

Notice of Opportunity to Opt Out of Tribal LLC That Will Make Distributions of a Portion of the Funds in the Purdue Bankruptcy

**Please review the information below.
Opt-Out Response Must Be Submitted by June 15, 2021.**

Opportunity to Opt Out: If a Tribe does not wish to become an “interest holder” in the Tribal LLC that is being formed in the Purdue bankruptcy – i.e., if you wish to opt-out of receiving payments from the LLC – you must sign and return the Opt-Out Election Statement (below) by no later than June 15, 2021. If a Tribe chooses to opt out of the LLC, the Tribe will be removed from the list of member Tribes of the LLC, and the opt-out Tribe will receive no payments from the LLC. Opting out of the LLC will not affect a Tribe’s interest in a separate entity, the Tribal Abatement Fund Trust, that will also make distributions of some proceeds from the Purdue bankruptcy.

If a Tribe does not wish to opt-out of the LLC, no action is needed. Any Tribe that does not opt-out of the LLC by June 15, 2021 will automatically be included as an “interest holder” in the LLC and will receive payments from the LLC.

Opt-Out Election Statement

Having reviewed the information below, the _____ [insert name of Tribe] elects to opt out of becoming an “interest holder” in the Tribal LLC in the Purdue bankruptcy proceeding (the Tribal Abatement Fund-2 or TAF-2). The Tribe acknowledges that by electing to opt out, it will receive no payments from the Tribal Abatement Fund-2.

Date

Name

Title

If you wish to opt out of receiving payments from the Tribal LLC, you must email a pdf copy of this signed Opt-Out Election Statement to nato@browngreer.com by no later than June 15, 2021.

Discussion of Opportunity to Opt Out of Tribal LLC in Purdue Bankruptcy.

The bankruptcy court in the Purdue Pharma case is set to consider a proposed restructuring plan later this summer. Under the plan (if it receives final approval from the court), certain assets in the bankruptcy proceeding will be paid to all non-federal governments – state, local and tribal – to be used by the governments to remediate the opioid epidemic in their communities.

General Allocation of Bankruptcy Funds: The allocation of the funds among governments has been resolved by negotiation, with federally recognized Tribes collectively to receive approximately 3% of all governmental funds. This money will be divided among all Tribes pursuant to an inter-tribal allocation matrix that takes into account a number of metrics relating to tribal population and to the impact of the opioid epidemic on Tribes across the country, and then determines a percentage interest of each Tribe.

A portion of the funds flowing to state, local and tribal governments will come from payments contributed to a settlement fund by members of the Sackler family, who were the principal shareholders of Purdue and who will receive releases from liability in exchange for their contributions. Other payments will come from collections on insurance policies held by Purdue or from cash-on-hand held by Purdue, among other sources. Because funds from some of these sources will be made available over time, it is anticipated that payments to the governments, including to the Tribes, will be spread over a period of as much as 8 to 9 years.

The tribal share of these funds will be channeled to a tribal trust (called the “Tribal Abatement Fund Trust” or “TAFT”), to be administered by three court-appointed trustees who will disburse the funds to each Tribe pursuant to each Tribe’s percentage interest as determined by the inter-tribal allocation matrix.

Distributions from Purdue “NewCo”: In addition, Purdue itself will emerge from the bankruptcy as an ongoing corporate entity (“NewCo”) that will indirectly and collectively be owned by the non-federal governments, including the Tribes. This company will continue to operate for a short period of time, likely 2-4 years, to produce and market pharmaceuticals, including opioid treatment medications and other drugs. After this period of operation, the governments intend to sell NewCo (and/or its assets) and distribute profits from the sale as part of the revenue stream of payments to governments, including to Tribes, to be used for abatement purposes.

For technical reasons, the tribal equity interests in NewCo will be held by a limited liability corporation created under the laws of Delaware and operated, for tax purposes, as a partnership. The LLC will be formed pursuant to a “Limited Liability Company Operating Agreement” that will be approved by the bankruptcy court as part of the confirmation of the overall restructuring plan for the Purdue bankruptcy. (A draft of the proposed Operating Agreement is attached.)

LLC Structure and Participation: The LLC will be managed by the same three individuals who will be the trustees of the tribal trust. Each Tribe will be an “interest holder” in the LLC, with each Tribe’s percentage interest determined by the same allocation matrix that the trust will use to distribute its funds to each Tribe. The LLC will receive dividends and capital gains generated by NewCo and pass through that money to each tribal “interest holder” in the LLC, pursuant to each

Tribe's percentage interest. Since Tribes are generally exempt from federal taxation, the Tribes receiving the dividends and capital gains generated by NewCo are not subject to federal tax on those revenues.

The Operating Agreement (at p. 1) provides that federally recognized Tribes will be deemed to become members of (or "interest holders" in) the LLC by order of the bankruptcy court as part of the confirmation process:

Pursuant to the Confirmation Order, each Tribe listed on Schedule C of Exhibit 4 hereto is deemed to accept membership in, and is hereby admitted to, the Company as a "member" of the Company within the meaning of the Delaware Act (each Tribe hereafter an "Interest Holder" and all Tribes collectively, the "Interest Holders.")

Any Tribe that does not wish to become an "interest holder" in the LLC through this process must affirmatively opt out of becoming a member of the LLC by executing the Opt-Out Election Statement. Tribes that opt out of the LLC will not receive payments from the LLC.

The Operating Agreement for the LLC states that it is the intent of the LLC to be treated as a partnership for tax purposes so that neither the LLC nor tribal interest holders will be taxed on the LLC's earnings and gains (due to the tax status of Tribes). Nonetheless, the LLC itself will not be a partnership, nor will any tribal "interest holder" in the LLC be a partner or joint venturer with any other tribal "interest holder." *See* Sec. 1.7.

The Operating Agreement provides that the "interest holders" will have no voting rights with respect to the management of the LLC (except as may be required by law), and that distributions will be made to "interest holders" in accordance with their percentage interests, as determined by the inter-tribal allocation matrix. *See* Sec. 3.1(b), (c).

There are a number of provisions in the Operating Agreement that are intended to protect each tribal "interest holder":

Sovereign Immunity. The Operating Agreement provides: "Nothing set forth in the Governing Documents shall be construed as a waiver of any claim of sovereign immunity in any action or proceeding, including without limitation, any action or proceeding occurring after the Effective Date." *See* Sec. 11.14.

Limitation of Liability. The Operating Agreement provides: "Except as otherwise required by applicable law, the debts, obligations, commitments and liabilities of the Company [the LLC], whether arising in contract, tort or otherwise, shall be solely the debts, obligations, commitments and liabilities of the Company, and no Interest Holder shall be obligated personally for any such debt, obligation, commitment or liability of the Company solely by reason of being a member of the Company." *See* Sec. 6.1(a).

Indemnification. The Operating Agreement includes exculpation and indemnification provisions that cover "each Interest Holder." *See* Art. VII.

HIGHLY CONFIDENTIAL

SUBJECT TO MATERIAL CHANGE

TRIBAL ABATEMENT FUND II, LLC

OPERATING AGREEMENT

Dated as of [], 2021

*Pursuant to the Debtors' Joint Chapter 11 Plan of
Reorganization Dated [], 2021*

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	I
TRIBAL ABATEMENT FUND II, LLC LIMITED LIABILITY COMPANY OPERATING AGREEMENT	1
RECITALS	1
ARTICLE I ORGANIZATIONAL MATTERS	1
1.1 Formation	1
1.2 The Certificate.....	1
1.3 Name.....	2
1.4 Purpose.....	2
1.5 Principal Office; Registered Office	2
1.6 Term	2
1.7 No State-Law Partnership.....	2
ARTICLE II BOARD OF MANAGERS; REPORTING	3
2.1 Management by the Board of Managers.	3
2.2 Composition and Actions of the Board of Managers.....	3
2.3 Board Meetings and Actions by Written Consent.	4
ARTICLE III LLC INTERESTS; CAPITAL ACCOUNTS	5
3.1 Interest Holders.....	5
3.2 Capital Accounts	5
3.3 Capital Contributions.....	5
3.4 Negative Capital Accounts	6
3.5 No Withdrawal.....	6
ARTICLE IV ALLOCATIONS; DISTRIBUTIONS	6
4.1 Allocations of Profits and Losses	6
4.2 Tax Elections	6
4.3 Opioid Abatement Uses	6
4.4 Distributions.....	6
ARTICLE V TRANSFER OF LLC INTERESTS.....	7
5.1 No Transfers by Interest Holders.....	7
ARTICLE VI GENERAL RIGHTS AND OBLIGATIONS OF INTEREST HOLDERS	7
6.1 Limitation of Liability.	7
6.2 Lack of Authority.....	8
6.3 No Right of Partition	8
ARTICLE VII EXCULPATION AND INDEMNIFICATION.....	8
7.1 Standard of Care; Exculpation.....	8
7.2 Liabilities and Duties of Covered Persons	8

7.3	Indemnification	9
ARTICLE VIII BOOKS, RECORDS, ACCOUNTING AND REPORTS.....		10
8.1	Records and Accounting.....	10
8.2	Fiscal Year	10
8.3	Reports.....	11
8.4	Financial Reporting.....	11
8.5	Tribal Opioid Abatement Reporting.....	11
8.6	Portal and Website.....	12
ARTICLE IX TAXES.....		12
9.1	Tax Returns	12
9.2	Partnership Treatment; Tax Elections	12
9.3	Partnership Representative.....	12
ARTICLE X DISSOLUTION AND LIQUIDATION		12
10.1	Dissolution	12
10.2	Liquidation and Termination	13
10.3	Cancellation of Certificate	13
10.4	Reasonable Time for Winding Up.....	13
ARTICLE XI GENERAL PROVISIONS		13
11.1	Amendments.....	13
11.2	Remedies Cumulative	14
11.3	Successors and Assigns	14
11.4	Severability	14
11.5	Applicable Law.....	14
11.6	Consent to Jurisdiction.....	14
11.7	Communications	14
11.8	Addresses and Notices	15
11.9	Creditors	15
11.10	Waiver	15
11.11	Further Action.....	15
11.12	Entire Agreement.....	15
11.13	Delivery by Electronic Transmission	15
11.14	Sovereign Immunity.....	16
ARTICLE XII CERTAIN DEFINITIONS		16
EXHIBIT 1 COMPANY ASSETS.....		20
EXHIBIT 2 CERTIFICATE.....		21
EXHIBIT 3 INTEREST HOLDER CAPITAL CONTRIBUTIONS.....		22
EXHIBIT 4 TRIBAL ABATEMENT TRUST DISTRIBUTION PROCEDURES.....		23

TRIBAL ABATEMENT FUND II, LLC

LIMITED LIABILITY COMPANY OPERATING AGREEMENT

THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT (this “**Agreement**”) of Tribal Abatement Fund II, LLC (the “**Company**”), dated as of [], 2021 and entered into by and among the managers identified on the signature pages hereto (each, a “**Manager**” and, collectively, the “**Managers**” or the “**Board**”), implements certain of the terms of the Debtors’ Joint Chapter 11 Plan of Reorganization Dated [], 2021 (as may be further modified, amended, or supplemented from time to time, and together with all exhibits and schedules thereto, the “**Plan**”) confirmed by an order entered on [], 2021 [Docket No. ____] (the “**Confirmation Order**”) by the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) in the chapter 11 cases of Purdue Pharma L.P. and its affiliated debtors (each a “**Debtor**” and collectively, the “**Debtors**”). Pursuant to the Confirmation Order, each Tribe listed on **Schedule C** of **Exhibit 4** hereto is deemed to accept membership in, and is hereby admitted to, the Company as a “member” of the Company within the meaning of the Delaware Act (each Tribe hereafter an “**Interest Holder**” and all Tribes collectively, the “**Interest Holders**”). Terms used in this Agreement and not otherwise defined in the Plan shall have the meanings set forth in Article XII of this Agreement.

RECITALS

(A) This Agreement is made pursuant to the provisions of Chapter 11 of the Bankruptcy Code in cases filed in the Bankruptcy Court known as *In re Purdue Pharma L.P. et al.*, Case No. 19-23649 (RDD) (collectively, the “**Chapter 11 Cases**”).

(B) This Agreement sets forth (a) certain rights and obligations relating to the respective ownership interests of the Interest Holders in the Company and (b) the terms governing the internal affairs of the Company.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I

ORGANIZATIONAL MATTERS

1.1 **Formation.** The Company has been organized as a Delaware limited liability company by filing the Certificate with the Secretary of State of the State of Delaware under and pursuant to the Delaware Act and shall be continued in accordance with this Agreement.

1.2 **The Certificate.** The Certificate was filed with the Secretary of State of the State of Delaware on [____], 2021. The Managers hereby agree to execute, file and record all such other certificates and documents, including amendments to the Certificate, and to do such other acts as may be appropriate to comply with all requirements for the formation, continuation and operation

of a limited liability company, the ownership of property and the conduct of business under the laws of the State of Delaware and any other jurisdiction in which the Company may own property or conduct business.

1.3 **Name.** The name of the Company shall be “Tribal Abatement Fund II, LLC”. The Company’s business may be conducted under its name and/or any other name or names deemed advisable by the Board.

1.4 **Purpose.** The purposes of the Company shall be to (i) hold, manage and monetize the Company Assets set forth on **Exhibit 1**, (ii) pay all administrative expenses of the Company, (iii) make distributions of Company Assets (“**Distributions**”) to Interest Holders in accordance with the Tribal Abatement Trust Distribution Procedures annexed hereto as **Exhibit 4** (the “**Tribal Abatement Trust Distribution Procedures**”), (iv) to engage in any lawful act or activity, including without limitation, to enter into leasing, financing or other agreements with third parties, that is consistent with, necessary or incidental to the Plan, the Confirmation Order and this Agreement (the “**Governing Documents**”), and (v) to engage in any lawful activity necessary or incidental to the foregoing.

1.5 **Principal Office; Registered Office.** The principal office of the Company shall be located at such place as the Board may from time to time designate, and all business and activities of the Company shall be deemed to have occurred at its principal office. The Company may maintain offices at such other place or places as the Board deems advisable. The registered office of the Company required by the Delaware Act to be maintained in the State of Delaware shall be the office of the initial registered agent named in the Certificate or such other office (which need not be a place of business of the Company) as the Board may designate from time to time in the manner provided by law. The registered agent of the Company in the State of Delaware shall be the initial registered agent named in the Certificate or such other Person or Persons as the Board may designate from time to time in the manner provided by law.

1.6 **Term.** The term of the Company commenced upon the filing of the Certificate in accordance with the Delaware Act and shall continue in existence until termination and dissolution thereof in accordance with the provisions of Article X.

1.7 **No State-Law Partnership.** The Interest Holders intend that the Company not be a partnership (including, but not limited to, a limited partnership) or joint venture, and that no Interest Holder be a partner or joint venturer of any other Interest Holder by virtue of this Agreement (except for tax purposes as set forth in the next succeeding sentence of this Section 1.7), and neither this Agreement nor any other document entered into by the Company or any Interest Holder relating to the subject matter hereof shall be construed to suggest otherwise. The Interest Holders intend that the Company shall be treated as a partnership for federal and, if applicable, state or local income tax purposes, and that each Interest Holder and the Company shall file any and all Tax returns as may be required by law and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment. Without the consent of the Board, the Company shall not make an election to be treated as a corporation for federal income tax purposes pursuant to Treasury Regulation Section 301.7701-3 (or any successor regulation or provision) and, if applicable, state and local income tax purposes.

ARTICLE II

BOARD OF MANAGERS; REPORTING

2.1 Management by the Board of Managers.

(a) Authority of Board of Managers. The business and affairs of the Company shall be managed by or under the direction of the Board, subject to the limitations set forth in this Agreement and as otherwise required by the Delaware Act, in which is vested, the full, exclusive and complete power, authority and discretion to manage and control the administration, affairs and operations of the Company. Each Manager shall be a “manager” of the Company as defined in Section 18-101(10) of the Delaware Act.

(b) Officers. Subject to direction of the Managers, the day-to-day administration of the business of the Company may be carried out by employees and agents who may be designated as officers (“**Officers**”) by the Managers. The Officers shall have such titles and powers and perform such duties as shall be determined from time to time by the Managers. The Officers shall hold office until their successors are appointed by the Managers, unless the Managers specify otherwise. Any Officer appointed by the Managers may be removed by the Managers at any time and any vacancy occurring in any office of the Company may be filled by the Managers, in their discretion.

2.2 Composition and Actions of the Board of Managers.

(a) Number. The number of Managers on the Board shall be established at three (3). The initial Managers shall be those persons named on the signature page hereof. The Managers shall, at all times, be the same persons serving as the trustees of the Tribal Abatement Fund Trust (“**TAFT**”).

(b) Term. The Managers shall have the same term as the trustees of the TAFT.

(c) Resignation or Removal. The resignation or removal of any Manager shall be consistent with the resignation or removal of any trustee of the TAFT, which shall be in accordance with the provisions of the TAFT Trust Agreement.

(d) Manager Compensation; Reimbursement of Expenses. The Managers shall receive reasonable compensation from the Company for their services as Managers.¹ The Company shall also reimburse all reasonable out-of-pocket costs and expenses incurred by each of the Managers incurred in the course of carrying out their duties as Managers in accordance with reasonable policies and procedures as may be adopted from time to time, including in connection with attending meetings of the Board. The amounts paid to the Managers for compensation and reimbursed to Managers for expenses shall be disclosed in the Annual Report.

(e) Rights of Inspection. Every Manager shall have the absolute right at any reasonable time to inspect and copy all books, records, reports and documents of every kind of the Company.

¹ Compensation of Managers TBD.

2.3 **Board Meetings and Actions by Written Consent.**

(a) **Regular Meetings.** Regular meetings of the Board may be held without notice at such times and at such places as may be determined from time to time by the Board.

(b) **Special Meetings.** Special meetings of the Board may be called by any Manager by giving written notice to each other Managers not less than one (1) Business Day prior to the date of the meeting. Any such notice shall include the time, place and purpose of the meeting, given to each Manager by overnight courier, personal delivery, facsimile, electronic mail or other similar means of communication. Notice shall be addressed or delivered to each Manager at the Manager's address as shown upon the records of the Company, or as may have been given to the Board by the Manager for purposes of notice. If a Manager's address is not shown on such records or is not readily ascertainable, notice to the Manager may be given care of the principal office of the Company. Notice by overnight courier shall be deemed to have been given one (1) Business Day after the time that written notice is provided to such overnight courier. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or actually transmitted by the person giving the notice by electronic means to the recipient.

(c) **Action and Quorum.** In all matters pertaining to the affairs of the Company, the Board shall act by a vote of a majority of the number of Managers then in office, which such majority shall constitute a quorum of the Board for the transaction of business, except to adjourn as provided in Section 2.3(f).

(d) **Participation in Meetings by Telephone Conference.** Managers may participate in a meeting of the Board by conference telephone or similar communications equipment (which shall include virtual meetings via video conferencing software), as long as all Managers participating in such meeting can hear one another. Participation by a Manager in a meeting pursuant to this Section 2.3(d) shall constitute presence in person at such meeting.

(e) **Waiver of Notice.** Notice of a meeting need not be given to any Manager who signs a waiver of notice, whether before or after the meeting. All such waivers shall be filed with Company records or made a part of the minutes of the meeting. Attendance at a meeting by a Manager shall constitute a waiver of notice of such meeting except when the Manager attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting was not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any Manager meeting need be specified in any waiver of notice.

(f) **Adjournment.** A majority of the Managers present, whether or not a quorum exists, may adjourn any Board meeting to another time and place.

(g) **Action by Unanimous Written Consent.** Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, if all of the Managers then in office consent thereto in writing or by Electronic Transmission, which may be executed in one or more counterparts, and the writing or Electronic Transmission are filed with the meeting minutes of the Board.

(h) Chairman. At their first meeting, the initial Managers shall designate one of their number to serve as the Chairman of the Board (the “**Chairman**”), with such administrative and other duties as the Managers may determine. The Managers may change the designation of the individual to serve as Chairman from time to time as circumstances warrant. The Chairman or, in the Chairman’s absence, another Manager selected by the Managers shall preside at meetings of the Managers. If no person is otherwise designated, the Chairman, or the Manager presiding over such meeting, shall be responsible for taking meeting minutes at each meeting of the Managers.

ARTICLE III

LLC INTERESTS; CAPITAL ACCOUNTS

3.1 **Interest Holders.**

(a) Admission of Interest Holders. The Interest Holders are those Tribes [and Tribal Health Organizations] identified on **Schedule C** of **Exhibit 4** hereto holding a Claim against any Debtor that is not a Priority Tax Claim.

(b) Interest Holder Information. The LLC Interests held by each Interest Holder shall represent (i) all of such Interest Holder’s rights, title and interest in the Company and (ii) all of such Interest Holder’s rights under this Agreement, including their rights to receive Distributions in accordance with their Percentage Interests. Each Interest Holder’s name, [address, LLC Interests held by such Interest Holder] and Percentage Interest is set forth on **Schedule C** of **Exhibit 4**. Each Interest Holder’s interest in the Company, including such Interest Holder’s interest in Profits, Losses and Distributions of the Company, shall be based upon its LLC Interests and Percentage Interests. An Interest Holder’s LLC Interest and Percentage Interest shall determine such Interest Holder’s allocation of Profits and Losses and Distributions of cash as set forth in Article IV. All LLC Interests shall be uncertificated.

(c) Limited Voting Rights. The Interest Holders shall have no voting rights with respect to the management of the Company, except as may be required by non-waivable provisions of applicable law, in which case any such action shall be approved by the (i) the majority of the Percentage Interests plus (ii) the majority of Interest Holders voting upon such action.

3.2 **Capital Accounts**. A separate capital account (each, a “**Capital Account**”) shall be maintained for each Interest Holder in accordance with the rules of Section 704(b) of the Code and the Treasury Regulations thereunder, and all provisions of this Agreement shall be interpreted and applied in a manner consistent therewith. The provisions of this Agreement may be modified to cause the allocations of Profits, Losses, income, gain and credit pursuant to Article IV to have substantial economic effect under the Treasury Regulations.

3.3 **Capital Contributions**. Consistent with Section [•] of the Plan, on the Effective Date, each Interest Holder shall be credited with the capital contribution as set forth on **Exhibit 3** hereto. No Interest Holder shall be required to make any additional capital contribution to the Company.

3.4 **Negative Capital Accounts.** No Interest Holder shall be required to pay to any other Interest Holder, the Company or any other Person any deficit or negative balance which may exist from time to time in such Interest Holder's Capital Account (including upon and after dissolution of the Company).

3.5 **No Withdrawal.** No Interest Holder shall be entitled to withdraw any part of its Capital Account or to receive any Distribution from the Company, except as expressly provided herein or in the other agreements referred to herein.

ARTICLE IV

ALLOCATIONS; DISTRIBUTIONS

4.1 **Allocations of Profits and Losses.** Profits and Losses for each Fiscal Year or other period shall be allocated among the Interest Holders for such Fiscal Year or other period, in accordance with the Interest Holders' Percentage Interests.

4.2 **Tax Elections.** Except as otherwise provided in this Agreement, all elections required or permitted to be made by the Company under any applicable tax law shall be made by the Board.

4.3 **Opioid Abatement Uses.** The Interest Holders hereby acknowledge and agree about the need and value in developing a comprehensive abatement strategy to address the opioid crisis and, to that end, shall apply all Distributions received from the Company for the Approved Uses (as defined in **Exhibit 4**).

4.4 **Distributions.**

(a) The Managers shall make Distributions to the Interest Holders only as, and to the extent set forth in this **Section 4.4** and the Tribal Abatement Trust Distribution Procedures. Distributions shall be used by the Interest Holders as described in Section 2 of the Tribal Abatement Trust Distribution Procedures.

(b) The Company shall endeavor to notify the Interest Holders of the intended Distribution date through the Tribal Opioid Abatement Portal (or by any other means determined appropriate by the Managers) not less than ten (10) Business Days prior to such date; provided, however, that the Managers may shorten such notice period in their discretion.

(c) Distributions shall be made to the Interest Holders in accordance with their Percentage Interests.

(d) Distributions may be made by the Managers or by a disbursing agent retained by the Company to make Distributions on its behalf (the "**Disbursing Agent**"). Distributions shall be made on the dates approved for distribution by the Managers in accordance with the Tribal Abatement Trust Distribution Procedures.

(e) The Board may cause Distributions to be withheld with respect to any Reporting Tribe (as identified on **Schedule C** of **Exhibit 4**) that has failed to deliver timely a completed

Interest Holder Report (as defined in Section 8.5(b) below) by the applicable due date. The Board shall cause withheld Distributions to be made no later than fifteen (15) days after receipt of any delinquent Interest Holder Report.

(f) All Distributions under this Agreement shall be made (i) in accordance with the electronic transfer information or (ii) by check at the address provided by the Interest Holders in accordance with the Tribal Abatement Trust Distribution Procedures. Changes to such electronic transfer information or address, as applicable, must be provided to the Company or the Disbursing Agent in writing at least five (5) business days prior to any upcoming Distribution date, provided, however, that the Managers and Disbursing Agent shall have the authority, in their discretion, to seek further direction from Interest Holders regarding the transfer information of Distributions under this Agreement.

(g) In the event that any Distribution is undeliverable, no further Distribution shall be made unless and until the Managers have been notified of the then current wire instructions or address, as applicable, as directed by such Interest Holder, at which time such Distribution shall be made without interest. The Managers shall take reasonable efforts to obtain a current address or wire instructions, as applicable, for any Interest Holders with respect to any undeliverable Distribution.

(h) No Company Asset or any unclaimed property shall escheat to any federal, state or local government or any other entity.

ARTICLE V

TRANSFER OF LLC INTERESTS

5.1 **No Transfers by Interest Holders.** No Interest Holder shall transfer any of its LLC Interests. Any purported transfer of any LLC Interests shall be null and void, no such transfer shall be recorded on the Company's books and the purported transferee in any such transfer shall not be treated (and the purported transferor shall continue to be treated) as the owner of such LLC Interests for all purposes of this Agreement. Nothing set forth in this Agreement shall be deemed to preclude Interest Holders from aggregating their Distributions with one or more Interest Holders, or otherwise directing their Distributions to another person or entity, for any Approved Tribal Opioid Abatement Uses (as defined in **Exhibit 4**) and/or common Tribal Abatement Strategies (as described in **Schedule D of Exhibit 4**).

ARTICLE VI

GENERAL RIGHTS AND OBLIGATIONS OF INTEREST HOLDERS

6.1 **Limitation of Liability.**

(a) Except as otherwise required by applicable law, the debts, obligations, commitments and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations, commitments and liabilities of the Company, and no Interest Holder shall be obligated personally for any such debt, obligation, commitment or liability of the

Company solely by reason of being a member of the Company. Notwithstanding anything contained herein to the contrary, the failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business and affairs under this Agreement or the Delaware Act shall not be grounds for imposing personal liability on the Interest Holders for debts, obligations, commitments or liabilities of the Company.

(b) It is the intent of the Interest Holders that no Distribution to any Interest Holder pursuant to Article IV hereof shall be deemed a return of money paid or distributed in violation of the Delaware Act. The payment of any such Distribution to an Interest Holder shall be deemed to be a compromise within the meaning of the Delaware Act, and the Interest Holder receiving any such Distribution shall not be required to return it, in whole or in part, to any Person. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Interest Holder is obligated to return some or all of such Distribution to make a payment to any Person, such obligation shall be the obligation of such Interest Holder and not of any other Interest Holder.

6.2 **Lack of Authority.** Except as expressly set forth herein, no Interest Holder in its capacity as such has the authority or power to act for or on behalf of the Company in any manner, to do any act that would be (or could be construed as) binding on the Company or to make any expenditures on behalf of the Company, and the Interest Holders hereby consent to the exercise by the Board of the powers conferred on it by law and this Agreement.

6.3 **No Right of Partition.** No Interest Holder shall have the right to seek or obtain partition by court decree or operation of law of any Company property, or the right to own or use particular or individual assets of the Company.

ARTICLE VII

EXCULPATION AND INDEMNIFICATION

7.1 **Standard of Care; Exculpation.**

(a) As used herein, the term “**Covered Person**” shall mean (i) each Interest Holder, (ii) each officer, director, shareholder, partner, member, controlling Affiliate, employee, agent or representative of each Interest Holder, and each of their controlling Affiliates and (iii) each Manager and Officer.

(b) No Covered Person shall be liable to the Company or any other Covered Person for any loss, damage or claim incurred for any actions taken or omitted to be taken by such Covered Person in his, her or its capacity as a Covered Person except to the extent that it is determined ultimately by a Final Order that such Damages arose primarily from the fraud, bad faith, gross negligence or willful misconduct by or of such Covered Person.

7.2 **Liabilities and Duties of Covered Persons.** This Agreement is not intended to, and does not, create or impose any fiduciary duty on any Covered Person. Furthermore, each of the Interest Holders and the Company hereby waives any and all fiduciary duties that, absent such waiver, may be implied by applicable law, and in doing so, acknowledges and agrees that the duties

and obligation of each Covered Person to each other and to the Company are only as expressly set forth in this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Interest Holders to replace such other duties and liabilities of such Covered Person.

7.3 **Indemnification.**

(a) To the fullest extent permitted by the Delaware Act, as the same now exists or may hereafter be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement only to the extent that such amendment, substitution or replacement permits the Company to provide broader indemnification rights than the Delaware Act permitted the Company to provide prior to such amendment, substitution or replacement), the Company shall indemnify, hold harmless, defend, pay and reimburse any Covered Person against any and all losses, claims, damages, judgments, fines or liabilities, including reasonable legal fees or other expenses incurred in investigating or defending against such losses, claims, damages, judgments, fines or liabilities, and any amounts expended in settlement of any claims (collectively, “**Damages**”) that may accrue to or be incurred by any Covered Person, for any actions taken or omitted to be taken by such Covered Person in his, her or its capacity as a Covered Person, except to the extent that it is determined ultimately by a Final Order that such Damages arose primarily from the fraud, bad faith, gross negligence or willful misconduct by or of such Covered Person.

(b) The Company shall promptly reimburse (and/or advance to the extent reasonably required) each Covered Person for reasonable legal or other expenses (as incurred) of such Covered Person in connection with investigating, preparing to defend or defending any claim, lawsuit or other proceeding relating to any Damages for which such Covered Person may be indemnified pursuant to this Section 7.3; provided, that if it is finally judicially determined that such Covered Person is not entitled to the indemnification provided by this Section 7.3, then such Covered Person shall promptly reimburse the Company for any reimbursed or advanced expenses.

(c) The indemnification provided by this Section 7.3 shall not be deemed exclusive of any other rights to indemnification to which those seeking indemnification may be entitled under any agreement or otherwise. The provisions of this Section 7.3 shall continue to afford protection to each Covered Person regardless of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to indemnification under this Section 7.3 and shall inure to the benefit of the executors, administrators, legatees and distributees of such Covered Person.

(d) The Company shall purchase and maintain, at its own expense (other than for the upfront premium payment which shall be paid by the Debtors), directors and officers (D&O) insurance to cover Damages covered by the foregoing indemnification provisions and to otherwise cover Damages for any breach or alleged breach by any Covered Person of such Covered Person’s duties.

(e) Notwithstanding anything contained herein to the contrary, any indemnity by the Company relating to the matters covered in this Section 7.3 shall be provided out of and to the extent of Company assets only, and no Interest Holder (unless such Interest Holder otherwise

agrees in writing) shall have personal liability on account thereof or shall be required to make additional capital contributions to help satisfy such indemnity by the Company.

(f) If this Section 7.3 or any portion hereof shall be invalidated on any ground by any Final Order, then the Company shall nevertheless indemnify and hold harmless each Covered Person pursuant to this Section 7.3 to the fullest extent permitted by any applicable portion of this Section 7.3 that shall not have been invalidated and to the fullest extent permitted by applicable law.

(g) The provisions of this Section 7.3 shall be a contract between the Company, on the one hand, and each Covered Person who served in such capacity at any time while this Section 7.3 is in effect, on the other hand, pursuant to which the Company and each such Covered Person intend to be legally bound. No amendment, modification or repeal of this Section 7.3 that adversely affects the rights of a Covered Person to indemnification for Damages incurred or relating to a state of facts existing prior to such amendment, modification or repeal shall apply in such a way as to eliminate or reduce such Covered Person's entitlement to indemnification for such Damages without the Covered Person's prior written consent.

(h) The provisions of this Article VII shall survive the dissolution, liquidation, winding up and termination of the Company.

ARTICLE VIII

BOOKS, RECORDS, ACCOUNTING AND REPORTS

8.1 **Records and Accounting**. The Company shall keep, or cause to be kept, appropriate books and records with respect to the Company's business, including all books and records necessary to provide any information, lists and copies of documents required pursuant to applicable laws. The detail of these books and records and the duration the Company shall keep such books and records shall be such as to allow the Managers to make a full and accurate accounting of all Company Assets, as well as to comply with applicable provisions of law and standard accounting practices necessary or appropriate to produce an annual report containing special-purpose financial statements of the Company, including, without limitation, the assets and liabilities of the Company as of the end of such fiscal year and the additions, deductions and cash flows for such fiscal year (the "**Annual Report**"); provided however, that the Managers shall maintain such books and records until the wind-up of the Company's affairs and satisfaction of all of the Company's liabilities. All matters concerning (i) the determination of the relative amount of allocations and Distributions among the Interest Holders pursuant to and in accordance with Article IV and (ii) accounting procedures and determinations, and other determinations not specifically and expressly provided for by the terms of this Agreement, shall be determined by the Board.

8.2 **Fiscal Year**. The fiscal year (the "**Fiscal Year**") of the Company shall constitute the twelve (12)-month period ending on December 31 of each calendar year, or such other annual accounting period as may be established by the Board.

8.3 **Reports.** The Company shall use its reasonable efforts to deliver or cause to be delivered, within ninety (90) days after the end of each Fiscal Year or as soon as reasonably practicable thereafter, to each Person who was an Interest Holder at any time during such Fiscal Year a Schedule K-1 and any information with respect to the Company reasonably required for the preparation of such Person's United States federal and state income Tax returns. Within sixty (60) days after the end of each Fiscal Year, the Company shall cause each Interest Holder to be furnished with a copy of the balance sheet of the Company as of the last day of the applicable period, a statement of income or loss of the Company for such period, and a statement of the Company's cash flow for such period. Within forty-five (45) days after the end of each fiscal quarter, the Company shall cause each Interest Holder to be furnished with a copy of a quarterly update in form deemed reasonable by the Board.

8.4 **Financial Reporting.**

(a) The Managers shall engage a firm of independent certified public accountants (the "**Company Accountants**") selected by the Managers, to audit the Annual Report. Within ninety (90) days following the end of each calendar year, the Managers shall file with the Bankruptcy Court the Annual Report audited by the Company Accountants and accompanied by an opinion of such firm as to the fairness in all material respects of the special-purpose financial statements. The Managers shall publish a copy of such Annual Report on the Tribal Opioid Abatement Website when such report is filed with the Bankruptcy Court.

(b) All Materials with the Bankruptcy Court by this Section 8.4 need not be served on any parties in the Chapter 11 Cases but shall be available for inspection by the public in accordance with procedures established by the Bankruptcy Court.

8.5 **Tribal Opioid Abatement Reporting.**

(a) Within ninety (90) days following the end of each calendar year the Board shall cause to be prepared and filed with the Bankruptcy Court an annual report on the specific uses of Distributions with respect to such period, together with such additional information as the Board determines necessary or appropriate in its discretion (each, a "**Tribal Opioid Abatement Report**"). The Board shall post a copy of the Tribal Opioid Abatement Report on the Tribal Opioid Abatement Website when such reports are filed with the Bankruptcy Court.²

(b) The Board shall establish the form and content of periodic opioid abatement reports to be delivered by the Interest Holders identified as Reporting Tribes on **Schedule C** of **Exhibit 4** ("**Interest Holder Reports**") to the Board through the Tribal Opioid Abatement Portal (or by other means approved by the Board). The Interest Holder Reports of Reporting Tribes shall contain the information necessary to allow the Company to satisfy its reporting obligations under Section 8.5(a). The Board may prescribe a modified reporting regime for Interest Holders that are not

² [For economic efficiency, the Tribal Opioid Abatement Website and NOAT Website (as defined in the NOAT Trust Agreement) (and related Portals) may be maintained and administered on a combined basis.]

designated as Reporting Tribes, provided such modified reporting regime is not inconsistent with the Company’s reporting obligations, as determined by the Board in its discretion.³

(c) For the avoidance of doubt, the Board shall not be required to include in any Tribal Opioid Abatement Report any abatement matters of any Abatement Trust created under the Chapter 11 Plan other than the Company.

8.6 **Portal and Website.** The Company shall contract for the establishment and continuing maintenance of (1) a secure method of internet-based communications for the Company and the Interest Holders (the “**Tribal Opioid Abatement Portal**”) and (2) a public-facing website to publish all information required or appropriate to be published (the “**Tribal Opioid Abatement Website**”).

ARTICLE IX

TAXES

9.1 **Tax Returns.** The Company shall prepare and file all necessary federal and state income Tax returns, including making the elections described in Section 9.2.

9.2 **Partnership Treatment; Tax Elections.** It is intended that the Company shall be treated as a partnership for federal and state income tax purposes, and the Board is permitted take any actions reasonably necessary to preserve such treatment. Neither the Company nor the Interest Holders shall take any action or make any election which is inconsistent with the Company’s treatment as a partnership. The Company shall make any election the Board may deem appropriate and in the best interests of the Interest Holders.

9.3 **Partnership Representative.** The Chairman shall be the Company’s partnership representative, as described in Section 6223 of the Code (“**Partnership Representative**”). The Partnership Representative shall have all powers and responsibilities provided for a “partnership representative” in Section 6221 of the Code *et seq.*. The Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Partnership Representative in performing its duties as such.

ARTICLE X

DISSOLUTION AND LIQUIDATION

10.1 **Dissolution.** The Company shall not be dissolved by the admission of Interest Holders or by the expulsion, bankruptcy or dissolution of an Interest Holder. The Company shall dissolve, and its affairs shall be wound up ninety (90) days after the first to occur of the following events:

³ The TAF2 Tribal Opioid Abatement Report may be coordinated or combined with the TAFT Tribal Opioid Abatement Report (as defined in the TAFT Agreement) in the discretion of the Board.

(a) the date on which the Managers decide to dissolve the Company because all reasonably expected assets have been collected by the Company and all Company Assets have been distributed to the maximum extent possible as provided in this Agreement; or

(b) the date on which the Bankruptcy Court enters an order approving such dissolution and such order becomes a Final Order.

10.2 **Liquidation and Termination.** On dissolution of the Company, the Board shall act as liquidator or may appoint one or more representatives to act as liquidator. The liquidators shall proceed diligently to wind up the affairs of the Company. The costs of liquidation shall be borne as a Company expense. The liquidators shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including the establishment of a cash fund for contingent liabilities in such amount and for such term as the liquidators may reasonably determine) and shall promptly distribute the remaining assets to the Interest Holders in accordance with the Percentage Interests; provided however, that if the Board determines, in its discretion, that making the such Distribution is not cost-effective with respect to the final amounts to be distributed to the Interest Holders, the Board shall have the authority to direct such final Distribution, in full, to the National Indian Health Board for opioid abatement purposes.

10.3 **Cancellation of Certificate.** On completion of the Distribution of Company Assets as provided herein, the Company shall be terminated (and the Company shall not be terminated prior to such time), and the Board (or such other Person or Persons as the Delaware Act may require or permit) shall file a Certificate of Cancellation with the Secretary of State of the State of Delaware, cancel any other filings made pursuant to this Agreement that are or should be cancelled, and take such other actions as may be necessary to terminate the Company. The Company shall be deemed to continue in existence for all purposes of this Agreement until it is terminated pursuant to this Section 10.3.

10.4 **Reasonable Time for Winding Up.** A reasonable time shall be allowed for the orderly winding up of the affairs of the Company pursuant to Section 10.2 in order to minimize any losses otherwise attendant upon such winding up.

ARTICLE XI

GENERAL PROVISIONS

11.1 **Amendments.**

(a) Material modifications to this Agreement may be made by the Board only with the consent of the Bankruptcy Court provided however, that the Managers then in office may amend this Agreement by unanimous consent from time to time without the consent, approval or other authorization of, but with notice to, the Bankruptcy Court, to: (i) make a change that is necessary or desirable to cure any ambiguity, to correct or supplement any provision in this Agreement that would be inconsistent with any other provision in this Agreement or to make any other provision with respect to matters or questions arising under this Agreement that will not be inconsistent with

the provisions of this Agreement; (ii) make a change that is necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, statute, ruling or regulation of any federal, state or foreign governmental entity; (iii) make a change that is required or contemplated by this Agreement; or (iv) make a change in any provision of this Agreement that requires any action to be taken by or on behalf of the Managers or the Company pursuant to applicable Delaware law if the provisions of applicable Delaware law are amended, modified or revoked so that the taking of such action is no longer required. Notwithstanding the foregoing, the Managers shall not modify this Agreement in a manner that is inconsistent with the Plan or the Confirmation Order. The Managers shall provide notice to the Interest Holders of any proposed modification to this Agreement, whether material or minor, through the Tribal Opioid Abatement Portal (or by other means approved by the Managers) not less than ten (10) Business Days before such modification becomes effective.

(b) Notwithstanding anything set forth in this Agreement to the contrary, none of this Agreement, nor any schedule or exhibit hereto shall be modified or amended in any way that could jeopardize or impair the Plan or the Confirmation Order.

11.2 **Remedies Cumulative.** The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

11.3 **Successors and Assigns.** All covenants and agreements contained in this Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, legal representatives and permitted assigns, whether so expressed or not.

11.4 **Severability.** Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

11.5 **Applicable Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

11.6 **Consent to Jurisdiction.** The Bankruptcy Court shall have continuing jurisdiction over the Company, provided however, the courts of the State of Delaware, including any federal court located therein, shall also have jurisdiction over the Company.

11.7 **Communications.** The Managers shall establish and maintain the Tribal Opioid Abatement Portal (or other means determined appropriate by the Managers) so as to (i) enable each Interest Holder to deliver the required documentation under the Tribal Opioid Abatement Report in an electronic format; (ii) enable secure communications between the Managers and each

Interest Holder; and (iii) provide each Interest Holder with access to its own secure electronic data folder; provided however, that the Managers may modify the foregoing as they determine necessary or advisable in the event such method of communication is unduly burdensome to the any Interest Holder.

11.8 **Addresses and Notices**. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given or made (a) when delivered personally to the recipient, (b) one (1) Business Day after delivery to a reputable express courier service (charges prepaid) or (c) on the Business Day telecopied or electronically transmitted to the recipient (with hard copy sent to the recipient by reputable overnight courier service (charges prepaid) that same day) if by telecopy or electronic transmission before 5:00 p.m. Eastern Time, and otherwise on the next Business Day. Such notices, demands and other communications shall be sent to the address for such recipient set forth in the Company's books and records, or to such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party. Any notice to the Board or the Company shall be deemed given if received by the Board at the principal office of the Company designated pursuant to Section 1.5.

11.9 **Creditors**. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company, and no creditor who makes a loan to the Company may have or acquire (except pursuant to the terms of a separate agreement executed by the Company in favor of such creditor) at any time as a result of making the loan any direct or indirect interest in Company Profits, Losses, Distributions, capital or property other than as a secured creditor.

11.10 **Waiver**. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

11.11 **Further Action**. The parties shall execute and deliver all documents, provide all information, and take or refrain from taking such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

11.12 **Entire Agreement**. The Governing Documents, and those documents expressly referred to in this Agreement embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter of this Agreement in any way.

11.13 **Delivery by Electronic Transmission**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement or any amendment hereto delivered by facsimile, email or other means of Electronic Transmission, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

11.14 **Sovereign Immunity.** Nothing set forth in the Governing Documents shall be construed as waiver of any claim of sovereign immunity in any action or proceeding, including without limitation, any action or proceeding occurring after the Effective Date.

ARTICLE XII

CERTAIN DEFINITIONS

Capitalized terms used but not otherwise defined herein shall have the following meanings:

“**Affiliate**” of any particular Person means (a) any other Person controlling, controlled by, or under common control with such particular Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, by contract or otherwise, (b) if such Person is a partnership, any partner thereof, and (c) if such Person is a trust, the trustee or beneficiary of such trust.

“**Agreement**” has the meaning set forth in the introductory paragraph hereto.

“**Annual Report**” has the meaning set forth in Section 8.1.

“**Bankruptcy Court**” has the meaning set forth in the introductory paragraph hereto.

“**Board**” means the Board of Managers established pursuant to Section 2.2.

“**Business Day**” means any day except any Saturday, any Sunday, any day which is a federal holiday in the United States of America or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“**Capital Account**” means the capital account maintained for an Interest Holder pursuant to Section 3.2.

“**Certificate**” means the Company’s Certificate of Formation as filed with the Secretary of State of the State of Delaware and attached hereto as **Exhibit 2**.

“**Chairman**” has the meaning set forth in Section 2.3(h).

“**Chapter 11 Cases**” has the meaning set forth in the recitals hereto.

“**Code**” means the United States Internal Revenue Code of 1986, as amended. Such term shall, at the Board’s discretion, be deemed to include any future amendments to the Code and any corresponding provisions of succeeding Code provisions (whether or not such amendments and corresponding provisions are mandatory or discretionary; provided however, that if they are discretionary, the term “Code” shall not include them if including them would have a material adverse effect on any Interest Holder).

“**Company**” has the meaning set forth in the introductory paragraph hereto.

“**Company Accountants**” has the meaning set forth in Section 8.4(a).

“**Company Assets**” are those assets set forth on **Exhibit 1** hereto.

“**Confirmation Order**” has the meaning set forth in the introductory paragraph hereto.

“**Covered Person**” has the meaning set forth in Section 7.1(a).

“**Damages**” has the meaning set forth in Section 7.3(a).

“**Debtor**” has the meaning set forth in the introductory paragraph hereto.

“**Delaware Act**” means the Delaware Limited Liability Company Act, 6 Del. L. § 18-101, *et seq.*, as it may be amended from time to time, and any successor to the Delaware Act.

“**Disbursing Agent**” has the meaning set forth in Section 4.4(d).

“**Eastern Time**” means Eastern Daylight Time or Eastern Standard Time, whichever is in effect on the relevant date.

“**Electronic Transmission**” means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

“**Final Order**” means an order or judgment of the Bankruptcy Court, or court of competent jurisdiction with respect to the subject matter, as entered on the docket in any Chapter 11 Case or the docket of any court of competent jurisdiction.

“**Fiscal Year**” means the Company’s annual accounting period established pursuant to Section 8.2.

“**Governing Documents**” has the meaning set forth in Section 1.4.

“**LLC Interest**” means all of the rights and interests of whatsoever nature of the Interest Holders in the Company (including their respective “limited liability company interest” as defined in the Delaware Act), the right to receive distributions of funds and to receive allocations of income, gain, loss, deduction and credit.

“**Manager**” means a current manager on the Board, who, for purposes of the Delaware Act, will be deemed a “manager” (as defined in the Delaware Act) but will be subject to the rights, obligations, limitations and duties set forth in this Agreement.

“**Interest Holder**” has the meaning set forth in the introductory paragraph hereof.

“**Officer**” has the meaning set forth in Section 2.1(b).

“**Partnership Representative**” has the meaning set forth in Section 9.3.

“Percentage Interest” means, with respect to any Interest Holder as of any particular time, the percentage interest assigned to that Interest Holder on **Schedule C** of **Exhibit 4** as its interest in Distributions and any other distribution made by the Company and the Profits and Losses of the Company. The sum of all Percentage Interests shall at all times equal 100%.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity or a Governmental Entity.

“Plan” has the meaning set forth in the introductory paragraph hereto.

“Profits” or **“Losses”** for each fiscal year of the Company shall mean the net taxable income or net taxable loss of the Company, as determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), modified to take into account the rules for properly maintaining capital accounts as set forth in Treasury Regulation Section 1.704-1(b)(2)(iv).

“Tax” or **“Taxes”** means any federal, state, local or foreign income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, registration, value added, excise, natural resources, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, personal property, capital stock, social security, unemployment, disability, payroll, license, employee, or other withholding or other tax of any kind whatsoever, including any interest, penalties or additions to tax or additional amounts in respect of the foregoing.

“Treasury Regulations” means the income tax regulations promulgated under the Code.

“Tribal Abatement Trust Distribution Procedures” has the meaning set forth in Section 1.4.

“Tribal Opioid Abatement Portal” has the meaning set forth in Section 8.6.

“Tribal Opioid Abatement Website” has the meaning set forth in Section 8.6.

[Remainder of page intentionally left blank.

Signature pages follow.]

The undersigned Managers have executed or caused to be executed on their behalf this Limited Liability Agreement as of the date first written above.

EXHIBIT 1

COMPANY ASSETS

The consideration described in Section [4.5(a)(ii)] of the Plan, together with any income or gain earned thereon and proceeds derived therefrom.

EXHIBIT 2
CERTIFICATE

EXHIBIT 3

INTEREST HOLDER CAPITAL CONTRIBUTIONS

EXHIBIT 4

TRIBAL ABATEMENT TRUST DISTRIBUTION PROCEDURES