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1. Name of conveying party(ies):  
CHARLES J. BONNICI, STEFANO F. TOGNOLI  
and ROSENTHAL & ASSOCIATES, INC.

Additional name(s) of conveying  
party(ies) attached? ☐ Yes ☒ No

3. Nature of Conveyance:  
☐ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☒ Other PureLight Technologies, LLC, Operating Agreement

Execution Date: March 1, 1997

2. Name and address of receiving party(ies):  
Name: PureLight Technologies, LLC  
Internal Address: \_\_\_\_\_

Street Address: 2680 Pacer Lane  
City: San Jose, CA  
Country: USA Zip: 95111  
Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: \_\_\_\_\_

A. Patent Application No.(s)

B. Patent No.(s)  
5,405,631 6,010,727  
5,636,521

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence  
concerning document should be mailed:

Name: ROBERT B. CHICKERING, ESQ.  
Internal Address: FLEHR HOHBACH TEST  
ALBRITTON & HERBERT LLP

Street Address: SUITE 3400  
FOUR EMBARCADERO CENTER  
City: SAN FRANCISCO  
State: CA Zip: 94111-4187

6. Total number of applications  
and patents involved: [3]

7. Total fee (37 CFR 3.41):.....\$120  
☒ Previously Submitted  
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8. Deposit account number: 06-1300  
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9. Statement and signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

ROBERT B. CHICKERING  
Name of Person Signing Reg. No. 24,286

Robert B. Chickering  
Signature

July 6, 2001  
Date

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and ROSENTHAL & ASSOCIATES, INC.Additional name(s) of conveying  
party(ies) attached? ☐ Yes ☒ No3. Nature of Conveyance:  
☐ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☒ Other PureLight Technologies, LLC, Operating AgreementExecution Date: March 1, 19972. Name and address of receiving party(ies):  
Name: PureLight Technologies, LLC  
Internal Address: \_\_\_\_\_Street Address: \_\_\_\_\_  
City: \_\_\_\_\_  
Country USA Zip: \_\_\_\_\_  
Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: \_\_\_\_\_

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B. Patent No.(s)  
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5,636,521Additional numbers attached? ☐ Yes ☒ No5. Name and address of party to whom correspondence  
concerning document should be mailed:Name: ROBERT B. CHICKERING, ESO.  
Internal Address: FLEHR HOHBACH TEST  
ALBRITTON & HERBERT LLPStreet Address: SUITE 3400  
FOUR EMBARCADERO CENTER  
City: SAN FRANCISCO  
State: CA Zip: 94111-41876. Total number of applications  
and patents involved: [3]7. Total fee (37 CFR 3.41):.....\$120  
☒ Enclosed  
☒ Authorized to be charged to  
deposit account DEFICIENCIES ONLY8. Deposit account number: 06-1300  
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PATENT  
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# PURELIGHT TECHNOLOGIES, LLC, OPERATING AGREEMENT

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# PURELIGHT TECHNOLOGIES, LCC, OPERATING AGREEMENT

This agreement is entered into by and among Charles J. Bonnici, a married man ("Bonnici"), Stefano F. Tognoli, a married man ("Tognoli"), and Rosenthal & Associates, Inc., a Minnesota corporation ("Rosenthal"), as of the date on the signature page. The parties have agreed to organize a limited liability company in accordance with the terms and conditions set forth in this agreement.

## ARTICLE I

### DEFINED TERMS

The following capitalized terms shall have the meanings specified in this article. Capitalized terms not defined in this agreement shall have the meaning specified in the Act.

1.01. **Act.** "*Act*" means the California Limited Liability Company Act, as amended.

1.02. **Adjusted Capital Account Deficit.** "*Adjusted Capital Account Deficit*" means, with respect to any Interest Holder, the deficit balance, if any, in the Interest Holder's Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments:

(a) **Decreases.** The deficit shall be decreased by the amounts which the Interest Holder is obligated to restore pursuant to Section 4.04, paragraph (b) or is deemed obligated to restore pursuant to Regulation §§1.704-1(b)(2)(ii)(c), 1.704-2(g), and 1.704-2(i)(5); and

(b) **Increases.** The deficit shall be increased by the items described in Regulation §1.704-1(b)(2)(ii)(d)(4), (5), and (6).

1.03. **Affiliate.** "*Affiliate*" means:

(a) **Persons under common control.** A Person directly or indirectly controlling, controlled by, or under common control with another Person;

(b) **Ten percent (10%) or more owner.** A Person owning or controlling ten percent (10%) or more of the outstanding voting securities or beneficial interests of another Person;

(c) **Officer, etc.** An officer, director, partner, or member of the immediate family of an officer, director, or partner, of another Person; or

(d) **Affiliate of above.** Any Affiliate of any such Person.

1.04. **Assignee.** "*Assignee*" means the Person who has acquired an Economic Interest in the Company, but is not a Member.

1.05. **Capital Account.** "*Capital Account*" means the account to be maintained by the Company for each Interest Holder in accordance with the following provisions:

(a) **Increases.** A Capital Account shall be increased by the following:

1. the amount of money and the net fair market value of any property contributed to the Company;
2. the amount of any unsecured liabilities assumed by the Interest Holder; and
3. the Interest Holder's distributive share of Profit and any item in the nature of income or gain specially allocated to the Interest Holder pursuant to the provisions of Section 4.03 [other than Section 4.03, paragraph (c)].

(b) **Decreases.** A Capital Account shall be decreased by the following:

1. the amount of money and the net fair market value of any property distributed to the Interest Holder;
2. the amount of any unsecured liabilities of the Interest Holder assumed by the Company; and
3. the Interest Holder's distributive share of Loss and any item in the nature of expenses or losses specially allocated to the Interest Holder pursuant to the provisions of Section 4.03 (other than Section 4.03, paragraph (c)).

(c) **Adjustment for transferred Interest.** If any Interest is transferred pursuant to this agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Interest. If the book value of Company property is adjusted pursuant to Section 4.03, paragraph (c), the Capital Account of each Interest Holder shall be adjusted to reflect the aggregate adjustment in the same manner as if the Company had recognized gain or loss equal to the aggregate adjustment. It is intended that the Capital Accounts of all Interest Holders shall be maintained in compliance with the provisions of Regulation §1.704-1(b), and all provisions of this agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Regulation.

1.06. **Cash Flow.** "*Cash Flow*" means all cash derived from operations of the Company (including interest received on reserves), without reduction for any noncash charges, but less cash used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by the Members.

1.07. **Code.** "*Code*" means the Internal Revenue Code of 1986, as amended.

1.08. **Company.** "*Company*" means the limited liability company formed by this agreement.

1.09. **Contribution.** "*Contribution*" means any money, property, or services rendered, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted in this agreement or by law, which a Member contributes to the Company as capital in



that Member's capacity as a Member pursuant to this agreement or any other agreement between the Members, including an agreement as to value.

**1.10. Economic Interest.** "*Economic Interest*" means a Person's right to share in the income, gains, losses, deductions, credits, or similar items of, and to receive Distributions from, the Company, but does not include any other rights of a Member including without limitation the right to Vote or to participate in management or any right to information concerning the Company.

**1.11. Interest Holder.** "*Interest Holder*" means any Person who holds an Economic Interest, whether as a Member or as an Assignee of a Member.

**1.12. Involuntary Withdrawal.** "*Involuntary Withdrawal*" means, with respect to any Member, the affirmative Vote of Members holding all of the Membership Interests, excluding the Member whose withdrawal is being considered, to terminate such Member's Membership Interest.

**1.13. Member.** "*Member*" means any Person who executes this agreement as a Member and any Person who subsequently is admitted as a Member of the Company.

**1.14. Member Loan Nonrecourse Deductions.** "*Member Loan Nonrecourse Deductions*" means any Company deductions that would be Nonrecourse Deductions if they were not attributable to a loan made or guaranteed by a Member within the meaning of Regulation §1.704-2(i).

**1.15. Member Nonrecourse Debt Minimum Gain.** "*Member Nonrecourse Debt Minimum Gain*" has the meaning set forth in Regulation §1.704-2(i)(2) (determined by substituting "Member" or "Interest Holder" for "partner").

**1.16. Membership Interest.** "*Membership Interest*" means a Member's rights in the Company, collectively, including the Member's Economic Interest, any right to Vote or participate in management, and any right to information concerning the business and affairs of the Company.

**1.17. Minimum Gain.** "*Minimum Gain*" has the meaning set forth in Regulation §1.704-2(d). Minimum Gain shall be computed separately for each Interest Holder in a manner consistent with the Regulations under IRC §704(b).

**1.18. Negative Capital Account.** "*Negative Capital Account*" means a Capital Account with a balance of less than zero.

**1.19. Nonrecourse Deductions.** "*Nonrecourse Deductions*" has the meaning set forth in Regulation §1.704-2(b)(1). The amount of Nonrecourse Deductions for a taxable year of the Company equals the net increase, if any, in the amount of Minimum Gain during that taxable year.

**1.20. Nonrecourse Liability.** "*Nonrecourse Liability*" has the meaning set forth in Regulation §1.704-2(b)(3).

**1.21. Percentage.** "*Percentage*" means, as to a Member, the Percentage set forth after the Member's name on Exhibit "A," as amended from time to time, and as to an Interest Holder who

is not a Member, the Percentage or part of a Percentage that corresponds to the portion of a Member's Economic Interest that the Interest Holder has acquired.

1.22. Person. "Person" means and includes an individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

1.23. Positive Capital Account. "Positive Capital Account" means a Capital Account with a balance greater than zero.

1.24. Profit and Loss. "Profit" and "Loss" mean, for each taxable year of the Company (or other period for which Profit or Loss must be computed), the Company's taxable income or loss determined in accordance with IRC §703(a), with the following adjustments:

(a) Separately stated items. All items of income, gain, loss, deduction, or credit required to be stated separately pursuant to IRC §703(a)(1) shall be included in computing taxable income or loss;

(b) Tax-exempt items. Any tax-exempt income, not otherwise taken into account in computing Profit or Loss, shall be added to taxable income or loss;

(c) IRC §705(a)(2)(B) items. Any expenditures described in IRC §705(e)(2)(B) [or treated as such pursuant to Regulation §1.704-1(b)(2)(iv)(i)] and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss;

(d) Sale adjustments. Gain or loss resulting from any taxable disposition of property shall be computed by reference to the book value as adjusted under Regulation §1.704-1(b) ("adjusted book value") of the property disposed of, notwithstanding that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes;

(e) Depreciation adjustment. In lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and

(f) Specially allocated items. Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 4.03 shall not be taken into account in computing Profit or Loss.

1.25. Regulation. "Regulation" means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

1.26. Transfer. "Transfer" means, when used as a noun, any sale, hypothecation, pledge, assignment, attachment, or other transfer and, when used as a verb, to sell, hypothecate, pledge, assign, or otherwise transfer.

1.27. Voluntary Withdrawal. "Voluntary Withdrawal" means a Member's disassociation from the Company by means other than a Transfer or an Involuntary Withdrawal.

**ARTICLE II**  
**FORMATION**

2.01. **Organization.** The parties hereby organize a limited liability company pursuant to the Act and the provisions of this agreement. The Company shall cause Articles of Organization to be prepared, executed, and filed with the Secretary of State.

2.02. **Name of the Company.** The name of the Company is PureLight Technologies, LLC.

2.03. **Purpose.** The Company is organized to commercially exploit the PureLight Food Purification Process, a Refrigeration Apparatus & Methods patent obtained by Rosenthal, and other technology developed by the Company, and to do any and all things necessary, convenient, or incidental to that purpose.

2.04. **Term.** The Company shall continue in existence until December 31, 2047, unless sooner dissolved as provided by this agreement or the Act.

2.05. **Principal Place of Business.** The Company's principal place of business shall be located at 2680 Pacer Lane, San Jose, California 95111, or at any other place upon which the Members agree.

2.06. **Resident Agent.** The name and address of the Company's initial resident agent in the State of California are Cenayda V. Rosenthal, 2680 Pacer Lane, San Jose, California 95111.

2.07. **Members.** The name, present mailing address, taxpayer identification number, and Percentage of each Member are set forth on Exhibit A.

**ARTICLE III**  
**CAPITAL AND CAPITAL ACCOUNTS**

3.01. **Initial Contributions.** Upon the execution of this agreement, the Members shall make Contributions to the Company as set forth in Exhibit A for each Member. These initial contributions shall be made within ten (10) days of executing this agreement.

3.02. **Additional Contributions.** Tognoli and Bonnici may be required to contribute up to an additional \_\_\_\_\_ dollars (\$) each to complete development of the Company's initial products or to meet deficits in operating capital. Such additional contributions may be required only on the terms and conditions set forth in this section. If the Company's initial funding by Tognoli and Bonnici has been expended and Company revenues are insufficient to complete development of the Company's initial products and to continue Company's operation, the Company may issue one or more written capital calls equally to Tognoli and Bonnici. Any such capital call shall be payable within fifteen (15) days after the capital call is made. The total amount of such capital calls

shall not exceed \_\_\_\_\_ dollars (\$) each for Tognoli and Bonnici, for a combined maximum total of additional capital calls of \_\_\_\_\_ dollars (\$ \_\_\_\_\_). Further, the right to make such capital calls shall expire on December 31, 1999. If either Tognoli or Bonnici fails to make any additional capital contribution as required by this section, the only sanction for such failure shall be the reallocation of Percentages provided in Section 3.08. Except as specifically provided in this section, no Member shall be required to contribute any additional capital to the Company, except as agreed by all of the Members, and no Member shall have personal liability for any obligation of the Company, except as expressly provided by law.

**3.03. No Interest on Contributions.** Neither Members nor any Interest Holders shall be paid interest with respect to Contributions.

**3.04. Return of Contributions.** Except as otherwise provided in this agreement, no Member nor Interest Holder shall have the right to receive the return of any Contribution or make any withdrawal from the Company, except upon the dissolution of the Company.

**3.05. Form of Return of Capital.** Except as otherwise expressly provided in this agreement, if a Member or an Interest Holder is entitled to receive the return of a Contribution, the Company may distribute notes or other property having a value equal to the amount of money otherwise distributable to such Person in lieu of money.

**3.06. Capital Accounts.** A separate Capital Account shall be maintained for each Member and Interest Holder.

**3.07. Loans and Other Business Transactions.** Any Member or Affiliate may, at any time, make or cause to be made a loan to the Company in any amount and on those terms upon which the Company and the Member agree. Members may also transact other business with the Company and, in doing so, they shall have the same rights and be subject to the same obligations arising out of any such business transaction that would be enjoyed by and imposed upon any Person, not a Member, engaged in a similar business transaction with the Company.

**3.08. Failure to Make Additional Contributions.** If either Tognoli or Bonnici, but not both, fails to make an additional capital contribution required by Section 3.02, then the Percentage of the one who failed to make the additional capital contribution (the "Defaulting Contributor") shall be reduced to the sum of (a) twelve and one-half percent (12.5%) plus (b) an additional 1,667/10,000 percent (.1667%) for each one thousand dollars (\$1,000) of additional capital contributions actually made by the Defaulting Contributor pursuant to Section 3.02 prior to the failure to make an additional capital contribution required pursuant to Section 3.02. The Percentage of Rosenthal shall be increased by the amount of the reduction in the Percentage of the Defaulting Contributor. If both Bonnici and Tognoli fail to make all of the additional capital contributions actually required under Section 3.02, then each

of their Percentages shall be reduced to the sum of (a) twelve and one-half percent (12.5%) plus (b) for each of them an additional 1,667/10,000 percent (.1667%) for each one thousand dollars (\$1,000) of additional capital contributions actually made by each of them, respectively, pursuant to Section 3.02 prior to each's respective failure to make an additional capital contribution required pursuant to Section 3.02. Rosenthal's Percentage shall be increased to one hundred percent (100%) minus the sum of the reduced Percentages of Tognoli and Bonnici.

## **ARTICLE IV**

### **PROFIT, LOSS, AND DISTRIBUTIONS**

**4.01. Distribution of Cash Flow.** Cash Flow for each taxable year of the Company shall be distributed to the Interest Holders in proportion to their Percentages at least quarterly.

**4.02. Allocation of Profit or Loss.** After giving effect to the special allocations set forth in Section 4.03 for any taxable year of the Company, Profit and Loss shall be allocated to the Interest Holders in the same proportion Cash Flow is allocated to the Interest Holders.

**4.03. Regulatory Allocations.**

(a) **Impermissible deficits and qualified income offset.** No Interest Holder shall be allocated Losses or deductions if the allocation causes the Interest Holder to have an Adjusted Capital Account Deficit; instead, such items shall be allocated to the other Interest Holders. If an Interest Holder for any reason (whether or not expected) receives (1) an allocation of Loss or deduction (or item thereof) or (2) any Distribution, which causes the Interest Holder to have an Adjusted Capital Account Deficit at the end of any taxable year, then all items of income and gain of the Company (consisting of a pro rata portion of each item of Company income, including gross income and gain) for that taxable year shall be allocated to that Interest Holder, before any other allocation is made of Company items for that taxable year (other than an allocation under paragraph (b) below), in the amount and in proportions required to eliminate the excess as quickly as possible. This paragraph (a) is intended to comply with, and shall be interpreted consistently with, the "alternate test for economic effect" and "qualified income offset" provisions of the Regulations promulgated under Code §704(b).

(b) **Minimum gain chargebacks.** In order to comply with the "minimum gain chargeback" requirements of Regulation §§1.704-2(f)(1) and 1.704-2(i)(4) and notwithstanding any other provision of this agreement to the contrary, in the event there is a net decrease in an Interest Holder's share of Minimum Gain or Member Nonrecourse Debt Minimum Gain during a taxable year, such Interest Holder shall be allocated items of income and gain for that year (and if necessary, other years) as required by and in accordance with Regulation §§1.704-2(f)(1) and

1.704-2(i)(4) before any other allocation is made. It is the intent of the parties that any allocation pursuant to this paragraph shall constitute a "minimum gain chargeback" under Regulation §§1.704-2(f) and 1.704-2(i)(4).

(c) **Contributed property and book-ups.** In accordance with Code §704(c) and applicable Regulations, income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the Interest Holders so as to take account of any variation between the adjusted basis of the property for federal income tax purposes and its fair market value at the date of Contribution (or deemed Contribution). If the adjusted book value of any Company asset is adjusted under Regulation §1.704-1(b)(2)(iv)(f), subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take into account any variation between the adjusted basis of the asset for federal income tax purposes and its adjusted book value in the manner required under Code §704(c) and the Regulations. The parties agree to use the traditional method with curative allocations, as described in Regulation §1.704-3(c), for making Code §704(c) allocations.

(d) **Code §754 adjustment.** To the extent an adjustment to the tax basis of any asset pursuant to Code §§734(b) or 743(b) is required, pursuant to Regulation §1.704-1(b)(2)-(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases basis), and the gain or loss shall be specially allocated to the Interest Holders in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Regulation.

(e) **Nonrecourse deductions.** Nonrecourse deductions for a taxable year or other period shall be specially allocated among the Interest Holders in proportion to their Percentages.

(f) **Member loan nonrecourse deductions.** Any Member Loan Nonrecourse Deductions for any taxable year or other period shall be specially allocated to the Interest Holder who bears the risk of loss with respect to the loan to which the Member Loan Nonrecourse Deductions are attributable in accordance with Regulation §1.704-2(i).

(g) **Guaranteed payments.** To the extent any compensation paid to an Interest Holder, including any fees payable to an Interest Holder pursuant to Section 5.03 of this agreement, is determined by the Internal Revenue Service not to be a guaranteed payment under Code §707(c) or is not paid to the Interest Holder other than in the Person's capacity as a partner (Interest Holder) within the meaning of Code §707(a), the Interest Holder shall be specially allocated gross income in an amount equal to the amount of that compensation and the Interest Holder's Capital Account shall be adjusted to reflect the payment of that compensation.

(h) **Unrealized receivables.** If an Interest Holder's Economic Interest is reduced, but does not completely terminate, the Interest Holder's share of the Company's "unrealized receivables" and "substantially appreciated inventory" (within the meaning of Code §751) shall not be reduced, so that, notwithstanding any other provision of this agreement to the contrary, that portion of the Profit otherwise allocable upon a liquidation or dissolution of the Company pursuant to Section 4.04 which is taxable as ordinary income for federal income tax purposes shall, to the extent possible without increasing the total gain to the Company or to any Interest Holder, be specially allocated among the Interest Holders in proportion to the deductions (or basis reductions treated as deductions) giving rise to such recapture.

(i) **Withholding.** All amounts required to be withheld pursuant to Code §1446 or any other provision of federal, state, or local tax law shall be treated as amounts actually distributed to the affected Interest Holders for all purposes under this agreement.

(j) **Nonrecourse liabilities.** Solely for purposes of determining an Interest Holder's share of "excess nonrecourse liabilities" within the meaning of Regulation §1.752-3(a)(3), the Interest Holders' interest in Company profits shall be based on their respective Percentages.

(k) **Intent of allocations.** The tax allocation provisions of this agreement are intended to produce final Capital Account balances that will permit liquidating Distributions that are made in accordance with such final Capital Account balances under Section 4.04, paragraph (a) to be equal to the Distributions that would occur if such Distributions were made to the Interest Holders in proportion to their Percentages. To the extent that the tax allocation provisions of this agreement would not produce such final Capital Account balances, such provisions shall be amended if and to the extent necessary to produce such result and taxable income or taxable loss for prior open years (or items of gross income and deduction) shall be reallocated among the Interest Holders to the extent it is not possible to achieve such result with allocations of income (including gross income) and deduction for the current year and future years. This paragraph shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the Internal Revenue Service or any other taxing authority.

(l) **Income tax provisions.** The Interest Holders are aware of the income tax consequences of this Article IV and agree to be bound by these provisions in reporting their shares of Profit, Loss, and other items for federal and state income tax purposes.

#### **4.04. Liquidation and Dissolution.**

(a) **Distributions.** Upon liquidation of the Company, the assets shall be distributed to the Interest Holders in accordance with the positive balances in their Capital Accounts, after giving effect to all Contributions, Distributions, and allocations for all periods.

Distributions to the Interest Holders pursuant to this paragraph shall be made in accordance with Regulation §1.704-1(b)(2)(ii)(b)(2).

(b) **No make up.** No Interest Holder shall be obligated to restore a Negative Capital Account.

**4.05. General.**

(a) **Timing.** Except as otherwise provided in this agreement, the timing and amount of all distributions shall be determined by the Members.

(b) **Distributions in kind.** If any assets of the Company are distributed in kind to the Interest Holders, those assets shall be valued at their fair market value and any Interest Holder entitled to any interest in those assets shall receive that interest as a tenant-in-common with all other Interest Holders so entitled. Unless the Members otherwise agree, the fair market value of the assets shall be determined by an independent appraiser who shall be selected by the Members. The Profit or Loss for each unsold asset shall be determined as if the asset had been sold at its fair market value and the Profit or Loss shall be allocated as provided in Section 4.02 and shall be properly credited or charged to the Capital Accounts of the Interest Holders prior to the Distribution of the assets in liquidation pursuant to Section 4.04.

(c) **To whom allocated.** All Profit and Loss shall be allocated and all distributions shall be made to the Persons shown on the Company's records to have been Interest Holders as of the last day of the taxable year for which the allocation or Distribution is made. Notwithstanding the foregoing, unless the Company's taxable year is separated into segments, if there is a Transfer or an Involuntary Withdrawal during the year, the Profit and Loss shall be allocated between the original Interest Holder and the successor on the basis of the number of days each was an Interest Holder during the year; provided, however, the Company's taxable year shall be segregated into two (2) or more segments in order to account for Profit, Loss, or proceeds attributable to a Capital Transaction or to any other extraordinary nonrecurring items of the Company.

(d) **Tax compliance amendments.** The Members are hereby authorized, upon the advice of the Company's tax counsel, to amend this article to comply with the Code and the Regulations promulgated under Code §704(b); provided, however, that no amendment shall materially affect Distributions to an Interest Holder without the Interest Holder's written consent.



**ARTICLE V**  
**MANAGEMENT**

**5.01. Management.** The Company shall be managed by the Members. Except as specifically provided otherwise in this agreement, each Member shall have the right to act for and bind the Company in the ordinary course of its business.

**5.02. Meetings of and Voting by Members.**

(a) **Calling meetings.** A meeting of the Members may be called at any time by any Member. Meetings shall be held at the Company's principal place of business or at any other place in or out of California designated by the Person or Persons calling the meeting.

(b) **Notice of meetings.** Not less than ten (10) nor more than sixty (60) days before each meeting, the Person or Persons calling the meeting shall give written notice of the meeting to each Member entitled to Vote at the meeting. The notice shall state the time, place, and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice may waive notice, either before or after the meeting, by executing a waiver of such notice, or by appearing at and participating in the meeting, in person or by proxy.

(c) **Quorum and proxy.** Unless this agreement provides otherwise, at a meeting of Members, the presence in person or by Proxy of Members holding Percentages which aggregate more than fifty percent (50%) constitutes a quorum. A Member may Vote either in person or by written Proxy signed by the Member or by the Member's attorney in fact.

(d) **Required vote.** Except as otherwise provided in this agreement, the Vote of Members holding a majority of the aggregate Percentages present at the meeting in person and by proxy shall be required to approve any matter coming before the Members.

**5.03. Action Without a Meeting.** In lieu of holding a meeting, the Members may take action by written consent specifying the action to be taken, which consent must be executed and delivered to the Company by Members whose combined Voting Power constitutes more than fifty percent (50%) of the total Voting Power of all Members, unless the action otherwise requires approval by a larger or smaller percentage of the total Voting Power. Any such approved action shall be effective immediately. The Company shall give prompt notice to all Members of any action approved by Members by less than unanimous consent.

**5.04. Actions Requiring Specified Votes.** The following matters shall require the Vote or consent of the Percentage interest of Members indicated after each such item for such action to be approved by the Members:

(a) **Continue business.** A decision to continue the business after dissolution of the Company - more than fifty percent (50%);

(b) **Admission of Assignee as Member.** Approval of the transfer of a Membership Interest and admission of an Assignee as a Member - seventy-five percent (75%) or more;

(c) **Amendment.** An amendment to the Articles of Organization or this agreement - seventy-five percent (75%) or more.

(d) **Dissolution.** Dissolution of the Company prior to the date set in Section 2.04 - seventy-five percent (75%) or more.

(e) **Capital calls.** Issuance of any capital call pursuant to Section 3.02 or demanding payment on any promissory note held by the Company as part of an initial capital contribution as provided for in Exhibit "A" - fifty percent (50%) or more.

**5.05. Personal Service.** Unless approved by the Members, no Member shall be entitled to compensation for services performed for the Company. However, upon substantiation of the amount and purpose, Members shall be entitled to reimbursement for expenses reasonably incurred, and advances reasonably made, in furtherance of the business of the Company.

**5.06. Time Devoted to Company.** Each Member shall devote such time to the business and affairs of the Company as is necessary to carry out the Member's duties set forth in this agreement. Except as otherwise expressly provided in Section 5.07, nothing in this agreement shall be deemed to restrict in any way the rights of any Member, or of any Affiliate of any Member, to conduct any other business or activity whatsoever and no Member shall be accountable to the Company or to any other Member with respect to that business or activity, unless the Member's business or activity competes with the Company's business. The organization of the Company shall be without prejudice to the Members' respective rights (or the rights of their respective Affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation from them. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of any other Member or the Member's Affiliates.

**5.07. Fiduciary Duties.** The only fiduciary duties a Member owes to the Company and the other Members are the duty of loyalty and the duty of care set forth in paragraphs (a) and (b):

(a) **Duty of loyalty.** A Member's duty of loyalty to the Company and the other Members is limited to the following:

1. To account to the Company and hold as trustee for it any property, profit, or benefit derived by the Member in the conduct or winding up of the Company's business or derived from a use by the Member of Company property, including the appropriation of a Company opportunity, without the consent of the other Members;

2. To refrain from dealing with the Company in the conduct or winding up of the Company business as or on behalf of a party having an interest adverse to the Company without the consent of the other Members; and

3. To refrain from competing with the Company in the Company's business before the Company's dissolution without the consent of the other Members.

(b) **Duty of care.** A Member's duty of care to the Company and the other Members in the conduct and winding up of the business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

5.08. **Indemnification of Members.** A Member shall not be liable, responsible, or accountable, in damages or otherwise, to any other Member or to the Company for any act performed by the Member with respect to Company matters and within the standard of care specified in Section 5.07. The Company shall indemnify each Member for any act performed by the Member with respect to Company matters, unless such act constitutes grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

5.09. **Employment.** Richard Rosenthal and Cenayda V. Rosenthal shall each be employed by the Company commencing March 1, 1997, and continuing until at least September 1, 1997, at a monthly salary of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) each. Such employment may be continued after September 1, 1997, upon the mutual agreement of Company and such employees, at a salary agreed upon at that time.

## **ARTICLE VI**

### **TRANSFER OF INTERESTS AND WITHDRAWAL OF MEMBERS**

6.01. **Transfers.** Except as provided in this agreement, no Member may Transfer all, or any portion of, or any interest or rights in, the Membership Interest owned by the Member. Each Member hereby acknowledges the reasonableness of this prohibition in view of the purposes of the Company and the relationship of the Members. The attempted Transfer of any portion or all of a Membership Interest in violation of the prohibition contained in this section shall be deemed invalid, null, void, and of no force or effect, except any Transfer mandated by operation of law and then only to the extent necessary to give affect to such Transfer by operation of law.

6.02. **Conditions of Transfer.** A Member may Transfer all or any portion of, or any interest or rights in, the Member's Economic Interest if each of the following conditions ("Conditions of Transfer") are satisfied:

(a) **No registration.** The Transfer may be accomplished without registration, or similar process, under federal and state securities laws;

(b) Transferee bound by agreement. The transferee delivers to the Company a written agreement to be bound by the terms of Article VI of this agreement;

(c) No termination. The Transfer will not result in the termination of the Company pursuant to Code §708;

(d) Investment Company Act. The Transfer will not result in the Company being subject to the Investment Company Act of 1940, as amended;

(e) Transferee information. The transferor or the transferee delivers to the Company the transferee's taxpayer identification number and the transferee's initial tax basis in the transferred Membership Interest; and

(f) Permissible transferee. Either (1) the Transfer is to another Member, a Member's spouse, or a Member's or spouse's lineal descendants, or to a trust for the benefit of the Member or such spouse or lineal descendants or (2) the transferor complies with the provisions set forth in Section 6.04.

(g) Family. For purposes of determining the permissible transferees under paragraph (f), item (1) above, Richard Rosenthal and Cenayda V. Rosenthal shall both be considered the Member for Rosenthal.

**6.03. Transfer of Economic Interest.** If the Conditions of Transfer are satisfied, the Member may Transfer all or any portion of the Member's Economic Interest. The Transfer of an Economic Interest pursuant to Section 6.02 shall not result in the transfer of any of the transferor's other Membership rights, unless the Transfer is to another Member. The transferee shall have no right to: (1) become a Member; (2) exercise any Membership rights other than those specifically pertaining to the ownership of an Economic Interest; or (3) act as an agent of the Company.

**6.04. Right of First Refusal.** If a Member (a "Transferor") desires to Transfer all or any portion of, or any interest or rights in, the Transferor's Economic Interest (the "Transferor Interest"), the Transferor shall notify the Company of that desire (the "Transfer Notice"). The Transfer Notice shall describe the Transferor Interest, the prospective transferee, and the terms of the prospective transfer. The Company, or its nominee, shall have the option (the "Purchase Option") to purchase all of the Transferor Interest for a price (the "Purchase Price") equal to the lower of (1) the amount the Transferor would receive if the Company were liquidated and an amount equal to the Book Value were available for distribution pursuant to Section 4.04 or (2) the price at which the Transferor proposes to transfer the Transferor Interest. The Purchase Option shall be and remain irrevocable for a period (the "Transfer Period") ending at 5:00 p.m. local time at the Company's principal office on the thirtieth (30th) day following the day the Transfer Notice is given. At any time during the Transfer Period, the Company or its nominee (the "Purchaser") may elect to exercise the Purchase Option by giving written

notice of its election to the Transferor. The Transferor shall not be deemed a Member for the purpose of Voting on whether the Company shall elect to exercise the Purchase Option. The Purchaser's notice of its election to purchase the Transferor Interest shall fix a closing date (the "Transfer Closing Date") for the purchase, which shall not be earlier than five (5) days after the date of the notice of election nor more than thirty (30) days after the expiration of the Transfer Period. The Purchase Price shall be paid in cash on the Transfer Closing Date.

**6.05. Failure to Exercise.** If the Purchase Option is not exercised, the Transferor may sell the Transferor Interest to the prospective transferee identified in the Transfer Notice at any time during the six (6) months (the "Outside Transfer Period") after the expiration of the Transfer Period, but only on the terms and conditions set forth in the Transfer Notice. If the Transferor does not Transfer the Transferor Interest within the Outside Transfer Period, the Transferor's right to Transfer the Transferor Interest pursuant to this section shall cease and terminate. Any Transfer of the Transferor Interest made after the last day of the Outside Transfer Period or without strict compliance with the terms, provisions, and conditions of this agreement, shall be null and void and of no force or effect.

**6.06. Voluntary Withdrawal.** No Member shall have the right or power to Voluntarily Withdraw from the Company.

**6.07. Involuntary Withdrawal.** Immediately after an Involuntary Withdrawal, the successor of the withdrawn Member shall become an Interest Holder, but shall not become a Member. If the Company is continued as provided in Article VII, the successor Interest Holder shall have all the rights of an Interest Holder, but shall not have the right to exercise any other rights of a Member.

## **ARTICLE VII**

### **DISSOLUTION, LIQUIDATION, AND TERMINATION**

**7.01. Events of Dissolution.** The Company shall be dissolved upon the happening of any of the following:

- (a) **Expiration of term.** The date set for termination in Section 2.04.
- (b) **Death or dissolution.** The death or dissolution of the last Member.
- (c) **Bankruptcy.** The bankruptcy of any Member, unless a majority in interest of the remaining Members elects within ninety (90) days after the event to continue the business of the Company pursuant to the terms of this agreement.
- (d) **Vote.** The vote or written agreement of the Members in accordance with Section 5.04, paragraph (d).

**7.02. Procedure for Winding Up and Dissolution.** If the Company is dissolved, the remaining Members shall wind up its affairs. On winding up, the assets shall be distributed, first to

creditors of the Company, including Interest Holders who are creditors, in satisfaction of the liabilities of the Company and then to the Interest Holders in accordance with this agreement.

**7.03. Filing of Certificate of Cancellation.** Upon completion of winding up the affairs of the Company, the Members shall promptly file the Certificate of Cancellation of Articles of Organization with the Secretary of State. If there are no remaining Members, such Certificate shall be filed by the last Person to be a Member; if there is no last Person to be a Member, the Certificate shall be filed by the legal or personal representative of the last Person to be a Member.

**7.04. Distribution of Specific Assets.** Upon dissolution of the Company, Tognoli and Bonnici shall be entitled to distribution in kind of the PureLight Meat purification system and the Refrigeration Volumetric Intercooler system, if it has been built; in addition, they shall each be entitled to a distribution in kind of an undivided percentage interest in all of the intangible assets contributed by Rosenthal equal to their respective Percentages at that time. Notwithstanding the prior sentence, if either Tognoli or Bonnici has had his Percentage Interest reduced to twelve and one-half percent (12.5%) for failure to make any additional capital contributions pursuant to Section 3.08, then he shall not be entitled to any distribution in kind of the intangible assets contributed by Rosenthal. Upon dissolution of the Company, Rosenthal shall be entitled to a distribution in kind of all of the intangible assets contributed by Rosenthal which are not distributable to Tognoli or Bonnici as provided above, plus all laboratory equipment and development systems. If the Company does not have sufficient cash upon its dissolution to pay all of its claims, after liquidating all of its assets other than those described in this section, then each distribution in kind described in this section shall be conditioned upon each recipient of such in kind distribution delivering to the Company that recipient's proportionate share (based upon Percentages) of the deficit between the Company's cash and the amount of its claims.

## **ARTICLE VIII**

### **FISCAL MATTERS**

**8.01. Bank Accounts.** All Company funds shall be deposited in accounts opened in the Company's name. The Members shall determine the financial institutions at which the accounts will be opened, the types of accounts, and the Persons who will have authority with respect to the accounts.

**8.02. Books and Records.** The Members shall keep or cause to be kept at the Company's office in California complete and accurate books, records, and financial statements of the Company and supporting documentation of transactions with respect to the conduct of the Company's business on the cash method of accounting and shall include, but not be limited to, the following:

(a) **List of members.** A current alphabetical list of the name and last known address of each Member and Interest Holder, with the Contribution and the share in Profits and Losses of each Member and Interest Holder;

(b) **Articles.** The Articles of Organization, including all amendments; and any powers of attorney under which they were executed;

(c) **Tax returns.** Federal and state income tax or information returns and reports, if any, for the six (6) most recent taxable years;

(d) **Operating agreement.** This agreement and any amendments and any powers of attorney under which they were executed;

(e) **Financial statements.** Financial statements for the past six (6) years;

(f) **Books.** Internal books and records for the current and past three (3) years; and

(g) **Property records.** A true copy of relevant records indicating the amount and cost of all property which the Company owns, claims, possesses, or controls.

**8.03. Right to Inspect.** Upon a Member's reasonable request for a purpose reasonably related to the Member's interest in the Company, the Company shall deliver to that Member at the Company's expense a copy of this agreement, as well as the information required to be maintained under paragraphs (a) and (c) of Section 8.02. Each Member has the right upon reasonable request, and for purposes reasonably related to the Member's interest in the Company, to do the following:

(a) **Inspect and copy.** To inspect and copy during normal business hours any of the records required to be maintained under Section 8.02; and

(b) **Copies of returns.** To obtain from the Company promptly after being available, a copy of the Company's federal and state income tax or information returns for each year.

**8.04. Annual Reporting.** The Company shall send or cause to be sent to each Member or Interest Holder within ninety (90) days after the end of each fiscal year such information as is necessary to complete federal and state income tax or information returns and a copy of the Company's federal and state income tax or information returns for the fiscal year.

**8.05. Reimbursement for Costs.** Unless otherwise expressly provided in this agreement, the inspecting or requesting Member shall reimburse the Company for all reasonable costs and expenses incurred by the Company in connection with such inspection and copying of the Company's books and records and the production and delivery of any other books or records.

**8.06. Fiscal Year and Taxation.** The Company's fiscal year shall be the calendar year. The Company shall elect to be taxed as a partnership for federal income tax purposes.

**ARTICLE IX**  
**GENERAL PROVISIONS**

9.01. **Assurances.** Each Member shall execute all certificates and other documents and do all filing, recording, publishing, and other acts that the Members deem appropriate to comply with the requirements for the formation and operation of the Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the Company's property.

9.02. **Notice.** Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a "notice") required or permitted under this agreement must be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, return receipt requested. A notice must be addressed to an Interest Holder at the Interest Holder's last known address on the records of the Company. A notice to the Company must be addressed to the Company's principal office. A notice delivered personally will be deemed given when it is delivered. A notice that is sent by Mail will be deemed given three (3) business days after it is Mailed. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices. Thereafter, notices are to be directed to those substitute addresses or addressees.

9.03. **Specific Performance.** The parties recognize that irreparable injury will result from a breach of any provision of this agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this agreement, any party who may be injured (in addition to any other remedies which may be available to that party) shall be entitled to one or more preliminary or permanent orders restraining and enjoining any act which would constitute a breach or compelling the performance of any obligation which, if not performed, would constitute a breach.

9.04. **Complete Agreement.** This agreement constitutes the complete and exclusive statement of the agreement among the Members. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty.

9.05. **Applicable Law.** All questions concerning the construction, validity, and interpretation of this agreement and the performance of the obligations imposed by this agreement shall be governed by the internal law, not the law of conflicts, of the State of California.

9.06. **Headings.** The headings in this agreement are inserted for convenience only and do not define, limit, or describe the scope of this agreement or the intent of its provisions.

9.07. **Binding Provisions.** This agreement is binding upon, and to the limited extent specifically provided in this agreement, inures to the benefit of, the parties and their respective heirs, executors, administrators, personal and legal representatives, successors, and assigns.



**9.08. Jurisdiction.** Any suit involving any dispute or matter arising under this agreement may only be brought in the appropriate California State Court having jurisdiction over the subject matter of the dispute or matter. All Members hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

**9.09. Terms.** Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the context may require.

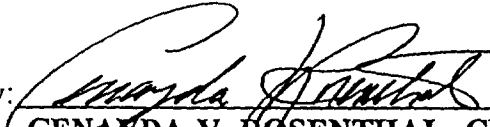
**9.10. Severability.** Each provision of this agreement shall be considered separable and, if for any reason, any provision or provisions are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this agreement which are valid.

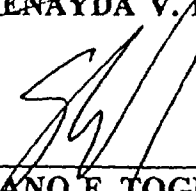
**9.11. Counterparts.** This agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

**9.12. Estoppel Certificate.** Each Member shall, within ten (10) days after written request by any Member, deliver to that Member a certificate stating, to the Member's knowledge, that: (a) this agreement is in full force and effect; (b) this agreement has not been modified except by any instrument or instruments identified in the certificate; and (c) there is no default hereunder by the requesting Person, or if there is a default, the nature or extent of it.

Dated: March 1, 1997

**ROSENTHAL & ASSOCIATES, INC.**

By:   
CENAYDA V. ROSENTHAL, CEO

  
STEFANO F. TOGNOLI

  
CHARLES J. BONNICI

**EXHIBIT A**

<u>Member, Address and Taxpayer I.D. Number</u>	<u>Capital Contribution</u>	<u>Percentage</u>
Tognoli P.O. Box 601 San Jose, CA 95106 SSN: 542-50-2986	See #1 below	25%
Bonnici P.O. Box 601 San Jose, CA 95106 SSN: 564-64-3804	See #2 below	25%
Rosenthal 2680 Pacer Lane San Jose, CA 95111 EIN: 33-0191171	See #3 below	50%

1. Cash of \$ previously paid to Company, receipt of which is acknowledged, plus Tognoli's noninterest bearing promissory note in the amount of \$ in the form of Exhibit "A-1," attached.
2. Cash of \$ previously paid to Company, receipt of which is acknowledged, plus Bonnici's noninterest bearing promissory note in the amount of \$ in the form of Exhibit "A-1," attached.
3. Patent for "Apparatus & Methods for Sanitizing Fruit," patent no. 5,405,631, pending patent application for "Refrigeration Apparatus & Method," continuations in part "Actinic process for cold pasteurization of fresh foods and beverages," patents pending docket nos. 2207, 2229, 2231, 2232, and 2233 for Hand/Wand/Viral/Blood/Liquid and Aerial sterilization systems, existing contracts in force with Armour Swift-Eckrich, Blue Diamond Growers, Bolthouse Farms, Fresh Express, and Mohawk Packing Co., all other goodwill of Rosenthal, one Medium Pressure PureLight development system, two Low Pressure PureLight development systems, laboratory equipment, and refrigeration and gas delivery systems.

**PROMISSORY NOTE**

§

For value received, the undersigned ("Maker") promises to pay to PureLight Technologies, LLC, a California limited liability company, or order, the sum of

Dollars (\$) without interest as follows:

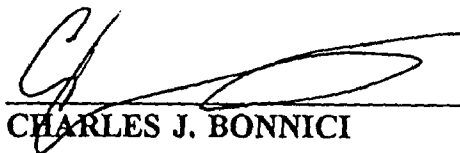
Principal shall be payable from time to time upon demand of the holder of this note, but in no event later than December 1, 1997.

Each payment shall be credited to principal. Principal shall be payable in lawful money of the United States at such place as is directed by the holder. This note may be prepaid in whole or in part without penalty.

Should Maker fail to pay any installment within ten (10) days after written demand, the unpaid balance of principal then owed shall, at the option of the holder of this note, become immediately due and payable without further notice or demand. If a legal proceeding is brought for the enforcement of this note, the prevailing party in such proceeding shall be entitled to recover from the other party all reasonable attorneys' fees and other costs incurred. The delay or failure of the holder in exercising any right of acceleration in the event of default shall not be a waiver of such right or of any rights accruing because of any subsequent defaults.

Dated: 6/4, 19 97

"Maker"

  
\_\_\_\_\_  
CHARLES J. BONNICI

**DO NOT DESTROY THIS NOTE!**

**THIS ORIGINAL IS TO BE SURRENDERED UPON PAYMENT IN FULL!**

**PROMISSORY NOTE**

\$

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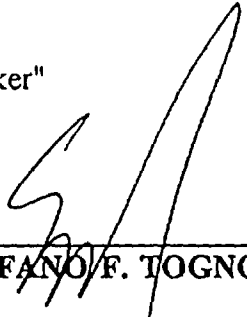
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Dated: 6/4/ 1997

"Maker"

  
\_\_\_\_\_  
STEFANO F. TOGNOLI

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**EXHIBIT "A-1"**  
**PROMISSORY NOTE**

\$

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Dated: \_\_\_\_\_, 19\_\_\_\_

"Maker"

\_\_\_\_\_

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