

PATENT ASSIGNMENT COVER SHEET

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CONVEYING PARTY DATA	
Name	Execution Date
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RECEIVING PARTY DATA	
Name:	ECO GARDEN SYSTEMS, LLC
Street Address:	3000 COUNTY ROAD 42, WEST SUITE 102
City:	BURNSVILLE
State/Country:	MINNESOTA
Postal Code:	55337
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Property Type	Number
Patent Number:	7856755
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**OPERATING AGREEMENT
OF
ECO GARDEN SYSTEMS, LLC**

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OPERATING AGREEMENT
OF
ECO GARDEN SYSTEMS, LLC

THIS OPERATING AGREEMENT is made and entered into effective as of the ____ day of November, 2016 (the “Effective Date”), by and between those Person(s) identified on Schedule 1 attached hereto and as amended from time to time (hereinafter, such person(s) are referred to collectively as the “Members” and each individually as a “Member”).

RECITALS:

A. The undersigned have caused the formation of ECO GARDEN SYSTEMS, LLC, a Minnesota limited liability company (the “Company”), of which the undersigned constitute(s) all of the current Members; and

B. The Minnesota Revised Uniform Limited Liability Company Act, Minnesota Statutes Chapter 322C, provides that the members of a limited liability company may enter into an Operating Agreement to establish or regulate the affairs of the limited liability company, the conduct of its business, and the relations of its Members; and

C. The undersigned desire to enter into such an agreement.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Members agree as follows:

ARTICLE I
General

Section 1.1 Name. The name of the Company is and, unless otherwise determined by the Members, the business of the Company shall be conducted under, the name of “Eco Garden Systems, LLC”.

Section 1.2 Principal Place of Business. The location of the principal place of business of the Company shall be 3000 County Road 42, West Suite 102, Burnsville, MN 55337 or such other place as the Members may from time to time determine (the “Principal Office”).

Section 1.3 Formation/Agreement. The Members hereby adopt, approve and ratify the filing in the office of the Secretary of State of the State of Minnesota of the Articles of Organization of the Company (the “Articles of Organization”). The Members agree that this Agreement constitutes the Operating Agreement of the Company within the meaning of the Act and shall govern the rights, duties and obligations of the Members, except as otherwise expressly required by the Act. Notwithstanding Section 322C.0102, subdivision 17 of the Act, the Members acknowledge and agree that this Agreement shall be the Company’s sole operating agreement for purposes of the Act, in each case as hereafter amended from time to time pursuant to this Agreement, and at no time shall any operating agreement be created by oral or implied means. It is expressly intended that, during the entire term of this Agreement, the provisions of

this Agreement shall supersede any provisions of the Act, as they now exist or as may be subsequently amended or restated, that are inconsistent or conflict with the provisions of this Agreement to the maximum extent permitted by law.

Section 1.4 Purpose. The purpose and character of the business of the Company shall be the ownership, development, management and operation of the Project, and any incidental and related activities. The Company may engage in all activities necessary, convenient, desirable or incidental to the foregoing and engage in any such other lawful business activity outside of the ordinary course of the Company's activities as deemed advisable from time to time by the Managing Member(s).

Section 1.5 Term of Existence. The Company's term of existence is perpetual, unless earlier terminated, dissolved or liquidated in accordance with the provisions of this Agreement or applicable law.

Section 1.6 Registered Office and Registered Agent. The location of the registered office and the name of the registered agent (if any) of the Company in the State of Minnesota are stated in the Articles. The registered office and registered agent of the Company in the State of Minnesota may be changed, from time to time, by the Managing Member(s).

ARTICLE II Definitions

Unless the context otherwise specifies or requires, the terms defined in this Article II shall, for the purposes of this Agreement, have the following meanings:

“Act” means the Minnesota Revised Uniform Limited Liability Company Act (Minnesota Statutes Chapter 322C), as amended from time to time, or any successor thereto.

“Additional Capital Contributions” means, with respect to each Member, the Capital Contributions made by such Member pursuant to Section 8.3. In the event Membership Interests are transferred in accordance with this Agreement, the transferee shall succeed to the Additional Capital Contributions of the transferor to the extent they relate to the transferred Membership Units.

“Adjusted Capital Accounts Deficit” means, with respect to any Member, the deficit balance, if any, in the Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) the deficit shall be increased by the amount, if any, which the Member is deemed obligated to restore pursuant to Regulation Section 1.704-2(g) and (i) or related regulations; and

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

“Affiliate” or “Affiliated Person” of any Person means: (a) any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question;

(b) with respect to an individual, such individual's estate, parents, spouse, children, grandchildren, siblings, nieces, nephews, spouses of the foregoing, trusts established with any one or more of the foregoing as the primary beneficiaries, and any corporation, limited liability company, limited partnership or other entity in which any one or more of the foregoing own 10% or more of the equity interests; (c) with respect to a trust, any natural person that is a primary beneficiary of such trust, the estate, parents, children, grandchildren, siblings, nieces and nephews of any such primary beneficiary, the spouses of the foregoing, or trusts established with one or more of the foregoing as the primary beneficiaries; or (d) with respect to an entity, any governor, director, manager, officer or legal representative of such entity or any Person with a material financial interest in such entity. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies whether through ownership of voting securities, by contract or otherwise.

"Agreement" means this Operating Agreement, and all written amendments and modifications hereto, including all Schedules and Exhibits hereto, which collectively constitutes the only "Operating Agreement" within the meaning of the Act.

"Assignee" is defined in Section 6.2(b)(iv) below.

"Capital Account" is defined in Section 8.1 below.

"Capital Contribution" means, with respect to any Member, the amount of cash or other currently available funds or the fair market value of any property (as determined by the Members as of the date of contribution) contributed to the Company by any Member, including any Additional Capital Contributions.

"Capital Transaction" means a sale or disposition (including without limitation by merger, liquidation, dissolution or otherwise) of the Project, or all or substantially all of the assets of the Company, in each case outside of the ordinary course of the Company's business.

"Cause" means that a Managing Member has: (1) engaged in any act of material dishonesty, willful malfeasance, gross negligence, or breach of fiduciary duty; (2) committed an act of fraud, moral turpitude or constituting a felony, or otherwise engaged in conduct that diminishes such Managing Member's credibility or reputation; (3) used or been under the influence of illegal drugs at the workplace or while performing Company business, or refused to submit for a drug test upon the request of the Requisite Holders of a majority of the issued and outstanding Class A Units; (4) breached any provision of Section 4.3 or any non-competition, non-solicitation or other restrictive covenant applicable to such Managing Member; (5) failed to disclose any conflict of interest, including, but not limited to failing to obtain Class A Approval prior to engaging in any business with any family members, their affiliates or any entities they work with; (6) caused, directed or permitted the Company to grant incentive equity to any person on terms and conditions not specifically approved by the Class A Approval; (7) caused, directed or permitted the Company to pay bonuses or grant raises to employees or other service providers of the Company not in line with the Company's budget, as approved pursuant to Section 4.3; or (8) failed to meet such Managing Member's other duties and obligations in this Agreement or any other agreement between such Managing Member and the Company, or took or failed to take any action in contravention of this Agreement, provided that if such failure is capable of cure, the

Requisite Holders shall give such Managing Member written notice describing the issue and why it constitutes Cause and allow such Managing Member a reasonable opportunity to remedy the situation (not to exceed thirty (30) days) to the Requisite Holders' satisfaction. The decision to remove a Managing Member for Cause, to take other action or to take no action in response to any occurrence shall be in the sole and exclusive discretion of the Requisite Holders.

"Class A Approval" means the prior written consent of the Requisite Holders.

"Class A Unit" means a Unit having the rights and obligations specified in this Agreement with respect to Class A Units.

"Class B Unit" means a Unit having the rights and obligations specified in this Agreement with respect to Class B Units.

"Class C Unit" means a Unit having the rights and obligations specified in this Agreement with respect to Class C Units.

"Code" means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder. Any reference in this Agreement to a section of the Code or the Treasury Regulations shall be considered also to include any subsequent amendment or replacement of that section.

"Committed Capital Threshold" means the product of (a) the sum of all Capital Contributions made by holders of Class A Units plus the aggregate amounts of Company indebtedness guaranteed by or otherwise the subject of credit enhancement provided by holders of Class A Units at any time after the date hereof, whether or not actually utilized, multiplied by (b) three (3).

"Company" means ECO GARDEN SYSTEMS, LLC, a Minnesota limited liability company.

"Company Opportunity" is defined in Section 4.12(c) below.

"Confidential Information" is defined in Section 14.1 below.

"Contributing Member(s)" is defined in Section 8.3(d) below.

"Covered Person" means any past or present Member or Managing Member, any successors or heirs of a past or present Member or Managing Member, any past or present Affiliate of a past or present Member or Managing Member, or any past or present Officers, employees, consultants, representatives, advisors or agents of the Company, or any Member or Managing Member and such other Persons as are entitled to indemnification under Section 322C.0408 of the Act.

"Depreciation" means, for each Fiscal Year or other applicable period of the Company, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such period; provided, that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the

beginning of such period, Depreciation for such period shall be (a) an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction with respect to such assets for such period bears to such beginning adjusted tax basis or (b) if the federal income tax depreciation, amortization or other cost recovery deduction for such period is equal to zero, an amount determined with reference to such beginning Gross Asset Value using a reasonable method selected by the Managing Member.

“Distributions” means any distributions by the Company to the Members of Net Cash Flow or proceeds or other amounts from a Capital Transaction.

“Drag-Along Notice” is defined in Section 6.4 below.

“Drag-Along Option” is defined in Section 6.4 below.

“Drag-Along Right” is defined in Section 6.4 below.

“Effective Date” means the date of execution hereof.

“Fiscal Year” means the 12-month accounting period of the Company ending on December 31 of each year, or such other date as the Members may determine from time to time.

“First Option Period” is defined in Section 6.2(b)(ii) below.

“Gross Asset Value” means, with respect to any asset of the Company, the asset’s adjusted basis for federal income tax purposes, except as follows:

(a) the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset;

(b) the Gross Asset Values of all Company assets (including intangible assets such as goodwill) shall be adjusted (at the election of the Managing Member) to equal their respective gross fair market values (i) upon the occurrence of any of the events described in Treasury Regulation § 1.704-1(b)(2)(iv)(f)(5), (ii) the liquidation of the Company within the meaning of Treasury Regulation § 1.704-1(b)(2)(ii)(g), and (iii) at such other times as the Managing Member reasonably determines necessary or advisable in order to comply with Treasury Regulation §§ 1.704-1(b) and 1.704-2;

(c) the Gross Asset Value of any asset distributed by the Company to a Member shall be equal to the gross fair market value of such asset on the date of the distribution;

(d) the Gross Asset Value of any Company asset with respect to which an adjustment to tax basis has occurred by reason of the application of Code Sections 734(b) or 743(b) shall be increased or decreased only if such adjustment is required to be taken into account in determining Capital Accounts pursuant to Treasury Regulation § 1.704-1(b)(2)(iv)(m); provided, that the Gross Asset Value shall not be increased or decreased pursuant to this subparagraph (d) to the extent an adjustment pursuant to subparagraph

(b) is made in connection with a transaction that otherwise would result in an adjustment pursuant to this subparagraph (d); and

(e) if the Gross Asset Value of an asset is not equal to its adjusted tax basis for federal income tax purposes, such Gross Asset Value shall be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profit and Loss and as otherwise required by Treasury Regulation § 1.704-1(b)(2)(iv)(g).

The foregoing definition of Gross Asset Value is intended to comply with the provisions of Treasury Regulation § 1.704-1(b)(2)(iv) and shall be interpreted and applied consistently therewith. Any determinations of “gross fair market value” in this definition of Gross Asset Value shall be determined by the Managing Member, which determination may be based upon the appraisal of an independent appraiser appointed by the Managing Member to the extent deemed necessary by the Managing Member.

“Loan” is defined in Section 8.3(d) below.

“Majority Member or Majority Members” is defined in Section 6.4 below.

“Majority Units” is defined in Section 6.4 below.

“Majority Vote” means the affirmative vote or written consent of the Members holding not less than 51% of Units outstanding and entitled to vote.

“Managing Member(s)” means such Person or Persons as may be elected by Class A Approval. The initial Managing Members shall be Donald Riesterer. The Managing Member will be the sole member with management rights under the Act.

“Member” or “Members” means the Managing Member(s) and the Persons owning one or more Units of the Company who has executed this Agreement, until they cease to be Members, and the Persons that are hereafter admitted to the Company as Members or Managing Members in accordance with this Agreement and all such person’s heirs, executors, administrators, personal representatives, successors and assigns.

“Membership Interest” means an ownership interest of a Member in the Company, including, all of a Member’s rights and interests in the Company in such Member’s capacity as a Member, all as provided in the Articles of Organization, this Agreement and the Act, including the Member’s interest in the capital, income, gain, deductions, losses, and credits of the Company. Unless otherwise expressly separated, a Membership Interest includes that Member’s transferable interest under the Act.

“Minimum Gain” has the meaning set forth in Treasury Regulation Section 1.704-2(d). Minimum Gain shall be computed separately for each Member in a manner consistent with the Treasury Regulations under Code Section 704(b).

“Negotiation Period” is defined in Section 6.2(c)(ii)(aa) below.

“Net Cash Flow” means, for any specified period, an amount equal to: (a) all cash revenues received by the Company during the period from operations or the sale or disposition of any assets; less (b) (i) expenditures by the Company during the period for operating expenses, development and construction costs, fees, including construction fees, development fees, leasing fees, financing fees and referral fees, any brokerage fees, any property management fees, asset management fees, taxes, insurance, and other costs and expenses in connection with the conduct of the Company’s business, (ii) all payments by the Company during the period of principal of and interest on loans and other obligations of the Company for borrowed money and prepayment of any outstanding loan obligations, (iii) all expenditures by the Company during the period for the acquisition of property, for construction period interest and taxes and for loan fees, whether or not capitalized, and for capital improvements and/or replacements, and (iv) such reserves for debt service and related covenants, maintenance, repairs, replacements, capital improvements, contingent or unforeseen liabilities or obligations, and anticipated expenses as set forth in any budget approved pursuant to Section 4.3(b)(ii).

“Officer” or “Manager” means an Officer of the Company appointed or elected pursuant to Section 4.4.

“Option Interest” is defined in Section 6.2(b)(i) below.

“Partnership Tax Audit Rules” means Code Sections 6221 through 6241, as amended by the Bipartisan Budget Act of 2015, together with any guidance issued thereunder and any similar provision of state or local tax laws.

“Percentage Interest” means, as to any Member, the rights of such Member in the Company, represented by the percentage that the Units held by such Member bears to the total number of Units outstanding.

“Permitted Transferee” means: (a) another Member; (b) a revocable living trust created by the Member and of which he or she is the primary beneficiary during their lifetime, (c) outright, in trust or upon death (by will or intestate succession), to or for the benefit of the Member’s spouse, children or grandchildren; (d) an Affiliate of such Member; or (e) an entity controlling, by or under common control with the Member, with “control” constituting the ability to control at least 70% of the voting power of such entity, directly or indirectly. For purposes of this definition, the term “entity” shall mean a corporation, partnership, limited liability company, trust (inter vivos or testamentary), or other legal entity.

“Person” means any natural person, corporation, limited liability company, association, partnership (whether general or limited), joint venture, proprietorship, governmental agency, trust, estate, association, custodian, nominee or any other individual or entity, whether acting in an individual, fiduciary, representative or other capacity.

“Principal Office” is defined in Section 1.2.

“Profits” or “Losses” for each Fiscal Year of the Company (or other period for which Profit or Loss must be computed) means the Company’s taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

(i) all items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss; and

(ii) any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss; and

(iii) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Treasury Regulation Section 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; and

(iv) gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes; and

(v) 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

(vi) notwithstanding any other provision of this definition, any items which are specially allocated pursuant to this Agreement hereof shall not be taken into account in computing Profits or Losses.

“Project” means the design, development, manufacturing, marketing, and sales, directly or indirectly through one or more subsidiaries, agents or representatives, of modular fruit and vegetable growing systems.

“Requisite Holders” means the holders of a majority of the issued and outstanding Class A Units.

“Seller” is defined in Section 6.2(a) below.

“Special Meeting” is defined in Section 6.2(b)(iii) below.

“Substitute Member” is defined in Section 6.1(d) below.

“Tag-Along Right” is defined in Section 6.5 below.

“Transfer” means the sale, assignment, transfer, withdrawal, mortgage, pledge, hypothecation, exchange or other disposition of any part or all of a Member’s Membership Interest or Units, whether or not for value and whether voluntarily, by operation of law or otherwise. In the case of an entity Member, the transfer of 51% or more of its ownership interest or voting control to other than a Permitted Transferee constitutes a Transfer hereunder.

“Transferee” is defined in Section 6.1(c) below.

“Transferor” is defined in Section 6.1(c) below.

“Treasury Regulations” means the regulations promulgated by the United States Treasury Department under the Code.

“Unit” or “Membership Unit” means a Membership Interest in the Company representing a fractional part of the Membership Interests of all , as further provided in and limited by this Agreement as of the date hereof.

“Unreturned Capital” means, with respect to any Class A Unit, the difference of (a) all Capital Contributions made in respect of such Class A Unit, less (b) all Distributions made pursuant to Section 10.3(a) in respect of such Class A Unit; provided, that in no event shall Unreturned Capital be less than zero (0).

ARTICLE III Members and Membership Units

Section 3.1 Members. Each Member’s name and address, Capital Contribution, Percentage Interest and Units owned as of the date of this Agreement are as set forth on Schedule 1 hereto. In the event of any change with respect to the information stated on Schedule 1 pursuant to or in accordance with the provisions of this Agreement, the Managing Member(s) will promptly cause Schedule 1 to be amended to reflect such change.

Section 3.2 Admission of New Members. The Managing Member(s) may from time to time admit additional Members to the Company upon the issuance of new Units pursuant to Section 3.3 or upon a Transfer in compliance with Article VI.

Section 3.3 Issuance of Membership Units. The Managing Member(s), with the Majority Vote of the Members or Class A Approval, to the extent required hereunder, may cause the Company to issue additional Membership Units from time to time to existing or new Members; provided, that no additional Class A Units may be issued without Class A Approval. Membership Units may be issued for any consideration, including, without limitation, cash or other property, tangible or intangible, received or to be received by the Company or services rendered or to be rendered to the Company. At the time of authorization of the issuance of Membership Units, the Managing Member(s) shall state the determination of the fair value to the Company in monetary terms of any consideration other than cash for which Membership Units are to be issued.

Section 3.4 Pre-Emptive Rights.

(a) Whenever the Company proposes to issue new or additional Units, or rights to purchase Units, or new or additional securities other than Units or rights to purchase an ownership interest other than Units, that are exchangeable for, convertible into, or carry a right to acquire new or additional Membership Units (“Equity Securities”), all Members shall, subject to Section 3.4(c) below, have the pre-emptive

**PAGES 10-29
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Treasury Regulations. If the Managing Member(s) reasonably determines that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company or any Members), are computed in order to comply with such Treasury Regulations, the Managing Member(s) may make such modification, provided that it is not likely to have a material effect on the amounts distributed to any Member upon the dissolution of the Company. The Managing Member(s) also shall: (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(q); and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulations Section 1.704-1(b).

Section 8.2 Return of Capital. No Member will be entitled to have any Capital Contribution returned to it or to receive any Distributions from the Company upon withdrawal or otherwise, except in accordance with the express provisions of this Agreement. No unrepaid Capital Contribution will be deemed or considered to be a liability of the Company or any Member. No Member will be required to contribute any cash or property to the Company to enable the Company to return any Member's Capital Contribution.

Section 8.3 Additional Capital Contributions.

(a) Each Member named on Schedule 1 attached hereto has made Capital Contributions to the Company in an amount specified opposite such Member's name on Schedule 1. The number and class of Units held of record by each Member is set forth opposite such Member's name on Schedule 1. The Company shall amend Schedule 1 without any action by any Member as needed to reflect all record holders of Units including holders who acquire Units from the Company or from a Member, in each case, in accordance with this Agreement.

(b) No Member shall be required to make any Capital Contributions, except the contributions referred to in Section 8.3(a) above. Without limitation of the preceding sentence, no Member shall be required to pay to the Company or any other Member any deficit or negative balance that may exist from time to time in such Member's Capital Account, including any deficit that may exist after the dissolution and complete liquidation of the Company.

Section 8.4 Loans to the Company; No Interest on Capital. The Members may, but are not obligated to, make loans to the Company from time to time, as authorized by the Managing Member(s). Any such loans shall not be treated as Capital Contributions to the Company for any purpose hereunder nor entitle such Member to any increase in its share of the Profits and Losses and cash Distributions of the Company, but the Company shall be obligated to such Member for the amount of any such loans pursuant to the terms thereof, as the same are determined by the Managing Member(s). Interest with respect to the outstanding amount of any loans made by a Member to the Company shall accrue and be payable at such times and at such reasonable commercial rate as shall be agreed upon by such Member and the Managing

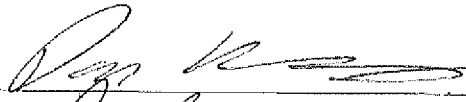
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SIGNATURES

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.


The Company:

ECO GARDEN SYSTEMS, LLC

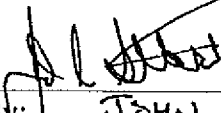

By: Dan Riesterer
Its: Managing Member

Members:


Cypress Capital LLC


By: CHRISTOPHER L. HUGHES
Its: AUTHORIZED REPRESENTATIVE

Locupletto VII-ECO, LLC


By: JOHN A. STANS
Its: MANAGER

Donald Riesterer



[Signature Page to Operating Agreement of
ECO GARDEN SYSTEMS, LLC,
dated November __, 2016.]

ECO GARDEN SYSTEMS, LLC

SCHEDULE 1

To Operating Agreement

Name and Address of Member	Capital Contribution	Class A Units	Class B Units	Class C Units
Locupieto VII-ECO, LLC	\$ <u>500,000</u> ⁰⁰	700	—	—
Cypress Capital, LLC	\$ <u>1,000</u> ⁰⁰	—	50	—
Donald Riesterer	Proprietary rights as more fully described in U.S. Patent no. 7,856,755	—	—	250