

OPERATING AGREEMENT

CALLICOTTE RANCH HOA, LLC

This limited liability company operating agreement ("Agreement") is made effective the 20th day of February 2013 (the "Agreement Date") by BOKF, National Association, a National Association ("BOKF").

BOKF is hereafter called the "Sole Member". The Sole Member hereby makes this agreement for the conduct of the affairs and business of Callicotte Ranch HOA, LLC.

1. **Organization of Limited Liability Company.** The Sole Member hereby organizes a limited liability company ("Company") pursuant to the Oklahoma Limited Liability Company Act as codified at 18 O.S. (Supp. 1992) Section 2000 and following (the "Act"). The Company shall be known as "Callicotte Ranch HOA, LLC". Articles of Organization of a Domestic Limited Liability Company ("Articles") were filed with the Secretary of State of the State of Oklahoma on February 18, 2013.

2. **Term of This Agreement.** The Company shall continue in existence until the Company is dissolved and its affairs wound up in accordance with this Agreement or the Act.

3. **Business of The Company.** The business of the Company shall be to engage in the business of acquire, own and sell real estate and other assets acquired through defaulted debt, and all activities incident thereto and all such other business as is lawful under the laws of the State of Oklahoma.

4. **Sole Member and Member Interest.**

- a. The Sole Member of the Company shall be BOKF.
- b. The Member Interest (as hereafter defined) of the Sole Member shall be the interest set forth on Schedule A.

5. **Managers of the Company.** The business affairs of the Company shall be directed by one or more Managers (herein, whether one or more, called the "Managers"). The Managers of the Company shall be BOKF, National Association. The Managers shall have authority to act on behalf of the Company.

- a. The Company shall reimburse the Managers for all reasonable expenses, including those of the Managers, incurred by the Managers in the conduct of the Company's business.
- b. The Company shall indemnify the Managers and Sole Member against all expenses and liabilities asserted against them by reason of their actions or failures to act on behalf of the Company to the full extent, and in the same manner,

permitted to a director of a corporation under the Oklahoma Business Corporation Act in effect at the date hereof.

- c. The Managers and Sole Member shall be entitled to enter into transactions which may be considered to be competitive with, or a business opportunity of, the Company.
- d. The Managers and Sole Member shall be liable to the Company in contract for any breach of an express provision of this Agreement. The Managers and Sole Member shall exercise ordinary and reasonable care in handling the affairs of the Company and shall be liable in contract, but not in tort, for a breach of this obligation.
- e. Neither the Managers nor the Sole Member shall be deemed a fiduciary of or to owe any fiduciary duty to the Company or to the Sole Member.

6. **Conduct of Business by the Managers.**

- a. The Managers shall have the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company, including but not limited to the following powers:
 - i. The purchase, receipt, lease or other acquisition, ownership, holding, improvement, and use of property, wherever located;
 - ii. The sale, conveyance, mortgage, pledge, lease, exchange, and other disposition of property;
 - iii. The entering into contracts and guaranties; incurring of liabilities; borrowing of money, issuance of notes, bonds, and other obligations; and the securing of any of its obligations by mortgage or pledge of any of its property or income, including without limitation entering into loans in connection with the federal New Market Tax Credit program and taking all actions and executing all documents and instruments with respect thereto;
 - iv. The investment and reinvestment of the Company's funds, and the receipt and holding of property as security for repayment;
 - v. The conduct of the Company's business, the establishment of Company officers, and the exercise of the powers of the Company within or without the State;
 - vi. The appointment of employees and agents of the Company, the defining of their duties, and the establishment of their compensation;

- vii. The payment or donation of money or property, or any other act that furthers the business and affairs of the Company;
 - viii. The participation in partnership agreements, joint ventures, or other associations of any kind with any persons or entities;
 - ix. The application for and utilization of federal and state tax credits in respect of the business and affairs and property of the Company and other tax compliance matters listed in Section 12(d) below; and
 - x. The determination whether distributions are to be made to the Sole Member and, if so, when and in what amounts.
- b. Any one of the Managers individually has the power to bind the Company as provided in, and subject to, this Section 6. Any difference arising as to any matter within the authority of Managers shall be decided by the Sole Member.
 - c. The Managers shall no less frequently than once a calendar year report to the Sole Member upon the business affairs and operating results of the Company with the Sole Member.

7. **Initial Capital Contributions.** The Sole Member shall contribute the Property as the initial capital contribution (the "Initial Contribution") to the capital of the Company. The value of such Initial Contribution shall be credited to the Sole Member's Capital Account (hereafter defined).

8. **Additional Capital Contributions.** The Sole Member shall not be required to make an additional capital contribution other than the Initial Contribution, but may make such additional contributions as it deems advisable.

9. **Sharing Ratios and Member Interest.** The sharing ratio ("Sharing Ratio") of the Sole Member shall be one hundred percent (100%, or 1.00). The Managers shall establish and maintain a capital account for the Sole Member ("Capital Account"). As used in this Agreement, "Member Interest" means the rights and obligations of the Sole Member arising under this Agreement, which shall be measured by the respective Capital Account of the Member.

10. **Allocations of Income.** Except as otherwise provided herein, all items of income, gain, loss, deduction, credit and tax preference, and all distributions, of the Company shall be allocated to the Sole Member. The Company shall elect to be treated for tax purposes as a "disregarded entity."

11. **Advances to the Company.** At the request of the Managers, the Sole Member may advance funds to the Company on such terms and conditions as the Managers and the Sole Member advancing such funds may agree. The Sole Member shall, in such case, have, and is hereby granted without the need for any further action, a security interest in all of the assets of the Company subject only to such liens as the Company may prior to or after the advance grant

in good faith to third party creditors. The Company shall execute and deliver from time to time all instruments reasonably required to evidence and perfect the security interest hereby granted. Except as provided in Section 8, the Sole Member may not be assessed additional capital without the Sole Member's consent.

12. **Fiscal Matters.** The following provisions shall apply to the fiscal affairs of the Company:

- a. **Fiscal Year.** The fiscal year of the Company shall be December 31 of each year.
- b. **Basis of Accounting.** The Company shall keep its books on the tax (cash) basis of accounting.
- c. **Books and Records.** The Company shall keep and make available to the Sole Member at any time during normal business hours, just and true books of account (maintained in accordance with sound accounting practices on the tax basis of accounting) and all other records of the business of the Company.
- d. **Tax Matters.** The Managers shall designate a "Tax Matters Partner" of the Company. The Managers shall timely prepare all required tax returns. The Managers shall furnish to the Sole Member such information as may be reasonably required by it to complete its own federal and state tax returns.
- e. **Bank Accounts.** Funds of the Company may be deposited in such account or accounts as the Managers may designate.

13. **Change of Managers.** The Sole Member may remove the Managers, or any one of them, and appoint such person or entity as the Sole Member may determine to serve as Managers. In such event, the Sole Member shall give written notice thereof to the Managers and the change shall be effective as of the first day of the first calendar month which is more than ten (10) business days following the notice.

14. **Actions by the Sole Member.** Any action which the Sole Member may take pursuant to the terms and provisions of this Agreement may be obtained by the Managers by telephonic communication or written memorandum; provided, however, the Managers shall memorialize all such actions in the records of the Company and no action of the Sole Member shall be effective without the consent of the Managers (which consent the Managers may withhold, delay or deny in their sole discretion without the obligation to provide any explanation for the exercise of such discretion).

15. **Dissolution and Winding Up.** The Company shall dissolve and wind up its business upon, and only upon, the first to occur of any Liquidating Event (as hereafter defined) on the following terms and conditions:

- a. A "Liquidating Event" is either of the following:

- i. An action to liquidate by the Sole Member; or
- ii. The happening of an event that makes it unlawful, impossible or impractical to carry on the business of the Company.
- b. Upon the occurrence of a Liquidating Event, the Company shall continue solely for the purpose of liquidating its assets, satisfying its creditors, and winding up its affairs in an orderly manner in accordance with the Act.
- c. Upon liquidation and payment of all debt and liabilities to all creditors, the income accounts shall be closed to the Capital Accounts and the balance of the Company's assets shall be distributed to the Sole Member in accordance with its Capital Account.

16. **Miscellaneous Provisions.** The following miscellaneous provisions shall apply to this Agreement:

- a. This Agreement is made and executed in Tulsa County, Oklahoma.
- b. This Agreement shall be subject to, and interpreted by and in accordance with, the laws (excluding conflict of law provisions) of the State of Oklahoma.
- c. This Agreement is the entire Agreement of the parties respecting the subject matter hereof. There are no other agreements, representations or warranties, whether oral or written, respecting the subject matter hereof.
- d. No course of prior dealings involving any of the parties hereto and no usage of trade shall be relevant or advisable to interpret, supplement, explain or vary any of the terms of this Agreement, except as expressly provided herein.
- e. This Agreement, and all the provisions of this Agreement, shall be deemed drafted by all of the parties hereto.
- f. This Agreement shall not be interpreted strictly for or against any party, but solely in accordance with the fair meaning of the provisions hereof to effectuate the purposes and interest of this Agreement.
- g. Each party hereto has entered into this Agreement based solely upon the agreements, representations and warranties expressly set forth herein and upon his own knowledge and investigation. Neither party has relied upon any representation or warranty of any other party hereto except any such representations or warranties as are expressly set forth herein.
- h. Each of the persons signing below on behalf of a party hereto represents and warrants that he or she has full requisite power and authority to execute and

deliver this Agreement on behalf of the parties for whom he or she is signing and to bind such party to the terms and conditions of this Agreement.

- i. This Agreement may be executed in counterparts, each of which shall be deemed an original. This Agreement shall become effective only when all of the parties hereto shall have executed the original or counterpart hereof. This agreement may be executed and delivered by a facsimile transmission of a counterpart signature page hereof.
- j. In any action brought by a party hereto to enforce the obligations of any other party hereto, the prevailing party shall be entitled to collect from the opposing party to such action such party's reasonable litigation costs and attorneys fees and expenses (including court costs, reasonable fees of accountants and experts, and other expenses incidental to the litigation).
- k. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
- l. This is not a third party beneficiary contract. No person or entity other than a party signing this Agreement shall have any rights under this Agreement.
- m. This Agreement may be amended or modified by a writing (including counterpart originals of a writing) which specifically references this Agreement signed by a two-thirds majority of the Members in interest.
- n. This Agreement may not be assigned (including any material performance by subcontract) by any party hereto.
- o. Nothing in this Agreement shall be construed to create a partnership or joint venture, nor to authorize any party hereto to act as agent for or representative of any other party hereto. Each party hereto shall be deemed an independent contractor and no party hereto shall act as, or hold itself out as acting as, agent for any other party hereto.
- p. A party to this Agreement may decide or fail to require full or timely performance of any obligation arising under this Agreement. The decision or failure of a party hereto to require full or timely performance of any obligation arising under this Agreement (whether on a single occasion or on multiple occasions) shall not be deemed a waiver of any such obligation. No such decisions or failures shall give rise to any claim of estoppel, laches, course of dealing, amendment of this Agreement by course of dealing, or other defense of any nature to any obligation arising hereunder.
- q. The repudiation, breach, or failure to perform any obligation arising under this Agreement by a party after reasonable notice thereof shall be deemed a


repudiation, breach, and failure to perform all of such party's obligations arising under this Agreement.

- r. Time is of the essence with respect to each obligation arising under this Agreement. The failure to timely perform an obligation arising hereunder shall be deemed a failure to perform the obligation.
- s. In the event any provision of this Agreement, or the application of such provision to any person or set of circumstances, shall be determined to be invalid, unlawful, or unenforceable to any extent for any reason, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, or unenforceable, shall not be affected and shall continue to be enforceable to the fullest extent permitted by law.
- t. Any cause of action for a breach or enforcement of, or a declaratory judgment respecting, this Agreement shall be commenced and maintained only in the United States District Court for the Northern District of Oklahoma or the applicable Oklahoma state trial court sitting in Tulsa, Oklahoma and having subject matter jurisdiction.

Dated and effective as of the Agreement Date.


"Sole Member"

BOKF, National Association

By: 
Name: Michael D. Nalley
Title: Sr. Vice President

"Manager"

BOKF, National Association

By: 
Name: Michael D. Nalley
Title: Sr. Vice President

**SCHEDULE A
TO
CALLICOTTE RANCH HOA, LLC
OPERATING AGREEMENT**

Member Interest

| <u>Member</u> | <u>Sharing Ratio</u> | <u>Property Contributed</u> |
|----------------------------|-----------------------------|---|
| BOKF, National Association | 1.00 | Real property described in Schedule B attached hereto, known as the "Callicotte Ranch". |

**SCHEDULE B
TO
CALLICOTTE RANCH HOA, LLC
OPERATING AGREEMENT**

Property Legal Description

See Confirmation Deed dated November 8, 2012 recorded November 9, 2012 at Reception No. 826802 for full legal description.

Property known as "Vacant Land, Carbondale, CO 81623"

A parcel of land situated in Lot 17 and the SW1/4SW1/4 of Section 13 and the NW1/4 and the NW1/4SW1/4 of Section 24, Township 7 South, Range 86 West of the Sixth Principal Meridian, County of Garfield, State of Colorado; Said parcel being more particularly described as follows:

Commencing at the northwest corner of section 24, the point of beginning; thence S 89 degrees 46' 24" E along the northerly line of said section 24, a distance of 888.24 feet to a point in an existing fence; thence leaving said northerly line S 85 degrees 36' 37" E along said existing fence a distance of 52.47 feet; thence continuing along said existing fence S 68 degrees 06' 22" E a distance of 36.36 feet; thence continuing along said existing fence S 88 degrees 31' 55" E a distance of 347.45 feet; thence continuing along said existing fence N 00 degrees 15' 54" W a distance of 726.53 feet; thence leaving said existing fence N 85 degrees 55' 51" E a distance of 1.89 feet to a point on the westerly line of Lot 17 of said section 13; thence along said westerly line N 01 degrees 20' 50" W a distance of 162.38 feet to a point in an existing fence; thence leaving said westerly line N 00 degrees 21' 10" E along said existing fence a distance of 80.32 feet; thence continuing along said existing fence N 02 degrees 00' 59" W a distance of 32.12 feet; thence continuing along said existing fence N 02 degrees 00' 58" W a distance of 50.00 feet; thence continuing along said existing fence N 00 degrees 16' 02" W a distance of 146.26 feet; thence continuing along said existing fence W 82 degrees 50' 31" E a distance of 74.39 feet; thence continuing along said existing fence S 69 degrees 44' 58" E a distance of 3.20 feet; thence continuing along said existing fence N 84 degrees 49' 12" E a distance of 289.30 feet; thence continuing along said existing fence N 63 degrees 52' 16" E a distance of 255.65 feet; thence continuing along said existing fence N 81 degrees 25' 57" E a distance of 21.63 feet; thence continuing along said existing fence N 84 degrees 27' 27" E a distance of 352.14 feet; thence continuing along said existing fence N 83 degrees 37' 38" E a distance of 293.93 feet to a point on the westerly right of way of County Road No. 103; thence leaving said existing fence the following four (4) courses along said westerly right of way:

- 1) S 01 degrees 22' 04" W 53.68 feet;
- 2) Along the arc of a curve to the left having a radius of 482.93 feet and a central angle of 20 degrees 44' 32", a distance of 174.85 feet (chord bears S 09 degrees 00' 12" E 173.89 feet);
- 3) S 19 degrees 22' 28" E 123.44 feet;
- 4) Along the arc of a curve to the right having a radius of 530.49 feet and a central angle of 07 degrees 27' 40", a distance of 69.08 feet (chord bears S 15 degrees 38' 38" E 69.03 feet) to a point on the easterly line of said Lot 17; thence leaving said right of way S 00 degrees 40' 46" W

along said easterly line 231.32 feet to a point on the westerly right of way of said County Road No. 103; thence leaving said easterly the following four (4) courses along said westerly right of way:

- 1) Along the arc of a curve to the right having a radius of 530.49 feet and a central angle of 02 degrees 15' 53", a distance of 20.97 feet (chord bears S 14 degrees 24' 17" W 20.97 feet);
- 2) S 15 degrees 32' 13" W 79.94 feet;
- 3) Along the arc of a curve to the left having a radius of 644.40 feet and a central angle of 17 degrees 01' 01", a distance of 191.39 feet (chord bears S 07 degrees 01' 43" W 190.69 feet);
- 4) S 01 degrees 28' 48" E 1195.00 feet to a point on the north-south centerline of said section 25; thence leaving said right of way S 00 degrees 47' 16" W along said north-south centerline a distance of 329.09 feet to a point on the westerly right of way of said County Road No. 103; thence leaving said north-south centerline the following five (5) courses along said westerly right of way:

- 1) Along the arc of a curve to the right having a radius of 619.91 feet and a central angle of 08 degrees 13' 01", a distance of 88.90 feet (chord bears S 14 degrees 23' 36" W 88.83 feet);
- 2) S 18 degrees 30' 06" W 542.67 feet;
- 3) Along the arc of a curve to the left having a radius of 1559.31 feet and a central angle of 09 degrees 46' 20" a distance of 265.95 feet (chord bears S 13 degrees 16' 56" W 265.63 feet);
- 4) S 08 degrees 43' 47" W 93.76 feet;
- 5) Along the arc of a curve to the right having a radius of 519.83 feet and central angle of 31 degrees 59' 48" a distance of 290.30 feet (chord bears S 24 degrees 43' 41" W 286.54 feet) to the northeast corner of that property described in Book 385 at Page 585 of the Garfield County Clerk and Recorder's Office; thence leaving said right of way N 62 degrees 13' 16" W along the northerly line of said property a distance of 548.17 feet to the northwest corner of said property; thence S 03 degrees 37' 16" E along the westerly line of said property a distance of 231.44 feet to the southwest corner of said property; thence S 54 degrees 58' 16" E along the southerly line of said property 363.50 feet to a point on the westerly right of way of said County Road No. 103; thence along said westerly right of way along the arc of a curve to the left having a radius of 1952.25 feet and a central angle of 03 degrees 43' 28" a distance of 126.90 feet (chord bears S 40 degrees 42' 12" W 126.88 feet) to a point on the east-west centerline of said Section 24; thence leaving said right of way N 89 degrees 35' 58" W along said east-west centerline a distance of 770.23 feet to the west-center sixteenth corner of said Section 24; thence leaving said centerline S 68 degrees 28' 56" W a distance of 194.14 feet; thence along the arc of a curve to the right having a radius of 200.00 feet, a central angle of 53 degrees 16' 53", a distance of 185.99 feet (chord bears S 05 degrees 07' 23" W a distance of 179.36 feet); thence S 31 degrees 45' 49" W a distance of 162.78 feet; thence along the arc of curve to the right having a radius of 255.00 feet, a central angle of 59 degrees 32' 33", a distance of 265.00 feet (chord bears S 61 degrees 32' 06" W a distance of 253.23 feet); thence S 38 degrees 57' 43" W a distance of 82.03 feet; thence S 01 degrees 00' 16" W a distance of 316.81 feet to a point on the northerly right of way of said County Road No. 103; thence the following seven (7) courses along said right of way:

- 1) W 76 degrees 10' 24" W 77.23 feet;

- 2) Along the arc of a curve to the left having a radius of 320.46 feet and a central angle of 26 degrees 32' 26", a distance of 148.44 feet (chord bears N 89 degrees 26' 37" W 147.12 feet);
- 3) S 77 degrees 17' 10" W 78.41 feet;
- 4) Along the arc of a curve to the left having a radius of 633.84 feet and a central angle of 07 degrees 33' 05", a distance of 83.54 feet (chord bears S 73 degrees 30' 38" W 83.43 feet);
- 5) S 69 degrees 44' 05" W 156.81 feet;
- 6) Along the arc of a curve to the left having a radius of 453.08 feet and a central angle of 19 degrees 43' 61", a distance of 155.92 feet (chord bears S 59 degrees 52' 35" W 155.15 feet);
- 7) S 50 degrees 01' 04" W 155.68 feet to a point on the westerly line of said Section 24; thence leaving said northerly right of way N 02 degrees 43' 05" W a distance of 1153.82 feet to the west quarter corner of said Section 24; thence continuing along said westerly line N 03 degrees 26' 31" E 267.78 feet to the southwest corner of the Kelly property; thence leaving said westerly line the following eight (8) courses along the boundary of said property:

- 1) N 78 degrees 38' 52" E 785.21 feet;
- 2) N 06 degrees 39' 16" E 353.76 feet;
- 3) N 20 degrees 43' 25" E 520.43 feet;
- 4) N 23 degrees 32' 29" E 413.00 feet;
- 5) N 33 degrees 21' 07" W 259.61 feet;
- 6) N 40 degrees 26' 54" W 187.53 feet;
- 7) N 44 degrees 47' 22" W 786.34 feet;
- 8) N 79 degrees 57' 50" W 204.94 feet to a point on the westerly line of said Section 24; thence N 03 degrees 26' 31" E along said westerly line 35.13 feet to the point of beginning.

County of Garfield
State of Colorado

Except the follow pursuant to that certain Partial Release of Deed of Trust dated April 22, 2008, recorded June 13, 2008 at Reception No. 750415.

Lots 9, 19, 14, 7, and 10 Callicotte Ranch Subdivision, Garfield County

Except the following pursuant to that certain Partial Release of Deed of Trust dated January 28, 2009, recorded February 19, 2009 at Reception No. 763408.

Lots 12 and 23 Callicotte Ranch Subdivision, Garfield County

Except the following pursuant to that certain Partial Release of Deed of Trust dated June 8, 2010, recorded June 14, 2010 at Reception No. 787234.

Lot 2 and 13 Callicotte Ranch Subdivision, according to the Plat recorded May 16, 2007, under Reception No. 723321 and Amended Final Plat recorded August 19, 2008 under Reception No. 754313.