

**LIMITED LIABILITY COMPANY OPERATING AGREEMENT**

**FOR**

**LITTLE HOGBACK COMMUNITY FOREST, LLC  
A MANAGER-MANAGED LIMITED LIABILITY COMPANY**

THIS OPERATING AGREEMENT is made by and among those persons listed on Schedule A attached hereto, all of whom have executed a copy of this Agreement.

**WITNESSETH:**

WHEREAS, certain Articles of Organization have been filed with the Vermont Secretary of State in order to form a limited liability company in accordance with the Vermont Limited Liability Company Act, and

WHEREAS, the undersigned wish to establish this Agreement, as it may from time to time be amended as provided herein, as the sole operating agreement of the Company;

NOW, THEREFORE, the parties agree as follows:

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**ARTICLE 1. Company Formation**

1.1. **FORMATION.** The Company was formed as a limited liability company under the Vermont Limited Liability Company Act by filing the Articles of Organization with the Vermont Secretary of State on the date the Articles of Organization were accepted for filing by the Secretary of State.

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1.2. **NAME.** The name of the Company shall be: Little Hogback Community Forest, L.L.C.

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1.3. **REGISTERED OFFICE.** The location of the registered office of the Company shall be: PO Box 254, Bristol, VT 05443

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1.4. **PRINCIPAL PLACE OF BUSINESS.** The location of the principal place of business of the Company shall be at 14 School Street, Bristol, Vermont or at such other place or places as the Members shall from time to time determine.

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1.5. **TERM.** The Company shall continue until the date upon which the Company is to dissolve as specified in the Articles of Organization unless dissolved by:

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- (a) Members holding a majority of Membership Units vote for dissolution; or
- (b) Any event which makes it unlawful for the business of the Company to be carried on by the Members; or
- (c) Any other event causing a dissolution of a Limited Liability Company under the laws of the State of Vermont.

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1.6. CONTINUANCE OF COMPANY. Notwithstanding the provisions of Section 1.5, in the event of an occurrence described in Section 1.5(c), if there are at least two remaining Members, said remaining Members shall have the right to continue the business of the Company. Such right can be exercised only by the unanimous vote of the remaining Members within ninety (90) days after the occurrence of an event described in Section 1.5(c). If not so exercised, the right of the Members to continue the business of the Company shall expire.

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1.7. BUSINESS PURPOSE. The purpose of the Company is to engage in any lawful act or activity for which a Limited Liability Company may be formed under the Limited Liability statutes of the State of Vermont.

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1.8. MEMBERSHIP UNITS. There shall be sixteen equal Membership Units. No Member may own more than two Membership Units.

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1.9. THE MEMBERS. The name, place of residence, and number of Membership Units of each initial member are contained in Exhibit 2 attached to this Agreement.

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1.10. ADMISSION OF ADDITIONAL MEMBERS. Except as otherwise expressly provided in the Agreement, no additional members may be admitted to the Company through issuance by the company of a new Membership Interest in the Company without the prior unanimous written consent of the Members. New Members may be admitted to the Company through acquisition of one or more of the existing Membership.

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## ARTICLE 2. Capital

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2.1. INITIAL CONTRIBUTIONS. The Members initially shall contribute to the Company capital as described in Schedule A attached to this Agreement. The agreed value of each Membership Unit is \$ 2850.

2.2. ADDITIONAL CONTRIBUTIONS. No Member shall make any additional contribution to the Company's capital except in the following situations:

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- (a) Purchase of an additional Membership Unit providing the Member will not own more than two Membership Units.

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- (b) Payment of any assessment made on each Membership Unit to cover operating costs as approved by Members holding a majority of the Membership Units according to the provisions of Section 4.6.

**ARTICLE 3. Profits, Losses and Distributions**

- 3.1. PROFITS/LOSSES. For financial accounting and tax purposes the Company's net profits or net losses shall be determined on an annual basis and shall be allocated to the Members in proportion to each Member's number of Membership Units in the Company as set forth in Schedule A as amended from time to time in accordance with Treasury Regulation 1.704-1.
- 3.2. DISTRIBUTIONS. Provided that the management reserve fund described in Section 4.5 shall be fully funded, the Members shall determine and distribute available funds annually or as they see fit based on the recommendations of the Manager provided that the distribution is approved by Members holding at least 50% of the Membership Units. Available funds, as referred to herein, shall mean the net cash of the Company available after appropriate provision for expenses and liabilities, as determined by the Manager. Distributions in liquidation of the Company or in liquidation of a Member's interest shall be made in accordance with the positive capital account balances pursuant to Treasury Regulation 1.704-1(b)(2)(ii)(b)(2). To the extent a Member shall have a negative capital account balance, there shall be a qualified income offset, as set forth in Treasury Regulation 1.704-1(b)(2)(ii)(d).

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**ARTICLE 4. Management.**

- 4.1. SELECTION OF MANAGER. Members, by a vote of the Members holding a majority of the Membership Units in the Company, as set forth in Schedule A as amended from time to time, shall elect one Manager. The initial Manager is Vermont Family Forests, PO Box 254, 14 School Street, Bristol, Vermont 05443.
- 4.2. RIGHT TO MANAGE. The Manager shall have the right to control and manage the Company consistent with any written policy established by the Membership.
- 4.3. POWERS OF MANAGER. Without limiting the generality of Section 4.2 above, the Manager shall have the power and authority, on behalf of the Company, to take the following action on behalf of the company.
  - (a) Purchase liability and other insurance to protect the company's property and business.
  - (b) Hold and own any company real and/or personal properties in the name of the Company.
  - (c) Oversee the management to ensure compliance with the easement and terms of other management agreements.

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- (d) Invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper, or other investments;
- (e) Purchase a Membership Unit on behalf of the Company pursuant to Section 7.2.
- (f) Employ on behalf of the company such persons, firms or corporations (including, without limitation, any Member or entities or persons related to, affiliated with or controlled by any Members) as the Manager, in its discretion, shall deem advisable, for or in connection with the operation and management of the business of the Company and for the performance of forestry, land management, accounting and legal services.
- (g) Recommend when and in what amounts distributions shall be made in accordance with and subject to Section 3.1 of this Agreement.
- (h) Estimate the amount needed for the Management Reserve Fund and recommend when an assessment or loan is needed pursuant to Section 4.6 of this Agreement.
- (i) File on behalf of the Company all required local, state and federal tax returns relating to the Company and make or fail to make, in its discretion, any and all elections required or permitted to be made by the IRC, or the regulations thereunder, or by the laws governing any state or local tax.
- (j) File on behalf of the Company any management or stewardship reports including the conformance report.
- (k) Execute on behalf of the Company all instruments and documents, including, without limitation: checks, drafts, loans, notes and other negotiable instruments, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's property; bills of sale; leases; and any other instruments or documents necessary, in the opinion of the Manager, to the business of the Company.

4.4. REMOVAL OF MANAGER. A manager may be removed as Manager with or without cause, but only upon the affirmative vote or written consent of Members holding a majority of the Membership Units.

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4.5. MANAGEMENT RESERVE FUND. The Manager shall be required to have a Management Reserve Fund in place at all times, and the management of the company shall be in compliance and consistent with the management reserve fund. Management Reserve Fund shall mean an amount of money to include 110 percent (110%) of the estimated budget expenses for the company between the major income stream events (such as sale of timber).

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4.6. ASSESSMENT. In the event the fund is not adequate to cover the estimated budget expenses for the Company the Manager, upon approval by Members holding a majority of Membership Units, may either assess Members an equal amount per Membership Unit to cover the expected shortfall or take out a loan to cover the expected shortfall.

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4.7. COMPANY INFORMATION. Upon request, the Manager shall supply to any member reasonably available information regarding the Company or its activities. Each Member or authorized representative shall have reasonable access to, including inspection and copying of, all books, records and materials in the Manager's possession regarding the Company or its activities. The exercise of the rights contained in this section shall be at the requesting Member's expense.

4.8. RECORDS. The Manager shall cause the Company to keep at its principal place of business the following:

- (a) a current list in alphabetical order of the full name and the last known street address and the number of Membership Units of each Member;
- (b) a copy of the Certificate of Association and the Company Operating Agreement and all amendments;
- (c) copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years;
- (d) copies of any financial statements of the limited liability company for the three most recent years.

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## ARTICLE 5. **Members**

5.1. LIMITATIONS. No act shall be taken, sum expended, decision made or obligation incurred by the Company except by the unanimous consent of all Members with respect to a matter that would make it impossible for the Company to carry on its ordinary business or which would contravene this agreement.

5.2. LIABILITY OF MEMBERS. The liability of the Members shall be limited as provided under the laws of the Vermont Limited Liability statutes.

5.3. NO POWER TO BIND. Members that are not Managers have no power individually to bind the Company.

5.4. DECISIONS OF MEMBERS. With the exception of those decisions otherwise specified in this agreement, action on a matter is approved if it received approval by Members holding a majority of the Membership Units. Approval may be given through a vote at a meeting of Members, written consent or electronic consent. . The Manager may seek direction from the Members, which shall be determined by a vote or written approval of Members holding a majority of the Membership Units.

5.5. MEETINGS. Meetings of Members may be called by the Members holding at least 33 percent (33%) of the Membership Units. The company shall send notice of the date, time place, and business to be transacted to the address as appears in the records of the Company at least thirty, but not more than sixty, days before

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the date of the meeting. A member may appoint a proxy to vote or otherwise act for the Members.

- 5.6. TELEPHONIC OR ELECTRONIC DECISIONS. Any or all Members may participate in any Members' meeting by, or through the use of, any means of communication by which all Members participating may receive each others comments.
- 5.7. REMOVAL OF MEMBERS. A Member may be removed for a breach of the obligations set forth by law, including Chapter 21 of Title 11 of the Vermont Statutes Annotated, or conduct evidencing a failure to abide by the rules for use of the Little Hogback Community Forest as set forth in Section 10.3 of this Agreement or in the easement or a rule otherwise established by the Company, or failure to pay an assessment as provided in Section 4.6 but only upon the affirmative vote or written consent of Members holding at least sixty (60) percent of the Membership Units. The removal of a Member shall not affect the Member's rights to transfer or sell the Membership Unit(s).
- 5.8. WRITTEN CONSENT. Any action permitted or required by the Act, the Articles or this Agreement to be taken by the Members may be taken without a meeting if a consent describing the action to be taken in writing (which may be executed in multiple counterparts), setting forth the action to be taken, is signed by the members and delivered to the Company for inclusion in the minutes. The record date for determining Members entitled to take action without a meeting is the first date a Member signs the consent to such action. Such consent shall have the same force and effect as the vote of the Members at a meeting and may be stated as such in any document or instrument filed with the Secretary of State of Vermont or delivered to any person or entity.

ARTICLE 6. **Bookkeeping**

- 6.1. BOOKS. The Manager shall maintain complete and accurate books of account of the Company's affairs at the Company's principal place of business. The company's accounting period shall be the calendar year.
- 6.2. MEMBER'S ACCOUNTS. The Manager shall maintain separate capital and distribution accounts for each member. Each member's capital account shall be determined and maintained in the manner set forth in Treasury Regulation 1.704-1(b)(2)(iv) and shall consist of his initial capital contribution increased by: any additional capital contribution made by him/her; credit balances transferred from his distribution account to his capital account; and decreased by: distributions to him/her in reduction of Company capital; the Member's share of Company losses if charged to his/her capital account.
- 6.3. REPORTS. The Manager shall close the books of account after the close of each calendar year, and shall prepare and send to each member a statement of such

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Member's distributive share of income and expense for income tax reporting purposes.

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ARTICLE 7. **Transfers**

7.1. TRANSFER DURING LIFETIME. Subject to Section 7.3 below, if at any time a Member has a bona fide agreement to sell, assign or otherwise dispose of all or any of his Membership Units in the Company, such Member shall provide a written notice of the agreement to Vermont Community Forests (VCF). VCF has the option to purchase Member's unit(s) as provided in this ARTICLE 7. The notice shall set forth the identity of any proposed transferee and the amount and type of consideration, if any, which the Transferring Member is to receive pursuant to the agreement.

Upon receipt of such notice, VCF shall within thirty (30) days from the date of receipt of the notice notify the transferring Member in writing of its decision whether it will exercise its option and the Purchase Option Price as determined pursuant to Section 7.5, and the purchase shall be made within thirty days after written notice of exercise of option is received by the transferring Member. If VCF shall not exercise its option or if no response is made within 30 days, the member shall have the right to sell in accord with the offer proposed.

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7.2. WITHDRAWAL. A Member who elects to withdraw as provided under Vermont law shall do so by providing written notice to the Company by certified mail. The withdrawing Member shall have comparable rights to payment for such Membership Units. The company or its assign shall within thirty (30) days provide an offer to purchase the withdrawing Member's Membership Unit, subject to any right of first refusal in Vermont Community Forests, including all information required under Section 3091 (b) of the Vermont Limited Liability Act, at a value determined according to the valuation method set out in Section 7.5 of this Agreement.

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7.3. TRANSFERS TO PERMITTED PERSONS. Anything in this Article 7 to the contrary notwithstanding, a Member shall have the right to Transfer his or her Membership Unit(s) by sale, gift, inheritance or devise to any (i) family member of the Member, or (ii) another Member, provided that such Member does not hold more than two Membership Units, without first offering his or her Membership Unit(s) to VCF.

7.4. RIGHTS OF PURCHASER OR ASSIGNEE. The purchaser or assignee shall become a Member entitled to all rights of a Member upon acquisition of a Membership Unit.

7.5. PURCHASE OPTION PRICE. To further the goals and purposes set forth herein by helping to preserve the affordability of the Membership Units to succeeding Members while taking fair account of the investment of labor and capital by

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current Members, subject to the provisions of Section 7.1 VCF shall have the right to purchase any share offered for sale at Purchase Option Price.

Purchase Option Price of a Membership Unit shall be defined as the value of the Productive Use of the land, plus the value of the Management Reserve Fund, divided by the number of Membership Units.

“Productive Use” of the land shall mean 45% of the current value of the inventory of merchantable wood products. The estimate of the inventory shall be based on the latest field sample data plus an estimate of growth since the field sample was taken. The value of the inventory shall be based on the most recent prices for products and for harvesting and management services. VCF shall provide the data used in its good faith effort to arrive at this value of the productive use.

## ARTICLE 8. **Liquidation**

- 8.1. CONTINUATION FOR INCOME TAX PURPOSES. Notwithstanding the dissolution of the Company, until termination, the business of the Company and the affairs of the Members shall continue to be governed by this Agreement and the Company shall be deemed to continue for Federal income tax purposes until its affairs have been wound up and the Company is liquidated.
- 8.2. LIQUIDATOR. Upon dissolution, a Liquidator designated by the Remaining Members shall liquidate the assets of the Company, apply and distribute the proceeds thereof as provided in Section 8.4 of this Agreement and cause the filing of the articles of dissolution as required by the Act.
- 8.3. ACCOUNTING. Upon dissolution of the Company, a full accounting of the assets and liabilities of the Company shall be promptly undertaken in accordance with generally accepted accounting principles by the independent public accountant regularly employed by the Company, and the Member(s) or the Liquidator or shall wind up the Company’s affairs by completing any business then in progress, and subject to any rights of first refusal to Vermont Community Forests, liquidating its assets to the extent practicable and applying its funds and remaining assets as set forth in Section 8.4 of this Agreement.
- 8.4. DISTRIBUTIONS. Upon dissolution of the company and the winding up of its affairs the funds and assets of the Company remaining after the completion of Company Business, the liquidation of Company assets, shall be applied and distributed by the later of the close of the taxable year of liquidation or ninety (90) days after the liquidation as follows:
  - (a) the Company shall pay its creditors, including Members who are creditors, to the extent permitted by law, and in the order of priority provided by law, in satisfaction of liabilities of the Company other than liabilities for distributions to Members;

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- (b) the Company shall establish reserves, which are deemed by the Manager or Liquidator, as the case may be, as reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company arising out of or in connection with the Company or its liquidations. These reserves shall be held by the Members or Liquidator for such period as they shall deem advisable and the balance thereafter remaining shall be distributed in the manner proved below;
- (c) the Company shall make any distribution necessary to satisfy liabilities to Members or former Members for any unpaid interim or withdrawal distributions;
- (d) the Company shall distribute to the Members, the balance, if any, in their Capital Accounts, in proportion to their respective balances; and
- (e) the Company shall divide the balance by the number of Membership Units and distribute it to Members according to their Membership Units.

8.5. LIQUIDATING TRUST. Distributions pursuant to this Section may be distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owned the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the Company. The assets of any such trust shall be distributed to the Members by the later of the close of the taxable year or liquidation or within ninety (90) days after liquidation in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to this Agreement.

**ARTICLE 9. Loans to the Company**

9.1. LOANS FROM MEMBERS. Nothing contained herein shall prevent any Member from making a loan or loans to the Company, and any amount so loaned shall be considered a debt of the Company payable in accordance with its terms and not a capital contribution to the Company. Unless otherwise expressly provided in the documentation evidencing the loan, the loan and the interest thereon shall be payable only out of the assets of the company and, unless expressly agreed in writing by such Member, no Member shall have any personal liability for the loan. Any loan by a Member to the Company shall bear interest at the prime rate quoted in the Wall Street Journal as the prevailing prime rate or at a mutually agreed upon lower rate.

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ARTICLE 10. **General**

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- 10.1. **SOLE OPERATING AGREEMENT.** This written Agreement embodies the only operation agreement of the Company and the entire understanding and agreement of the parties relating to the subject matter of the Agreement and no promise, condition, representation or warranty, expressed or implied, not herein set forth shall bind any party with respect thereto.
- 10.2. **AMENDMENT.** None of the terms and conditions of this Agreement may be amended, changed, modified, waived or cancelled, except by an agreement of the Members holding a majority interest of the Membership Units. A waiver at any time of compliance with any of the terms and conditions of this Agreement shall not be considered a modification, cancellation or waiver of such terms and conditions or of any preceding or succeeding breach hereof unless expressly so stated.
- 10.3. **MANAGEMENT OF FOREST.** The uses of the forest land held by Little Hogback Community Forest, LLC, are limited by the terms of a conservation easement held by the Vermont Land Trust, or its designee. The property shall be managed according to a properly approved management plan. Any tree cutting, crop tree release, road and trail building or other management and extraction activities shall be in accordance with the plan and approved by the Manager. The rights in the land are also subject to a covenant running in favor of Vermont Community Forests providing them with the option to repurchase the rights. The Company may establish rules to restrict and direct use of the property.

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### Schedule A

Pursuant to ARTICLE 2, the Members' initial contribution to the Company capital is stated to be \$2850 per Membership Unit. The initial Members, Membership Units and contributions are as follows:

Name	Membership Units	Capital Contribution
Mischul Brownstone	1	\$2850
Donald Joseph Dewees and Martha Potter Dewees	1	\$2850
Laura Farrell and Joe Roman	1	\$2850
Patricia A. Hannaford Regional Technical Center	1	\$2850
Richard E. Hotchkin and Toni D. Hotchkin	1	\$2850
Lee Kauppila	1	\$2850
Cory Malzac and Cindy Growney	1	\$2850
Nancy Marcus and George Marcus	1	\$2850
Kathryn McEachen	1	\$2850
Bill McKibben and Sus Halpern	1	\$2850
John P. McNerny and Kimberly A. Clark	1	\$2850
Joshua Sky and Natasha Sky	1	\$2850
Roger Wallace and Susan M. DeSimone	1	\$2850
William Whitney and Carla Klop	1	\$2850
Martha Heidi Willis	1	\$2850
Matthew Witten	1	\$2850

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