

Business Plan for Boutique Beverages L.L.C.

A unique company specializing in fine wines and quality microbrewed beer.



270
Corporations
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Executive Summary

This document, a hybrid between a business plan as known in the industry and an operating agreement, presents a recommended structure for Boutique Beverages LLC and its two subsidiaries, Boutique Wines LLC and Boutique Microbrew LLC. The Company, Boutique Beverages LLC seeks to provide discerning consumers with high quality microbrewed beer and fine wines.

The document addresses the recommended business organization, maximization of management efficiency, access to capital, company growth, member security, company liability. Risks, earnings, taxation, management control, longevity, economies of scale, flexibility, and member retirement and disability are also addressed.

The proposed business organization is that of a manager-managed Limited Liability Company (LLC) with two independent wholly owned subsidiaries also organized as LLCs, all organized under the Uniform Limited Liability Company Act (ULLCA). Contribution, profit, loss and voting structures are established, as well as a structure for the distribution of assets upon winding up of business. Three classes of members are established with different rights. In particular Class A will be composed of Investors who do not seek employment in the company, but provide most of the capital contribution. Class B will be the most active, responsible of the day to day operation of the Company and is composed of member managers. Finally, Class C members, with less voting powers will be composed of employee members.

It is recommended that the members attain a high level of participation, commitment and loyalty of members to the Company, and the document provides instances in which this is attempted. In the end, developing the inner workings of the company as a big responsible family will be the task of the Member-managers and depend on their personality and rapport they develop with all members and employees. This is seen as an important aim, since a “satisfied family” will provide higher quality services to the customers, establishing, maintaining and improving the company’s goodwill.

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1. FORMATION

1.1 Applicable Law

The parties wish to form a manager-managed Limited Liability Corporations (LLCs) pursuant to the Uniform Limited Liability Corporations Act (ULLCA) by entering into a Membership Agreement and filing a Certificate of Formation of the Companies with the office of the Secretary of State of Ullcaland.

[ULLCA is chosen since its default provisions ensure that the parties have limited liability² by making the Corporations legal entities distinct from their members. ULLCA §201. The default provisions grant sufficient protection and rights to their members and to the Companies themselves. ULLCA also gives the Companies “the same powers as an individual to do all things necessary or convenient to carry on its business or affairs” ULLCA §112. LLCs are flexible and have flow-through taxation, a tax advantage since the Companies themselves are not taxed, but only the members upon distribution.³

A manager-managed is preferred since a centralized management will be more effective and efficient in conducting the company business, and only they will have actual authority to bind the company, while the other members have no such authority.⁴ ULLCA §404(b).]

1.2 Members

The members of the Company shall be Amber Perrier, Bert Perrier, Lee Heineken, Celeste Chandon, Frank Marketton, Johnnie Walker, Leo Wantmore, Joy Moneypenny, Gin Gecko, Joan Beam, Joseph Cuervo, Janet O'Douls, and Sandra Bacardi. The members shall acquire an interest in the Company by contributing the amount stated in section 4.1 to the Company's capital.

[Members will receive a private placement memorandum inviting them to invest in the Company. The memorandum shall set forth a description of the Company, its purpose and structure, a description of the managing members expertise and experience, risk factors associated with the investment, the terms of the private placement, and a

¹ This document has freely used and modified form Larry E. Ribstein, Membership Agreement, Unincorporated Business Entities, Second Edition, (2000)

² Larry E. Ribstein, Unincorporated Business Entities, Second Edition, 344 (2000).

³ Larry E. Ribstein, Unincorporated Business Entities, Second Edition, 342-343 (2000).

⁴ Larry E. Ribstein, Unincorporated Business Entities, Second Edition, 364 (2000).

subscription agreement. See generally U.S. Microbrew Export Company Inc., Private Placement Memorandum, Mar. 1 1996.

The Company, as issuer, will file with the SEC a notice of the sale, however, this placement comes within the private placement disclosure exemption since the Company is offering and selling an interest to only 13 persons who had previously agreed to participate. It is raising more than \$5 million and while it is manager-managed, all of its members, except Bert Perrier and Amber Perrier will participate in the day to day operation of the business. The Perriers are “loaded with money”, and are savvy investors, as shown by their return on the investment they made with Enron, thus satisfying SEC tests of financial sophistication. SEC Regulation D, Rule 506, Doran v. Petroleum Mgmt. Corp. 545 F.2d 893 (5th Circ. 1977).]

1.3 Name

The business of the Company will be conducted under the name of Boutique Beverages LLC. The Company shall have at least two wholly owned subsidiaries. Boutique Wines LLC will conduct the business of the Vineyards and Wineries; and the business of the Breweries will be conducted under the name of Boutique Microbrew LLC.

[The names were chosen upon review of the records o the Secretary of State of Ullcaland, so that they are distinguishable from the name of any other corporation (ULLCA §105)]

1.3 Effective Date

The effective date of formation of the Company is the date in which the Articles of Organization are filed and accepted by the Secretary of State of Ullcaland.

[We are ready to start!]

1.4 Term

Each Company named hereby will have a term commencing upon the filing of the Articles of Organization with the Department of State of Ullcaland and shall continue indefinitely, unless a Company shall be dissolved in accordance with section 12 below.

1.5 Principal Place of Business

The principal place of business of the Company shall be at 123 Lakefront Road, Skaneateles, NY 13220, unless otherwise changed by a majority of the vote of the Members as provided below.

[Skaneateles is a quaint little town at the shores of one of the Finger Lakes, which will give an aura of dignified respect to our business, and help bring in visitors, travelers and tourists.]

1.6 Registered Agent and Office

The Company's registered agent and office shall be Leo Wantmore, 123 Lakefront Road, Skaneateles, NY 13220. At any time, the Managing members may designate another registered agent and/or registered office.

1.6 Fiscal Year

The fiscal year of the Company for both accounting and tax purposes shall be the calendar year.

2. PURPOSE AND POWERS

2.1 Purpose

The Company is formed for the object and purpose of producing, making, selling, buying, distributing, marketing of providing high quality, premium wines and microbrews as well as related services and products.

2.2 Accomplishing the Purpose

The purpose stated on section 2.1 above is to be accomplished by establishing a carefully selected number of microbreweries, boutique vineyards and wineries, related hospitality entities, services and products, as well as an active marketing campaign. The quantity of such entities, services and products is expected to grow over the years according to an Expansion Plan which will consider business conditions, opportunities and resources, risks, exploit gained knowledge and experience, and maintain our high quality standards. Initially, the Company will start with one Microbrewery and one Winery.

The quality of the wine and beer will be carefully monitored by setting limits on the quantity of wine of any given variety that is produced by the wineries, establishing or funding small vineyards in areas that have appropriate soil and climate conditions, setting quotas on the amount of beer produced in any brewery, and using the best available raw materials, process and technology. *See generally Quentin Hardy, The Appellation Trail, Forbes, Sept. 16, 2002.*

While actively promoting training and experimentation by our employees, they will be limited to contributing to the Company within their developed area of expertise and experience.

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Employees and managers will receive market-generous compensation and benefits, so as to attract the best available persons in the business.

[While the purpose is intended to be broad ULLCA §112(a), it is limited here to what the members or employees know best: services and products related to providing high quality premium wines and microbrews. Thus for example, the Company Expansion Plan could provide for future guided tours of the wineries and breweries; for the addition of shops, restaurants or even Bed and Breakfast Inns in the wineries and microbreweries. These would make the most of the knowledge of our member-employees, since they are alumni of the Cornell Hotel School and allow for the wine and microbrew enthusiast to sample our great varieties in an increasing range of comfortable, relaxed atmospheres where gourmet food and aperitifs would be served. Appropriate promotional memorabilia would be available at the shops.]

Market-generous employee and manager compensation and benefits will pay for themselves in a short span of time by providing employment security, improving loyalty, and quality of production and services, thus assisting in obtaining and retaining a broad customer base. See generally Joseph Anthony, Good burgers, fries and employee benefits, at <http://www.bcentral.com/articles/msnfeature/102.asp>, last visited Sept. 2, 2002. An Employment Agreement will be used to provide for these benefits, state the duties and status of employees and define the cause and consequences for termination.⁵]

2.3 Powers

The Companies' powers are as established on ULLCA §112(b) and allow the company to lawfully accomplish its purpose.

3. COMPANY STRUCTURE

The members of Boutique Beverages LLC agree to form the Company as a Limited Liability Corporation under and pursuant to the provisions of the Uniform Limited Liability Corporation Act effective as of the date on which the certificate is filed.

Mr. Leo Wantmore will be the President and General Manager of the parent company Boutique Beverages LLC. His duties, compensation and liabilities are described in Sections 7 and 8 of this document. Within the parent company, a Marketing Division will be directed by the Vice-president for Marketing Mr. Frank Marketton. The Marketing Division will provide

⁵ William A. Klein et al, Business Associations, Foundation Press, Fourth Edition, 595-596, (2000).

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advertising, promotion and marketing services to both subsidiaries at an industry competitive rate.

Boutique Beverages LLC is the sole owner of two independent subsidiaries: Boutique Wines LLC and Boutique Microbrew LLC. Boutique Wines LLC will be managed by the Vice-President for Wines, Ms. Celeste Chandon, and Boutique Microbrew LLC will be managed by the Vice-President for Beer, Mr. Lee Heineken. The members, except the Perriers will be employed in one of the three companies, according to their expertise. For example, Mr. Johnnie Walker will be the Brewmaster for Boutique Microbrew LLC.

[A company structure with a parent company and two independent subsidiaries reduces the risk that the whole company fail if one of the subsidiaries is not successful. The subsidiaries as well as the parent will follow all formalities required by law. The parent company will provide each subsidiary with sufficient working capital, while charging each subsidiary for the use of some services such as legal assistance and marketing. These actions will minimize the possibility of veil piercing in case of a lawsuit. *Sea-Land Services Inc. v. Pepper Source* 941 F. 2d 519 (7th Circ. 1991).

The centralized services provided at a cost by the parent will benefit the company, since it will take advantage of the economies of scale and synergy provided by such arrangement and avoid duplicating functions and costs. The Marketing Division will not be created as an independent LLC. It will thus focus exclusively on the needs of the company.

As an independent Marketing LLC there is the possibility that the business of its only two clients, Boutique Microbrew LLC and Boutique Wines LLC will not compensate for the added creation costs and investment in additional infrastructure. Furthermore, a Marketing LLC, if provided with such purpose, could or would be hired by other companies (non-competing with Boutique Beverages LLC) to work on marketing campaign for them, diluting the necessary attention to its main goal, that of providing such services to Boutique Beverages and its subsidiaries. However, as the subsidiaries grow, the wisdom of having them absorb these functions or create an independent Marketing LLC will be examined by the members.]

4. CONTRIBUTIONS AND ACCOUNTS

4.1 Nature and Amount of Contributions by Members

Members shall make or have made initial cash contributions to the capital of the Company in the amounts set forth on Schedule A. The initial equity capital of the Company is the sum of each member's contribution, as set forth on Schedule A. ULLCA §401. Schedule A also includes the class to which each member belongs. The class defines the member's profit and loss allocations during the life of the Company, its share of the assets upon dissolution and voting rights.

[Three classes are defined in Schedule A. Class A Investor-members make the largest capital contribution and have 5 votes each. Class B Manager-members, who are charged with the management and direction of the Company, make a smaller capital contribution and have 2 votes each. Class C Employee-members make the smallest contribution and have 1 vote each.]

Only Class B Manager members have the right to vote for all of the company decisions which by law do not require the vote of all members. This latter arrangement will increase managing efficiency since the decisions are left to those best prepared to make them. It is also a smaller group, composed of only five persons. All such votes will be decided by simple majority, which in this case is actually 60% of the voting members.

When a supermajority vote is required, eighteen out of the twenty six available votes must be cast in favor. This allows Class A and Class B members to have great influence over the results. The votes all members of Class A and Class B will achieve a supermajority. This result is fair since they are the ones who have most at stake at the Company. In any decision requiring supermajority, at least one Class A member and one Class B member must vote in favor.]

4.2 Initial Loans

Boutique Beverages LLC will borrow a \$4 million dollars from the Adirondack National Bank at the interest rate of 7.5% for a term of 20 years. It will also borrow \$1 million at the interest rate of 3.5% from the Central New York development Agency for a term of 20 years.

[A total of \$10.4 million dollars is deemed sufficient to properly capitalize the Company, and avoid the possibility of veil piercing. This will cover all of the initial legal and regulatory expenses, purchased equipment, leased land and buildings, operating costs, and maintenance costs. The members' contribution interest represents the percentage of

the Company the member owns, and is the percentage to be used whenever a member sells his interest in the Company or when the Company is liquidated, merged or purchased. The amount borrowed is less than the total equity capital contributed by the members as required by the financial institutions.]

4.3 Enforcement of Contribution Agreement

In the event any member fails to make the contribution such member has agreed to make, including additional contributions as set forth in section 4.4, the President shall give such member a Notice of the failure to meet the agreement. If the member fails to perform the agreement within twenty business days of the giving of Notice, the Member shall be deemed to be in default and agrees to be subject to suit in a court of Ullcaland with jurisdiction to enforce the agreement or to expulsion pursuant to section 11.2. ULLCA §402(a).

Members not in default may pay the amount in default as a loan which bears interest at the prime rate or the maximum non-usurious rate, whichever is less, and which is secured by the defaulting Member's interest in the Company. Until they are fully repaid, the paying Members shall be entitled to all distributions to which the defaulting Member would have been entitled. If the defaulting member is expelled from the Company, the members who pay the amount in default will increase their proportion of their sharing ratios by the amount thusly paid.

[Members are required to fulfill their agreed to contributions, if any member does not comply, he or she will be subject to a lawsuit or expulsion. Other non-defaulting members may pay the amount in default as a loan secured by the defaulting member interest in the Company. It is only fair that the members who paid the defaulting and expelled member's share increase their own proportion of their sharing ratios.]

4.4 Additional Contributions

From time to time, if and when Company needs so require, members may be required or permitted to make contributions in addition to the initial amounts set forth on Schedule A. When such a determination is made, the Managing Members shall give notice to all members in writing at least thirty business days prior to the date on which such contribution is due. The Notice shall set forth the amount of additional contribution needed, the purpose for which the contribution is needed, and the date by which the members should contribute.

The members shall be obligated to make the additional contribution in the proportions of their sharing ratios. In the event any one or more members do not make their additional contribution, the other members shall be given the opportunity to make the contributions in their

sharing ratios, and such ratios shall be adjusted to reflect these additional contributions. A remedy against a member who fails to make a required contribution is expulsion pursuant to 11.2.

[The members already have a stake in and substantial information about the company, and therefore may be the best source of capital in case of Company need, such as changing market conditions and unforeseen circumstances. Provisions 4.3 and 4.4 allow a member who cannot afford to contribute to receive a loan from the other members or to leave the Company]

4.5 Capital Accounts

A capital account shall be established and maintained for each member. The amount in a member's capital account initially shall be the amount of a member's initial capital contribution. A member's capital account shall be credited with any other capital contribution made by the member, if and when made. It will also be credited when the member receives a distributive share of net profits, and with the net losses charged to the Member.

Capital accounts will not bear any interest and except as provided in section 11.3 no member may withdraw all or any part of his capital contribution.

At no time upon Company dissolution or dismissal of the member, whether voluntarily after the first five year of the company's existence; or not voluntarily unless by expulsion, will a member with a negative capital account will be required to restore such deficit except as required by law.

[While Mr. Nordale's conduct was not exemplary, it only adds insult to injury the fact that his estate not only received nothing of a share worth more than \$75,000 in fair market value, it had to pay about \$44,000 to restore the deficit in his capital account which was maintained on a cost basis, such as here. G&S Investments v. Belman 145 Ariz. 258 (Ct. App. Div. 2, 1984). A Member who disassociates voluntarily before the first five years of the company's existence or is expelled will be required to restore his or her capital account.]

4.6 Addition of New Members and Effect on Capital Accounts

From time to time, if properly proposed, the company may admit additional members with the consent of a majority of votes, as required by ULLCA §403(c)(7). New members will adopt each and every stipulation set forth in this document and any other document which the other members have agreed to and signed. Other members may increase their capital

contribution upon addition of a new member so as to maintain the same proportion of ownership of the Company they had when the Company was initiated.

[Allowing an existing member to increase their capital contribution results in non-dilution of their distributions. The number of votes allocated to each member will be adjusted by a quantity, possibly including a fractional quantity, so that the ratio of each member's number of votes to the total number of votes in the Company is not affected, that is the members' voting power is never diluted.]

5. EXPENSES, TAXES, PROFITS, LOSSES, AND COMPENSATION

5.1 Expenses

The Company shall buy land and equipment necessary to establish its business and lease buildings. A 40 acre estate of vineyard land in prime Finger Lakes area will be bought, company-owned suitable buildings will be built there and appropriate equipment and materials such as delivery trucks, company vehicles, vines, fertilizer, and casks will also be bought. A building in downtown Skaneateles will be leased for the Company headquarters and another for the Microbrewery. Additional expenses include office furniture, equipment and materials, lease of telephone lines, heating, water, and electricity. Other expenses are general liability, fire, and theft insurance, as well as health, disability, and life insurance for the members and employees.

[While long term leases provide tax advantages and reduce start-up cost, this company aims to be extremely successful and has an indefinite term. At the end of the lease term the land owner may choose not to renew the lease or to increase the lease payment prohibitively thus raising the possibility of having to go out of business or to move at great expense. Also, customers will get to know the area very well and expect the Winery to remain in same place. With the company's success other wineries will seek to establish nearby, thus establishing a region hopefully akin to Sonoma or the Napa Valley.

The buildings for the Brewery and the Headquarters will be leased for a period of 30 years with an option to buy. This will allow the Company to purchase the building if it ultimately is found to be the best location or to move to a more suitable one.

The purchase of the items mentioned above and the lease of the two buildings have tax advantages. The winery land and buildings there are depreciated as are the purchased equipment and vehicles. This produces charges against income and thus reduce taxes.]

5.2 Tax Considerations

The Company is a Limited Liability Company, and as such has flow-through taxation, that is, the Company itself is not taxed, but only the members upon distribution.⁶

5.3 Accounting Method and Books

The Company shall use the accrual method of accounting. The parent and subsidiaries will each maintain a record of all transactions, and keep full and faithful books. These will be kept for inspection by the members at the office of the President or Vice-president of each particular site: the Brewery, the Winery and Headquarters.

5.4 Determination of Net Profits and Net Losses

The Company's profits or losses shall be computed at the end of each fiscal year. The members' capital account will be adjusted then to reflect the appropriate allocations as provided in section 5.5. The Company will also abide by ULLCA §406 which limits the situations when such distributions can be made.

5.5 Allocation of Net Profits and Net Losses

The Company's net profits and net losses, as well as other items of income, gain, deduction and credit, shall be allocated to each Member's capital account in proportion to the Members' sharing ratios, except that all allocations shall be made in accordance with applicable federal and state tax law and regulations.

For the duration of the Company, the class of Class A Investor-members will receive 60% of the profits, the class of Class B Manager-members will receive 30% of the profits, and the class of Class C Employee-member will receive 10% of the profits.

For the duration of the Company, the class of Class A Investor-members will receive 90% of the losses, the class of Class B Manager-members will receive 10% of the losses, and the class of Class C Employee-member will receive 0% of the losses.

[An operating agreement can “regulate the affairs of the company and the conduct of its business, and to govern relations between members, managers and company.”

ULLCA §103. ULLCA governs relations between members, managers and company to the extent the operating agreement does not provide otherwise, subject to the limitations of ULLCA §103(b). The latter subsection does not prohibit the above allocation of profits and

⁶ Larry E. Ribstein, Unincorporated Business Entities, Second Edition, 342-343 (2000).

losses. Section 5.2 above, in fact replaces ULLCA §405(a) as so far that the latter imposes equal shares for distributions.

The allocation in Section 5.2 meets the investment and tax needs of Class A Investor-members, since they contributed the lion's share of the capital, are in a higher tax bracket and benefit from the tax deductible losses throughout the life of the company. The Class B Manager-members benefit from the 30% profit distribution which works as an incentive to produce such profits. They also benefit from an albeit smaller share of the losses since they are expected to be in a higher tax bracket than the Class C Employee-members. The Class C Employee-members main benefit from their contribution is employment in the Company. They also participate in the distribution of profits, but not in the losses.]

5.6 Compensation

Class B Manager-members and Class C Employee-members shall be employed and compensated by the Company for their services. Class A Investor-members will not be employed by the Company.

[An Employment Contract will regulate employment terms and compensation. It will include among other terms: the duration of contract and renewal conditions; termination for cause; salaries, bonuses, and other benefits such as health, disability and life insurance; duties and employee status; nondisclosure of trade secrets and non-competition agreements; and consequences of termination. All contract terms will be competitive within the industry. The contract will give the employed member employment security as well as generous benefits, and predictability in their evaluation, especially since they must leave their current day job and spend their full effort in the success of the enterprise. See William A. Klein, *Business Associations* 595, Foundation Press (2000).]

6. MEMBERS' INFORMATION RIGHTS

6.1 Disclosure to Members

The following financial information, which need not be examined and certified to by an independent certified public accountant, shall be transmitted by the President to each member or its duly appointed representative within three (3) months after the close of each Fiscal Year:

- (i) balance sheet of the Company as of the beginning and close of such Fiscal Year;
- (ii) statement of Company profits and losses for such Fiscal Year;

- (iii) statement of such Member's capital account as of the close of such Fiscal Year, and changes therein during such Fiscal Year; and
- (iv) a statement indicating such Member's share of each item of Company income, gain, loss, deduction or credit for such Fiscal Year for income tax purposes.

Pursuant to ULLCA §408, any other reasonable information and company records will also be provided without a showing of purpose.

[The intention is to provide an open book and record policy where every member will be fully and timely informed about the Company's status. This will assist in improving Company loyalty and commitment among the members. The hope is that they feel as active owners-participants of the Company with their own personal stake in its success.]

7. MANAGEMENT AND CONTROL

7.1 Management by Managing Members

The Managing members shall manage the Company in accordance with this document except and to the extent that such power is expressly delegated to any other person by the Managing member. In the latter case, the Managing member remains ultimately responsible to the Company for any and all acts of the person to whom he or she has delegated such power. The Managing members and any person to whom the Manager has delegated authority pursuant to this paragraph are the sole agents in connection with the Company's business, and the actions of such persons taken in such capacity and in accordance with this Agreement shall bind the Company.

The managing members are Leo Wantmore President and General Manager of Boutique Beverages LLC; Lee Heineken, Vice-President for Beer; Celeste Chandon, Vice-President for Wines; Frank Marketton, Vice-President for Marketing; and Johnnie Walker, Brewmaster. All Vice-Presidents report to the President and the Brewmaster reports to the Vice-President for Beer.

[The managing members powers will be limited to their own sphere of responsibility, as will be established in the employment contract. Thus for example, the Vice-President for Wines will be in effect the person in charge of Boutique Wines LLC with power to bind the company in all matters regarding wines. Similarly, Vice-President for Beer will be the person in charge of Boutique Microbrew LLC with power to bind the

company in all matters regarding beer. The Brewmaster will be in charge of all matters regarding beer selection, making and testing.

The managing members will form an Executive Committee which will approve by majority any and all matters relating to the functioning of the Company except as provided by ULLCA §404(c). The latter provision refers to matters which require the consent of all members, such as amending the Operating Agreement, dissolving the Company and the like.

Managing members may delegate some of their functions and powers, but doing so does not relieve the Managing member from responsibility of the authorized actions taken in his or her behalf. This provision does not allow the Managing member to “pass the buck.”]

7.2 Reliance by Third Parties

A person may rely upon a writing that is signed by a person who is designated as Class B Manager-Member on Schedule A as to the identity of the Manager or of any persons who are authorized to execute and deliver any instrument or document of or on behalf of the Company for Company purposes.

[Innocent third parties dealing with the Company shall not bear the costs of relying on the execution of instruments by a member who is not authorized to do so. Members who without actual authority hold themselves as such, and enter into transactions supposedly on behalf of the Company will be subject to termination of employment and membership, and to the possibility of a lawsuit to recover improperly used funds.]

7.3 Term of Managing Members

Managing members shall have a five year employment contract as established in section 5.6. A Managing member shall serve until the earliest of:

- (i) the dissociation of such Manager as a Member pursuant to section 11;
- (ii) the resignation of such Manager as a Manager pursuant to section 7.4, or
- (iii) the removal of the Manager pursuant to paragraph 11.2.
- (iv) the end of the five year contract term.

7.4 Resignation of a Managing Member

A Manager may resign as Manager at any time, subject to any right of the Company to recover damages from the Manager for breach of any employment contract between the

Company and the Manager. A Manager's resignation shall in itself cause the Manager's dissociation as a Member.

7.5 Removal of Manager

A Manager may be removed for cause as provided in the employment contract and receiving a total of 16 votes for removal.

[Resignation or removal as a manager should cause dissociation since it is likely that a disgruntled former manager continuing as a Member with full voting rights will increase the potential decision-making costs. This document does not provide a class of membership that would include a manager who resigns. Upon resignation or removal the manager will be forced to sell his or her interest to a non-resigning member.]

7.6 Election of Manager

Upon the termination of the term of a Manager pursuant to section 7.3, a new Manager shall be elected by receiving two-thirds (18) of all votes according to the voting structure in Schedule A.

8. DUTIES AND LIABILITIES OF MEMBERS AND MANAGERS

8.1 Managers' Standard of Care

A Manager's duty of care in the discharge of the Manager's duties to the Company and the other Members is limited to acting in good faith and refraining from engaging in negligent, grossly negligent, reckless, willful misconduct or knowing violation of law. In discharging its duties, a Manager shall be fully protected in relying in good faith upon the records required to be maintained and upon any report of or information supplied by any person who knows the information or has expertise on those matters. A Manager will use his or her best efforts to afford the Company the best available deals.]

[The manager shall act in the best interest of the Company, and is entitled to the presumption of the Business Judgment Rule, so as to take risks in the pursuit of those interests. A Manager can rely in good faith on information known to be supplied by a reliable source. The manager has a positive duty to find the best available deals for the benefit of the Company.]

8.2 Self-Dealing and Outside Transactions

A Manager has a duty not to engage in a transaction with the Company if the Manager has a direct or indirect interest in the transaction, unless either the transaction is fair to the

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Company or Members owning a majority of the voting ratios, knowing the material facts of the transaction and the Manager's interest, authorize, approve, or ratify the transaction. A Manager may engage in or possess an interest in business ventures that are not transactions with the Company of any nature or description and the Company and the Members shall have no rights in and to such ventures.

[A manager or any member may possess interests in other business ventures that do not conflict or compete with the business of the Company. In all other respects of standards of conduct of the members and managers, the Company adopts ULLCA §409]

8.3 Company Property and Information

A Member or Manager shall not use or appropriate Company property unless such use or appropriation is fair to the Company or is approved, authorized or ratified by Members who own a majority of the voting ratios and who know the material facts of the transaction and the Manager's or Members' interest. Company property includes information developed exclusively for the Company or opportunities expressly offered to the Company.

[A non-disclosure agreement is part of the employment contract. A member or Manager may not appropriate for the manager's own benefit Company Trade Secrets which may include processes and recipes, nor compete with the Company for a lawful period of time and geographical region to the fullest extent to which the law enforces a non-competition agreement.]

8.4 Indemnification of Company

The Company shall be entitled to indemnification from a Member or Manager of the Company on account of a liability of or payment by the Company that results from the Member's breach of duty to the Company. If more than one Member is responsible for such liability or payment, the liability or payment shall be joint and several or as determined by a court.

[The main aim is that the Company recover damages it suffered from the members or managers who caused them. A court can determine another distribution of the damages owed to the Company, but joint and several liability will better serve the purpose of recovering for those damages.]

8.6 Indemnification by Company

The Company shall indemnify a Member or Manager of the Company who pays or incurs a liability or expense, including legal fees, in connection with or in a successful outcome in proceeding arising out of the business of the Company. The Company shall not indemnify if the

payment, liability or expense resulted from such Member's or Manager's breach of duty to the company, form a knowing violation of law, or if the proceeding is unsuccessful.

[Accidents do happen, ordinary negligence is relatively common, the company may become liable for acts done in good faith on behalf of the company. If the act does not involve a breach of duty to the company, or a knowing violation of law, the company shall indemnify the member or manager. Waltuch v. Conticommodity Services Inc. 88 F.3d 87 (2d Cir. 1996) (defining successful outcome)]

8.7 Insurance

The Company shall purchase and maintain insurance on behalf of the Manager, Members and agents of the Company against any liability that may be asserted against or expenses that may be incurred by any such person in connection with the activities of the Company or such indemnities, regardless of whether the Company would have the power to indemnify such person against such liability under the provisions of this Agreement.

8.8 Advances

Any reasonable expenses for which a Member or Manager may be entitled to indemnification under section 8.6 shall be advanced by the Company prior to the final disposition of any action or proceeding., The Member or Manager shall repay such amount if it shall be determined that such person is not entitled to be indemnified as authorized in section 8.6.

[Citadel Holding Corporation v. Roven 603 A.2d 818 (Del. 1992) (advancement of reasonable expenses)]

9. MEMBERS' VOTING AND CONTROL RIGHTS

9.1 Requirement of Member Approval

A vote by Members owning a majority of the voting ratios (14 votes) shall be required to approve the following actions:

- (i) any purchase or sale of real estate;
- (ii) any transaction that involves an obligation to pay or to receive from one or more persons an aggregate in excess of \$250,000;
- (iii) any amendment to this Agreement, provided that without the written consent of each Member adversely affected thereby, no amendment of this document shall be made that (a) increases the obligations of such Member to make contributions, (b) alters the allocation to the

affected Member for tax purposes of any items of income, gain, loss, deduction or credit, or (c) alters the manner of computing the distributions of the affected Member;

(iv) admission of a new Member as provided in section 4.6;

(v) any matter that is expressly required by this document to be approved by the Members.

9.2 No Management by Members

Except as otherwise expressly provided in this Agreement, no Member other than the Managing members shall take part in the management or control of the business and affairs of the Company. Except and only to the extent expressly delegated by the Manager, no Member or other person other than the Manager shall be an agent of the Company or have any right, power or authority to transact any business in the name of the Company or to act for or on behalf of or to bind the Company.

[This provision denies actual authority to non managing members and tries to limit the member's apparent authority. The latter however, depends on how the member holds himself out to third parties and whether the third parties rely on the member's apparent authority. Three-Seventy Leasing Corporation v. Ampex Corporation 528 F.2d 993 (5th Circ.) (defining apparent authority to do things which are usual and proper of the business)]

9.3 Meetings of the Members

The Company shall hold a yearly meeting of the members on the first week of each April. In this meeting the managing members will discuss a previously circulated report of company status, as well as short, medium and long range plans for the company. If appropriate, members may be asked to vote on any such matter. The discussion will provide ample space for voicing and listening to members' concerns. Any new matter to be discussed shall be included in the agenda if submitted in writing to the President at least 30 business days before the meeting and backed by at least six votes. Quorum shall be constituted with at least sixteen votes present, and at least one member of each class present.

[The unanimous minority members, with only one vote are provided with the opportunity to discuss any matter of their concern, though the six votes can be obtained from any mix of members. The quorum stipulation requires that each class be represented in the meeting and at least two thirds of the votes present. This way no two classes can collude against another class.]

Meetings of the Members may be called at any time by members who have at least 10 votes amongst them. Notice of any meeting shall be given to all Members not less than four (4) days nor more than thirty (30) days prior to the date of such meeting. Each Member may authorize any Person to act for it by proxy on all matters in which a Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Member or its attorney-in-fact.

The President, in his sole discretion, except as directed by this section, shall establish all other provisions relating to meetings of Members, including notice of the time, place or purpose of any meeting, waiver of any such notice, action by consent without a meeting, the establishment of a record date, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote.

[A yearly meeting is required, though it may be costly, if only for the purpose of reaffirming the members commitment to the Company and collegial discussions. Ideally, an informal family gathering should follow the meeting. This will improve member relations and reinforce identification of the company with members' and family values. While some members may choose to participate through the use of communications technology, they will be strongly encouraged to participate in person.]

10. TRANSFER OF MEMBER RIGHTS

10.1 Voluntary Assignment of Membership Interest

A Member or an assignee of a Membership Interest may assign or otherwise transfer all or a portion of a Membership Interest. However, a Member may not assign or transfer hers or his voting or management rights. The assignee is only entitled to receive the distributions and allocations of profits and losses provided in this document. A Member shall not encumber any part of her or his interest by mortgage, pledge, lien or otherwise.

[This provision avoids the possibility that a member encumber his or her interest and defaults thereafter, giving the Company a “headache” with an undesired outsider with interest in the Company. ULLCA §502.]

10.2 Admission of Substitute Members

An assignee of a Membership Interest shall be admitted as a substitute Member only with the approval of two thirds of the votes of the non-assigning Members. A substitute Member has all the rights and powers, has the same capital account, voting rights and sharing ratio, and is

subject to all the restrictions and liabilities of the Member who originally assigned the Membership Interest. The admission of a substitute Member, without more, shall not release the Member originally assigning the Membership Interest from any liability to the Company that may have existed prior to the approval. Manager-members shall not be substituted, though they may assigne their economic interest in the Company.

[Sections 10.1 and 10.2 only applies to voluntary assignment of interest. The substituted member is not released from responsibilities acquired before the substitution. Managers can only be substituted by a person chosen at the will of the Company pursuant to sections 7.4 through 7.6 (resignation, removal and election).]

11. DISSOCIATION AND DISSOLUTION

11.1 Voluntary Member Dissociation

A member shall voluntarily disassociate from the company at any time by giving written Notice to the President at least 60 days prior to the date in which the disassociation is proposed to be effective.

11.2 Involuntary Member Disassociation

A Member may be involuntarily dissociated upon the occurrence of one of the following events: a Member's bankruptcy; the death of a Member; the permanent disability of a Member; the retirement of a Member, or expulsion of a Member.

[Members' powers to dissociate from the company may threaten the company's continuity; therefore no member may disassociate during the first five years of the company's existence. Written notice is required for voluntary dissociation to provide opportunity to substitute the member or accept additional contributions from members.]

11.2 Consequences of Dissociation

Upon dissociation as a Member, the Member shall have only the rights of an assignee of a Member's Interest pursuant to section 10.1.

[A disassociating member or her estate's only rights are economic rights to have her interest in the Company distributed according to section 11.3.]

11.3 Distribution to Dissociated Member

In the event of a Member's voluntary dissociation the dissociated Member or any successor of such Member shall receive as full payment for his or her interest an amount equal to

the capital account balance of the withdrawing Member; except that a member who voluntarily disassociates in the first five years of the Company's existence shall receive no distribution, his or her contribution will be forfeited and he or she will be required to restore any deficit in his or her capital account. After the first five years of the Company's existence, a disassociating member shall receive payment in cash or by a promissory note due and payable upon the expiration of five years bearing interest at the Prime Rate which shall be secured Company assets having an unencumbered value at least equal to the amount of the promissory note.

[The Company may not have enough cash to pay in full the member's distribution, therefore, the promissory note. The Company aims to continue its existence, thus requiring time to repay the disassociating member's distribution. Such member's distribution upon voluntary disassociation will depend on the Company's continued solvency. In Re Northwest Oxygen, Inc. 99 B.R. 703 (Bkrtcy.M.D.N.C. 1989) (promissory note rendered unenforceable by corporation's subsequent insolvency). Pursuant to section 4.5 no member shall be required to restore a deficit in his or her capital account.]

The balance in the capital account is used, though it may initially "undervalue" the member's fair market value of his or her share ratio, especially at the beginning of the Company's existence. However, the fair market value is a quantity which is difficult and expensive to establish. The member is expected to have received benefits by his or her employment in the company (except for the Perriers) or by the large percentage of losses and profits awarded to Class A members. Using the capital account balance will also dissuade members from disassociating at an early date.]

12. DISSOLUTION, LIQUIDATION, AND TERMINATION

12.1 Dissolution

The Company shall be dissolved and its affairs shall be wound up upon the entry of a decree of judicial dissolution, or upon the written determination of the Managing members and a proportion of 21/26 votes of the members. ULLCA §801.

[A larger supermajority is required to ensure that at least one employee-member agrees with the dissolution.]

12.2 Notice of Dissolution

Upon the dissolution of the Company, the President shall promptly notify the Members of such dissolution.

12.3 Liquidation

Upon dissolution of the Company, the President, as liquidating trustee, shall immediately commence to wind up the Company's affairs. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the satisfaction of liabilities to creditors, enabling the Members to minimize the normal losses attendant upon a liquidation. The Members shall continue to share profits and losses during liquidation in the same proportions as before liquidation. However, upon winding up of the Company's affairs Class A members shall receive 80% of any remaining assets, Class B members shall receive 15% of those assets and Class C will receive 5%.

12.4 Termination

The Company shall terminate when all of the assets of the Company have been distributed in the manner provided for in this document and the Articles of Termination filed with the Secretary of State of Ullcaland. ULLCA §805.

Boutique Beverages LLC

Schedule A. Member Contributions and Borrowed Funds

Member	Position	Member Class	Number of votes	Capital Contribution	Contribution Interest
Amber Perrier	Investor	A	5	\$2,500,000	46.30%
Bert Perrier	Investor	A	5	2,500,000	46.30%
Leo Wantmore	President and General Manager	B	2	50,000	0.93%
Celeste Chandon	Vice President for Wines	B	2	50,000	0.93%
Lee Heineken	Vice President for Beer	B	2	50,000	0.93%
Frank Marketton,	Vice President for Marketing	B	2	50,000	0.93%
Johnnie Walker	Brewmaster	B	2	50,000	0.93%
Joy Moneypenny	Employee	C	1	25,000	0.46%
Gin Gecko	Employee	C	1	25,000	0.46%
Joan Beam	Employee	C	1	25,000	0.46%
Joseph Cuervo	Employee	C	1	25,000	0.46%
Janet O'Douls	Employee	C	1	25,000	0.46%
Sandra Bacardi	Employee	C	1	25,000	0.46%
Total			26	\$5,400,000	100.00%

Borrowed Capital

Lender	Amount Borrowed	Interest Rate
Adirondack National Bank	4,000,000	7.5%
Central New York Development Agency	1,000,000	3.5%
Total	5,000,000	20 year period

Debt to Equity Ratio: .93