

**AMENDED AND RESTATED
OPERATING AGREEMENT
OF
RANDALL PROPERTY INVESTMENTS, LLC**

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**AMENDED AND RESTATED
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OF
RANDALL PROPERTY INVESTMENTS, LLC**

THIS AMENDED AND RESTATED OPERATING AGREEMENT (hereinafter "Agreement") of **Randall Property Investments, LLC**, a Texas limited liability company (hereinafter "Company"), is entered as of the dates indicated and to be effective as of April 1, 2020, and adopted by and between Emprestiza Retirement Plan Trust FBO Jason Randall (hereinafter collectively "Member(s)"), and Jason Randall (hereinafter "Manager").

RECITALS

The Company is a limited liability company formed under the Texas Limited Liability Company Act (The "Act") on February 11, 2016 and hereby adopts this Agreement as of April 1, 2020. The parties intend by this Agreement to define their rights and obligations with respect to the Company's governance and financial affairs and to adopt regulations and procedures for the conduct of the Company's activities. Accordingly, with the intention of being legally bound, they agree as follows:

Article 1: The Company

1.1 **Status.** The Company is a Manager-Managed Texas limited liability company organized under the Act.

1.2 **Name.** The Company's name is **Randall Property Investments, LLC**

1.3 **Term.** The Company's existence as a limited liability company will commence on the date that the Company's existence as a limited liability company begins, as prescribed by the Act, or on April 1, 2020 (hereinafter the "Effective Date"), and be perpetual, unless sooner terminated under the Act or by the terms of this Agreement.

1.4 **Purposes.** The primary purpose of the Company will be to engage in the business of investments and development of real and personal property. The Company shall also have unlimited power to engage in and to do any lawful act concerning any or all lawful business for which Limited Liability Companies may be organized under the Act, subject to the restrictions of Internal Revenue Code ("IRC") § 4975 and/or The Employee Retirement Income Security Act of 1974 ("ERISA").

1.5 **Principal Place of Business.** The Company's principal place of business is located at 17724 Carol Circle, Flint, Texas 75762.

1.6 **Registered Agent and Registered Office.** The Company's registered and designated office in Texas is located at 9900 Spectrum Drive, Austin, Texas 78717 and its registered agent at that location is United States Corporation Agents, Inc.

ARTICLE 2: MEMBERS

2.1 Identification

(a) Members. The names, addresses and Membership Interests of the Members are as follows:

Member	Profit %	Loss%	Ownership%
Emprestiza Retirement Plan Trust FBO Jason Randall 17724 Carol Circle Flint, Texas 75762	100%	100%	100%

(b) Additional and Substitute Members. The Company may admit additional or substitute Members only with the unanimous approval of all the Members, which shall not be withheld unreasonably. All new Members are subject to the terms of this Agreement, and the rights and duties set forth in Section 2.7. The Company may not admit any additional or substitute Members who is a disqualified person.

(c) Right to Vote. Only Members having an Ownership Percentage, as set forth in Section 2.1(a) above, have the right to vote. A Member does not have the right to vote, simply due to having a right to Profit or Loss. A Member's interest in Profit, Loss and Ownership Percentages are independent and separate from one another.

2.2 Changes and Verification of Membership Interests.

(a) Changes in Membership Interests. A Member's Membership Interest may be changed in its form, so long as the underlying ownership does not change. For example, a Member may desire to change its ownership to a Revocable Living Trust or another Limited Liability Company for estate planning purposes. This change in form must be approved by the Manager, so long as there is not a change or substitute in the underlying owner/Member. With respect to a Member that is an Entity, a change in the control of the Entity is an indirect Transfer for purposes Article 2.7, and requires the unanimous written consent of all Members. With respect to a Member that is a Qualified Plan, any transfer to other trustees, custodians, administrators, account owners, participants or beneficiaries will not effect the Member's status within the Company. Thus the change shall be allowed and there shall be no change in the Member's rights to voting, profits and losses as they had before any purported transfer.

(b) Verification of Membership Interests. Within 10 days after receipt of a Member's written request, the Company will provide the Member with a statement of the Member's Membership Interest. The statement will serve the sole purpose of verifying the Member's Membership Interest, as reflected in the Company's records, and will not constitute for any purpose a certificated security, negotiable instrument or other vehicle by which a Transfer of a Membership Interest may be effected.

2.3 Manner of Meetings.

(a) Meetings.

(1) Right to Call. Any Manager or any Member or combination of Members whose Membership Interest is five percent (5%) or greater may call a meeting of Members by giving written notice to all Members not less than 10 nor more than 60 days prior to the date of the meeting. The notice must specify the date of the meeting and the nature of any business to be transacted. A Member may waive notice of a meeting of Members orally, in writing or by attendance at the meeting.

(2) Proxy Voting. A Member may act at a meeting of Members through a Person authorized by signed proxy.

(3) Quorum. All Members must be present or present by proxy to constitute a quorum. No action may be taken in the absence of a quorum.

(4) Required Vote. All decisions regarding the change of ownership interests and a Member's rights to profit, loss or ownership/voting, including the decisions set forth in Section 4.3 below, shall require unanimous written approval of all Members. Except with respect to the above matters, or for which a greater minimum vote is required by the Act or this Agreement, the unanimous vote of all Members present will constitute the act of the Members at a meeting of Members.

(b) Written Consent. The Members may act without a meeting by written consent describing the action and signed by Members whose aggregate Membership Interest is at least equal to the minimum that would be necessary to take the action at a meeting at which all Members were present.

2.4 **Limitation on Individual Authority.** A Member who is not also a Manager has no authority to bind the Company. A Member whose unauthorized act obligates the Company to a third party will indemnify the Company for any costs or damages the Company incurs as a result of the unauthorized act.

2.5 **Negation of Fiduciary Duties.** A Member who is not also a Manager owes no fiduciary duties to the Company or to the other Members solely by reason of being a Member.

2.6 **Resignation of a Member.** A Member may resign from the Company at any time, and by doing so, the Member effectively gifts its ownership back to the other Members pro-rata. Any gift taxes due, or appropriate gift tax reporting, are the responsibility of the resigning Member. However, the Member will remain liable for the Member's share of the debt or obligations of the Company in proportion to the Member's Membership Interest in the Company, unless released from this obligation by the remaining Members in writing.

2.7 Transfer of Membership

(a) Transfers Prohibited. A Member may not Transfer, directly or indirectly, all or a portion of a Membership Interest without the unanimous written consent of all Members, as set forth in Section 2.1, **or if such transfer would result in a prohibited transaction under IRC § 4975.** With respect to a Member that is an Entity, a change in the control of the Entity is an indirect Transfer for purposes of this Article 2.7. With respect to a Member that is a Qualified Plan, the Qualified Plan may transfer its membership to other trustees, custodians, administrators, account owners, participants or beneficiaries without any consent required by other Members or the Manager. At all times a transfer is

subject to the buy-sell provisions set forth in Article 2.11 below, other than a transfer by a Qualified Plan, as described in the preceding sentence.

(b) Prohibited Transfers Void. A Member who Transfers all or a portion of a Membership Interest in contravention of the provisions of this Article 2.7, the recipient of the Transfer shall receive Non-Member Transferee status as provided in Section 2.7(d)(2).

(c) Transferor's Membership Status. If a Member Transfers any portion of their Membership Interest, the Member's rights with respect to the transferred portion, including the right to vote or otherwise participate in the Company's governance and the right to receive Distributions, will terminate as of the effective date of the Transfer. However, the Member will remain liable for the Member's pro-rata share of any debt or obligations of the Company based on the amount/share of the transferred interest that existed prior to the effective date of the Transfer, unless released in writing by the remaining Members. With respect to a Member that is a Qualified Plan, any transfer to other trustees, custodians, administrators, account owners, participants or beneficiaries will not effect the Member's status within the Company, and thus shall be allowed and there shall be no change in the Member's rights to voting, profits and losses as they had before any purported transfer.

(d) Transferee's Status.

(1) Admission as a Member. A Member who Transfers a Membership Interest has no power to confer on the Transferee the status of a Member. A Transferee may be admitted as a Member only in accordance with the provisions of Article 2.1. Once admitted, the new Member shall execute and agree to this Operating Agreement and be treated as a full Member.

(2) Rights of Non-Member Transferee. A Transferee who is not admitted as a Member in accordance with the provisions of Article 2.1, (i) has no right to vote or otherwise participate in the Company's governance, (ii) is not entitled to receive information concerning the Company's affairs or inspect the Company's books and records, (iii) with respect to the transferred Membership Interest, is entitled to receive the Distributions to which the Member would have been entitled had the Transfer not occurred, but only at such times and in such amounts as the Company in its sole discretion may determine.

2.8 **Disassociation.**

(a) Event of Disassociation. A Member experiences an Event of Disassociation from the Company when one of the following events occur: (i) an approved transfer of a Member's entire interest under Articles 2.1(b) and 2.7; (ii) a Member's death; (iii) an Event of Dissolution as set forth in Article 6.1, (iv) a Member's filing of bankruptcy, whether voluntary or involuntary; (v) the execution, attachment, levy or other similar seizure against a Membership Interest of a Member; (vi) any involuntary transfer, assignment, or other disposition of a Membership Interest by operation of law; (vii) a transfer to a third party as provided in Section 2.11. The date upon which one of the previously described events occurs or a date of notice, is the effective date of the Member's Disassociation. If a Member is a Qualified Plan, the death of the owner of the Plan shall also constitute a Member's Disassociation.

(b) Rights of Member Following Disassociation. If a Member's Disassociation is due to their resignation as set forth in this agreement, as of the effective date of the Member's Disassociation, the Member's right to participate in the Company's governance, receive information concerning the Company's affairs and inspect the Company's books and records will terminate, the Member will no longer be entitled to profits, losses, distribution, and/or any ownership in the Company.

2.9 Certificates of Ownership. Certificates of Ownership representing Membership Interests in the Company will be in the form determined by the Members. Certificates of Ownership must be signed by the Manager. All Certificates must be consecutively numbered or otherwise identified. The name and address of the person to whom the Certificates are issued and their ownership interest shall be entered in the Certificate Register of the Company. In the case of a lost or destroyed certificate, a new one may be issued on the terms and indemnity to the Company as the Members may prescribe.

The Members agree that all certificates shall bear the following legend on the back of the membership certificates:

“The transfer, sale, gift, pledge, hypothecation or encumbrance of the membership interest represented by this certificate is restricted under the terms of the Company Operating Agreement (and possible amendments thereto), copies of which are on file with the Company. Prospective transferees of such certificates are advised to obtain a copy of such Agreement and comply with its provisions.”

2.10 Indemnification. No Member shall be personally liable for any obligations of the Company, unless agreed to previously by the Member in writing. Nor shall any Member be personally liable for any duties or obligations of the Company, or for any duties or obligations arising out of any acts or conduct of any Member or Manager performed for or on behalf of the Company. The Company shall and does hereby indemnify and hold harmless each person and his or her heirs and administrators, who shall serve at any time hereafter as Members or Managers of the Company, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of having heretofore or hereafter being a Member or Manager of the Company, or by reason of any action alleged to have theretofore or hereafter taken or omitted to have been taken by a Member or Manager, and shall reimburse each such person for all legal and other expenses reasonably incurred by a Member or Manager in connection with any such claim or liability, including power to defend such person from all suits or claims.

2.11 Buy-Sell Provision and Redemption of Disassociating Member's Interest if Transfer of a Member's Interest to a Third Party / Right of First Refusal.

(a) First Right of Refusal. In addition to the other limitations and restrictions set forth in this Agreement, no Member shall Transfer all or any portion of the Member's Membership Interests (the Offered Membership Interest) unless the transferring Member (the Seller) first offers to sell the Offered Membership Interest pursuant to the terms of this Section.

(b) Limitation on Transfers. No Transfer may be made under this Section unless the Seller has received a bona fide written offer (the “Purchase Offer”) from a third party (the “Purchaser”) to purchase the Offered Membership Interest for a purchase price (the “Offer Price”) payable in United States dollars at closing. The Purchase Offer shall be in writing signed by the Purchaser and shall be irrevocable for a period ending no sooner than the day following the end of the Offer Period, and shall include sufficient evidence that the third party has the wherewithal, which shall include the opening of escrow with instructions recognizing a commitment letter from a bank or qualified lending institution or funds on deposit to be transferred to Seller to consummate the Purchase Offer.

(c) Offer Notice. Before transferring the Membership Interest that is subject to the terms of this Section, the Seller shall give to the Company and each Member written notice (the “Offer Notice”) which shall include a copy of the Purchase Offer and an offer (the “First Offer”) to sell the Offered Membership Interest to the other Members or secondly to the Company (the “Offerees”) for the

Offer Price, payable according to the same terms as (or more favorable terms than) those contained in the Purchase Offer; provided that the First Offer shall be made without regard to the requirement of any earnest money or similar deposit required of the Purchaser before closing, and without regard to any security (other than the Offered Membership Interest) to be provided by the Purchaser for any deferred portion of the Offer Price.

(d) Offer Period. The First Offer shall be irrevocable for a period (the Offer Period) ending at 11:59 p.m., local time at the Company's principal office, on the ninetieth (90th) day following the day of the Offer Notice.

(e) Acceptance of First Offer. At any time during the first 60 days of the Offer Period, any Offeree who is a Member may accept the First Offer as to that portion of the Offered Membership Interest that corresponds to the ratio of such Offered Membership Interest to the total Membership Interests held by all Offerees who are Members, by giving written notice of such acceptance to the Seller and the Manager. At any time after the 60th day of the Offer Period, the Manager may accept the First Offer as to any portion of the Offered Membership Interest that has not been previously accepted by giving written notice of such acceptance to the Seller. In the event that Offerees, in the aggregate accept the First Offer with respect to all of the Offered Membership Interest, the First Offer shall be accepted. If Offerees do not accept the First Offer as to all of the Offered Membership Interest during the Offer Period, the First Offer is rejected in its entirety.

(f) Closing of Purchase Pursuant to First Offer. In the event that the First Offer is accepted, the closing of the sale of the Offered Membership Interest shall take place within 30 days after the First Offer is accepted or, if later, the date of closing set forth in the Purchase Offer. The Seller and all Accepting Offerees shall execute such documents and instruments as may be necessary or appropriate to complete the sale of the Offered Membership Interest pursuant to the terms of the First Offer and this Section.

(g) Sale Upon Rejection of First Offer. If the First Offer is not accepted in the manner provided above, the Seller may sell the Offered Membership Interest to the third party at any time within 60 days after the last day of the Offer Period, provided that such sale shall be made on terms no more favorable to the third party than the terms contained in the Purchase Offer. In the event that the Offered Membership Interest is not sold to the third party in accordance with the terms of the preceding sentence, the Offered Membership Interest shall again become subject to all of the conditions and restrictions of this Section. In the event that the Offered Membership Interest is sold to the third party in accordance with the terms of the preceding sentence, the third party shall receive the status of a Non-member Transferee and possess only those rights provided in Section 2.7(d)(2).

2.12 Purchase Price, Timing, and Payment after an Event of Disassociation other than a Transfer of a Member's Interest to a Third Party.

(a) Mandatory Redemption. Upon a Member's Disassociation, the Company may or may not redeem all of the Disassociating Member's Membership Interest on the terms set forth in this Article, and the remaining members shall personally accept said obligation, pro-rata based on their ownership in the Company. If the Disassociation is due to death, the Company shall redeem the Member's Interest as set forth below.

(b) Redemption Price. The Redemption Price of a Member's Interest shall be calculated as follows:

(1) The Redemption Price of the Disassociating Member's Membership Interest will be no less than the Disassociating Member's Capital Account plus the Disassociating Member's pro-rata share of the Company Net Value.

(2) The Company Net Value, shall be calculated as follows: The fair market value of all Company assets, less any Company mortgages and debts, less all Member's Capital Accounts. For the purpose of determining the Company's Net Value, first the Net Value will be determined by unanimous agreement of the Members at one-year intervals.

(3) If the Members cannot agree and/or fail to re-determine the Company's Net Value for two successive years, the Net Value shall be determined by an independent qualified appraiser acceptable to the Company and the Seller. The Company will pay all costs associated with the determination of the Net Value. The appraiser shall consider the effect of mortgage and debts on the fair market value of all Company assets.

(c) Notice. The Company has the affirmative duty within three (3) working days of the Event of Disassociation to notify the appraiser to begin calculating the Company Net Value.

(d) Partial Purchase Prohibited. The Company must purchase all the Member's Membership interest, if any at all.

(e) Closing Location and Date.

(1) Closing. Closing shall take place at principal office of Company, or such other place as all the remaining Members shall agree.

(2) Closing Date. The Closing Date shall not be later than ninety (90) days after the Event of Disassociation.

(f) Payment of the Redemption Price. The Company shall pay the Purchase Price as follows: Ten Percent (10%) of the Purchase Price shall be paid in cash on or before the Closing Date. The balance of the Purchase Price shall be evidenced by a promissory note providing for sixty (60) monthly installments of principal and interest at a fixed rate calculated by adding five-hundred (500) basis points to the published annual federal mid-term rate for the month immediately preceding the transferring event. Installments of principal and interest commencing on the first day of the second month following the month in which the closing date occurred, and continuing on the first day of each month thereafter until fully paid. The promissory note shall provide for: (i) the privilege of prepayment at any time, without penalty; (ii) the acceleration of all remaining installments of principal and interest in the event any installment remains unpaid for thirty (30) calendar days after the date upon which any installment becomes due; and (iii) the promissory note to be secured by a security interest in the membership interest and/or underlying real property, if any, then existing; (iv) all remaining members shall sign the promissory note and personally guarantee their proportionate share that corresponds to their interest in the Company immediately after the Closing Date. If substantially all the property securing the promissory note is sold, whether in one transaction or a series, then the principal balance of the promissory note shall be accelerated.

(g) Payment Terms if due to Member's Death. The Company has three (3) options if there is an Event of Disassociation because of the death of a Member; (i) pay the Redemption Price at the closing in the form of a promissory note as set forth in Article 2.12(f) above; (ii) transfer the Membership Interest to the Member's family, estate, or beneficiary making the recipient a full Member; (iii) dissolve the Company and distribute the profit and loss pro rata according to Article 6.2.

ARTICLE 3: FINANCE

3.1 Contributions.

(a) Required. A required contribution may be made of the Members, only with seventy-five percent (75%) of the Members approving of said requirement. A required contribution can only be required if it is determined that such a contribution is reasonably necessary to keep the Company operating and in business.

(b) Optional Additional Contributions. The Company may authorize, but not require, additional Contributions at such times and on such terms and conditions as it determines to be in its best interest, and as the Members may unanimously agree. If the Members agree to make additional contributions, all contributions shall be pro-rata based on the ownership percentages of the Members. In Compliance with IRC § 4975, a qualified plan which owns One Hundred percent (100%) of Company may make additional contribution of capital at any time.

3.2 Allocation of Profit and Loss.

(a) General Allocation. The Company's Profit or Loss for a Taxable Year, including the Taxable Year in which the Company is dissolved, will be allocated among the Members in proportion to their Membership Interests, as set forth in Section 2.1 above, or as may be unanimously agreed upon in writing between the Members.

(b) Special Allocations. No special allocations shall be allowed under the Operating Agreement.

(c) Effect of Transfers During Year. The Company will prorate items attributable to a Membership Interest during a Taxable Year wherein a transfer of Membership has occurred.

(d) Charging Order. If there is a standing Charging Order issued by any Court or similar jurisdictional authority against a Member or Manager of the Company, and their assets or ownership of the Company, there shall be no distributions to any Member to which a standing Charging Order has been issued and any allocations of income shall be reported to the beneficiary or plaintiff benefitting from any such Charging Order.

3.3 Tax Allocations. For federal income tax purposes, unless the Code otherwise requires, each item of the Company's income, gain, loss or deduction will be allocated to the Members in proportion to their allocations of the Company's Profit or Loss. With respect to a Member that is a Qualified Plan, the Plan Custodian/Trustee disclaims any responsibility for payment of Unrelated Business Income Tax or Unrelated Debt Financed Income. It is the sole responsibility of the Qualified Plan owner to determine if said taxes are due and pay for said taxes out of the distributions to the Plan Member. Additionally, the Qualified Plan Owner is responsible for preparing any necessary tax returns to report Unrelated Business Income Tax or Unrelated Debt Financed Income.

3.4 Pro-Rata Distributions. The Company will make all Distributions to the Members in proportion to their Membership Profit Percentage, and at no times shall Distributions take place unless pro-rata according to the Profit Percentages set forth in Article 2 above.

3.5 **Annual Distribution.** In the event that there are federal taxes due to the Members from the Company's activities and upon the majority vote of the Members, an annual distribution (the "Annual Distribution") of the profits of the Company shall be made no later than February 28th of each year, based on the profits of the previous year. The Annual Distribution shall be equal to thirty percent (30%) of the previous year's profit. This Annual Distribution is for the purpose of the Member's paying any tax liability they may incur based on the income that may flow to them through the K-1 reporting as set forth in Article 5 below. At all times the Annual Distribution shall be pro-rata as set forth in Article 3.4 above. If the Company (i) does not have the cash in the Company bank account to allow for said distribution; (ii) there was a previous distribution for the same profit period made that exceeds thirty percent (30%); or (iii) said Annual Distribution would negatively impact the operations of the Company, this Annual Distribution shall not be made. Keeping cash for future expansion or growth is not considered a reason that would qualify for avoiding the Annual Distribution.

3.6 **Discretionary Distributions.** All discretionary distributions shall be unanimously agreed upon between the Members.

3.7 **Capital.**

(a) General Maintenance. The Company will establish and maintain a Capital Account for each Member. A Member's Capital Account will be:

(1) increased by: (i) the amount of any money the Member contributes to the Company's capital; (ii) the fair market value of any property the Member contributes to the Company's capital, net of any liabilities the Company assumes or to which the property is subject; and (iii) the Member's share of Profits and any separately stated items of income or gain; and

(2) decreased by: (i) the amount of any money the Company distributes to the Member; (ii) the fair market value of any property the Company distributes to the Member, net of any liabilities the Member assumes or to which the property is subject; and (iii) the Member's share of Losses and any separately stated items of deduction or loss.

(b) Adjustments for Distributions in Kind. If at any time the Company distributes property in kind, it will adjust the Members' Capital Accounts to account for their shares of any Profit or Loss the Company would have realized had it sold the property at fair market value and distributed the sale proceeds.

(c) Adjustments for Acquisitions and Redemptions. If at any time a Person acquires a Membership Interest from the Company or the Company redeems a Membership Interest, the Company may adjust the Members' Capital Accounts to reflect any Profit or Loss the Company would have realized had it sold all of its assets at fair market value on the date of the acquisition or redemption.

(d) Transfer of Capital Account. A Transferee of a Membership Interest succeeds to the portion of the transferor's Capital Account that corresponds to the portion of the Membership Interest that is the subject of the Transfer.

(e) Compliance with Code. The requirements of Article 3.5 are intended and will be construed to ensure that the allocations of the Company's income, gain, losses, deductions and credits have substantial economic effect under the Regulations promulgated under Section 704(b) of the Code.

(f) Contributions by Qualified Plan. No Member's Capital Account, other than the contributing Qualified Plan Member's Capital Account, shall be increased due to the investment by a

Qualified Plan. However, a Member's ownership interest may be adjusted pro-rata, because of the investment of new Members, whether by a Qualified Plan or not.

ARTICLE 4: MANAGEMENT

4.1 **Representative Management.** The Company will be managed by a Manager or Managers. The Members from time to time may establish and change the Manager or number of Managers. The names and business address of the Company's Manager is Jason Randall, located at 17724 Carol Circle, Flint, Texas 75762.

4.2 **Powers and Authority**

(a) General Scope. Except for matters on which the Members' approval is required by the Act or this Agreement, the Managers have full power, authority and discretion to manage and direct the Company's business, affairs and properties, including, without limitation, the specific powers referred to in Article 4.2 (b) subject to the requirements of IRC § 4975 and ERISA.

(b) Specific Powers. The Manager is authorized on the Company's behalf to (i) make all decisions as to management of all or any part of the Company's assets and business; (ii) make any and all elections available to the Company under any federal or state tax law or regulation; (iii) file any necessary tax returns and/or reports; and (iv) direct all of the bank accounts and financial affairs of the Company.

4.3 **Agency Power and Authority.** A Manager acting for the Company in the usual course of its business has the power to bind the Company and no person has an obligation to inquire into the Manager's actual authority to act on the Company's behalf. However, if Manager acts outside the scope of the Manager's actual authority or in contravention of a decision of the Members, the Manager will indemnify the Company for any costs or damages it incurs as a result of the unauthorized act.

In the event a Manager also has a Qualified Plan which when combined with other related or disqualified parties comprises fifty percent (50%) or more of the Membership of Company, the Managers actions are limited to administrative and investment oversight functions such as signing contracts and documents, receiving income, paying expenses and overseeing the Company's investments and assets. The Manager in this instance is prohibited from physically working on any of the Company's properties.

4.4 **Majority of Managers Required.** When more than one Manager is serving for the Company, a majority of the Managers' approval is required for any decision or act made by the Manager(s). If two Managers are serving, a unanimous consent is required for any such act.

4.5 **Fiduciary Duties.**

(a) Standard of Care.

(1) Exculpation. A Manager will not be liable to the Company or any Member for an act or omission done in good faith to promote the Company's best interests, unless the act or omission constitutes gross negligence, intentional misconduct or a knowing violation of law.

(2) Justifiable Reliance. A Manager may rely on the Company's records maintained in good faith and on information, opinions, reports or statements received from any Person pertaining to matters the Manager reasonably believes to be within the Person's expertise or competence.

(b) Conflicts of Interest.

(1) Competing Activities. A Manager may participate in a Competing Activity unless the activity negatively impacts another Member.

(c) Self-Dealing. A Manager may enter into a business transaction with the Company if the terms of the transaction are no less favorable to the Company than those of a similar transaction with an independent third party. Approval or ratification by Members having no interest in the transaction constitutes conclusive evidence that the terms satisfy the foregoing condition. Additionally, pursuant to C.F.R. § 2550.408b-2, a Manager may not use their official authority, control or responsibility to personally benefit from the use of the business assets or services.

4.6 **Indemnification of Managers.** The Company may but is not required to indemnify each Manager for all expenses, losses, liabilities and damages the Manager actually and reasonably incurs in connection with the defense or settlement of any action arising out of or relating to the conduct of the Company's activities, except an action with respect to which the Manager is adjudged to be liable for breach of a fiduciary duty owed to the Company or the Members under the Act or this Agreement.

4.7 **Compensation.** The Company may reimburse any Manager for reasonable expenses properly incurred on the Company's behalf. The Company may also compensate a Manager for services provided for and on behalf of the Company, provided that the Manager and any related or disqualified parties owns less than fifty percent (50%) of the Membership of Company and so long as such compensation does not violate IRC § 4975, ERISA or other laws applicable to a Qualified Plan.

4.8 **Tenure.**

(a) Term. A Manager will serve until the earlier of: (i) the Manager's resignation; (ii) the Manager's removal; (iii) the Manager's Bankruptcy; (iv) as to a Manager who is a natural person, the Manager's death or disability; and (v) as to a Manager that is an Entity, the Manager's dissolution.

(b) Resignation. A Manager at any time may resign by written notice delivered to the Members at least 30 days prior to the effective date of the resignation.

(c) Removal. The Members at any time may remove a Manager, with or without cause, with the approval of Members whose aggregate Membership Interest exceeds fifty percent (50%).

(d) Vacancy. If a Manager for any reason ceases to act, the Members will promptly elect a successor, to serve until a manager is elected and qualified.

4.9 **Power of Attorney** Each Member appoints each Manager, with full power of substitution, as the Member's attorney-in-fact, to carry out the duties and operations of the Company, unless such duty or act requires the Member's specific consent as set forth above in Section 4.3.

ARTICLE 5: RECORDS AND ACCOUNTING

5.1 Maintenance of Records.

(a) Required Records. The Manager will maintain at its principal place of business such books, records and other materials as are reasonably necessary to document and account for its activities, including, without limitation, those required to be maintained by the Act.

(1) A current list, in alphabetical order, of the full name and last known business address of each Member and each Manager, if any;

(2) A copy of the filed Articles and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any Articles have been executed;

(3) A copy of this Operating Agreement, including all amendments thereto;

(4) Copies of the Company's tax returns for the last three (3) years; and

(5) Copies of the Company's financial statements for the three (3) most recent years.

(b) Member Access. A Member and the Member's authorized representative will have reasonable access to and may inspect and copy all books, records and other materials pertaining to the Company or its activities. The exercise of such rights will be at the requesting Member's expense.

(c) Confidentiality. No Member or Manager will disclose any information relating to the Company or its activities to any unauthorized person or use any such information for his or her or any other Person's personal gain.

5.2 Financial Accounting

(a) Accounting Method. The Company's general method of accounting shall be on the cash basis in accordance with standard accounting methods generally applicable under Subchapter K of the Code. If the Company is inventory or construction based, the appropriate method shall be applied as may be required by the Code. Such methods shall be in a consistent manner, and shall accurately reflect all Company transactions. The accounting records shall show a true and accurate records of all costs and expenses incurred, all charges made, all credits made and received, and all income derived in connection with the operation of the Company business in accordance with generally accepted accounting principles.

(b) Taxable Year. The Company's Taxable Year ending on December 31 is the Company's annual accounting period.

5.3 Reports.

(a) Members. As soon as practicable after the close of each Taxable Year, the Manager will prepare and send to the Members such reports and information as are reasonably necessary to (i) inform the Members of the results of the Company's operations for the Taxable Year, (ii) enable the Members to completely and accurately reflect their distributive shares of the Company's income, gains,

deductions, losses and credits in their federal, state and local income tax returns for the appropriate year, and (iii) value the Company and report said valuation to the Members.

(b) Valuations/Appraisals. Any valuations/appraisals of the Company's value, its investments or the Member's interests are the sole responsibility of the individual Members, and if the Member is a Qualified Plan, the owner of the Qualified Plan is solely responsible for the valuation process and cost, and not the Plan custodian or administrator.

(c) Periodic Reports. The Manager will complete and file any periodic reports required by the Act or the law of any other jurisdiction in which the Company is qualified to do business.

5.4 **Tax Compliance.**

(a) Withholding. If the Company is required by law or regulation to withhold and pay over to a governmental agency any part or all of a Distribution or allocation of Profit to a Member: (i) the amount withheld will be considered a Distribution to the Member; and (ii) if the withholding requirement pertains to a Distribution in kind or an allocation of Profit, the Company will pay the amount required to be withheld to the governmental agency and promptly take such action as it considers necessary or appropriate to recover a like amount from the Member, including offset against any Distributions to which the Member would otherwise be entitled.

(b) Tax Matters Partner/Partnership Representative. In the event the Company is required to file a Form 1065 Partnership Tax Return, but qualifies and has filed the necessary documents to opt out of the Centralized Partnership Audit Regime, then upon approval of a majority of the Members, the Company will designate a Member or Manager to act as the "Tax Matters Partner" pursuant to Section 6231(a)(7) of the Code. The Company may, upon approval of a majority of the Members, remove any Tax Matters Partner, with or without cause, and designate a successor to any Tax Matters Partner who for any reason ceases to act. The Tax Matters Partner will inform the Members of all administrative and judicial proceedings pertaining to the determination of the Company's tax items and will provide the Members with copies of all notices received from the Internal Revenue Service regarding the commencement of a Company-level audit or a proposed adjustment of any of the Company's tax items. Upon approval by a majority of the Members, the Tax Matters Partner may extend the statute of limitations for assessment of tax deficiencies against the Members attributable to any adjustment of any tax item. The Company will reimburse the Tax Matters Partner for reasonable expenses properly incurred while acting within the scope of the Tax Matters Partner's authority.

In the event the Company is required to file a Form 1065 Partnership Tax Return, but either does not qualify or has not filed the necessary documents to opt out of the Centralized Partnership Audit Regime, then the Company will designate, upon approval of a majority of the Members, a Member or Manager to act as the "Partnership Representative" pursuant to Section 6223(a) of the Code. The Company may, upon approval of a majority of the Members, remove any Partnership Representative, with or without cause, and designate a successor to any Partnership Representative who for any reason ceases to act. The Partnership Representative will inform the Members of all administrative and judicial proceedings pertaining to the determination of the Company's tax items and will provide the Members with copies of all notices received from the Internal Revenue Service regarding the commencement of a Company-level audit or a proposed adjustment of any of the Company's tax items. Upon approval by a majority of the Members, the Partnership Representative may extend the statute of limitations for assessment of tax deficiencies against the Members attributable to any adjustment of any tax item, and/or settle any matter within the scope of its authority as Partnership Representative. The Company will reimburse the Partnership Representative for reasonable expenses properly incurred while acting within the scope of the Partnership Representative's authority.

(c) Asset Purchases. Pursuant to I.R.C. §§ 401 and 4975, the Manager may not enter into any asset purchase on behalf of the Company, which is considered a “Prohibited Transaction” under tax-law statutes for qualified plans. A Prohibited Transaction shall include, but is not limited to, the Company purchasing property from the Qualified Plan Owner, a spouse, ancestor, or lineal descendant of a Manager or a Member, who also, combined with their personal ownership and that of their qualified plan, owns fifty percent (50%) or more of the Company.

ARTICLE 6: DISSOLUTION

6.1 Events of Dissolution. The Company shall experience an Event of Dissolution upon the first of the following to occur.

(1) the vote of the Members to dissolve the Company with the approval of Members whose aggregate Membership Interest exceeds fifty percent (50%);

(2) any event that makes the Company ineligible to conduct its activities as a limited liability company under the Act or the Code; or

(3) any event or circumstance that makes it unlawful or impossible for the Company to carry on its business.

6.2 Effect of Dissolution

(a) Appointment of Liquidator. Upon the Company's dissolution, the Manager will appoint a “liquidator”, who may but need not be a Member. The Liquidator will wind up and liquidate the Company in an orderly, prudent and expeditious manner in accordance with the following provisions of this Article 6.2.

(b) Final Accounting. The Liquidator will make proper accountings (i) to the end of the month in which the event of dissolution occurred and (ii) to the date on which the Company is finally and completely liquidated.

(c) Duties and Authority of Liquidator. The Liquidator will make adequate provisions for the discharge of all of the Company's debts, obligations and liabilities. The Liquidator may sell, encumber or retain for distribution in kind any of the Company's assets. Any gain or loss recognized on the sale of assets will be allocated to the Members' Capital Accounts in accordance with the provisions of Article 3.7. With respect to any asset the Liquidator determines to retain for distribution in kind, the Liquidator will allocate to the Members' Capital Accounts the amount of gain or loss that would have been recognized had the asset been sold at its fair market value.

(d) Final Distribution. The Liquidator will distribute any assets remaining after the discharge of the Company's debts, obligations and liabilities, to the Members in the following manner: (i) all Members, including Qualified Plan Members, shall receive a full return of their capital contributions upon liquidation before any Members share in profits or losses according to their respective profit or loss percentage; (ii) after returning the Member's Capital Account amounts, the Liquidator shall distribute the remaining assets to the Members according to their respective membership interest profit or loss percentage; (iii) the Liquidator will distribute any assets distributable in kind to the Members in undivided interests as tenants in common; and (iv) A Member whose Capital Account is negative will have no

liability to the Company, the Company's creditors, or any other Member with respect to the negative balance.

(e) Required Filings. The Liquidator will file with the appropriate State agency any statements, certificates and other instruments, and take such other actions, as are reasonably necessary or appropriate to effectuate and confirm the cessation of the Company's existence.

ARTICLE 7: DEFINITIONS

7.1 **Scope**. For purposes of this Agreement, unless the language or context clearly indicates that a different meaning is intended; capitalized terms have the meanings specified in this Article.

7.2 **Defined Terms**.

(a) "Act" means the Texas Limited Liability Company Act.

(b) "Affiliate," with respect to a Person, means (i) a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the Person, (ii) a Person who owns or controls at least ten percent (10%) of the outstanding voting interests of the Person, (iii) a Person who is an officer, director, manager or general partner of the Person, or (iv) a Person who is an officer, director, manager, general partner, trustee or owns at least ten percent (10%) of the outstanding voting interests of a Person described in clauses (i) through (iii) of this sentence.

(c) "Agreement" means this agreement, including any amendments.

(d) "Articles" means the Articles of Organization filed with the appropriate division/agency of Texas Corporations and Commercial Code to organize the Company as a limited liability company, including any amendments.

(e) "Bankruptcy" means the filing of a petition seeking liquidation, reorganization, arrangement, readjustment, protection, relief or composition in any state or federal bankruptcy, insolvency, reorganization or receivership proceeding.

(f) "Capital Account" of a Member means the capital account maintained for the Member in accordance with and defined in Article 3.7.

(g) "Code" means the Internal Revenue Code of 1986, as amended.

(h) "Company" means **Randall Property Investments, LLC** and any successor limited liability company.

(i) "Company Net Value" means the value of the Company for purposes of the Buy-Sell Agreement provisions as defined in Article 2.12.

(j) "Competing Activity" means an activity that competes with or is benefitted by the Company's present or prospective activities. A passive investment in an Entity engaged in a Competing Activity is itself a Competing Activity only if the investor and the Entity are Affiliates.

(k) "Contribution" means anything of value that a Member contributes to the Company as a prerequisite for or in connection with membership, including any combination of cash, property, services rendered, a promissory note or any other obligation to contribute cash or property or render services.

(l) "Disability" means (i) a Member shall be deemed disabled during any period when, in the opinion of two licensed physicians, a Member is incapacitated or disabled because of illness, age, or any other cause which results in the Member's inability to effectively manage his or her property or financial affairs, (ii) A Member shall also be deemed to be disabled upon the determination of a court of competent jurisdiction that a Member is incompetent, incapacitated, or otherwise legally unable to effectively manage his or her property or financial affairs, (iii) A Member shall be deemed to be disabled upon the unexplained disappearance or absence of a Member, or if a Member is being detained under duress where the Member is unable to effectively manage his or her property or financial affairs.

(m) "Disassociation" means a complete termination of a Member's membership in the Company in consequence of an event described in Article 2.8.

(n) "Distribution" means the Company's direct or indirect transfer of money with respect to a Member's Interest. In cases of liquidation, the distribution of money or property with respect to a Member's Interest.

(o) "Effective Date," with respect to this Agreement, means the date on which the Company's existence as a limited liability company begins, as prescribed by the Act, or April 1, 2020, whichever is earlier.

(p) "Entity" means an association, relationship or artificial person through or by means of which an enterprise or activity may be lawfully conducted, including, without limitation, a partnership, trust, limited liability company, corporation, joint venture, cooperative or association.

(q) "Manager" means a Person who is vested with authority to manage the Company in accordance with Article 4.

(r) "Member" means a Member to this Agreement and any Person or entity who subsequently is admitted as an additional or substitute Member after the Effective Date, in accordance with Article 2.

(s) "Membership Interest" means a Member's percentage interest in the Company, consisting of the Member's right to share in Profits, receive Distributions, participate in the Company's governance, approve the Company's acts, participate in the designation and removal of a Manager and receive information pertaining to the Company's affairs. The Membership Interests of the initial Members are set forth in Article 2.1(a). Changes in Membership Interests after the Effective Date, including those necessitated by the admission and Disassociation of Members, will be reflected in the Company's records. The allocation of Membership Interests reflected in the Company's records from time to time is presumed to be correct for all purposes of this Agreement and the Act.

(t) "Minimum Gain" means minimum gain as defined in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

(u) "Person" means a natural person or an Entity.

(v) "Plan Custodian" means a Plan Administrator or Custodian of a Qualified Plan as defined in this Agreement.

(w) "Plan Owner" means an individual who is the owner or beneficiary of a Qualified Plan as defined in this Agreement.

(x) "Qualified Plan" means an ERISA or IRS qualified retirement plan such as a 401(k), SEP IRA, KEOGH, SIMPLE, HSA, Traditional IRA or Roth IRA plan.

(y) "Taxable Year" means the Company's taxable year as determined in accordance with Article 5.2.

(z) "Transfer," as a noun, means a transaction or event by which ownership of a Membership Interest is changed or encumbered, including, without limitation, a sale, exchange, abandonment, gift, pledge or foreclosure. "Transfer," as a verb, means to effect a Transfer.

(aa) "Transferee" means a Person who acquires a Membership Interest by Transfer from a Member or another Transferee and is not admitted as a Member in accordance with Article 2.7.

ARTICLE 8: GENERAL PROVISIONS

8.1 Amendments.

(a) Required Amendments. The Company, the Manager and the Members will execute and file any amendment to the Articles required by the Act of the Code. If any such amendment results in inconsistencies between the Articles and this Agreement, this Agreement will be considered to have been amended in the specifics necessary to eliminate the inconsistencies.

(b) Other Amendments. Any Manager or any Member may propose for consideration and action an amendment to this Agreement or to the Articles. A proposed amendment will become effective at such time as it is approved by the Managers and all Members.

8.2 **Nominee.** Title to the Company's assets may be held in the name of the Company or any nominee (including any Manager or any Member so acting), as the Company determines. The Company's agreement with any nominee may contain provisions indemnifying the nominee for costs or damages incurred as a result of the nominee's service to the Company.

8.3 **Investment Representation.** Each Member represents to the Company and the other Members that (i) the Member is acquiring a Membership Interest in the Company for investment and for the Member's own account and not with a view to its sale or distribution and (ii) neither the Company nor any other Member has made any guaranty or representation upon which the Member has relied concerning the possibility or probability of profit or loss resulting from the Member's investment in the Company.

8.4 **Resolution of Disputes.** The Members and Manager (collectively, the "Parties") will endeavor in good faith to resolve all disputes arising under or related to this Agreement by mediation with a mutually acceptable mediator. The Parties affected by the dispute (the "Affected Parties") shall select an individual who understands the mediation process, possesses no conflict with any Affected Party, and who possess knowledge in the area of dispute. If the process of mediation is not successful, the Affected Parties agree to be bound to arbitration by a third party arbitrator (the "Arbitrator") whose identity is to be

(i) different from that of any person who already served as mediator for the dispute, and (ii) agreed upon by the Affected Parties. The Arbitrator shall follow the then-prevailing local court rules and procedures and shall produce an arbitration opinion which contains a summary of the applicable law and findings of fact, which opinion is to be upheld as binding on the Affected Parties unless a court subsequently determines that such opinion is clearly erroneous or that the Arbitrator acted in an arbitrary and capricious manner. All costs shall be shared equally between the Members.

8.5 **Notices.** Notices contemplated by this Agreement may be sent by any commercially reasonable means, including hand delivery, first class mail, fax, E-mail or private courier. The notice must be prepaid and addressed as set forth in the Company's records. The notice will be effective on the date of receipt or, in the case of notice sent by first class mail, the fifth day after mailing.

8.6 **Resolution of Inconsistencies.** If there are inconsistencies between this Agreement and the Articles, the Articles will control. If there are inconsistencies between this Agreement and the Act, this Agreement will control, except to the extent the inconsistencies relate to provisions of the Act that the Members cannot alter by agreement. Without limiting the generality of the foregoing, unless the language or context clearly indicates a different intent, the provisions of this Agreement pertaining to the Company's governance and financial affairs and the rights of the Members upon Disassociation and dissolution will supersede the provisions of the Act relating to the same matters.

8.7 **Additional Instruments.** Each Member will execute and deliver any document or statement necessary to give effect to the terms of this Agreement or to comply with any law, rule or regulation governing the Company's formation and activities.

8.8 **Computation of Time.** In computing any period of time under this Agreement, the day of the act or event from which the specified period begins to run is not to be included. The last day of the period is included, unless it is a Saturday, Sunday or legal holiday, in which case the period will run until the end of the next day that is not a Saturday, Sunday or legal holiday.

8.9 **Entire Agreement.** This Agreement and the Articles comprise the entire agreement among the parties with respect to the Company. This Agreement and the Articles supersede any prior agreements or understandings with respect to the Company.

8.10 **Waiver.** No right under this Agreement may be waived, except by an instrument in writing signed by the party sought to be charged with the waiver.

8.11 **General Construction Principles.** Words in any gender are deemed to include the other genders. The singular is deemed to include the plural and vice versa. The headings and underlined paragraph titles are for guidance only and have no significance in the interpretation of this Agreement.

8.12 **Binding Effect.** Subject to the provisions of this Agreement relating to the transferability of Membership Interests and the rights of Transferees, this Agreement is binding on and will inure to the benefit of the Company, the Members and their respective distributees, successors and assigns.


8.13 **Governing Law.** Texas law governs the construction and application of the terms of this Agreement.

8.14 **Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original.

Signed on the respective dates set forth below, to be effective as of April 1, 2020.

MEMBERS:


EMPRESTIZA RETIREMENT PLAN TRUST FBO JASON RANDALL



Jason Randall, Trustee

Apr 10, 2020
Date

MANAGER:



Jason Randall

Apr 10, 2020
Date

Exhibit A
Schedule of Values

MEMBER'S INITIAL CONTRIBUTIONS

<u>NAME</u>	<u>MEMBERSHIP UNITS</u>	<u>ASSET</u>	<u>AMOUNT</u>
Emprestiza Retirement Plan Trust FBO Jason Randall	100%	cash	\$ _____

ASSIGNMENT

For value received **The Entrust Group Inc. FBO Jason Randall IRA #7230000763** has hereby transferred, sold, assigned, conveyed, and set over to:

Emprestiza Retirement Plan Trust FBO Jason Randall
17724 Carol Circle
Flint, TX 75762


As Assignee, its successors, representatives and all others, all its right, title and interest to:

Randall Property Investments, LLC

The Assignor herein has assigned to the Assignee herein the Agreement and this transfer is made to secure the Assignee, its successors, representatives and all others, in the payment of said agreement.

In Witness whereof, the Assignor has hereunto set its had this _____ day of _____, 2020.

Emprestiza Retirement Plan Trust FBO Jason Randall

By:  _____

Title: Authorized Signer

**ACTION BY WRITTEN CONSENT OF THE
MEMBERS OF
RANDALL PROPERTY INVESTMENTS, LLC**

The Member of Randall Property Investments, LLC (hereinafter the “Company”) takes the following action by written consent.

The Member, The Entrust Group, Inc. FBO Jason Randall IRA #7230000763, through its beneficiary, Jason Randall, hereby takes the following actions.

IT WAS RECOGNIZED that the ownership of the Company has changed and is as follows:

Emprestiza Retirement Plan Trust - 100 Membership Units (100%)
FBO Jason Randall

IT WAS RESOLVED that the Member of the Company has voted and agreed to accept the Assignment Transfer wherein membership is transferred from The Entrust Group, Inc. FBO Jason Randal IRA #7230000763 to Emprestiza Retirement Plan Trust FBO Jason Randall.

IT WAS FURTHER RESOLVED that the Member of the Company has voted and agreed to retain Kyler Kohler Ostermiller & Sorensen, LLP to Restate and Amend the Company’s Operating Agreement.

DATED this 1st day of April, 2020.

EMPRESTIZA RETIREMENT PLAN TRUST FBO JASON RANDALL



Jason Randall, Trustee




Randall Property Investments, LLC

Final Audit Report

2020-04-10

Created:	2020-04-10
By:	Andrea Emans (Andrea@kkoslawyers.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAIFWAAIBa_AtA_BwVcKbDs2rJOKGyD020

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