and until written notice (including the name and address of the proposed transferee or donee and the date of such transfer) has been provided to the Company and the non-transferring Member(s).

(b) Upon and contemporaneously with any sale or gift of a Transferring Member's Economic Interest in the Company which does not at the same time transfer the balance of the rights associated with the Economic Interest transferred by the Transferring Member (including, without limitation, the rights of the Transferring Member to participate in the management of the business and affairs of the Company), the Company shall purchase from the Transferring Member, and the Transferring Member shall sell to the Company for a purchase price of \$100.00, all remaining rights and interests retained by the Transferring Member which immediately prior to such sale or gift were associated with the transferred Economic Interest.

(c) The restrictions on transfer contained in this Section 11.03 are intended to comply (and shall be interpreted consistently) with any restrictions on transfer set forth in the North Dakota Act.

## ARTICLE XII

### ADDITIONAL MEMBERS

From the date of the formation of the Company, any Person or Entity acceptable to the Members by a majority vote by the Majority Interest may become a Member in this Company either by the issuance by the Company of Membership Interests for such consideration as the Members by a majority vote by the Majority Interest shall determine, or as a transferee of a Member's Membership Interest or any portion thereof, subject to the terms and conditions of this Operating Agreement. No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Board of Governors may, at its option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, income and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Treasury Regulations promulgated thereunder.

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## ARTICLE XIII

### DISSOLUTION AND TERMINATION

#### 13.01 Dissolution.

(a) The Company shall be dissolved upon the occurrence of any of the following events:

(i) when the period fixed for the duration of the Company shall expire pursuant to Section 2.05 hereof;

(ii) by the unanimous written agreement of all Members;

(iii) upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of the last Member or occurrence of any other event which terminates the continued membership of the last Member in the Company (a "Withdrawal Event"); or

(iv) as otherwise provided in chapter 10-32.1, N.D.C.C.

(b) Notwithstanding anything to the contrary in this Operating Agreement, if a Member or Members owning voting Capital Interests which in the aggregate constitute not less than two-thirds of the voting Capital Interests vote to dissolve the Company at a meeting of the Company pursuant to Article VIII, then all of the Members shall agree in writing to dissolve the Company as soon as possible (but in any event not more than 20 days) thereafter.

(c) As soon as possible following the occurrence of any of the events specified in this Section 13.01 effecting the dissolution of the Company, the appropriate representative of the Company shall execute a notice of dissolution in such form as shall be prescribed by the North Dakota Secretary of State and file same with the North Dakota Secretary of State's office.

(d) If a Member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the Member's rights for the purpose of settling his estate or administering his property.

(e) Except as expressly permitted in this Operating Agreement, a Member shall not voluntarily resign or take any other voluntary action which directly causes a Withdrawal Event. Unless otherwise approved by a majority vote by the Majority Interest, a Member who resigns (a "Resigning Member") or whose Membership Interest is otherwise terminated by virtue of a Withdrawal Event, regardless of whether such Withdrawal Event was the result of a voluntary act by such Member, shall not be entitled to receive any distributions to which such Member would not have been entitled had such Member remained a Member. Except as otherwise expressly

provided herein, a Resigning Member shall become an Economic Interest Owner. Damages for breach of this Section 13.01(e) shall be monetary damages only (and not specific performance), and such damages may be offset against distributions by the Company to which the Resigning Member would otherwise be entitled.

13.02 Effect of Filing of Notice of Dissolution. Upon the filing by the North Dakota Secretary of State of a notice of dissolution, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until articles of dissolution and termination have been filed with the Secretary of State or until a decree dissolving the Company has been entered by a court of competent jurisdiction.

13.03 Winding Up, Liquidation and Distribution of Assets.

(a) Upon dissolution, an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Board of Governors shall immediately proceed to wind up the affairs of the Company.

(b) If the Company is dissolved and its affairs are to be wound up, the Board of Governors shall:

(i) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Board of Governors may determine to distribute any assets to the Members in kind).

(ii) Allocate any profit or loss resulting from such sales to the Members' and Economic Interest Owners' Capital Accounts in accordance with Article X hereof.

(iii) Discharge all liabilities of the Company, including liabilities to Members and Economic Interest Owners who are creditors, to the extent otherwise permitted by law, other than liabilities to Members and Economic Interest Owners for distributions, and establish such Reserves as may be reasonably necessary to provide for contingencies and foreseeable liabilities of the Company (for purposes of determining the Capital Accounts of the Members and Economic Interest Owners, the amounts of such Reserves shall be deemed to be an expense of the Company).

(iv) Distribute the remaining assets in the following order:

(1) If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Members and

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Economic Interest Owners shall be adjusted pursuant to the provisions of Article X and Sections 9.03 and 9.04 hereof to reflect such deemed sale.

(2) The positive balance (if any) of each Member's and Economic Interest Owner's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs) shall be distributed to the Members, either in cash or in kind, as determined by the Board of Governors, with any assets distributed in kind being valued for this purpose at their fair market value as determined pursuant to Section 13.03(b)(1) hereof. Any such distributions to the Members in respect of their Capital Accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations.

(c) Notwithstanding anything to the contrary in this Operating Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

(d) Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

(e) The Board of Governors shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

13.04 Articles of Dissolution and Termination. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Members, articles of dissolution and termination shall be executed in duplicate and verified by the person signing the articles, which articles shall set forth the information required by the North Dakota Act. Duplicate originals of such articles of dissolution and termination shall be delivered to the North Dakota Secretary of State.

13.05 Effect of Filing of Articles of Dissolution and Termination. Upon the filing of the articles of dissolution and termination, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the North Dakota Act. The Board of Governors shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

13.06 Return of Contribution Nonrecourse to Other Members. Except as provided by law or as expressly provided in this Operating Agreement, upon dissolution, each Member shall look

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solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members, such Member or Members shall have no recourse against any other Member.

## ARTICLE XIV

### MISCELLANEOUS PROVISIONS

14.01 Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Operating Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Operating Agreement. Except as otherwise provided herein, any such notice shall be deemed to be given three business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid.

14.02 Books of Account and Records. Proper and complete records and books of account shall be kept or shall be caused to be kept by the Board of Governors in which shall be entered fully and accurately all transactions and other matters relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such books and records shall be maintained as provided in Section 10.09 hereof. The books and records shall at all times be maintained at the principal executive office of the Company and shall be open to the reasonable inspection and examination of the Members, Economic Interest Owners or their duly authorized representatives during reasonable business hours.

14.03 Application of North Dakota Law. This Operating Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of North Dakota, and specifically the North Dakota Act.

14.04 Waiver of Action for Partition. Each Member and Economic Interest Owner irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

14.05 Amendments. This Operating Agreement may not be amended except by the unanimous agreement of all of the Members.

14.06 Execution of Additional Instruments. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

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14.07 Construction. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

14.08 Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

14.09 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

14.10 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

14.11 Severability. If any provision of this Operating Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

14.12 Heirs, Personal Representatives, Successors, and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, personal representatives, successors and assigns.

14.13 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company.

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

14.15 Investment Representations. The undersigned Members and Economic Interest Owners, if any, understand (1) that the Membership Interests and Economic Interests evidenced by this Operating Agreement have not been registered under the Securities Act of 1933, the North Dakota Securities Act of 1951 or any other state securities laws (the "Securities Acts") because the Company is issuing these Membership Interests and Economic Interests in reliance upon the exemptions from the registration requirements of the Securities Acts providing for issuance of securities not involving a public offering, (2) that the Company has relied upon the fact that the Membership Interests and Economic Interests are to be held by each Member for investment, and (3) that exemption from registration under the Securities Acts would not be available if the Membership Interests and Economic Interests were acquired by a Member with a view to distribution.





Accordingly, each Member and Economic Interest Owner hereby confirms to the Company that such Member and Economic Interest Owner is acquiring the Membership Interests and Economic Interests for such Member's and Economic Interest Owner's own account, for investment and not with a view to the resale or distribution thereof. Each Member and Economic Interest Owner agrees not to transfer, sell or offer for sale any portion of the Membership Interests or Economic Interests unless there is an effective registration or other qualification relating thereto under the Securities Act of 1933 and under any applicable state securities laws or unless the holder of Membership Interests or Economic Interests delivers to the Company an opinion of counsel, satisfactory to the Company, that such registration or other qualification under such Act and applicable state securities laws is not required in connection with such transfer, offer or sale. Each Member and Economic Interest Owner understands that the Company is under no obligation to register the Membership Interests or Economic Interests or to assist such Member or Economic Interest Owner in complying with any exemption from registration under the Securities Acts if such Member or Economic Interest Owner should at a later date wish to dispose of the Membership Interest or Economic Interest. Furthermore, each Member realizes that the Membership Interests and Economic Interests are unlikely to qualify for disposition under Rule 144 of the Securities and Exchange Commission unless such Member is not an "affiliate" of the Company and the Membership Interest or Economic Interest has been beneficially owned and fully paid for by such Member or Economic Interest Owner for at least three years.

Prior to acquiring the Membership Interests and Economic Interests, each Member and Economic Interest Owner has made an investigation of the Company and its business and has had made available to each such Member and Economic Interest Owner all information with respect thereto which such Member needed to make an informed decision to acquire the Membership Interest or Economic Interest. Each Member and Economic Interest Owner considers himself or itself to be a person possessing experience and sophistication as an investor which are adequate for the evaluation of the merits and risks of such Member's or Economic Interest Owner's investment in the Membership Interest or Economic Interest.

### CERTIFICATE

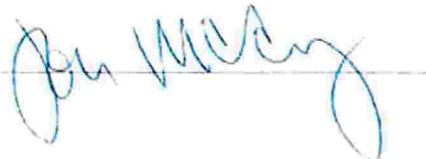
The undersigned hereby agree, acknowledge and certify that the foregoing Operating Agreement, consisting of Thirty-One (31) pages including attached Exhibit(s), constitutes the Operating Agreement of AMI SILICA LLC adopted by the Members of the Company as of July 19, 2021.

MEMBERS:

JMAC ENERGY SERVICES LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_



OPERATING AGREEMENT

AMISILICA LLC


A NORTH CAROLINA LIMITED LIABILITY COMPANY

Page 30



Its:

ATHABASCA MATERIALS INC.

By: 

Name: Robert Beekhuizen, CEO

Its:

**EXHIBIT A**

**INITIAL CAPITAL CONTRIBUTIONS OF  
MEMBERS OF AMI SILICA LLC**

<u>Initial Member Contributions</u>	<u>Initial Capital Contribution</u>	<u>Voting Units</u>	<u>Capital Interest</u>
JMAC Energy Services LLC 1505 N. Miller St., Ste. 260 Wenatchee, WA 98801	\$10,000 in kind services	125,000	50.0%
Athabasca Minerals Inc. Canada Place, Suite 620 407 2 Street SW Calgary, AB Canada, T2P 2Y3	\$10,000 in kind services	125,000	50.0%
<b>TOTAL:</b>	<b>\$20,000</b>	<b>250,000</b>	<b>100.0%</b>



**UNANIMOUS WRITTEN CONSENT**

**OF**

**MEMBERS OF AMI SILICA LLC**

**IN LIEU OF**

**ORGANIZATIONAL MEETING**

The undersigned, being all of the members (the "Members") of AMI SILICA LLC, a North Dakota limited liability company (the "Company"), do hereby consent in writing pursuant to the applicable provisions of the North Dakota Uniform Limited Liability Company Act, as amended, to the adoption of the resolutions and to the Company actions hereinafter set forth and direct that they shall, in all respects, be deemed as valid Company actions as though such actions and resolutions had been duly approved and authorized at a formal organizational meeting (this "Written Consent").

1. Acceptance of Articles of Organization

RESOLVED, that the Articles of Organization of the Company, as filed with the Secretary of State of the State of North Dakota on June 2, 2021, be, and they hereby are, accepted and approved, and that the Certificate of Organization and Articles of Organization, be placed in the minute book of the Company.

FURTHER RESOLVED, that the Articles of Organization correctly state the registered office of the Company and that the person named therein as registered agent until subsequently changed by a resolution of the Company's Board of Governors (the "Board").

2. Approval of Operating Agreement

RESOLVED, that the Operating Agreement of the Company, in the form attached to this Written Consent (the "Operating Agreement"), be, and it hereby is, adopted as the Operating Agreement of the Company and that the Secretary is instructed to insert a original of such Operating Agreement, signed by the Members, in the minute book of the Company immediately following the filed photocopy of the Articles of Organization.

3. Ratification of Prior Actions

RESOLVED, that all actions taken by the promoters and organizers prior to the formation of this Company are hereby ratified, approved, confirmed, and adopted. The Company shall hereafter be bound by the activities of the promoters and organizers and shall accept the benefit of all agreements, arrangements, negotiations, and contracts that



have been negotiated on behalf of the Company, by the promoters and organizers. The organization and other activities for which the organizer was responsible have been completed. The organizer is relieved of any further duties and responsibilities in that regard, and the Company and the Members indemnify and hold harmless the organizer for any loss, liability, or expense arising from his actions or conduct in such capacity.

4. Certificate of Membership Units

RESOLVED, that the form of certificate attached to this Written Consent is adopted as the form of certificate of units of membership interest for Company; and

FURTHER RESOLVED, that the Board of this Company be, and it hereby is, authorized to issue certificates of units of membership in the form as attached to this Written Consent.

5. Initial Capital Contribution/Issuance of Units

WHEREAS, the Company has received the following offers for the purchase of its membership interests.

RESOLVED, that this Company hereby accepts the offer of JMAC Energy Services LLC, to contribute services performed and to be performed in the amount of \$10,000 in consideration of this Company issuing to JMAC Energy Services LLC 125,000 fully paid and non-assessable units of its voting membership interests.

FURTHER RESOLVED, that this Company hereby accepts the offer of Athabasca Minerals Inc., to contribute services performed and to be performed in the amount of \$ 10,000 in consideration of this Company issuing to Athabasca Minerals Inc. 125,000 fully paid and non-assessable units of its voting membership interests.

FURTHER RESOLVED, that the Company issue and deliver to those entities upon receipt of the consideration described above, pursuant to the terms of the aforesaid offers, certificates representing the units of membership of the Company, each such units to include the units originally subscribed for by the subscribers to the membership interests of the Company.

FURTHER RESOLVED, that the Board of the Company be, and it hereby is, authorized, empowered, and directed to take any and all steps, and to execute and deliver any and all instruments in connection with consummating the transaction contemplated by the aforesaid offers and in connection with carrying the foregoing resolutions into effect.

FURTHER RESOLVED, that upon issuance of the certificates and payment of the consideration the units shall be deemed to be fully paid and non-assessable.

6. Authority to Open Bank Accounts

RESOLVED, that BMO Harris Bank , Napperville IL, be, and it hereby is, selected as depository for the monies, funds, and credit of this Company and that Mark Smith and Dana Archibald be, and they hereby are, authorized and empowered to draw checks (including checks payable to their own order or to bearer) on the above depository, against the account of the Company with the depository, upon the signature of two, and to endorse in the name of the Company and receive payment of all checks, drafts, and commercial papers payable to the Company either as payee or endorsee.

FURTHER RESOLVED, that the authority hereby conferred above shall remain in full force and effect until it shall have been revoked and until a formal written notice of such revocation shall have been given to and received by BMO Harris Bank.

FURTHER RESOLVED, that the certification of a majority of the Board as to the election and appointment of persons so authorized to sign such checks and as to the signatures of such persons shall be binding on this Company.

FURTHER RESOLVED, that the Board of this Company be, and it hereby is, authorized and directed to deliver to BMO Harris Bank a copy of these resolutions properly certified by them.

7. Authority to Pay Organizational Expenses

RESOLVED, that the Board is authorized and directed to procure all limited liability company books required by the State of North Dakota or necessary in connection with the business of the Company and are further authorized and directed to pay all fees and expenses incident to and necessary for the organization of the Company, and to reimburse those persons who have advanced said fees and expenses incident to and necessary for the organization of the Company, and to reimburse those persons who have advanced said fees and expenses on behalf of the Company.

8. Professional Services

- Frisura will supply Bonding for AMI Silica -- Jonathan Hope is the main contact at Frisura.
- AMI Silica is still working to secure insurance - in the interim JMAC has secured it through Assured Partners and AMI is utilizing them to get a new policy.
- Athabasca Minerals Inc. is doing the accounting for AMI Silica AMI Silica's auditors are Grant Thornton.

9. Board of Governors

RESOLVED, that the following individuals are elected to the Board to serve at the pleasure of the Members of the Company or until their successors are elected and qualified:

Jon McCreary	Governor contemplated by Section 5.03(a) of the Company's Operating Agreement
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Todd Erickson	Governor contemplated by Section 5.03(a) of the Company's Operating Agreement
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Robert Beekhuizen	Governor contemplated by Section 5.03(b) of the Company's Operating Agreement
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Dana Archibald	Governor contemplated by Section 5.03(b) of the Company's Operating Agreement
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10. Officers

RESOLVED, that the following individuals are elected as the Company's officers to serve at the pleasure of the Board or until their successors are elected and qualified:

Robert Beekhuizen	President
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Todd Erickson	Vice President
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Shela Pistorosi	Secretary
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Mark Smith	Treasurer
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**[The remainder of this page is intentionally left blank.]**

**[Signature page – Unanimous Written Consent of Members of AMI Silica LLC in Lieu of Organizational Meeting.]**

IN WITNESS WHEREOF, the undersigned Members have executed this unanimous Written Consent as of July 19, 2021, waiving all notice requirements whether provided by statute or otherwise.

MEMBERS:

JMAC ENERGY SERVICES LLC

By: \_\_\_\_\_

Name: Jon McCreary

Its: Owner

ATHABASCA MATERIALS INC.

By: \_\_\_\_\_

Name: Robert Beekhuizen

Its: Chief Executive Officer

**Amendment to the Operating Agreement for AMI Silica LLC, a limited liability company formed under the laws of North Dakota**

**February 16, 2022**

We the Members of AMI Silica LLC do hereby amend the Operating Agreement as of this fifteenth day of February, 2022. This amendment of Article XIV, Miscellaneous Provisions, shall contain the following additional terms:

JMAC: JMAC Energy Services LLC and its affiliates

AMI: Athabasca Minerals Inc. and its affiliates

Parties: AMI and JMAC excluding AMI Silica LLC.

AMI Silica: 50/50 Joint Venture Partnership between AMI and JMAC

14.16 Most Favored Buyer Pricing. JMAC shall have the right and benefit of Most Favored Buyer pricing for any sand product purchases up to 50,000 tons per month, meaning that the JMAC shall have the right to purchase sand products FOB the Taylor or Humbird transload facilities at the lowest prices available to any AMI Silica LLC customer at that time, including customers with long-term agreements or spot pricing.

14.17 Rail Car Preference. AMI Silica will provide rail cars to JMAC for shipping sand to North Dakota for transportation up to 50,000 tons per month if demand is present. Over 50,000 tons per month will be allocated as determined by AMI Silica LLC. JMAC will endeavor to return rail cars as quickly as reasonably possible.

14.18 First Right of Refusal and Terms for Debt or Equity Capital. JMAC Energy Services and its affiliates shall have the first right of refusal to provide either/both debt or equity capital to AMI Silica LLC, at terms equivalent to the most favorable available to AMI Silica LLC in bona fide offers from reputable capital sources.

14.19 Accounting and Cash Management. All accounting and cash management duties of AMI Silica LLC shall be performed by JMAC Energy Services LLC or its affiliates. These services shall be performed at cost plus 15%.

14.20 Management Fee. AMI will provide Management and Engineering Support Services to AMI Silica LLC at cost plus 15%.

14.21 Exclusive Sales Territories. JMAC shall have the exclusive right to transload sand products in the state of North Dakota.

All other sections of the Operating Agreement remain in full force and effect.





The undersigned have duly executed this amendment to the Operating Agreement on the date first written above.

JMAC Energy Services LLC

By: \_\_\_\_\_

Jon McCreary, President

Athabasca Minerals Inc.

By: \_\_\_\_\_

Robert Beekhuizen, CEO

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# TRISURA®

## TERMS AND CONDITIONS

February 16, 2022

Trisura Guarantee Insurance Company ("Trisura") is pleased to advise that Wilson M. Beck Insurance Services has arranged a bonding facility for AMI Silica LLC (the "Client") with the following terms and conditions:

### BONDING FACILITY:

Reclamation Bond (Jackson County):	US \$6,292,578.59
Road Use Bond (Town of Curran):	US \$250,000.00
Railcar Sublease Bond (Schlumberger):	US \$5,000,000.00
General Performance Bond (Schlumberger):	US \$2,200,000.00

Requests for bonds in excess of the Facility will be considered on a case by case basis.

### PROJECT DESCRIPTION:

Purchase and Operation of sand mine, wet sand processing facility, dry sand processing facility, sand storage facility, truck loadout, and associated facilities located at N8499 South Adams Road, Hixton, Wisconsin 54635, together with Hixton equipment. In addition, the rail loadout and associated facilities connecting the Union Pacific Railroad line located at W11296 County Line Road, Humbird, Wisconsin 54746, together with Humbird equipment. Furthermore, the rail loadout and associated facilities connecting to the Canadian National Railroad line located at N7696 N Davis Road, Taylor, Wisconsin 54659, together with Taylor equipment.

### RATES AND FEES:

Facility Administration Fee: \$5,000 (annually invoiced, starting upon bond issuance)

Annual Rate: 2.5% of bond penalty.

The annual rates are for a one year period, beginning effective date of the bond. Renewal premiums shall be payable at each anniversary date of the effective date. Any increase in the total Bond Penalty will result in an increase in the premium on a pro rata basis based on the effective date of bond. Bond premium will be considered fully earned upon issuance or renewal of the bonds.

### PRECEDENT CONDITIONS:

- Copies of their CGL policy with Sudden and Accidental Pollution Coverage, or standalone EI policy with coverage for the new assets.
- Copies of all the required insurance policies/documents as per the Rail-Car Sublease Agreement.

### REPORTING:

1. Fiscal year-end financial statements of JMAC Energy Services, LLC and Subsidiaries.
2. Annual report including statement of accounts outlining the payments made under the Rail-Car Sublease Agreement, and what amounts remain owing under the Agreement.

Upon issuance of Bond, Trisura Guarantee Insurance Company shall be notified, immediately, to any of the following occurrences:

- Any written request of change in Bond Amount
- Any significant changes to the Agreements bonded, including the reclamation plan and reclamation permits
- Any change of control of the Company
- Copies of any adverse written claims, complaints, notices or inquiries relating to the condition of its facilities and properties or compliance with Environmental Laws, which could reasonably be expected to have a Material Adverse Effect, and shall promptly cure, have dismissed or otherwise resolved to the satisfaction of Trisura any actions and proceedings relating to any such compliance with Environmental Laws, except for those being diligently contested in good faith and by appropriate proceedings
- Any significant changes to the Company's Environmental Insurance Coverage
- Any lapse in Environmental Insurance Coverage
- Any default or event of default under the Company's Credit Agreement, and of the occurrence or existence of any event or circumstance that foreseeably will become a default or event of default and the action which the Company proposes to take or has taken with respect thereto
- Any significant changes to the existing bank terms and conditions
- Any significant disputes, liens, litigation, or impairment of assets (i.e. bad debts, fixed assets)
- Such additional financial or operating reports or statements, or other information as Trisura may reasonably require, from time to time

#### **BANKING**


- Deliver within 60 days of the end of each of its fiscal quarters (excluding the fourth quarter) and within 120 days of the end of each fiscal year a copy of the bank Compliance Certificate.
- Such additional financial or operating reports or statements, or other information as Trisura may reasonably request, from time to time.

#### **INDEMNITY AND SECURITY:**

1. The following companies shall execute Trisura's Indemnity Agreement, registered in Alberta and with UCC filings in Wisconsin and North Dakota:
  - AMI Silica LLC
  - Athabasca Minerals Inc.
  - JMAC Energy Services, LLC
  - JMAC Resources Inc.
  - JMAC Corporate Services, LLC(the "Indemnitors")
2. If Schlumberger, or any other creditor, requires collateral charges or mortgages on land, plant, or equipment of AMI Silica LLC, then the same security will need to be executed and provided to Trisura, with first ranking priority.
3. Authorization letter to disclose information to Trisura, as requested by Trisura from Schlumberger from time to time.


Thank you in advance and we look forward to supporting your client's bonding needs.

**TRISURA GUARANTEE INSURANCE COMPANY**

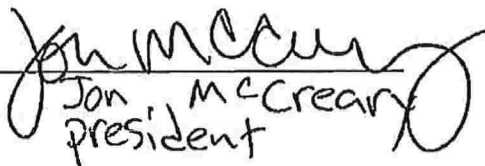
By:   
Name: Jonathan Hope  
Title: Assistant Vice President, Surety

Dated: 2022-02-16

**AMI SILICA LLC**

  
By: \_\_\_\_\_  
Name: Robert J. Beekhuizen  
Title: President

**JMAC RESOURCES INC.**

By:   
Name: Jon McCreeary  
Title: president



COURT FILE NUMBER B301 009380  
25-3009380, 25-3009384, 25-3009386, 25-3009385,  
25-3009379, 25-3009389, 25-3009398

COURT COURT OF KING'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
RSC 1985, C B-3 AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE  
A PROPOSAL OF ATHABASCA MINERALS INC., AMI SILICA INC.,  
AMI AGGREGATES INC., AMI ROCKCHAIN INC., TERRASHIFT  
ENGINEERING LTD., 2132561 ALBERTA LTD., and 2140534  
ALBERTA LTD.

APPLICANTS ATHABASCA MINERALS INC., AMI SILICA INC., AMI  
AGGREGATES INC., AMI ROCKCHAIN INC., TERRASHIFT  
ENGINEERING LTD., 2132561 ALBERTA LTD., and 2140534  
ALBERTA LTD.

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Field LLP  
400 – 444 – 7 Avenue SW  
Calgary AB T2P 0X8  
Lawyer: Douglas Nishimura  
Phone Number: (403) 260-8500  
Fax Number: (403) 264-7084  
Email Address: dnishimura@fieldlaw.com  
File No. 77794-5

**AFFIDAVIT OF TODD ERICKSON**  
**(Sworn December 8<sup>th</sup>, 2023)**

I, Todd Erickson of the Village of Hixton, in the State of Wisconsin, MAKE OATH AND SAY THAT:

1. I am the Corporate Development Officer with JMAC Resources Inc., a subsidiary of JMAC Energy Services, LLC ("**JMAC**"). JMAC is a contracting counter-party and first secured creditor of Athabasca Minerals Inc. ("**AMI**") as well as being a secured creditor of several of AMI's

subsidiaries. As such, I have personal knowledge of the facts deposed to hearing in which case I believe the same to be true.

2. All capitalized terms herein not otherwise defined shall have the same meaning as those defined in Affidavit No. 1 of John David Churchill sworn on December 6, 2023 (the "**Churchill Affidavit**"), filed in the within proceedings.
3. I have had the opportunity to review the Churchill Affidavit. As set out in paragraph 68 therein, JMAC and AMI each own 50% of the membership interest of AMI Silica LLC ("**AMIS LLC**") and are further each entitled to appoint half of the members of the board of governors of AMIS LLC. The relationship between JMAC and AMI, with respect to AMIS LLC, is governed by the operating agreement of AMI Silica LLC adopted by the members of AMI Silica LLC as of July 19, 2021 (the "**Operating Agreement**"), a copy of which is attached hereto and marked as **Exhibit "A"**. The Operating Agreement contains provisions which require JMAC and AMI to fund cash calls by AMIS LLC and the Operating Agreement also requires that AMI offer JMAC a right of first refusal ("**ROFR**") in the event AMI desires to sell all or any portion of its "Membership Interest" or "Economic Interest" in AMIS LLC (as both of those of terms are defined in the Operating Agreement) to a third party purchaser. The Operating Agreement is governed by the laws of the State of North Dakota. The ROFR is referred to in the Stalking Horse Term Sheet, attached as Exhibit P to the Churchill Affidavit, and in paragraph 15 of the SISP, attached as Exhibit Q to the Churchill Affidavit.
4. Shortly after termination of the Arrangement Agreement, AMI advised JMAC that it and the Corporate Guarantors were entering into formal proposal proceedings under the *Bankruptcy and Insolvency Act* (Canada). Through legal counsel, JMAC was also advised that AMI intended to enter into the SISP and would seek a stalking horse bidder for that process. JMAC indicated that it was prepared to act as the stalking horse bidder.
5. At this time, JMAC was also aware, through its management of AMIS LLC, that AMIS LLC would soon be making its usual cash call to JMAC and AMI to fund on-going operations. JMAC was aware that AMI could not finance or fund the cash call under its existing cash flows, and that AMI would require interim financing. JMAC advised AMI that, as AMI's first secured creditor, JMAC did not

wish to be primed and that, accordingly, it was prepared to act as interim financier to AMI under debtor in possession financing.

6. AMI and JMAC immediately engaged in negotiations with respect to the SISP, stalking horse bidder, and interim financing terms. In doing so, JMAC has made it clear that it was not waiving any its rights under the Operating Agreement, including with respect to the ROFR. Ultimately, JMAC and AMI agreed to the terms reflected in the Interim Financial Term Sheet and Stalking Horse Term Sheet attached as Exhibits O and P, respectively, to the Churchill Affidavit.

7. I am not physically present before a Notary Public but was linked with one via video technology and followed the process for remote commissioning of affidavits as specified in the Notice to the Profession and Public NPP#2020-02 dated March 25, 2020 for the purpose of swearing this Affidavit.

SWORN BEFORE ME at the City of Calgary )  
in the Province of Alberta, this 8<sup>th</sup> day of )  
December, 2023. )

  
\_\_\_\_\_ )

A Notary Public in and for Alberta

\_\_\_\_\_  
TODD ERICKSON

**MARSHAL WOLFF**  
***Student-at-Law***



THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT  
OF TODD ERICKSON.

SWORN BEFORE ME THIS 8th DAY OF DECEMBER,  
2023.

OPERATING AGREEMENT

OF

AMI SILICA LLC



A Notary Public in and for Alberta  
**MARSHAL WOLFF**  
*Student-at-Law*

ARTICLE I

DEFINITIONS

The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

(a) “Articles of Organization” shall mean the Articles of Organization of AMI SILICA LLC as filed with the Secretary of State of North Dakota as the same may be amended from time to time.

(b) “Board of Governors” or “Board” shall mean the board of governors of the Company.

(c) “Capital Account” as of any given date shall mean the Capital Contribution to the Company by a Member as adjusted up to the date in question pursuant to Article VIII.

(d) “Capital Contribution” shall mean any contribution to the capital of the Company in cash or property by a Member whenever made. “Initial Capital Contribution” shall mean the initial contribution to the capital of the Company pursuant to this Operating Agreement.

(e) “Capital Interest” shall mean the proportion that a Member’s positive Capital Account bears to the aggregate positive Capital Accounts of all Members whose Capital Accounts have positive balances as may be adjusted from time to time. For purposes of the exercise of voting rights under the North Dakota Act and this Operating Agreement, only voting membership interests shall be included within the definition of a Capital Interest under this Operating Agreement unless otherwise indicated. Each Member’s Capital Interest as of the date hereof is specified on the attached Exhibit A and which may be adjusted from time to time pursuant to this Operating Agreement or under the North Dakota Act.

(f) “Code” shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

(g) “Company” shall refer to AMI SILICA LLC.





(h) “Deficit Capital Account” shall mean with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the taxable year, after giving effect to the following adjustments:

(i) credit to such Capital Account any amount which such Member is obligated to restore under Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations, as well as any addition thereto pursuant to the next to last sentence of Sections 1.704-2(g)(1) and (i)(5) of the Treasury Regulations, after taking into account thereunder any changes during such year in partnership minimum gain (as determined in accordance with Section 1.704-2(d) of the Treasury Regulations) and in the minimum gain attributable to any partner nonrecourse debt (as determined under Section 1.704-2(i)(3) of the Treasury Regulations); and

(ii) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

This definition of Deficit Capital Account is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(e) and 1.704-2, and will be interpreted consistently with those provisions.

(i) “Distributable Cash” means all cash, revenues and funds received by the Company from Company operations, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred incident to the normal operation of the Company’s business; (iii) such Reserves as the Board of Governors deem reasonably necessary to the proper operation of the Company’s business.

(j) “Economic Interest” shall mean a Member’s or Economic Interest Owner’s share of one or more of the Company’s Net Profits, Net Losses and distributions of the Company’s assets pursuant to this Operating Agreement and the North Dakota Act, but shall not include any right to participate in the management or affairs of the Company, including the right to vote on, consent to or otherwise participate in any decision of the Members or Board of Governors.

(k) “Economic Interest Owner” shall mean the owner of an Economic Interest who is not a Member.

(l) “Entity” shall mean any general partnership, limited partnership, limited liability partnership, limited liability limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

(m) “Fiscal Year” shall mean the Company’s fiscal year, which shall be the year ending on December 31.

(n) “Gifting Member” shall mean any Member or Economic Interest Owner who gifts, bequeaths or otherwise transfers for no consideration (by operation of law or otherwise, except with respect to bankruptcy) all or any part of its Membership Interest or Economic Interest.

(o) “Governors” shall mean one or more governors. References to the Governors in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be.

(p) “Majority Interest” shall mean one or more Interests of Members which taken together exceed 50% of the aggregate of all Capital Interests. For purposes of the exercise of voting rights under the North Dakota Act and this Operating Agreement, only voting membership interests shall be included within the definition of a Majority Interest under this Operating Agreement unless otherwise indicated.

(q) “Member” shall mean each of the parties who execute a counterpart of this Operating Agreement as a Member and each of the parties who may hereafter become Members. If a Person is a Member immediately prior to the purchase or other acquisition by such Person of an Economic Interest, such Person shall have all the rights of a Member with respect to such purchased or otherwise acquired Membership Interest or Economic Interest, as the case may be.

(r) “Membership Interest” shall mean a Member’s entire interest in the Company including such Member’s Economic Interest and the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Operating Agreement and the North Dakota Act.

(s) “North Dakota Act” shall mean the North Dakota Uniform Limited Liability Company Act at N.D.C.C. 10-32.1-01, et seq.

(t) “Net Profits” and “Net Losses” shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with the accounting principles employed under the acceptable method of accounting at the close of each fiscal year on the Company’s information tax return filed for federal income tax purposes.

(u) “Operating Agreement” shall mean this Operating Agreement as originally executed and as amended from time to time.

(v) “Persons” shall mean any individual or Entity, and the heirs, personal representatives, legal representatives, successors, and assigns of such “Person” where the context so permits.

(w) “Reserves” shall mean, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed

sufficient by the Governors for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

(x) "Selling Member" shall mean any Member or Economic Interest Owner which sells, assigns, or otherwise transfers for consideration all or any portion of its Membership Interest or Economic Interest.

(y) "Transferring Member" shall collectively mean a Selling Member and a Gifting Member.

(z) "Treasury Regulations" shall include proposed, temporary and final regulations promulgated under the Code in effect as of the date of filing the Articles of Organization and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.

## ARTICLE II

### FORMATION OF COMPANY

2.01 Formation; Articles of Amendment. On June 2, 2021, Trevor A. Hunter of CROWLEY FLECK PLLP organized a North Dakota limited liability company by executing and delivering Articles of Organization to the North Dakota Secretary of State in accordance with and pursuant to the North Dakota Act. On July 19, 2021, Trevor A. Hunter of CROWLEY FLECK PLLP executed and delivered Articles of Amendment to the North Dakota Secretary of State in accordance with and pursuant to the North Dakota Act, which were filed on July 19, 2021.

2.02 Name. The name of the Company is **AMI SILICA LLC**.

2.03 Principal Executive Office. The principal executive office of the Company is 1505 North Miller Street, Suite 260, Wenatchee, Washington 98801. The Company may locate its principal executive office at any other place or places as the Governors may from time to time deem advisable.

2.04 Registered Office and Registered Agent. The Company's registered agent in the State of North Dakota is Corporation Service Company and its registered office is at the office of its registered agent at 1709 North 19th Street, Suite 3, Bismarck, North Dakota 58501. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the North Dakota Secretary of State pursuant to the North Dakota Act.

2.05 Term. The term of the Company shall be perpetual from the date of filing of Articles of Organization with the Secretary of State of the State of North Dakota, unless the

Company is earlier dissolved in accordance with either the provisions of this Operating Agreement or the North Dakota Act.

### ARTICLE III

#### BUSINESS OF COMPANY

3.01 Permitted Businesses. The business of the Company shall be for any lawful business purpose or purposes pursuant to Section 10-32.1-07(2) of the North Dakota Uniform Limited Liability Company Act, and said business of the Company shall include the power:

(a) to accomplish any lawful business whatsoever, or which shall at any time appear conducive to or expedient for the protection or benefit of the Company and its assets;

(b) to exercise all other powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the North Dakota Act; and

(c) to engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

### ARTICLE IV

#### NAMES AND ADDRESSES OF MEMBERS AND MEMBERS UNITS, CLASSIFICATIONS

4.01 Authorized Membership Units. The Company shall be authorized to create and issue up to 250,000 Membership Units. This shall include 250,000 Voting Membership Units and 0 Nonvoting Membership Units.

4.02 Initial Ownership of Membership Units. The Membership Units currently owned by each current member are contained on Exhibit A.



## ARTICLE V

### RIGHTS AND DUTIES OF BOARD OF GOVERNORS

5.01 General Powers. All limited liability company powers shall be exercised by or under authority of and the business and affairs of the Company shall be managed under the direction of the Board of Governors except as may be otherwise provided in the Articles of Organization, the Operating Agreement, or by law.

5.02 Duties. A Governor shall perform his duties as a Governor, including his duties as a member of any committee of the Board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing his duties, a Governor is entitled to rely on information, opinions, reports, or statements, including financial statements or other financial data, in each case prepared or presented by:

- (a) one or more officers or employees of the Company whom the Governor reasonably believes to be reliable and competent in the matters presented;
- (b) counsel, public accountants, or other persons as to matters that the Governor reasonably believes to be within such person's professional or expert competence; or
- (c) a committee of the Board upon which he does not serve, duly designated, as to matters within its designated authority, which committee the Governor reasonably believes to merit confidence.

A Governor may not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs his duties has no liability by reason of being or having been a Governor of the Company.

5.03 Number, Tenure, and Qualifications. The number of Governors of the Company shall be four (4). A Governor shall serve until the earlier of: (i) expiration of the Governor's term which shall be three (3) years; or (ii) his or her death, resignation, removal, or disqualification. Any Governor subject to removal under this Section shall not be entitled to vote for or against such Governor's removal. No Governor shall be subject to term limits. Governors need not be residents of the State of North Dakota or members of the Company. Governors shall be elected by the Members of the Company as of the date hereof as follows:

- (a) As long as JMAC Energy Services LLC, or its successor(s), holds at least 50.0% of the Membership Interest of the Company, it shall be entitled to elect two (2) of the four (4) total Governors.

- (b) As long as Athabasca Materials Inc., or its successor(s), holds at least 50.0% of the Membership Interest of the Company, it shall be entitled to elect two (2) of the four (4) total Governors.

5.04 Regular Meetings. A regular meeting of the Board of Governors or any committee designated thereby shall be held without other notice than this Section, immediately after and at the same place as, the annual meeting of the members. The Board of Governors may provide, by resolution, the time and place, either within or without the State of North Dakota, for the holding of additional regular meetings without other notice than such resolution. Members of the Board of Governors or any committee designated thereby may participate in a meeting of the Board or a committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means constitutes presence in person at a meeting.

5.05 Special Meetings. Special meetings of the Board of Governors or any committee designated thereby, may be called by or at the request of the President or any Governor. The person or persons authorized to call special meetings of the Board of Governors or any committee designated thereby may fix any place, either within or without the State of North Dakota, as the place for holding any special meeting of the Board of Governors called by them.

5.06 Notice. Notice of any special meeting shall be given at least two (2) days previous thereto by written notice delivered personally or mailed to each Governor at his business address, or by electronic mail (when directed to an electronic mail address at which a Governor has consented to receive notice at such address) or by telegram. If mailed, such notice shall be deemed to be delivered three (3) days after having been deposited in the United States mail, so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any Governor may waive notice of any meeting. The attendance of a Governor at a meeting shall constitute a waiver of notice of such meeting, except where a Governor attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Governors need be specified in the notice or waiver of notice of such meeting.

5.07 Quorum. A majority of the number of Governors fixed by Section 5.03 hereof shall constitute a quorum for the transaction of business at any meeting of the Board of Governors, but if less than such majority is present at a meeting, a majority of the Governors present may adjourn the meeting from time to time without further notice.

5.08 Manner of Acting. The act of the majority of the Governors present at a meeting at which a quorum is present shall be the act of the Board of Governors ("Board Consent").

5.09 Action Without a Meeting. Any action required or permitted to be taken by the Board of Governors or a committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Governors, or all of the members of the committee.

5.10 Vacancies and Removals. Any vacancy (however created) in the Board of Governors may be filled by the applicable Member as set forth in the subparts of Section 5.03 hereof. Any Governorship to be filled by reason of the removal of one or more Governors by the Members may be filled by election by the Members at the meeting at which the Governor or Governors are removed, but in accordance with the subparts of Section 5.03 hereof. At a meeting called expressly for that purpose, any Governor or the entire Board of Governors may be removed, with or without cause, by a vote of the Majority Interest.

5.11 Resignation. A Governor may resign at any time by delivering written notification thereof to the President or Secretary of the Company. Resignation shall become effective upon its acceptance by the Board of Governors; provided, however, that if the Board of Governors has not acted thereon within ten (10) days from the date of its delivery, the resignation shall upon the tenth day be deemed accepted.

5.12 Compensation. By resolution of the Board of Governors, each Governor shall be paid his necessary expenses, if any, of attendance at each meeting of the Board of Governors and may be paid a stated salary as Governor or a fixed sum for attendance at each meeting of the Board of Governors or both. No such payment shall preclude any Governor from serving the Company in any other capacity and receiving compensation therefor.

5.13 Presumption of Assent. A Governor of the Company who is present at a meeting of the Board of Governors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Governor who voted in favor of such action.

5.14 Liability of Governors. In addition to any other liabilities, a Governor who votes for or assents to any distribution contrary to law or contrary to any restrictions contained in the Articles of Organization or in the Operating Agreement shall, unless he complies with the standard provided in this Article for the performance of the duties of the Governors, be liable to the Company, jointly and severally with all other Governors so voting or assenting, for the amount or the value of such distribution in excess of the amount of such distribution which could have been made without a violation of law or any restrictions in the Articles of Organization or the Operating Agreement. Any Governor against whom a claim shall be asserted under or pursuant to this Section for the making of a distribution and who shall be held liable thereon shall be entitled to contribution from the members who accepted or received any such distribution, knowing such distribution to have been made in violation of law or any restrictions in the Articles of Organization or Operating Agreement, in proportion to the amounts received by them respectively. Any Governor against whom a claim shall be asserted under or pursuant to this Section shall be entitled to contribution from any other Governors who voted for or assented to the action upon which the claim is asserted and who did not comply with the standard provided in this Article for the performance of the duties of a Governor.

5.15 Conflict of Interest. No contract or other transaction between the Company and one or more of its Governors or any other company, firm, association, or entity in which one or more of the Governors of the Company are governors or officers or are financially interested is either void or voidable because of such relationship or interest or because such Governor or Governors are present at the meeting of the Board of Governors or a committee thereof which authorizes, approves, or ratifies such contract or transaction or because his or their votes are counted for such purposes if:

- (a) the fact of such relationship or interest is disclosed or known to the Board of Governors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested Governors;
- (b) the fact of such relationship or interest is disclosed or known to the members entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent, in which vote or consent such interested Governors may participate to the extent that they are also members; or
- (c) the contract or transaction is fair and reasonable to the Company.

Common or interested Governors may be counted in determining the presence of a quorum at a meeting of the Board of Governors or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

## ARTICLE VI

### RIGHTS AND DUTIES OF OFFICERS

6.01 Number. The officers of the Company shall be a President, a Vice President, a Secretary, and a Treasurer, each of whom shall be elected by a vote of the Board of Governors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by a majority vote of the Board of Governors. Any two or more offices may be held by the same person, except for President and a Vice President, if any.

6.02 Election and Term of Office. The officers of the Company to be elected by the Board of Governors shall be elected annually by the Board of Governors at the first meeting of the Board of Governors held after each annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.



6.03 Removal. Any officer or agent may be removed by a majority vote of the Board of Governors whenever in its judgment the best interests of the Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

6.04 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by a majority vote of the Board of Governors for the unexpired portion of the term.

6.05 Resignation. Any officer may resign at any time by delivering written notification thereof to the President or Secretary of the Company. Resignation shall become effective upon its acceptance by the Board of Governors; provided, however, that if the Board of Governors has not acted thereon within ten (10) days from the date of its delivery, the resignation shall upon the tenth day be deemed accepted.

6.06 President. The President shall be the principal executive officer of the Company and, subject to the supervision and control of the Board of Governors, shall have general active management of the business of the Company. He shall, when present, preside at all meetings of the members and of the Board of Governors. He may sign, with the Secretary or any other officer of the Company thereunto authorized by the Board of Governors, certificates for membership interests of the Company and deeds, mortgages, bonds, contracts, or other instruments which the Board of Governors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Governors or by these Bylaws to some other officer or agent of the Company, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Governors from time to time. The President shall vote all interests owned by the Company in another Company, corporation, or other entity, unless the Board of Governors expressly delegates the authority to vote such interests to some other officer or person.

6.07 Vice President. In the absence of the President or in the event of his death, inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice President may sign, with the Secretary or any other officer of the Company thereunto authorized by the Board of Governors, certificates for membership interests of the Company; and shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Governors.

6.08 Secretary. The Secretary shall:

- (a) keep the minutes of the proceedings of the members and of the Board of Governors in one or more books provided for that purpose;
- (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;

- (c) be custodian of the corporate records and of the seal of the Company and see that the seal of the Company is affixed to all documents the execution of which on behalf of the Company under its seal is duly authorized;
- (d) keep a register of the post office address of each member and assignee of financial rights, if any, which shall be furnished to the Secretary by such member or assignee of financial rights, as applicable;
- (e) sign with the President, or a Vice President, certificates for membership interests of the Company, as authorized by the resolution of the Board of Governors;
- (f) have general charge of the membership interest transfer books of the Company; and
- (g) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Governors.

6.09 Treasurer. The Treasurer shall:

- (a) have charge and custody of and be responsible for all funds and securities of the Company;
- (b) receive and give receipts for moneys due and payable to the Company from any source whatsoever, and deposit all such moneys in the name of the Company in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article VII of these Bylaws;
- (c) pay all local, state, and federal tax obligations and liabilities of the Company as they come due; and
- (d) in general, perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Governors or the North Dakota Act.

If required by the Board of Governors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Governors shall determine.

6.10 Salaries. The salaries of the officers shall be fixed from time to time by the Board of Governors and no officer shall be prevented from receiving such salary by reason of the fact that he is also a Governor of the Company.

6.11 Indemnity of the Governors, Officers, Employees and Other Agents. The Company shall indemnify the governors and officers and make advances for expenses to the maximum extent permitted under Section 10-32.1-40 of the North Dakota Act. The Company shall indemnify its

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employees and other agents who are not governors and officers to the fullest extent permitted by law, provided that such indemnification in any given situation is approved by the Majority Interest.

## ARTICLE VII

### RIGHTS AND OBLIGATIONS OF MEMBERS

7.01 Limitation of Liability. Each Member's liability shall be limited as set forth in this Operating Agreement, the North Dakota Act and other applicable law.

7.02 Company Debt Liability. A Member will not be personally liable for any debts or losses of the Company beyond his respective Capital Contributions and any obligation of the Member under Sections 9.01 or 9.02 hereof to make Capital Contributions, except as provided in Section 7.07 hereof herein or as otherwise required by law.

7.03 List of Members. Upon written request of any Member, the President shall provide a list showing the names, addresses and Membership Interests and Economic Interests of all Members.

7.04 Approval of Sale of All Assets. The Members shall have the right, by the affirmative vote of Members holding at least two-thirds of all voting Capital Interests to approve the sale, exchange, or other disposition of all, or substantially all, of the Company's assets (other than in the ordinary course of the Company's business) which is to occur as part of a single transaction or plan.

7.05 Company Books. In accordance with Section 10.09 hereof, the Board of Governors shall maintain and preserve, during the term of the Company, and for six (6) years thereafter, all accounts, books, and other relevant Company documents. Upon reasonable request, each Member and Economic Interest Owner shall have the right, during ordinary business hours, to inspect and copy such Company documents at the requesting Member's and Economic Interest Owner's expense.

7.06 Priority and Return of Capital. Except as may be expressly provided in Article X, no Member or Economic Interest Owner shall have priority over any other Member or Economic Interest Owner, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

7.07 Liability of a Member to the Company.

(a) A Member who rightfully receives the return in whole or in part of its contribution (as defined in Section 10-32.1-28 of the North Dakota Act) is nevertheless liable to the Company only to the extent now or hereafter provided by the North Dakota Act.

(b) A Member who receives a distribution made by the Company which is either in violation of this Operating Agreement or the North Dakota Act, is liable to the Company for a period of six years after such distribution for the amount of the distribution.

## ARTICLE VIII

### MEETINGS OF MEMBERS

8.01 Annual Meeting. The annual meeting of the Members shall be held on the first Monday in July or at such other time as shall be determined by resolution of the Members, commencing with the year 2021, for the purpose of the transaction of such business as may come before the meeting.

8.02 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or the Board of Governors or by any Member or Members holding at least 10% of the voting Capital Interests.

8.03 Place of Meetings. The Members may designate any place, either within or outside the State of North Dakota, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the Company in the State of North Dakota.

8.04 Notice of Meetings. Except as provided in Section 8.05 hereof, written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than 10 nor more than 30 days before the date of the meeting, either personally or by mail, by or at the direction of the President or the Board of Governors or person calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Company, with postage thereon prepaid.

8.05 Meeting of all Members. If all of the Members shall meet at any time and place, either within or outside of the State of North Dakota, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

8.06 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose,

the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

8.07 Quorum. Members holding at least fifty percent (50.0%) of all Capital Interests, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Capital Interests so represented may adjourn the meeting from time to time for a period not to exceed 60 days without further notice. However, if the adjournment is for more than 60 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

8.08 Manner of Acting. If a quorum is present, the affirmative vote by the Majority Interest shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the North Dakota Act, by the Articles of Organization, or by this Operating Agreement ("Member Consent"). Unless otherwise expressly provided herein or required under applicable law, Members who have an interest (economic or otherwise) in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon any such matter and their Capital Interest, vote or consent, as the case may be, shall be counted in the determination of whether the requisite matter was approved by the Members.

8.09 Proxies. At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

8.10 Action by Members Without a Meeting. Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote and delivered to the Secretary of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

8.11 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

## ARTICLE IX

### CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS

9.01 Members' Capital Contributions. Each Member has contributed such amount as is set forth in Exhibit A hereto as its share of the Initial Capital Contribution.

9.02 Additional Contributions. Except as set forth in Section 9.01 hereof, no Member shall be required to make any Capital Contributions. To the extent approved by a majority vote of the Board of Governors, from time to time, the Members may be permitted to make additional Capital Contributions if and to the extent they so desire, and if by a majority vote of the Board of Governors it is determined that such additional Capital Contributions are necessary or appropriate in connection with the conduct of the Company's business (including without limitation, expansion or diversification) ("Additional Capital Contribution"). Once an Additional Capital Contribution has been approved by the Board, the Board shall deliver to each Member a notice ("Additional Capital Call Notice") of the date ("Additional Contribution Date") and the Additional Capital Contribution amount to the Members. Upon receipt of an Additional Capital Call Notice, a Member shall have the sole discretion either (i) to deliver to the Board such Member's pro-rata portion of each such Additional Capital Contribution according to such Member's Capital Interest or (ii) to decline to participate in the Additional Capital Contribution.

9.03 Delinquent Capital Contributions/Adjustment of Capital Interest. In the event that a Member notifies the Board of Governors that the Member will not make such Member's Additional Capital Contribution, or such Member does not make such Member's full Additional Capital Contribution by the Additional Contribution Date, then, with respect to such Additional Capital Call Notice, the other Members shall have the right, but not the obligation, to contribute an amount equal to the non-paying Member's portion of the Additional Capital Contribution. If more than one Member chooses to make such Additional Capital Contribution, and such Members do not otherwise agree on the amount each will contribute, then they will contribute a pro-rata portion of such Additional Capital Contribution according to their relative Capital Interest. For purposes of clarity, a Member's decision not to make such Member's Additional Capital Contribution is not a breach of this Agreement and shall not give rise to a claim against such Member by the Company or the other Members. The only effect of a Member's decision not to make such Member's Additional Capital Contribution shall be adjustment of the Member's Capital Interest pursuant to this Section 9.03 hereof. The Capital Interest of each Member shall be re-determined following each Additional Capital Contribution so that each Member's Capital Interest is equal to the ratio that such Member's aggregate Capital Contributions (calculated following each Additional Capital Contribution) bears to the aggregate Capital Contributions of all Members (calculated following each Additional Capital Contribution) to reflect their total Capital Contributions through such date, and Exhibit A shall be amended accordingly.

9.04 Capital Accounts.

(a) A separate Capital Account will be maintained for each Member. Each Member's Capital Account will be increased by (1) the amount of money contributed by such Member to the Company; (2) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to Section 752 of the Code); (3) allocations to such Member of Net Profits and Net Losses; and (4) allocations to such Member of income described in Section 705(a)(1)(B) of the Code. Each Member's Capital Account will be decreased by (1) the amount of money distributed to such Member by the Company; (2) the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to Section 752 of the Code); (3) allocations to such Member of expenditures described in Section 705(a)(2)(B) of the Code; and (4) allocations to the account of such Member of Company loss and deduction as set forth in the Treasury Regulations, taking into account adjustments to reflect fair market value.

(b) In the event of a permitted sale or exchange of a Membership Interest or an Economic Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest or Economic Interest in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 9.04 is intended to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. If in the opinion of the Company's accountants the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 9.04 should be modified in order to comply with Section 704(b) of the Code and the Treasury Regulations thereunder, then notwithstanding anything to the contrary contained in the preceding provisions of this Section 9.04, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

(d) Upon liquidation of the Company (or any Member's Membership Interest or Economic Interest Owner's Economic Interest), liquidating distributions will be made in accordance with the positive Capital Account balances of the Members and Economic Interest Owners, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs. Liquidation proceeds will be paid within sixty days of the end of the taxable year (or, if later, within 120 days after the date of the liquidation). The Company may offset damages for breach of this Operating Agreement by a Member or Economic Interest Owner whose interest is liquidated (either upon the withdrawal of the Member or the liquidation of the Company) against the amount otherwise distributable to such Member.

(e) Except as otherwise required in the North Dakota Act (and subject to Sections 9.01 and 9.02 hereof), no Member or Economic Interest Owner shall have any liability to restore all or any portion of a deficit balance in such Member's or Economic Interest Owner's Capital Account.

9.05 Withdrawal or Reduction of Members' Contributions to Capital.

(a) A Member shall not receive out of the Company's property any part of its Capital Contribution until all liabilities of the Company, except liabilities to Members on account of their Capital Contributions, have been paid or there remains property of the Company sufficient to pay them.

(b) A Member, irrespective of the nature of its Capital Contribution, has only the right to demand and receive cash in return for its Capital Contribution.

ARTICLE X

ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS, AND REPORTS

10.01 Allocations of Profits and Losses from Operations. The Net Profits and Net Losses of the Company for each fiscal year will be allocated in proportion to the Capital Accounts of the Members.

10.02 Special Allocations to Capital Accounts. Notwithstanding Section 10.01 hereof:

(a) No allocations of loss, deduction and/or expenditures described in Section 705(a)(2)(B) of the Code shall be charged to the Capital Account of any Member if such allocation would cause such Member to have a Deficit Capital Account. The amount of the loss, deduction and/or Code Section 705(a)(2)(B) expenditure which would have caused a Member to have a Deficit Capital Account shall instead be charged to the Capital Accounts of any Members which would not have Deficit Capital Accounts as a result of the allocation, in proportion to their respective Capital Contributions, or, if no such Members exist, then to the Members in accordance with their interests in Company profits pursuant to Section 10.01 hereof.

(b) In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Treasury Regulations, which create or increase a Deficit Capital Account of such Member, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially credited to the Capital Account of such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Deficit Capital Account so created as quickly as possible. It is the intent that this Section 10.02(b) be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

(c) In the event any Member would have a Deficit Capital Account at the end of any Company taxable year which is in excess of the sum of any amount that such Member is



obligated to restore to the Company under Treasury Regulations Section 1.704-1(b)(2)(ii)(c) and such Member's share of minimum gain as defined in Section 1.704-2(g)(1) of the Treasury Regulations), the Capital Account of such Member shall be specially credited with items of Membership income (including gross income) and gain in the amount of such excess as quickly as possible.

(d) Notwithstanding any other provision of this Section 10.02, if there is a net decrease in the Company's minimum gain as defined in Treasury Regulation Section 1.704-2(d) during a taxable year of the Company, then, the Capital Accounts of each Member shall be allocated items of income (including gross income) and gain for such year (and if necessary for subsequent years) equal to that Member's share of the net decrease in Company minimum gain. This Section 10.02(d) is intended to comply with the minimum gain chargeback requirement of Section 1.704-2 of the Treasury Regulations and shall be interpreted consistently therewith. If in any taxable year that the Company has a net decrease in the Company's minimum gain, if the minimum gain chargeback requirement would cause a distortion in the economic arrangement among the Members and it is not expected that the Company will have sufficient other income to correct that distortion, the Board of Governors may in their discretion (and shall, if requested to do so by a Member) seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Treasury Regulation Section 1.704-2(f)(4).

(e) Items of Company loss, deduction and expenditures described in Section 705(a)(2)(B) which are attributable to any nonrecourse debt of the Company and are characterized as partner (Member) nonrecourse deductions under Section 1.704-2(i) of the Treasury Regulations shall be allocated to the Members' Capital Accounts in accordance with said Section 1.704-2(i) of the Treasury Regulations.

(f) Beginning in the first taxable year in which there are allocations of "nonrecourse deductions" (as described in Section 1.704-2(b) of the Treasury Regulations) such deductions shall be allocated to the Members in accordance with, and as a part of, the allocations of Company profit or loss for such period.

(g) In accordance with Section 704(c)(1)(A) of the Code and Section 1.704-1(b)(2)(iv)(d)(3) of the Treasury Regulations, if a Member contributes property with a fair market value that differs from its adjusted basis at the time of contribution, income, gain, loss and deductions with respect to the property shall, solely for federal income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company and its fair market value at the time of contribution.

(h) Pursuant to Section 704(c)(1)(B) of the Code, if any contributed property is distributed by the Company other than to the contributing Member within seven years of being contributed, then, except as provided in Section 704(c)(2) of the Code, the contributing Member shall be treated as recognizing gain or loss from the sale of such property in an amount equal to the gain or loss that would have been allocated to such Member under Section 704(c)(1)(A) of the Code if the property had been sold at its fair market value at the time of the distribution.

(i) In the case of any distribution by the Company to a Member or Economic Interest Owner, such Member or Economic Interest Owner shall be treated as recognizing gain in an amount equal to the lesser of:

(1) the excess (if any) of (A) the fair market value of the property (other than money) received in the distribution over (B) the adjusted basis of such Member's Membership Interest or Economic Interest Owner's Economic Interest in the Company immediately before the distribution reduced (but not below zero) by the amount of money received in the distribution, or

(2) the Net Precontribution Gain (as defined in Section 737(b) of the Code) of the Member or Economic Interest Owner. The Net Precontribution Gain means the net gain (if any) which would have been recognized by the distributee Member or Economic Interest Owner under Section 704(c)(1)(B) of the Code if all property which (1) had been contributed to the Company within five years of the distribution, and (2) is held by the Company immediately before the distribution, had been distributed by the Company to another Member or Economic Interest Owner. If any portion of the property distributed consists of property which had been contributed by the distributee Member or Economic Interest Owner to the Company, then such property shall not be taken into account under this Section 10.02(i) and shall not be taken into account in determining the amount of the Net Precontribution Gain. If the property distributed consists of an interest in an entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such entity after such interest had been contributed to the Company.

(j) In connection with a Capital Contribution of money or other property (other than a de minimis amount) by a new or existing Member or Economic Interest Owner as consideration for an Economic Interest or Membership Interest, or in connection with the liquidation of the Company or a distribution of money or other property (other than a de minimis amount) by the Company to a retiring Member or Economic Interest Owner as consideration for an Economic Interest or Membership Interest, the Capital Accounts of the Members shall be adjusted to reflect a revaluation of Company property (including intangible assets) in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f). If under Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations, Company property that has been revalued is properly reflected in the Capital Accounts and on the books of the Company at a book value that differs from the adjusted tax basis of such property, then depreciation, depletion, amortization and gain or loss with respect to such property shall be shared among the Members in a manner that takes account of the variation between the adjusted tax basis of such property and its book value, in the same manner as variations between the adjusted tax basis and fair market value of property contributed to the Company are taken into account in determining the Members' shares of tax items under Section 704(c) of the Code.

(k) All recapture of income tax deductions resulting from sale or disposition of Company property shall be allocated to the Member or Members to whom the deduction that gave



rise to such recapture was allocated hereunder to the extent that such Member is allocated any gain from the sale or other disposition of such property.

(l) Any credit or charge to the Capital Accounts of the Members pursuant to Sections 10.02(b), (c) and/or (d) hereof shall be taken into account in computing subsequent allocations of profits and losses pursuant to Section 10.01 hereof, so that the net amount of any items charged or credited to Capital Accounts pursuant to Sections 10.01 and 10.02 hereof shall to the extent possible, be equal to the net amount that would have been allocated to the Capital Account of each Member pursuant to the provisions of this Article IX if the special allocations required by Sections 10.02(b), (c) and/or (d) hereof had not occurred.

10.03 Distributions. Except as provided in Section 9.04(d), all distributions of cash or other property shall be made to the Members as follows:

Except as provided in Section 10.04 hereof, all distributions of Distributable Cash and property shall be made at such time as determined by the Board of Governors. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to this Section 10.03.

10.04 Limitation Upon Distributions. No distribution shall be declared and paid unless, after the distribution is made, the assets of the Company are in excess of all liabilities of the Company, except liabilities to Members on account of their contributions.

10.05 Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis using the accrual method of accounting. It is intended that the Company will elect those accounting methods which provide the Company and the Members with the greatest tax benefits.

10.06 Interest On and Return of Capital Contributions. No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution, except as otherwise specifically provided for herein.

10.07 Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.

10.08 Accounting Period. The Company's accounting period shall be the calendar year.

10.09 Records, Audits, and Reports. At the expense of the Company, the Board of Governors shall maintain records and accounts of all operations and expenditures of the Company. At a minimum, the Company shall keep at its principal executive office of the Company the following records:

(a) A current list of the full name and last known business, residence, or mailing address of each Member, Economic Interest Owner, Officer, and Governor, both past and present;

(b) A copy of the Articles of Organization of the Company and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

(c) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the four most recent years;

(d) Copies of the Company's currently effective written Operating Agreement, copies of any writings permitted or required with respect to a Member's obligation to contribute cash, property or services, and copies of any financial statements of the Company for the three most recent years;

(e) Minutes of every annual, special, and court-ordered meeting;

(f) Any written consents obtained from Members for actions taken by Members without a meeting.

10.10 Returns and Other Elections. The President shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. The President shall timely file with the North Dakota State Tax Commissioner the Company's annual North Dakota return.

All elections permitted to be made by the Company under federal or state laws shall be made by the President in his/her sole discretion, provided that the President shall make any tax election requested by the Majority Interest.

## ARTICLE XI

### TRANSFERABILITY

11.01 General. Except as otherwise specifically provided herein neither a Member nor an Economic Interest Owner shall have the right to:

(a) sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration (collectively, "sell"),

(b) gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy) all or any part of its Membership Interest or Economic Interest.

11.02 Right of First Refusal.

(a) In the event a Selling Member desires to sell all or any portion of its Membership Interest or Economic Interest in the Company to a third party purchaser, the Selling Member shall first obtain from such third party purchaser a bona fide written offer to purchase such interest, stating the terms and conditions upon which the purchase is to be made and the consideration offered therefor. The Selling Member shall give written notification to the remaining Members, by certified mail or personal delivery, of its intention to so transfer such interest, furnishing to the remaining Members a copy of the aforesaid written offer to purchase such interest.

(b) The remaining Members, and each of them shall, on a basis pro rata to their Capital Interests (voting having a right of first refusal as to voting and non-voting having a right of first refusal as to non-voting) or on a basis pro rata to the Capital Interests of those remaining Members exercising their right of first refusal, have the right to exercise a right of first refusal to purchase all (but not less than all) of the interest proposed to be sold by the Selling Member upon the same terms and conditions as stated in the aforesaid written offer to purchase by giving written notification to the Selling Member, by certified mail or personal delivery, of their intention to do so within twenty (20) days after receiving written notice from the Selling Member. The failure of all the remaining Members (or any one or more of them) to so notify the Selling Member of their desire to exercise this right of first refusal within said twenty (20) day period shall result in the termination of the right of first refusal and the Selling Member shall be entitled to consummate the sale of its interest in the Company, or such portion of its interest, if any, with respect to which the right of first refusal has not been exercised, to such third party purchaser.

In the event the remaining Members (or any one or more of the remaining Members) give written notice to the Selling Member of their desire to exercise this right of first refusal and to purchase all of the Selling Member's interest in the Company which the Selling Member desires to sell upon the same terms and conditions as are stated in the aforesaid written offer to purchase, the remaining Members shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within twenty (20) days after receipt of written notification from the Selling Member of the third party offer to purchase.

(c) In the event of either the purchase of the Selling Member's interest in the Company by a third party purchaser or the gift of an interest in the Company (including an Economic Interest), and as a condition to recognizing one or more of the effectiveness and binding nature of any such sale or gift and (subject to Section 11.03 hereof, below) substitution of a new Member as against the Company or otherwise, the remaining Members may require the Selling Member or Gifting Member and the proposed purchaser, donee or successor-in-interest, as the case may be, to execute, acknowledge and deliver to the remaining Members such instruments of transfer, assignment and assumption and such other certificates, representations and documents,

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and to perform all such other acts which the remaining Members may deem necessary or desirable to:

(i) constitute such purchaser as a Member, donee or successor-in-interest as such;

(ii) confirm that the person desiring to acquire an interest or interests in the Company, or to be admitted as a Member, has accepted, assumed and agreed to be subject and bound by all of the terms, obligations and conditions of the Operating Agreement, as the same may have been further amended (whether such Person is to be admitted as a new Member or will merely be an Economic Interest Owner);

(iii) preserve the Company after the completion of such sale, transfer, assignment, or substitution under the laws of each jurisdiction in which the Company is qualified, organized or does business;

(iv) maintain the status of the Company as a partnership for federal tax purposes; and

(v) assure compliance with any applicable state and federal laws including securities laws and regulations.

(d) Any sale or gift of a Membership Interest or Economic Interest or admission of a Member in compliance with this Article XI shall be deemed effective as of the last day of the calendar month in which the remaining Members' consent thereto was given, or, if no such consent was required pursuant to Section 11.02(e) hereof, then on such date that the donee or successor-in-interest complies with this Article. The Selling Member agrees, upon request of the remaining Members, to execute such certificates or other documents and perform such other acts as may be reasonably requested by the remaining Members from time to time in connection with such sale, transfer, assignment, or substitution. The Selling Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article XI.

(e) Subject to Section 11.03(c) hereof, a Transferring Member may gift all or any portion of its Membership Interest and Economic Interest without regard to Sections 11.02(a) and (b) hereof provided that the donee or other successor-in-interest (collectively, "donee") complies with Section 11.02(c) hereof and further provided that the donee is either the Gifting Member's spouse, former spouse, or lineal descendent (including adopted children). In the event of the gift of all or any portion of a Gifting Member's Membership Interest or Economic Interest to one or more donees who are under 25 years of age, one or more trusts shall be established to hold the gifted interest(s) for the benefit of such donee(s) until all of the donee(s) reach the age of at least 25 years.

#### 11.03 Transferee Not Member in Absence of Unanimous Consent.

(a) Notwithstanding anything contained herein to the contrary (including, without limitation, Section 11.02 hereof), if all of the remaining Members do not approve by unanimous written consent the proposed sale or gift of the Transferring Member's Membership Interest or Economic Interest to a transferee or donee which is not a Member immediately prior to the sale or gift, then the proposed transferee or donee shall have no right to participate in the management of the business and affairs of the Company or to become a Member. The transferee or donee shall be merely an Economic Interest Owner. No transfer of a Member's interest in the Company (including any transfer of the Economic Interest or any other transfer which has not been approved by unanimous written consent of the Members) shall be effective unless and until written notice (including the name and address of the proposed transferee or donee and the date of such transfer) has been provided to the Company and the non-transferring Member(s).

(b) Upon and contemporaneously with any sale or gift of a Transferring Member's Economic Interest in the Company which does not at the same time transfer the balance of the rights associated with the Economic Interest transferred by the Transferring Member (including, without limitation, the rights of the Transferring Member to participate in the management of the business and affairs of the Company), the Company shall purchase from the Transferring Member, and the Transferring Member shall sell to the Company for a purchase price of \$100.00, all remaining rights and interests retained by the Transferring Member which immediately prior to such sale or gift were associated with the transferred Economic Interest.

(c) The restrictions on transfer contained in this Section 11.03 are intended to comply (and shall be interpreted consistently) with any restrictions on transfer set forth in the North Dakota Act.

## ARTICLE XII

### ADDITIONAL MEMBERS

From the date of the formation of the Company, any Person or Entity acceptable to the Members by a majority vote by the Majority Interest may become a Member in this Company either by the issuance by the Company of Membership Interests for such consideration as the Members by a majority vote by the Majority Interest shall determine, or as a transferee of a Member's Membership Interest or any portion thereof, subject to the terms and conditions of this Operating Agreement. No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Board of Governors may, at its option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, income and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Treasury Regulations promulgated thereunder.

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## ARTICLE XIII

### DISSOLUTION AND TERMINATION

#### 13.01 Dissolution.

(a) The Company shall be dissolved upon the occurrence of any of the following events:

(i) when the period fixed for the duration of the Company shall expire pursuant to Section 2.05 hereof;

(ii) by the unanimous written agreement of all Members;

(iii) upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of the last Member or occurrence of any other event which terminates the continued membership of the last Member in the Company (a "Withdrawal Event"); or

(iv) as otherwise provided in chapter 10-32.1, N.D.C.C.

(b) Notwithstanding anything to the contrary in this Operating Agreement, if a Member or Members owning voting Capital Interests which in the aggregate constitute not less than two-thirds of the voting Capital Interests vote to dissolve the Company at a meeting of the Company pursuant to Article VIII, then all of the Members shall agree in writing to dissolve the Company as soon as possible (but in any event not more than 20 days) thereafter.

(c) As soon as possible following the occurrence of any of the events specified in this Section 13.01 effecting the dissolution of the Company, the appropriate representative of the Company shall execute a notice of dissolution in such form as shall be prescribed by the North Dakota Secretary of State and file same with the North Dakota Secretary of State's office.

(d) If a Member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the Member's rights for the purpose of settling his estate or administering his property.

(e) Except as expressly permitted in this Operating Agreement, a Member shall not voluntarily resign or take any other voluntary action which directly causes a Withdrawal Event. Unless otherwise approved by a majority vote by the Majority Interest, a Member who resigns (a "Resigning Member") or whose Membership Interest is otherwise terminated by virtue of a Withdrawal Event, regardless of whether such Withdrawal Event was the result of a voluntary act by such Member, shall not be entitled to receive any distributions to which such Member would not have been entitled had such Member remained a Member. Except as otherwise expressly

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provided herein, a Resigning Member shall become an Economic Interest Owner. Damages for breach of this Section 13.01(e) shall be monetary damages only (and not specific performance), and such damages may be offset against distributions by the Company to which the Resigning Member would otherwise be entitled.

13.02 Effect of Filing of Notice of Dissolution. Upon the filing by the North Dakota Secretary of State of a notice of dissolution, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until articles of dissolution and termination have been filed with the Secretary of State or until a decree dissolving the Company has been entered by a court of competent jurisdiction.

13.03 Winding Up, Liquidation and Distribution of Assets.

(a) Upon dissolution, an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Board of Governors shall immediately proceed to wind up the affairs of the Company.

(b) If the Company is dissolved and its affairs are to be wound up, the Board of Governors shall:

(i) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Board of Governors may determine to distribute any assets to the Members in kind),

(ii) Allocate any profit or loss resulting from such sales to the Members' and Economic Interest Owners' Capital Accounts in accordance with Article X hereof,

(iii) Discharge all liabilities of the Company, including liabilities to Members and Economic Interest Owners who are creditors, to the extent otherwise permitted by law, other than liabilities to Members and Economic Interest Owners for distributions, and establish such Reserves as may be reasonably necessary to provide for contingencies and foreseeable liabilities of the Company (for purposes of determining the Capital Accounts of the Members and Economic Interest Owners, the amounts of such Reserves shall be deemed to be an expense of the Company),

(iv) Distribute the remaining assets in the following order:

(1) If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Members and

Economic Interest Owners shall be adjusted pursuant to the provisions of Article X and Sections 9.03 and 9.04 hereof to reflect such deemed sale.

(2) The positive balance (if any) of each Member's and Economic Interest Owner's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs) shall be distributed to the Members, either in cash or in kind, as determined by the Board of Governors, with any assets distributed in kind being valued for this purpose at their fair market value as determined pursuant to Section 13.03(b)(1) hereof. Any such distributions to the Members in respect of their Capital Accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations.

(c) Notwithstanding anything to the contrary in this Operating Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

(d) Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

(e) The Board of Governors shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

13.04 Articles of Dissolution and Termination. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Members, articles of dissolution and termination shall be executed in duplicate and verified by the person signing the articles, which articles shall set forth the information required by the North Dakota Act. Duplicate originals of such articles of dissolution and termination shall be delivered to the North Dakota Secretary of State.

13.05 Effect of Filing of Articles of Dissolution and Termination. Upon the filing of the articles of dissolution and termination, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the North Dakota Act. The Board of Governors shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

13.06 Return of Contribution Nonrecourse to Other Members. Except as provided by law or as expressly provided in this Operating Agreement, upon dissolution, each Member shall look

solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members, such Member or Members shall have no recourse against any other Member.

## ARTICLE XIV

### MISCELLANEOUS PROVISIONS

14.01 Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Operating Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Operating Agreement. Except as otherwise provided herein, any such notice shall be deemed to be given three business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid.

14.02 Books of Account and Records. Proper and complete records and books of account shall be kept or shall be caused to be kept by the Board of Governors in which shall be entered fully and accurately all transactions and other matters relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such books and records shall be maintained as provided in Section 10.09 hereof. The books and records shall at all times be maintained at the principal executive office of the Company and shall be open to the reasonable inspection and examination of the Members, Economic Interest Owners or their duly authorized representatives during reasonable business hours.

14.03 Application of North Dakota Law. This Operating Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of North Dakota, and specifically the North Dakota Act.

14.04 Waiver of Action for Partition. Each Member and Economic Interest Owner irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

14.05 Amendments. This Operating Agreement may not be amended except by the unanimous agreement of all of the Members.

14.06 Execution of Additional Instruments. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

14.07 Construction. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

14.08 Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

14.09 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

14.10 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

14.11 Severability. If any provision of this Operating Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

14.12 Heirs, Personal Representatives, Successors, and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, personal representatives, successors and assigns.

14.13 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company.

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

14.15 Investment Representations. The undersigned Members and Economic Interest Owners, if any, understand (1) that the Membership Interests and Economic Interests evidenced by this Operating Agreement have not been registered under the Securities Act of 1933, the North Dakota Securities Act of 1951 or any other state securities laws (the "Securities Acts") because the Company is issuing these Membership Interests and Economic Interests in reliance upon the exemptions from the registration requirements of the Securities Acts providing for issuance of securities not involving a public offering, (2) that the Company has relied upon the fact that the Membership Interests and Economic Interests are to be held by each Member for investment, and (3) that exemption from registration under the Securities Acts would not be available if the Membership Interests and Economic Interests were acquired by a Member with a view to distribution.

Accordingly, each Member and Economic Interest Owner hereby confirms to the Company that such Member and Economic Interest Owner is acquiring the Membership Interests and Economic Interests for such Member's and Economic Interest Owner's own account, for investment and not with a view to the resale or distribution thereof. Each Member and Economic Interest Owner agrees not to transfer, sell or offer for sale any portion of the Membership Interests or Economic Interests unless there is an effective registration or other qualification relating thereto under the Securities Act of 1933 and under any applicable state securities laws or unless the holder of Membership Interests or Economic Interests delivers to the Company an opinion of counsel, satisfactory to the Company, that such registration or other qualification under such Act and applicable state securities laws is not required in connection with such transfer, offer or sale. Each Member and Economic Interest Owner understands that the Company is under no obligation to register the Membership Interests or Economic Interests or to assist such Member or Economic Interest Owner in complying with any exemption from registration under the Securities Acts if such Member or Economic Interest Owner should at a later date wish to dispose of the Membership Interest or Economic Interest. Furthermore, each Member realizes that the Membership Interests and Economic Interests are unlikely to qualify for disposition under Rule 144 of the Securities and Exchange Commission unless such Member is not an "affiliate" of the Company and the Membership Interest or Economic Interest has been beneficially owned and fully paid for by such Member or Economic Interest Owner for at least three years.

Prior to acquiring the Membership Interests and Economic Interests, each Member and Economic Interest Owner has made an investigation of the Company and its business and has had made available to each such Member and Economic Interest Owner all information with respect thereto which such Member needed to make an informed decision to acquire the Membership Interest or Economic Interest. Each Member and Economic Interest Owner considers himself or itself to be a person possessing experience and sophistication as an investor which are adequate for the evaluation of the merits and risks of such Member's or Economic Interest Owner's investment in the Membership Interest or Economic Interest.

### CERTIFICATE

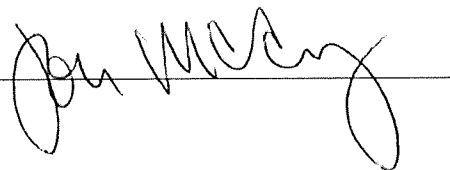
The undersigned hereby agree, acknowledge and certify that the foregoing Operating Agreement, consisting of Thirty-One (31) pages including attached Exhibit(s), constitutes the Operating Agreement of AMI SILICA LLC adopted by the Members of the Company as of July 19, 2021.

MEMBERS:

JMAC ENERGY SERVICES LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_




OPERATING AGREEMENT  
AMI SILICA LLC

A NORTH DAKOTA LIMITED LIABILITY COMPANY  
PAGE 30



Its:

ATHABASCA MATERIALS INC.

By: 

Name: Robert Beekhuizen, CEO

Its:

**EXHIBIT A**

**INITIAL CAPITAL CONTRIBUTIONS OF  
MEMBERS OF AMI SILICA LLC**

<u>Initial Member Contributions</u>	<u>Initial Capital Contribution</u>	<u>Voting Units</u>	<u>Capital Interest</u>
JMAC Energy Services LLC 1505 N. Miller St., Ste. 260 Wenatchee, WA 98801	\$10,000 in kind services	125,000	50.0%
Athabasca Minerals Inc. Canada Place, Suite 620 407 2 Street SW Calgary, AB Canada, T2P 2Y3	\$10,000 in kind services	125,000	50.0%
<b>TOTAL:</b>	<b>\$20,000</b>	<b>250,000</b>	<b>100.0%</b>



UNANIMOUS WRITTEN CONSENT

OF

MEMBERS OF AMI SILICA LLC

IN LIEU OF

ORGANIZATIONAL MEETING

The undersigned, being all of the members (the "Members") of AMI SILICA LLC, a North Dakota limited liability company (the "Company"), do hereby consent in writing pursuant to the applicable provisions of the North Dakota Uniform Limited Liability Company Act, as amended, to the adoption of the resolutions and to the Company actions hereinafter set forth and direct that they shall, in all respects, be deemed as valid Company actions as though such actions and resolutions had been duly approved and authorized at a formal organizational meeting (this "Written Consent").

1. Acceptance of Articles of Organization

RESOLVED, that the Articles of Organization of the Company, as filed with the Secretary of State of the State of North Dakota on June 2, 2021, be, and they hereby are, accepted and approved, and that the Certificate of Organization and Articles of Organization, be placed in the minute book of the Company.

FURTHER RESOLVED, that the Articles of Organization correctly state the registered office of the Company and that the person named therein as registered agent until subsequently changed by a resolution of the Company's Board of Governors (the "Board").

2. Approval of Operating Agreement

RESOLVED, that the Operating Agreement of the Company, in the form attached to this Written Consent (the "Operating Agreement"), be, and it hereby is, adopted as the Operating Agreement of the Company and that the Secretary is instructed to insert a original of such Operating Agreement, signed by the Members, in the minute book of the Company immediately following the filed photocopy of the Articles of Organization.

3. Ratification of Prior Actions

RESOLVED, that all actions taken by the promoters and organizers prior to the formation of this Company are hereby ratified, approved, confirmed, and adopted. The Company shall hereafter be bound by the activities of the promoters and organizers and shall accept the benefit of all agreements, arrangements, negotiations, and contracts that

have been negotiated on behalf of the Company, by the promoters and organizers. The organization and other activities for which the organizer was responsible have been completed. The organizer is relieved of any further duties and responsibilities in that regard, and the Company and the Members indemnify and hold harmless the organizer for any loss, liability, or expense arising from his actions or conduct in such capacity.

4. Certificate of Membership Units

RESOLVED, that the form of certificate attached to this Written Consent is adopted as the form of certificate of units of membership interest for Company; and

FURTHER RESOLVED, that the Board of this Company be, and it hereby is, authorized to issue certificates of units of membership in the form as attached to this Written Consent.

5. Initial Capital Contribution/Issuance of Units

WHEREAS, the Company has received the following offers for the purchase of its membership interests.

RESOLVED, that this Company hereby accepts the offer of JMAC Energy Services LLC, to contribute services performed and to be performed in the amount of \$10,000 in consideration of this Company issuing to JMAC Energy Services LLC 125,000 fully paid and non-assessable units of its voting membership interests.

FURTHER RESOLVED, that this Company hereby accepts the offer of Athabasca Minerals Inc., to contribute services performed and to be performed in the amount of \$ 10,000 in consideration of this Company issuing to Athabasca Minerals Inc. 125,000 fully paid and non-assessable units of its voting membership interests.

FURTHER RESOLVED, that the Company issue and deliver to those entities upon receipt of the consideration described above, pursuant to the terms of the aforesaid offers, certificates representing the units of membership of the Company, each such units to include the units originally subscribed for by the subscribers to the membership interests of the Company.

FURTHER RESOLVED, that the Board of the Company be, and it hereby is, authorized, empowered, and directed to take any and all steps, and to execute and deliver any and all instruments in connection with consummating the transaction contemplated by the aforesaid offers and in connection with carrying the foregoing resolutions into effect.

FURTHER RESOLVED, that upon issuance of the certificates and payment of the consideration the units shall be deemed to be fully paid and non-assessable.



6. Authority to Open Bank Accounts

RESOLVED, that BMO Harris Bank , Napperville IL, be, and it hereby is, selected as depository for the monies, funds, and credit of this Company and that Mark Smith and Dana Archibald be, and they hereby are, authorized and empowered to draw checks (including checks payable to their own order or to bearer) on the above depository, against the account of the Company with the depository, upon the signature of two, and to endorse in the name of the Company and receive payment of all checks, drafts, and commercial papers payable to the Company either as payee or endorsee.

FURTHER RESOLVED, that the authority hereby conferred above shall remain in full force and effect until it shall have been revoked and until a formal written notice of such revocation shall have been given to and received by BMO Harris Bank.

FURTHER RESOLVED, that the certification of a majority of the Board as to the election and appointment of persons so authorized to sign such checks and as to the signatures of such persons shall be binding on this Company.

FURTHER RESOLVED, that the Board of this Company be, and it hereby is, authorized and directed to deliver to BMO Harris Bank a copy of these resolutions properly certified by them.

7. Authority to Pay Organizational Expenses

RESOLVED, that the Board is authorized and directed to procure all limited liability company books required by the State of North Dakota or necessary in connection with the business of the Company and are further authorized and directed to pay all fees and expenses incident to and necessary for the organization of the Company, and to reimburse those persons who have advanced said fees and expenses incident to and necessary for the organization of the Company, and to reimburse those persons who have advanced said fees and expenses on behalf of the Company.

8. Professional Services

- Trisura will supply Bonding for AMI Silica – Jonathan Hope is the main contact at Trisura.
- AMI Silica is still working to secure insurance – in the interim JMAC has secured it through Assured Partners and AMI is utilizing them to get a new policy.
- Athabasca Minerals Inc. is doing the accounting for AMI Silica. AMI Silica's auditors are Grant Thornton.

9. Board of Governors

RESOLVED, that the following individuals are elected to the Board to serve at the pleasure of the Members of the Company or until their successors are elected and qualified:

Jon McCreary	Governor contemplated by Section 5.03(a) of the Company's Operating Agreement
Todd Erickson	Governor contemplated by Section 5.03(a) of the Company's Operating Agreement
Robert Beekhuizen	Governor contemplated by Section 5.03(b) of the Company's Operating Agreement
Dana Archibald	Governor contemplated by Section 5.03(b) of the Company's Operating Agreement

10. Officers

RESOLVED, that the following individuals are elected as the Company's officers to serve at the pleasure of the Board or until their successors are elected and qualified:

Robert Beekhuizen	President
Todd Erickson	Vice President
Shela Pistoresi	Secretary
Mark Smith	Treasurer

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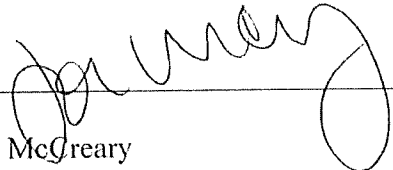
**[Signature page – Unanimous Written Consent of Members of AMI Silica LLC in Lieu of Organizational Meeting.]**

IN WITNESS WHEREOF, the undersigned Members have executed this unanimous Written Consent as of July 19, 2021, waiving all notice requirements whether provided by statute or otherwise.

MEMBERS:

JMAC ENERGY SERVICES LLC

By: \_\_\_\_\_

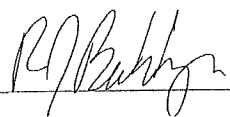


Name: Jon McCreary

Its: Owner

ATHABASCA MATERIALS INC.

By: \_\_\_\_\_



Name: Robert Beekhuizen

Its: Chief Executive Officer



**Amendment to the Operating Agreement for AMI Silica LLC, a limited liability  
company formed under the laws of North Dakota**

**February 16, 2022**

We the Members of AMI Silica LLC do hereby amend the Operating Agreement as of this fifteenth day of February, 2022. This amendment of Article XIV, Miscellaneous Provisions, shall contain the following additional terms:

JMAC: JMAC Energy Services LLC and its affiliates

AMI: Athabasca Minerals Inc. and its affiliates

Parties: AMI and JMAC excluding AMI Silica LLC.

AMI Silica: 50/50 Joint Venture Partnership between AMI and JMAC

14.16 Most Favored Buyer Pricing. JMAC shall have the right and benefit of Most Favored Buyer pricing for any sand product purchases up to 50,000 tons per month, meaning that the JMAC shall have the right to purchase sand products FOB the Taylor or Humbird transload facilities at the lowest prices available to any AMI Silica LLC customer at that time, including customers with long-term agreements or spot pricing.

14.17 Rail Car Preference. AMI Silica will provide rail cars to JMAC for shipping sand to North Dakota for transportation up to 50,000 tons per month if demand is present. Over 50,000 tons per month will be allocated as determined by AMI Silica LLC. JMAC will endeavor to return rail cars as quickly as reasonably possible.

14.18 First Right of Refusal and Terms for Debt or Equity Capital. JMAC Energy Services and its affiliates shall have the first right of refusal to provide either/both debt or equity capital to AMI Silica LLC, at terms equivalent to the most favorable available to AMI Silica LLC in bona fide offers from reputable capital sources.

14.19 Accounting and Cash Management. All accounting and cash management duties of AMI Silica LLC shall be performed by JMAC Energy Services LLC or its affiliates. These services shall be performed at cost plus 15%.

14.20 Management Fee. AMI will provide Management and Engineering Support Services to AMI Silica LLC at cost plus 15%.

14.21 Exclusive Sales Territories. JMAC shall have the exclusive right to transload sand products in the state of North Dakota.

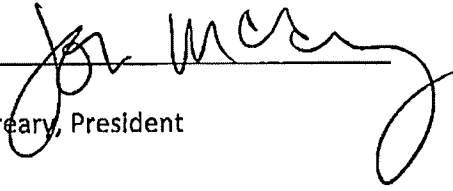
All other sections of the Operating Agreement remain in full force and effect.

The undersigned have duly executed this amendment to the Operating Agreement on the date first written above.

JMAC Energy Services LLC

By: \_\_\_\_\_

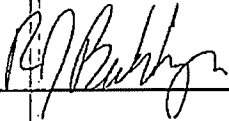
Jon McCreary, President



Athabasca Minerals Inc.

By: \_\_\_\_\_

Robert Beekhuizen, CEO





# TRISURA®

## TERMS AND CONDITIONS

February 16, 2022

Trisura Guarantee Insurance Company ("Trisura") is pleased to advise that Wilson M. Beck Insurance Services has arranged a bonding facility for AMI Silica LLC (the "Client") with the following terms and conditions:

### BONDING FACILITY:

Reclamation Bond (Jackson County):	US \$6,292,578.59
Road Use Bond (Town of Curran):	US \$250,000.00
Railcar Sublease Bond (Schlumberger):	US \$5,000,000.00
General Performance Bond (Schlumberger):	US \$2,200,000.00

Requests for bonds in excess of the Facility will be considered on a case by case basis.

### PROJECT DESCRIPTION:

Purchase and Operation of sand mine, wet sand processing facility, dry sand processing facility, sand storage facility, truck loadout, and associated facilities located at N8499 South Adams Road, Hixton, Wisconsin 54635, together with Hixton equipment. In addition, the rail loadout and associated facilities connecting the Union Pacific Railroad line located at W11296 County Line Road, Humbird, Wisconsin 54746, together with Humbird equipment. Furthermore, the rail loadout and associated facilities connecting to the Canadian National Railroad line located at N7696 N Davis Road, Taylor, Wisconsin 54659, together with Taylor equipment.

### RATES AND FEES:

Facility Administration Fee: \$5,000 (annually invoiced, starting upon bond issuance)

Annual Rate: 2.5% of bond penalty.

The annual rates are for a one year period, beginning effective date of the bond. Renewal premiums shall be payable at each anniversary date of the effective date. Any increase in the total Bond Penalty will result in an increase in the premium on a pro rata basis based on the effective date of bond. Bond premium will be considered fully earned upon issuance or renewal of the bonds.

### PRECEDENT CONDITIONS:

- Copies of their CGL policy with Sudden and Accidental Pollution Coverage, or standalone EI policy with coverage for the new assets.
- Copies of all the required insurance policies/documents as per the Rail-Car Sublease Agreement.

### REPORTING:

1. Fiscal year-end financial statements of JMAC Energy Services, LLC and Subsidiaries.
2. Annual report including statement of accounts outlining the payments made under the Rail-Car Sublease Agreement, and what amounts remain owing under the Agreement.

Upon issuance of Bond, Trisura Guarantee Insurance Company shall be notified, immediately, to any of the following occurrences:

- Any written request of change in Bond Amount
- Any significant changes to the Agreements bonded, including the reclamation plan and reclamation permits
- Any change of control of the Company
- Copies of any adverse written claims, complaints, notices or inquiries relating to the condition of its facilities and properties or compliance with Environmental Laws, which could reasonably be expected to have a Material Adverse Effect, and shall promptly cure, have dismissed or otherwise resolved to the satisfaction of Trisura any actions and proceedings relating to any such compliance with Environmental Laws, except for those being diligently contested in good faith and by appropriate proceedings
- Any significant changes to the Company's Environmental Insurance Coverage
- Any lapse in Environmental Insurance Coverage
- Any default or event of default under the Company's Credit Agreement, and of the occurrence or existence of any event or circumstance that foreseeably will become a default or event of default and the action which the Company proposes to take or has taken with respect thereto
- Any significant changes to the existing bank terms and conditions
- Any significant disputes, liens, litigation, or impairment of assets (i.e. bad debts, fixed assets)
- Such additional financial or operating reports or statements, or other information as Trisura may reasonably require, from time to time

#### **BANKING**


- Deliver within 60 days of the end of each of its fiscal quarters (excluding the fourth quarter) and within 120 days of the end of each fiscal year a copy of the bank Compliance Certificate.
- Such additional financial or operating reports or statements, or other information as Trisura may reasonably request, from time to time.

#### **INDEMNITY AND SECURITY:**

1. The following companies shall execute Trisura's Indemnity Agreement, registered in Alberta and with UCC filings in Wisconsin and North Dakota:
  - AMI Silica LLC
  - Athabasca Minerals Inc.
  - JMAC Energy Services, LLC
  - JMAC Resources Inc.
  - JMAC Corporate Services, LLC(the "Indemnitors")
2. If Schlumberger, or any other creditor, requires collateral charges or mortgages on land, plant, or equipment of AMI Silica LLC, then the same security will need to be executed and provided to Trisura, with first ranking priority.
3. Authorization letter to disclose information to Trisura, as requested by Trisura from Schlumberger from time to time.

Thank you in advance and we look forward to supporting your client's bonding needs.

**TRISURA GUARANTEE INSURANCE COMPANY**

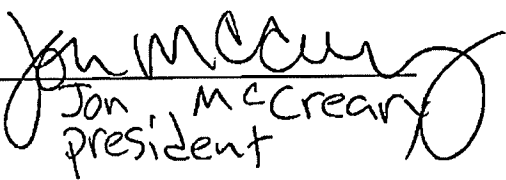
By:   
Name: Jonathan Hope  
Title: Assistant Vice President, Surety

Dated: 2022-02-16

**AMI SILICA LLC**  


By:  
Name: Robert J. Beekhuizen  
Title: President

**JMAC RESOURCES INC.**

By:   
Name: Jon McCreeary  
Title: president





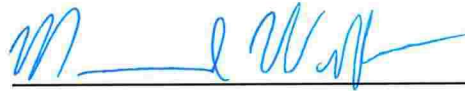
## COMMISSIONER'S CERTIFICATE

CANADA  
PROVINCE OF ALBERTA

I, **Marshal Wolff**, a Notary Public/Commissioner for Oaths in and for Alberta, am satisfied that it was necessary for the Deponent, **Todd Erickson**, to execute the Affidavit attached hereto by video technology, because it was impossible or unsafe, for medical reasons, for the deponent and the commissioner to be physically present together in accordance with public health measures currently in place by the Government of Alberta with respect to the COVID-19 pandemic.

This Certificate has been completed in accordance with the directive contained in Alberta Court of King's Bench Notice to the Profession and Public: Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During the COVID-19 Pandemic, NPP#2020-01.

IN CONFIRMATION OF the foregoing, I have hereunto subscribed my name at the City of Calgary, in the Province of Alberta, this 8<sup>th</sup> day of December, 2023.



MARSHAL WOLFF

MARSHAL WOLFF  
*Student-at-Law*

