**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MISSOURI**
**EASTERN DIVISION**

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|---|---|---|
| SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br><br>v.<br><br>BURTON DOUGLAS MORRISS, et al.,<br><br>Defendants, and<br><br>MORRISS HOLDINGS, LLC,<br><br>Relief Defendant. | ) | Case No. 4:12-cv-00080-CEJ |

**REPLY IN SUPPORT OF RECEIVER'S MOTION FOR AUTHORIZATION TO DISTRIBUTE FUNDS HELD BY INTEGRIEN ACQUISITION, LLC AND INTEGRIEN ACQUISITION II, LLC AND REQUEST FOR CORRECTION TO DENOMINATION OF MANAGING MEMBER OF INTEGRIEN ACQUISITION II, LLC IN RECEIVER'S MOTION**

The Receiver respectfully files this Reply ("Reply") to the Objection of Ameet Patel to Receiver's Motion for Authorization to Distribute Funds Held by Integrien Acquisition, LLC and Integrien Acquisition II, LLC (the "Objection"). The Receiver opposes the relief requested in the Objection and respectfully requests that the Court grant the relief requested in the Receiver's Motion for Authorization to Distribute Funds Held By Integrien Acquisition, LLC and Integrien Acquisition II, LLC (Dkt. No. 241, 242; filed May 3, 2013) ("Motion").[1] The Receiver also requests that the Court note a correction in the identification of the managing member of IAII[2] in

[1] The Receiver's Motion was served upon thirteen interested parties. Mr. Patel is the only interested party that filed an objection.

[2] All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Receiver's Motion for Authorization to Distribute Funds Held By Integrien Acquisition, LLC and Integrien Acquisition II, LLC (Dkt. No. 241, 242; filed May 3, 2013).

the Receiver's Motion and enter an order on the Motion substantially in the form attached hereto as **Exhibit A** (corrected to reflect Integrien Capital II, LLC as the managing member of IAII).

In support, the Receiver states as follows:

**Reply to Mr. Patel's Objection to the Receiver's Motion**

**A. The Receiver Properly Relied on the Existing and Unamended Corporate Governance Documents in Proposing the Distribution from AMP to Acartha.**

The AMP Operating Agreement provides: "Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member." **Exhibit B**, AMP Operating Agreement. The Receiver properly relied on this distribution provision in proposing to distribute the funds received by AMP from IA to Acartha Group. The distribution provision permits distributions to be made to the "Member." Acartha Group is the sole "Member" of AMP. Under the plain terms of the AMP Operating Agreement, when the Receiver decides to make a distribution from AMP, the Receiver is obligated to make such distribution to, and only to, the Member – Acartha Group. Therefore, the unamended AMP Operating Agreement authorizes the Receiver's distribution of amounts held by AMP to its sole member, Acartha Group, as proposed in the Schedule of Proposed Distribution.[3]

Mr. Patel, however, argues that the Schedule of Proposed Distribution is incorrect and advocates for a distribution from AMP to Mr. Patel of almost $19,000 based on an email (the "March 19 Email", attached as Exhibit B to the Zito Declaration)[4] that purportedly supersedes

[3] The Receiver's statements regarding Acartha Group's status as the sole Member of AMP is based on the Receiver's current review of the available corporate governance documents. The Receiver's statements regarding the absence of amendments to the AMP Operating Agreement is based on the Receiver's current review of the available corporate governance documents and communications with counsel for Wynne Morriss, former management for the Receivership Entities.

[4] The March 19 Email was sent by Wynne Morriss to Mr. Morriss and Mr. Patel on March 19, 2009. Both Mr. Morriss and Mr. Patel stood to benefit from the March 19 Email. *See* March 19 Email ("The basic division of

the AMP Operating Agreement and former management's prior distributions to Mr. Patel in 2010 and 2011.

First, the March 19 Email did not amend the AMP Operating Agreement or supersede the AMP Operating Agreement's terms regarding distributions. The AMP Operating Agreement states that it "may not be amended except in writing signed by the Member." AMP Operating Agreement, ¶ 18.3. The March 19 Email did not purport to be an amendment to the AMP Operating Agreement and in fact specifically contemplated that changes to the governing documents of the various Non ATP Vehicles would be necessary to give effect to the agreements in the March 19 Email. *See* March 19 Email (emphasis added):

> It is both your expectations that **this e-mail will be followed by a more comprehensive letter agreement, and that the necessary changes to the governing documents of the various Non ATP Vehicles will be enacted** to give effect to the intent expressed herein.

As Mr. Patel admits, the governing documents of AMP were never amended to reflect Mr. Patel's purported right to a portion of the carried interest distributed by IA to AMP.[5]

Second, Mr. Patel's receipt of prior distributions from AMP in 2010 and 2011 and UHY's "review and approv[al]" of these distributions does not obligate the Receiver to ignore the unamended distribution provision of the AMP Operating Agreement. The 2010 and 2011 distributions to Mr. Patel and B. Douglas Morriss may have been consistent with Mr. Morriss's

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carried interest to be allocated to Ameet with be 40% of the overall carried interest actually distributed by any of the Non ATP Vehicles. … The balance of the carried interest in the Non ATP Vehicles will be allocated to Doug…").

[5] Mr. Patel filed a claim with the Receiver pursuant to the established claims process. Mr. Patel attached the March 19 Email to his proof of claim form as supporting documentation for his asserted claim amount. Mr. Patel's claim included amounts relating to profit interest (i.e., "carried interest") in certain funds, including IA. His claim states: "As a result of the sale of Integrien to VMWare, Mr. Patel should have received a distribution of approximately $31,149.95 on March 1, 2012, representing his carried interest in Integrien Acquisition LLC and Integrien Acquisition 2, LLC." To the extent that Mr. Patel's purported right to carried interest distributed by IA is a claim owed by one or more of the Receivership Entities rather than one of the SPVs (which point is not conceded), Mr. Patel's purported right to carried interest can be dealt with in the established claims process.

directions as managing member of Acartha Group. Mr. Morriss, however, is no longer the managing member of Acartha Group. The plain provisions of the corporate governance documents must guide the Receiver's actions.

Third, the March 19 Email should not bind the Receiver because it lacks clarity and conflicts with the subsequent allocations of carried interest distributed by IA. The March 19 Email states that Mr. Patel would be allocated 40% of the overall carried interest actually distributed by any of the Non ATP Vehicles. In practice, as Mr. Patel admits, Mr. Patel received 37.5% of the carried interest distributed from IA in 2010 and 2011. This inconsistency between the terms of the March 19 Email and the actual 2010 and 2011 allocations of the IA carried interest suggests that at the time of the March 19 Email, the terms of the parties' agreement were not final. There is no indication in the Receivership Entities' documents or otherwise that the parties followed through on their intent to formally document the proposed division of carried interest.

**B. The Receiver Is Not Bound By The March 19 Email.**

A receiver, by virtue of his or her appointment, does not become liable upon the covenants and agreements of the receivership entities. *Sunflower Oil Co. v. Wilson*, 142 U.S. 313, 322 (1892). Rather, a receiver has the inherent power to reject contracts and leases as an equity receiver under the common law. *See In re Unishops, Inc.*, 422 F. Supp. 75, 79 (S.D.N.Y. 1975) (citing *U.S. Trust Co. v. Wabash Western Ry.*, 150 U.S. 287, 299 (1893)) (rejecting unprofitable leases and contracts); *see S.E.C. v. Ross*, 504 F.3d 1130, 1145 (9th Cir. 2007) ("Congress has authorized federal receivers to exercise broad powers in administering, retrieving, and disposing of assets belonging to the receivership.").

By virtue of her appointment, the Receiver did not become liable to Mr. Patel as a result of the March 19 Email. Moreover, the March 19 Email, if given effect, does not benefit the Receivership Estate. Mr. Patel requests payment of almost $19,000. Absent Mr. Patel's contention as to his right to the payment, this money would be distributed to Acartha Group and be available for the payment of expenses of administering the Receivership Estate. Considering the detriment to the Receivership Estate, the Receiver cannot be held to the March 19 Email.

**C. The Equitable Purposes Of This Receivership Do Not Support Mr. Patel's Requested Relief.**

A federal receivership is equitable in nature and is instituted to serve equitable purposes. *See U.S. v. Vanguard Inv. Co., Inc.*, 6 F.3d 222, 226 (4th Cir. 1993). Where proposed relief is "inimical to receivership purposes," the court has the discretionary power to deny that relief. *Id.* ("Given its equitable nature and purposes, a district court supervising such a receivership has the discretionary power to deny these equitable remedies as inimical to receivership purposes even though they are or might be warranted under controlling law."); *see S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (receivership court has broad discretion in the conduct of the receivership and the relief to be granted to involved parties).

Here, Mr. Patel's proposed relief -- revising the Schedule of Proposed Distribution to provide for an almost $19,000 payment to Mr. Patel -- deprives the Receivership of much-needed funds to support the continued work of the Receiver and the Receivership's service providers, who are attempting to serve the overall interests of the investors and the Receivership Estate as a whole.[6] The equitable purposes of this Receivership weigh in favor of distributing these funds to the Receivership Estate, rather than to corporate insiders.

[6] The relief sought by Mr. Patel leaves open the suggestion that the Receiver consider payment of an identical sum to Mr. Morriss, another corporate insider.

Moreover, the relief requested by Mr. Patel is inconsistent with the Receiver's obligations under the Receivership Order and the Receiver's role as managing member of the Receivership Entities. Pursuant to the Receivership Order, the Court authorized the Receiver to, among other things, marshal and safeguard the assets of the Receivership Entities and take such actions as are necessary for the protection of investors. *See* Receivership Order, p.1. Also, the Receiver is charged with acting as the sole and exclusive managing member and/or partner of the Receivership Entities and administering and managing the business affairs, funds, assets, choses in action and other property of the Receivership Entities.

The Receiver must keep these obligations in mind when she administers assets of the Receivership Entities as well as assets of the non-Receivership Entities that she controls by virtue of her role as managing member of the Receivership Entities. *See Scholes v. Lehmann*, 56 F.3d 750, 755 (7th Cir. 1995) (receiver's "object is to maximize the value of the [Receivership assets] for the benefit of their investors and any creditors"). The Receiver's ultimate objective is to administer the Receivership Estate so that she maximizes the recovery for the investor class. *S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 336 (7th Cir. 2010) ("the ultimate goal of a receivership is to maximize the recovery of the investor class"). The Receiver fulfills this objective best if she distributes the Integrien funds in a manner that repays the investors in the Integrien SPVs (of which Mr. Patel is not one) and makes available additional funds for the Receiver to use in operating the Receivership and maximizing recovery for the investors.

**Correction to Identification of Managing Member of Integrien Acquisition II, LLC**

In the Motion filed May 3, 2013, the Receiver mistakenly named the managing member of IA II as Integrien Acquisition Capital II, LLC. The correct name of the managing member of IA II is Integrien Capital II, LLC. The Receiver requests that the Court treat all references to Integrien Acquisition Capital II, LLC in the Motion and accompanying exhibits as referring to Integrien Capital II, LLC. The Receiver is attaching a form of proposed order that reflects this correction. *See* Exhibit A

**Conclusion and Request for Relief**

For all the foregoing reasons, the Receiver requests that the Court overrule Mr. Patel's objection and enter an Order, substantially in the form attached hereto as Exhibit A,

(A) lifting the asset freeze of the Asset Freeze Order with respect to the First Escrow Funds and the Final Escrow Funds;

(B) directing Reliance Bank to grant the Receiver control over the IA Reliance Bank Account and the funds and assets of such account and to distribute such funds as directed by the Receiver;

(C) authorizing the Receiver to distribute the remaining First Escrow Funds withheld by former management from the intended investor distributees of IA in accordance with the Schedule of Proposed Distribution attached to the O'Shaughnessy Declaration;

(D) approving the Receiver's payment of, or reservation for, fees and expenses of the Integrien SPVs, AMP and Integrien Capital II from the Final Escrow Funds in accordance with the Schedule of Proposed Distribution attached to the O'Shaughnessy Declaration;

(E) authorizing the Receiver to distribute the Final Escrow Funds, minus fees and expenses, to (i) the investors in IA and IAII, (ii) AMP and Integrien Capital II (for carried

interest) and (iii) the investors in and managing member of AMP and Integrien Capital II in accordance with the Schedule of Proposed Distribution attached to the O'Shaughnessy Declaration; and

(F) granting such other and further relief as is just and appropriate under the circumstances.

Respectfully submitted,

THOMPSON COBURN LLP

By /s/ Kathleen E. Kraft

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 28, 2013, I electronically filed the foregoing with the Clerk of the Court through the Court's CM/ECF system which will send a notice of electronic filing to the following:

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*Counsel for Defendant Burton Douglas Morriss*

Robert K. Levenson
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*Attorneys for Plaintiff*

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Carter Ledyard & Milburn LLP
2 Wall Street
New York, NY 10005-2072
*Attorney for Objector Ameet Patel*

I further certify that on May 28, 2013, I served the above document with exhibits via electronic mail and/or U.S. mail, postage prepaid on the following:

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/s/ Kathleen E. Kraft

**EX. A**

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MISSOURI**
**EASTERN DIVISION**

| | | |
|---|---|---|
| SECURITIES AND EXCHANGE COMMISSION, | ) | |
| Plaintiff, | ) | |
| v. | ) | Case No. 4:12-cv-00080-CEJ |
| BURTON DOUGLAS MORRISS, et al., | ) | |
| Defendants, and | ) | |
| MORRISS HOLDINGS, LLC, | ) | |
| Relief Defendant. | ) | |

**ORDER**

This matter is before the Court on the *Receiver's Motion for Authorization to Distribute Funds Held By Integrien Acquisition, LLC and Integrien Acquisition II, LLC* and Memorandum in Support (the "Motion") filed by Claire M. Schenk, the court-appointed receiver (the "Receiver") for Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, L.P. and Gryphon Investments III, LLC in this action; and

Having fully considered the Motion and accompanying papers and being duly advised as to the merits,

**THE COURT DOES HEREBY ORDER THAT**

1. The Receiver's Motion is granted in its entirety; and

2. The asset freeze of the Asset Freeze Order is lifted with respect to the First Escrow Funds and the Final Escrow Funds.

3. Reliance Bank is directed to grant the Receiver control over the IA Reliance Bank Account and the funds and assets of such account and to distribute such funds as directed by the Receiver.

3. The Receiver is authorized to distribute the remaining First Escrow Funds to intended investor distributees of IA in accordance with the Schedule of Proposed Distribution attached to the O'Shaughnessy Declaration.

4. The Receiver's payment of, or reservation for, fees and expenses (which expenses are only estimated at this time and may exceed or fall below the numbers listed in the Schedule of Proposed Distribution) of the Integrien SPVs, AMP and Integrien Capital II from the Final Escrow Funds in accordance with the Schedule of Proposed Distribution attached to the O'Shaughnessy Declaration is approved.

5. The Receiver is authorized to distribute the Final Escrow Funds, minus fees and expenses, to (i) the investors in IA and IAII, (ii) AMP and Integrien Capital II (for carried interest) and (iii) the investors in and managing member of AMP and Integrien Capital II in accordance with the Schedule of Proposed Distribution attached to the O'Shaughnessy Declaration.

**SO ORDERED** this the ____ day of _____, 2013.

_____

THE HONORABLE CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

# ACARTHA MERCHANT PARTNERS, LLC

Limited Liability Company Agreement

Dated as of October 14, 2003

**Ex. B**

# ACARTHA MERCHANT PARTNERS, LLC

## LIMITED LIABILITY COMPANY AGREEMENT

THIS LIMITED LIABILITY COMPANY AGREEMENT of Acartha Merchant Partners, LLC, (the "Company") dated as of October 14, 2003, is by Acartha Group, LLC, a Delaware limited liability company (the "Member").

**1. Formation**. The Company was formed by the filing of a Certificate of Formation (the "Certificate") with the Secretary of State of the State of Delaware on October 14, 2003. The rights and liabilities of the Member shall be determined pursuant to the Delaware Limited Liability Company Act, as amended (the "Act") and this Agreement. To the extent that the rights or obligations of the Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement, to the extent permitted by the Act, shall control.

**2. Name**. The name of the Company is Acartha Merchant Partners, LLC.

**3. Registered Office/Agent**. The registered office required to be maintained by the Company in the State of Delaware pursuant to the Act is c/o Corporation Service Company, located at 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, State of Delaware 19808. The name and address of the registered agent of the Company pursuant to the Act is and shall continue to be c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. The Company may, upon compliance with the applicable provisions of the Act, change its registered office or registered agent from time to time in the discretion of the Member.

**4. Term**. The Company shall continue in perpetuity unless the Company is earlier dissolved in accordance with either the provisions of this Agreement or the Act.

**5. Purpose**. The business of the Company shall be to conduct any lawful business whatsoever that may be conducted by limited liability companies pursuant to the Act.

**6. Powers**. In furtherance of its purposes, the Company has the power and is hereby authorized to do such things and engage in such activities as may be necessary, convenient or incidental to the conduct of the business of the Company, and have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

**7. Limited Liability**. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, are solely the debts, obligations and liabilities of the Company, and the Member is not obligated or liable personally for any such debt, obligation or liability of the Company solely by reason of being a member of the Company.

**8. Capital Contributions**. The Member is deemed admitted as the Member of the Company upon its execution and delivery of this Agreement. The Member has contributed the amount of capital to the Company as shown in the books and records of the Company, and in

exchange the Company has issued to the Member one hundred percent (100%) of the membership interests in the Company. The Member is not required to make any additional capital contributions to the Company. However, Member may make additional capital contributions to the Company at any time. To the extent Member makes an additional capital contribution to the Company, such additional capital contribution shall be reflected in the books and records of the Company.

**9. Allocation of Profits and Losses**. All profits and losses of the Company shall be allocated to the Member.

**10. Treatment for Tax Purposes**. The Member expects and intends that the Company be treated as a disregarded entity for federal income tax purposes, unless and until a second person acquires an interest in the Company, in which event the Company will be treated as a partnership for such purposes. The Member agrees that it will not file an election for or on behalf of the Company to be treated as association for federal income tax purposes and will take such steps as necessary to comply with all separate tax filing requirements that may be imposed upon the Company under state or local law.

**11. Distributions**. Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member.

**12. Management**.

12.1 The management of the Company is vested in the Member, and the Member has ultimate authority and control to exercise all management powers relating to the operations of the Company. Any action required to be taken by or on behalf of the Company may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by the Member.

12.2 The Member may delegate management of the Company to a Board of Directors. The Board of Directors shall consist of one (1) person, who shall be a "manager" of the Company for all purposes of the Act (the "Director"). The initial Director shall be B. Douglas Morriss. Decisions of the Board of Directors shall be decisions of the "manager" for all purposes of the Act and shall be carried out by officers or agents of the Company appointed by the Board of Directors in the vote or resolution in question or in one or more standing votes or resolutions. The Member may appoint and remove the Director in its sole discretion.

**13. Right to Indemnification**. The Company hereby indemnifies the Member against any and all damage, loss, claim, expense, deficiency or cost incurred as the result of any claim, suit or proceeding made or brought against the Member by reason of the fact that he is a member of the Company to the fullest extent permitted by the laws of the State of Delaware. The right to indemnification conferred by this Section shall not be exclusive of any other right which a person or entity may have or hereafter acquire under any law (common or statutory), the Certificate, this Agreement, any other agreements or otherwise.

**14. Assignment**. The Member may assign in whole or in part its limited liability company interest in the Company. If the Member transfers all of its interest in the Company pursuant to this Section, the transferee shall be admitted to the Company upon its execution of an instrument

signifying its agreement to be bound by the terms and conditions of this Agreement. Such admission shall be deemed effective immediately prior to the transfer, and, immediately following such admission, the transferor Member shall cease to be a member of the Company and the transferee shall thereafter be referred to herein as the "Member."

**15. Dissolution**.

15.1 The Company shall dissolve, and its affairs shall be wound up, upon the first to occur of the following: (i) the written consent of the Member, (ii) the retirement, resignation or dissolution of the Member or the occurrence of any other event which terminates the continued membership of the Member in the Company unless the business of the Company is continued in a manner permitted by the Act, or (iii) the entry of a decree of judicial dissolution under the Act.

15.2 In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in the Act.

**16. Liquidation and Distribution of Assets.**

16.1 The Member shall be responsible for overseeing the winding up and liquidation of the Company and shall take full account of the Company's liabilities and assets, and shall immediately proceed to wind up the affairs of the Company.

16.2 If the Company is dissolved and its affairs are to be wound up, the Member shall (1) sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Member may determine to distribute any assets to the Member in kind), (2) allocate any profits or losses resulting from such sales to the Member's capital account in accordance with this Agreement, (3) discharge all liabilities of the Company (other than liabilities to the Member), including all costs relating to the dissolution, winding up, and liquidation and distribution of assets, (4) establish such reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the capital account of the Member, the amounts of such reserves shall be deemed to be an expense of the Company), (5) discharge any liabilities of the Company to the members other than on account of their interest in the Company's capital or profits, and (6) distribute the remaining assets to the Member.

**17. Fiscal Year**. The fiscal year of the Company shall be the calendar year, unless otherwise approved by the Member.

**18. Miscellaneous.**

18.1 Notices. Whenever, under the provisions of the Act or this Agreement, notice is required to be given to the Member, such notice shall be given in writing addressed to the Member at its address as it appears below, and will be deemed effectively given upon personal delivery or upon deposit in the United States mail, by registered or certified mail, return receipt requested. Whenever any notice is required to be given under the provisions of the Act or this Agreement, a waiver thereof in writing, signed by the person or persons entitled to said notice,

whether before or after the time stated therein, will be deemed equivalent thereto. Notices given by counsel for the Member shall be deemed a valid notice if addressed and sent in accordance with the provisions of this Section 18.1. Notices shall be sent to:

Member: Acartha Group, LLC
18500 Edison Avenue
Chesterfield, Missouri 63005
Attn: Chairman of the Board

18.2 Binding Effect. This Agreement is binding on and inures to the benefit of the Member and its permitted transferees, successors, assigns and legal representatives.

18.3 Amendments. This Agreement may not be amended except in writing signed by the Member.

18.4 Governing Law. This Agreement, and its interpretation, shall be governed exclusively by its terms and by the internal laws of the State of Delaware (other than its conflicts of laws rules) and specifically the Act.

18.5 Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter herein.

18.6 Statutory References. Any reference to the Act or other statutes or laws includes all amendments, modifications, or replacements of the specific sections and provisions concerned.

18.7 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

18.8 References to this Agreement. Numbered or lettered articles, sections and subsections herein contained refer to articles, sections and subsections of this Agreement unless otherwise expressly stated.

18.9 Severability. If any provision of this Agreement or the application thereof to any person or entity or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned Member, intending to be legally bound hereby, has duly executed this Agreement as of the date first written above.

ACARTHA GROUP, LLC

By:_____
Name: B. Douglas Morriss
Title: Chairman of the Board