

## EXHIBIT E

### **TABLE OF PERMISSIVE PROVISIONS OF THE NEW HAMPSHIRE LIMITED LIABILITY COMPANY ACT RELEVANT IN LLC FORMATIONS (AS OF APRIL 17, 2009)**

#### Preliminary notes.

1. Overview of table. The table that begins on the next page of this exhibit (the “Table”) is based on the New Hampshire Limited Liability Company Act (the “Act”) as in effect on April 17, 2009. The provisions of the Act in the Table are in the order in which they appear in the Act.
2. Abbreviations in Table. In the Table:
  - a. The abbreviation P indicates a permissive provision.
  - b. Quotations of provisions of the Act are within quotation marks, while paraphrases of provisions are within brackets.
  - c. The phrase “this chapter” refers to the chapter of New Hampshire statutory law that codifies the Act—namely, Chapter 304-C of Title 28 of the New Hampshire Revised Statutes Annotated.
3. Provisions of the Act to which this Table makes few or no references. As indicated in the title of this exhibit, the focus of the exhibit and of the exhibits derived from it—namely, those concerning the definitional, mandatory, default and permissive provisions of the Act—is on the provisions of the Act that are relevant to LLC formations. Accordingly, the Table makes no reference to the provisions of the Act that relate to (i) statutory conversions of non-LLC entities to LLCs; (ii) statutory conversions of LLCs to non-LLC entities; or (iii) foreign LLCs. In addition, the Table makes reference to only the more basic provisions of the Act that concern LLC dissolutions.
4. References to Form 11.1. Form 11.1 is the master form among the 42 forms that John Cunningham has developed for use under the Act. References in the Table to sections of Form 11.1 are intended to assist users of that form to organize the references in the table in accordance with the sequence of provisions in the form.

NUMBER OF PROVISION	CITATION	TYPE	STATEMENT OR PARAPHRASE OF PROVISION	SECTION OR SUBSECTION OF FORM 11.1 TO WHICH THE NEW HAMPSHIRE ACT PROVISION RELATES
1.	§304-C:1,VI (a)(1) (first clause)	P	<u>Admissions of members and assignees to LLCs upon signing of the LLC agreement.</u> [This provision states that a person may become a member and may become bound by the LLC’s LLC agreement by signing the LLC agreement.]	Sections 8.8 and 10
2.	§304-C:1,VI (a)(1) (second clause)	P	<u>Admissions of members and assignees to LLCs, etc., upon other written evidence of intent to become a member.</u> “A limited liability company agreement or another written agreement or writing [m]ay provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned, and shall become bound by the limited liability company agreement [i]f such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) executes the limited liability company agreement or any other writing evidencing the intent of such person to become a member or assignee[.]” [This provision applies in situations in which a person should be deemed to be a member of an LLC even though the person has not signed the LLC agreement.]	Sections 8.8 and 10

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3.	§304-C:1,VI (a)(2)	P	<u>Admission of members without signing the LLC agreement upon compliance with written terms of membership and request to be made a member of record.</u> [The LLC agreement or “another written agreement or writing” may provide that a person shall be admitted as a member . . . and shall be bound by the LLC agreement even if the person does not sign any writing, if the person complies with conditions for membership in the LLC agreement or any other writing and requests that the records of the LLC reflect the person’s membership.] [This provision, like the one above, also applies in situations in which a person should be deemed to be a member of an LLC even though the person has not signed the LLC agreement.]	Sections 8.8 and 10
4.	§304-C:2,V (second sentence)	P	<u>LLC name need not be in English.</u> “A limited liability company name need not be in the English language if written in English letters or Arabic or Roman numerals . . .”	Section 1.1
5.	§304-C:3,I(b)	P	<u>LLC name.</u> “[An LLC’s name] may contain the name of a member or manager.”	Section 1.1
6.	§304-C:3,IV	P	<u>LLC name.</u> [This section provides for exceptions to the above rule on various grounds upon application to the Secretary of State.]	Section 1.1
7.	§304-C:3,V	P	<u>Use by LLC of name of another entity operating in New Hampshire.</u> [An LLC may use the name, including the fictitious name, of another entity which is legitimately using the name in this state if the LLC (1) has merged with the other entity; (2) has been formed by reorganization of the other entity; or (3) has acquired all or substantially all of the assets, including the name, of the other entity.]	Section 1.1

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8.	§304-C:3,VII	p	<u>Registered trade name may be valid as an LLC name.</u> “Nothing in this section would prohibit the owner or owners of a trade name registered under RSA 349 to form a domestic limited liability company under the same name as the trade name.”	Section 1.1
9.	§304-C:5,I(a)	P	<u>Registered office.</u> [An LLC’s registered office may be the same as any of its places of business.]	Section 1.9
10.	§304-C:5,I (b)(1) – (4)	P	<u>Who may be a registered agent.</u> [A registered agent may be a resident individual or New Hampshire corporation, LLC or LLP.]	Section 1.9
11.	§ 304-C:7,I (first sentence)	P	<u>Permissible LLC purposes.</u> “A limited liability company may be organized under this chapter for any lawful purpose [except those enumerated in § 304-C:7,I (first sentence)].”	Section 1.5
12.	§304-C:9,I(b)	P	<u>Duty of loyalty—permissive provision.</u> [This provision appears to provide implicitly that an LLC agreement may impose a more stringent duty of loyalty than that of not acting in a manner opposed to the best interest of the LLC.]	Section 17
13.	§304-C:9,I	P	<u>Restrictions, etc., on indemnification.</u> [An LLC agreement may set forth standards and restrictions concerning an LLC’s power to indemnify any person.]	Section 31.5
14.	§304-C:11,II (first sentence, first clause)	P	<u>Delayed effective time and date of document.</u> “A document may specify a delayed effective time and date . . .”	Section 29.4
15.	§304-C:12,II(f)	P	<u>Optional content of certificate of formation.</u> [An LLC’s certificate of formation may contain in addition to the required content “[a]ny other matters the members decide to include.”]	Section 1.3
16.	§304-C:13,II (before “so long as”)	P	<u>Subject to certain conditions, a certificate of formation may be amended at any time.</u> “A certificate of formation may be amended at any time in any respect [subject to stated conditions].”	Section 33.2(b)

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17.	§304-C:14,I (first sentence)	P	<u>Superior court jurisdiction over petitions to require execution of certificates.</u> “If a person required to execute a certificate required by this chapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the superior court to direct the execution of the certificate.”	Section 32
18.	§304-C:14,II (first sentence)	P	<u>Superior court jurisdiction concerning execution of LLC agreements.</u> “If a person required to execute a limited liability company agreement or amendment of such an agreement fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the superior court to direct the execution of the limited liability company agreement or amendment of such agreement.”	Section 32
19.	§ 304-C:23,I (b)	P	<u>LLC agreement may provide for admission of members to newly formed LLCs.</u> [This provision clearly implies that the members of an LLC may determine in their LLC agreement the time when a member shall be deemed to be admitted as a member of an LLC in connection with its formation and may determine the conditions for that admission.]	Section 1.2
20.	§304-C:23,II(a) (first sentence to the word “or”)	P	<p><u>A person may become a member after the LLC’s formation as provided in the LLC agreement.</u>  “II. After the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:</p> <p>(a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with the limited liability company agreement[.]”</p>	

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21.	§304-C:23,II(b) (first sentence, to the word “or”)	P	<p><u>After the formation of the LLC, a person acquiring a limited liability company interest as an assignee is admitted as a member as provided in the LLC agreement.</u> “II. After the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:</p> <p>(b) In the case of an assignee of a limited liability company interest, as provided in RSA 304-C:46, at the time provided in and upon compliance with the limited liability company agreement[.]”</p>	Section 10
22.	§304-C:23,III	P	<p><u>Persons may become members of LLCs without making contributions.</u> “A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company.”</p>	Section 3.4
23.	§ 304-C:24,I	P	<p><u>Classes of members.</u> [These provisions permit LLC agreements to provide for classes of members having disparate rights, powers and duties and to provide for the future creation of such classes of members without taking into account the seniority of any such class.]</p>	Section 13.2
24.	§ 304-C:24,II	P	<p><u>Taking of actions permitted without the participation of a class of members.</u> [This provision permits LLC agreements to provide for the taking of actions, including the amendment of the LLC agreement, without a vote of a particular class of members, including an action to create an additional class or group of LLC interests.]</p>	Section 13.2
25.	§304-C:24,III (first sentence)	P	<p><u>Member voting classes.</u> “A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter.”</p>	Section 13.1

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26.	§304-C:24,III (second sentence)	P	<u>Permitted bases for member voting power.</u> “Voting by members may be on a per capita, number, financial interest, class, group or any other basis.”	Section 13.3
27.	§304-C:24,IV	P	<u>Member meeting and voting procedures.</u> [These sections provide flexible procedural rules concerning member meetings and votes.]	Section 12
28.	§304-C:24,VIII(a)	P	<u>Special meetings of manager-managed LLCs are not required to be face-to-face.</u> “[Special meetings of members] may be held in person or wholly or partly by any substantially simultaneous means or telecommunications or by unanimous written waiver or consent of the members.”	Section 12
29.	§304-C:24,VIII(b)	P	<u>Members may send proxies to special meetings.</u> “Members may participate [in special meetings] in person or by proxy.”	Section 7.8(c)
30.	§ 304-C:27,II	P	<u>Member dissociation upon the occurrence of event specified in LLC agreement.</u> “The members may provide in a limited liability company agreement for . . . events [other than events specifically provided for in this chapter], the occurrence of which shall result in a person ceasing to be a member of the limited liability company.”	Sections 7.9 and 7.10
31.	§ 304-C:27,III (first sentence, second clause)	P	<u>LLC agreement may provide alternate withdrawal notice period.</u> [This clause provides that the LLC agreement may provide in writing for a notice-of-withdrawal period other than 30 days.]	Section 7.4(c)

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32.	§ 304-C:27,III (second sentence)	P	<u>Damages from member for wrongful withdrawal.</u> [If the withdrawal of a member causes a breach of the LLC agreement or is the result of wrongful conduct, the LLC may recover damages caused by the acts or omissions of the withdrawing member and may offset the damages against any amount distributable to the breaching member, whether or not the LLC agreement provides definite remedies for the breach.]	Section 15.4
33.	§ 304-C:28,III	P	<u>Confidentiality of LLC information.</u> [This section gives managers substantial discretion in keeping information confidential from the members.]	Section 22
34.	§ 304-C:28,IV	P	<u>Maintenance of records in other than written form.</u> “A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.”	Not relevant in Form 11.1
35.	§ 304-C:28,VI	P	<u>Restrictions on informational rights.</u> “Access to information and records provided by [§ 304-C:28] may be conditioned upon and provided subject to such reasonable standards as may be set forth in a limited liability company agreement or otherwise established by a manager or, if there is no manager, the members, as to:  (a) The location of the documents;  (b) The time and days of the week during which the information will be available; [and]  (c) If the records are not those maintained in the ordinary course of business, the expense of providing the information requested.”	Section 14

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36.	§ 304-C:29,I	P	<p><u>LLC agreements may impose penalties on members for failure to comply with LLC agreement terms.</u> “A limited liability company agreement may provide that:</p> <p>I. A member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or consequences ....”</p> <p>[This section permits LLC agreements to impose penalties on members for breaches of the agreement (and thus overrides any common law rule invalidating contractual penalties).]</p>	Section 32.16
37.	§ 304-C:29,II	P	<p><u>LLC agreements may impose penalties on members upon occurrence of event.</u> “A limited liability company agreement may provide that .....</p> <p>II. At the time or upon the occurrence of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences.”</p> <p>[This section permits LLC agreements to impose penalties on member upon the occurrence of events specified in an agreement (and thus overrides any common law rule invalidating contractual penalties).]</p>	Section 32.16
38.	§304-C:30	P	<p><u>Appointment of managers.</u> “A person may be named or designated as a manager of the limited liability company as provided in § 304-C:1, IX [which provides that a manager may be named or designated as a manager of an LLC pursuant to an LLC agreement or similar instrument under which the LLC is formed].”</p>	Section 15.3
39.	§304-C:31,I (first sentence, first clause until the word “managers”)	P	<p><u>LLCs may be managed by managers.</u> “A limited liability company agreement may provide for the management, in whole or in part, of a limited liability company by a manager or managers . . .”</p>	Section 1.10

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40.	§304-C:31,IV	P	<u>Contractual freedom with respect to standard of care.</u> [This provision appears to provide implicitly that an LLC agreement may impose any standard of care on members and managers except a standard less stringent than that of avoiding gross negligence and willful misconduct.]	Section 18.1
41.	§304-C:31,VI	P	<u>Restriction or elimination of member and manager liability for breaches of duties, etc.</u> “Subject to the liability of a member or manager for acts of gross negligence or willful misconduct . . . [an LLC agreement] may eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in [§304-C:31,V].”	Section 31.3
42.	§304-C:32	P	<u>Manager may contribute to LLC and share profits, etc.</u> “A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member.”	Section 15.1
43.	§ 304-C:33, II	P	<u>Classes of managers, future creation of classes of managers, etc.</u> “A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers.”	Section 16.7

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44.	§ 304-C:33,II	P	<p><u>Classes of managers may have different powers.</u> “A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.”</p>	Section 13
45.	§304-C:33, III (first sentence)	P	<p><u>Manager voting rights.</u> “A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter.”</p>	Section 16.7
46.	§304-C:33, III (second sentence)	P	<p><u>Permitted bases for allocating manager votes.</u> “Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.”</p>	Section 13.3
47.	§304-C:33, IV	P	<p><u>Manager meetings and voting.</u> [These provisions provide flexible rules concerning manager meetings and the exercise of manager voting rights.]</p>	Section 12
48.	§304-C:34,I	P	<p><u>Imposition of penalties on managers for failure to comply with LLC agreement.</u> “A limited liability company agreement may provide that:</p> <p style="padding-left: 40px;">I. A manager who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences ....”</p> <p>[This section permits LLC agreements to impose penalties on managers for breaches of the agreement (and thus overrides any common law rule invalidating contractual penalties).]</p>	Section 32.16

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49.	§304-C:34,II	P	<p><u>Imposition of penalties on managers upon occurrence of specified event.</u> “A limited liability company agreement may provide that: .....</p> <p>II. At the time or upon the occurrence of events specified in the limited liability company agreement, a manager shall be subject to specified penalties or consequences.”</p> <p>[This section permits LLC agreements to impose penalties on managers upon the occurrence of events specified in the agreement (and thus overrides any common law rule invalidating contractual penalties).]</p>	Sections 3.11 and 32.16
50.	§304-C:36,I	P	<p><u>Permissible contributions.</u> “The contribution of a member to a limited liability company may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.”</p>	Section 3.1
51.	§ 304-C:37,II (third sentence)	P	<p><u>Additional remedies for failures to contribute.</u> “[The right of the LLC to require members to contribute cash if they fail to contribute promised property or services] shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the limited liability company agreement or applicable law.”</p>	Section 3.11
52.	§ 304-C:37,IV (first sentence)	P	<p><u>Penalties to which members may be subject for failure to contribute.</u> “A limited liability company agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure.”</p>	Section 3.11
53.	§ 304-C:37,IV (second sentence)	P	<p><u>Types of penalties to which members may be subject for failure to contribute.</u> [This provision authorizes LLCs to impose various specified types of penalties on members who fail to make promised contributions.]</p>	Section 3.11

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54.	§ 304-C:38 (first sentence)	P	<u>Allocations of profits and losses—permissive rule.</u> “The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement.”	Section 4
55.	§ 304-C:39 (first sentence)	P	<u>Allocations of distributions—permissive rule.</u> “Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement.”	Section 5.2
56.	§ 304-C:43 (second sentence)	P	<u>Establishment of record date for allocations and distributions.</u> “A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.”	Not relevant in Form 11.1
57.	§ 304-C:46,III	P	<u>Certificates of LLC membership.</u> “A limited liability company agreement may provide that a member’s interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company.”	Not relevant in Form 11.1.
58.	§ 304-C:47 (first sentence)	P	<u>Creditors may obtain charging orders.</u> “On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment with interest.”	Section 33.20
59.	§ 304-C:48,I(2)	P	<u>How an assignee may become a member.</u> “An assignee of a limited liability company interest shall become a member:  (2) To the extent provided in the limited liability company agreement, and upon compliance with any procedure provided for in the limited liability company agreement . . .”	Not relevant in Form 11.1.

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60.	§ 304-C:49 (first sentences)	P	<u>Rights of personal representatives of deceased and incompetent individual members.</u> “If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member’s person or property, the member’s personal representative may exercise all of the member’s rights for the purpose of settling the member’s estate or administering the member’s property.”	Section 9.4
61.	§ 304-C:50, I	P	<u>LLC dissolutions under the LLC agreement.</u> “A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:  I. The occurrence of events specified in an LLC agreement . . . .”	Section 29
62.	§ 304-C:51	P	<u>Superior court jurisdiction over actions to dissolve LLC.</u> “On application by or for a member or manager, the superior court may decree dissolution of a limited liability company upon the occurrence of one or more [enumerated events].”	Section 29.2(c)
63.	§ 304-C:51	P	<u>Grounds for petitions for judicial dissolution.</u> [This section provides that a member or manager may petition to dissolve the LLC on the grounds of (i) fraud; (ii) abuse of power; (iii) illegal activity; (iv) management deadlock or (v) an event specified in a limited liability company agreement. The section also provides that the attorney general may petition upon the first three of these grounds.]	Section 29.2(c)
64.	§ 304-C:52	P	<u>Grounds for administrative dissolution.</u> [This section provides that the Secretary of State may administratively dissolve an LLC for failure to pay annual fees or to file its annual report on time; for failure to have a registered agent or office or to notify the Secretary of any change in registered agent or office within 60 days; or upon the expiration of the LLC’s period of duration as stated in its certificate of formation.]	Section 29.2(b)

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65.	§ 304-C:56,II	P	<p><u>Powers of persons winding up an LLC.</u> “The persons winding up the business or affairs of the limited liability company, in the name of, and for and on behalf of, the limited liability company may:</p> <ul style="list-style-type: none"> <li>(a) Prosecute and defend suits;</li> <li>(b) Settle and close the business of the limited liability company;</li> <li>(c) Dispose of and transfer the property of the limited liability company;</li> <li>(d) Discharge the liabilities of the limited liability company; and</li> <li>(e) Distribute to the members any remaining assets of the limited liability company;</li> </ul> <p>All without affecting the liability of members and managers and without imposing liability on a liquidating trustee.”</p>	Section 29.7
66.	§ 304-C:75	P	<p><u>Capacity to sue.</u> “An action may be brought by or against a limited liability company in its own name.”</p>	Section 31.1
67.	§§ 304-C:76,I (first sentence) and 304-C:76,II	P	<p><u>Derivative actions.</u> [These sections provide members and managers with the right to bring derivative actions if they meet certain conditions. For convenience, the rules contained in these sections are identified here as permissive, but they also include certain mandatory and default rules.]</p>	Not relevant in Form 11.1.
68.	§ 304-C:76,III	P	<p><u>Expenses of derivative action.</u> “If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any [derivative] action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from a limited liability company.”</p>	Not relevant in Form 11.1.

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69.	§ 304-C:78,III(b)	P	<p><u>Restriction or expansion of member and manager duties, etc.</u> “To the extent that, at law or in equity, a member or manager has duties, including fiduciary duties, and liabilities relating to such duties to a limited liability company or to another member or manager, subject to § 304-C:31,IV, the member’s or manager’s duties may be expanded or restricted by provisions in the limited liability company agreement . . .”</p>	Sections 17.1, 18.1, 19, 20, 23.1, and 31.3

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