

La Montanita Fund, LLC
Operating Agreement
Amended 07/06/2017

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1. Preliminary Provisions

1.1 *LLC Creation.* The La Montanita Fund, Limited Liability Company (“LLC” or “Fund”) was created by the La Montanita Food Cooperative, a New Mexico cooperative association (“the Cooperative” or “La Montanita”).

1.2 *Effective Date.* This Operating Agreement of the LLC is effective when signed.

1.3 *Formation.* This LLC was formed under the laws of the State of New Mexico.

1.4 *Principal Office.* The street address of the principal place of business is at 3361 Columbia NE, Albuquerque, New Mexico.

1.5 *Business Purposes.* The specific business purposes and activities contemplated by the sole Member of this LLC at the time of initial signing this agreement are supporting farms, ranches, value added producers and other food system endeavors and related business (“Local Producers”) in the La Montanita food-shed region by providing collateral for loans from Nusenda Federal Credit Union (“Nusenda”) using funds from Investors who are members of the Cooperative.

1.6 *Duration of LLC.* The duration of this LLC shall be perpetual, unless sooner terminated as provided herein. Further, this LLC shall terminate when a proposal to dissolve the LLC is adopted by the Member of this LLC or when this LLC is otherwise terminated in accordance with law.

1.7 *Trade Name.* The LLC may use a tradename, including but not limited to LaM Fund.

2. Management Provisions.

2.1 *Management by Member Representative.* This LLC will be managed by the sole Member, through its Cooperative Operation and Support Officer (COSO) or staff person designated in writing by the COSO.

2.2 *Authority and Votes of Manager.* The Member’s Cooperative Operation and Support Officer (COSO) shall be the Fund Manager responsible for all management decisions relating to this LLC’s business.

2.2.1. Record of Meetings. The proceedings of all formal LLC meetings shall be noted or summarized with written minutes of the meeting and a copy of the minutes shall be placed and kept in the records book of this LLC.

2.3 *Fund Manager's Standard of Care.* The Fund Manager's duty of care in the discharge of the Fund Manager's duties to the LLC and the Member will be to refrain from, and the Fund Manager will not be liable to the LLC or to the Member or holder of a participation interest for any loss or damage which does not result from, gross negligence, recklessness, or intentional or willful misconduct or violation of the law. In discharging its duties, the Fund Manager shall be fully protected in relying in good faith upon information, opinions, reports or statements by any person who has professional or expert competence and who has been selected with reasonable care by or on behalf of the LLC. This protection will extend to information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the LLC, or any other facts pertinent to the existence and amount of assets from which distributions might properly be paid.

2.4 *Indemnification.* Other than as provided in Section 2.4, neither the Member nor the Fund Manager (or affiliate of either) will be liable, responsible, or accountable in damages or otherwise to each other or holder of a participation interest (or affiliate) for, and the LLC will, to the fullest extent permitted by law, defend, indemnify and hold the Member and the Fund Manager, harmless from and against, all claims, losses, damages and liabilities, including all costs, fees and attorneys' expense in connection with them, arising out of any acts or omissions by the Member or Manager in good faith on behalf of the LLC or the Member or the holders of participation interests, and in a manner the Member or Manager reasonably believed to be within the scope of authority granted by this Agreement, if any, and in the interests of the LLC or the Member. However, the satisfaction of any indemnification will be solely from LLC assets, and the Member will not have any personal liability for it.

2.5 *Loan Committee.* The Manager may appoint a Loan Committee to review loan applications, and make recommendations to the Manager.

3. Membership Provisions.

3.1 *Initial Member's Representative.* The La Montanita Food Cooperative is the sole initial member of the LLC. The initial Member's Representative is its Cooperative Operation and Support Officer (COSO), who may be assisted by staff and selected Members of La Montanita Food Cooperative. There may be one or more Committees established to advise on Fund operations, and lending.

3.2 *Member's Percentage Interests.* As of the Effective Date of this Agreement, the sole Member owns 100% interest in the LLC.

4. Financial Provisions.

4.1. *Tax Year and Accounting Method.* The tax year of this LLC shall be “the calendar year”. The LLC shall use the “accrual” method of accounting. Both the tax year and the accounting period of the LLC may be changed with the consent of the Member through its Cooperative Operation and Support Officer (COSO). If the LLC qualifies for such change, it may be effected by the filing of appropriate forms with the IRS and state tax authorities.

4.2. *Bank Accounts.* The LLC designates the Nusenda Federal Credit Union (“NUSENDA”) for the deposit of the funds of the LLC, and shall establish savings, checking, investment and other such accounts as are reasonable and necessary for its business and investments. Two or more employees of the Member shall be designated to deposit and withdraw funds of the LLC, and to direct the investment of funds from, into and among such accounts. The funds of the LLC, however and wherever deposited or invested, shall not be commingled with any other funds.

4.3. *Title to Assets.* All assets of this LLC shall be held in the name of the LLC, not in the names of the Member or Fund participants.

4.4. *Lending Provisions.*

4.4.1. The LLC will enter into a Loan Collateralization Agreement with Nusenda.

4.4.2. The LLC will have written Criteria for deciding whether to have the LLC recommend Nusenda make a loan to a member of La Montanita Food Co-operative which will be secured by the LLC’s account containing Participation Interest Funds.

4.5. *Administration.* The Member will pay all expenses and costs of administering this LLC.

4.6 *Distributions.* The Fund Manager will determine the amount of LLC cash available for distribution to the Member, and in doing so may establish whatever reserves the Fund Manager believes are advisable. The Fund Manager may, in the Fund Manager’s discretion, distribute the available cash of the LLC to the Member at reasonable intervals. Unless otherwise determined at the time of issuance of membership interests, these distributions will be made in the percentage in which the Member shares LLC profits. However, this section is not intended to prevent the LLC from paying compensation to a person who is a Member for services rendered, even if the compensation is considered to be a distribution for tax purposes. Compensatory distributions will be over and above, and not credited against, distribution of profits to the Member. No distribution may be made if, after giving effect to the distribution, the Company would be deemed to be insolvent.

4.7. *Lending Limits.* The maximum loan approved by the Fund for collateralization through Nusenda to any entity may not exceed 20% of capital invested in the Fund and on deposit at Nusenda in the Fund's account at the time the loan is approved by the Loan Committee or \$30,000, whichever is less.

5. Participation Capital Provisions.

5.1. *Terms.* The LLC through the Fund Manager can issue participation interests with the consent of the Member, on the terms and conditions satisfactory to both.

5.2. *Use of Funds.* The funds raised from sale of participation interests to members of La Montanita Food Cooperative will be used as determined by the Fund Manager and can include use as collateral for loans approved by the Fund to be made by Nusenda.

6. Dissolution Provisions.

6.1. *Events that Trigger Dissolution of the LLC.* The following events shall trigger a dissolution of the LLC, except as provided:

6.1.1. The written consent of the initial Member, acting through its Cooperative Operation and Support Officer (COSO), after consultation with its Board of Directors, to dissolve the LLC.

6.1.2. Entry of a decree of dissolution of the LLC under applicable law.

7. General Provisions.

7.1. *Records.* The LLC shall keep at the Member's principal office address a copy of all proceedings of LLC meetings, as well as books of account of the LLC's financial transactions. A list of the names and addresses of Investor Participants and Collateralized Loan recipients of the LLC also shall be maintained at this address.

7.1.1. Copies of the LLC's Articles of Organization, a signed copy of this operating agreement, and the LLC's tax documents shall be kept at the principal office address of the LLC.

7.1.2. Any Participant may inspect any and all records maintained by the LLC upon reasonable notice to the LLC.

7.2. *All Necessary Acts.* The Member is authorized to perform all acts necessary to perfect the organization of this LLC and to carry out its business operations expeditiously and efficiently. The Member's COSO or designee may certify to other

businesses, financial institutions and individuals as to the authority of this LLC to transact specific items of business on behalf of the LLC.

7.3. *Sue and Be Sued.* This LLC is authorized to sue and be sued in its LLC name in any court of competent jurisdiction within the United States consistent with and to the extent provided in the Articles of Organization.

7.4. *Entire Agreement; Amendment.* This operating agreement represents the entire agreement of this LLC, and it shall not be amended, modified, or replaced except by a written instrument executed by the Member's Representative.

7.5. *Governing Law.* The laws of the State of New Mexico, including the Articles of Organization of this LLC, shall be used to interpret the terms and conditions of this Operating Agreement.

7.6. *Conflict of Interest Waiver.* Arrangements for collateralization of loans by Nusenda which are approved by the LLC for participating members of the La Montanita Food Cooperative are not to be considered conflicts of interests between the Member and the Fund.

7.7 *Liability of the Member.* The Member will not be personally liable for the return of the Member's capital account or income account; any such return will be made solely from LLC assets. The Member will not be liable, solely by reason of being a Member, to the LLC, or to any creditor of the LLC, for LLC liabilities or losses, for any amount in excess of the amount the Member originally agreed to contribute to the LLC capital plus any contribution returned and recoverable under the New Mexico Limited Liability Company Act. A Member acting in the Member's capacity as a Member may, however, be liable to the LLC for any unauthorized act or omission which results in damage or loss, however characterized, to the LLC.


7.8 *Tax Matters.* The LLC may retain an independent public accountant, chosen by the Fund Manager, for fiscal purposes. The Fund Manager is designated as the "Tax Matters Partner" under Section 6231(a)(7) of the Code, and will manage audits of the LLC conducted by the Internal Revenue Service or other tax authorities. The Fund Manager will have no liability to the LLC or the Member for any loss resulting from its acts or omissions as the "Tax Matters Partner," except on account of the Manager's gross negligence or willful misconduct. All elections required or permitted to be made by the LLC under the Internal Revenue Code will be made by the Fund Manager as advised by the LLC's accountants and tax consultants. The LLC will make an election under Section 754 of the Code at the request of the Member. The requesting Member will pay the costs and expenses of any election under Section 754.

8. Signatures of Authorized Representative of Member.

8.1. *Execution of Agreement.* In witness whereof, the sole initial Member of this LLC by its Member Representative approves this agreement as its 2017 Operating Agreement for La Montanita Fund, LLC.

8.2. *Signature of Sole Member by its Member Representative.*

La Montanita Fund, LLC
a New Mexico Limited Liability Company

By:  _____
Rob Dixon
Cooperative Operation and Support Officer

**ACTION BY MANAGER/MEMBER'S REPRESENTATIVE
APPROVING AMENDMENT TO THE OPERATING AGREEMENT**

The following action was taken on July 6, 2017 by the MANAGER/MEMBER'S REPRESENTATIVE, which is the Cooperative Operations and Support Officer ("COSO"), Rob Dixon, of La Montañita Fund, LLC ("LLC"), a New Mexico Limited Liability Company created by the La Montañita Food Cooperative, a New Mexico cooperative association ("LLC Owner"):

Recitals:


1. LLC is formed under the laws of the State of New Mexico;
2. The COSO is responsible for all management decisions related to business of the LLC according to its Operating Agreement, Section 2. "Management Provisions";
3. The initial Member's Representative was the General Manager. However, LLC Owner's Board of Directors abolished that position, replacing it with the COSO for purposes of managing the LLC;
4. The initial Member Representative may amend the Operating Agreement by written instrument according to Section 7.4 "Entire Agreement; Amendment.";
5. After discussions with the LLC Loan Committee, the COSO acted to amend the LLC Operating Agreement by
 - (a) amending sections 2.1, 2.2, 3.1, and 4.1 to replace "General Manager" with "COSO" as Manager and Member Representative;
 - (b) adding new subsection 2.5 Loan Committee, and
 - (c) replacing "New Mexico Educators" with "Nusenda" in sections 1.5, 4.2, 4.4.1, 4.4.2, 4.7, 5.2 and 7.6.
 - (d) deleting section 4.4.3 describing Loan Advisory Committee.
 - (e) revising section 4.7 title and loan limits.
 - (f) revising signature block, to show action on behalf of Fund.

NOW, THEREFORE, BE IT ENACTED by the COSO:

- A. The LLC Operating Agreement is amended to replace "General Manager" with "COSO" in Sections 2.1, 2.2, 3.1, and 4.1.
- B. The LLC Operating Agreement is amended to include new section 2.5 "Loan Committee" and delete section 4.4.3 concerning the same subject;

- C. The LLC Operating Agreement is amended to edit Section 4.7 "Maximum Loan" to be re-titled "Lending Limits" with additional edits to change maximum loan limits;
- D. This amendment to the LLC Operating Agreement is effective immediately; and
- E. A revised copy of the La Montañita Fund, LLC Operating Agreement is attached hereto.

La Montanita Fund, LLC

By:  _____
Rob Dixon, COSO
Cooperative Operation and Support Officer