

**DYNAMITE CAVE CREEK LLC
TERM SHEET FOR FORMATION OF COMPANY**

**(Common and Preferred Units)
Dated as of August 16, 2024**

We are seeking a limited number of persons (“**Organizers**”) to create Dynamite Cave Creek LLC (the “**Company**”), a new Arizona limited liability company to own and operate a new Dynamite Beer brew pub in Cave Creek, Arizona. The day-to-day business of the Company will be managed by Marfa Partners LLC, (“**Marfa**”) an Arizona limited liability company owned and controlled by Mike Chapman and Laura Chapman. Mike and Laura Chapman are the owners of Desert City Brewing Company, which operates Dynamite Beer Company (DBC1). Mike Chapman and Laura Chapman are sometimes referred to as the “**Dynamite Principals**”) Organizers will be issued Common or Preferred Membership Units in the Company in reliance on the exemption afforded by Section 44-1844 (A)(10), Arizona Revised Statutes.

This Term Sheet is a summary of terms and is not a legally binding commitment by any party. Each Organizer will execute an Organizers’ Agreement (the “**Organizers’ Agreement**”), Articles of Organization and related documents, which will set forth the binding obligations of the parties.

Company: Dynamite Cave Creek LLC, an Arizona limited liability company to be formed by the Organizers (the “**Company**”)

Execution of Organizers’ Agreement and Creation of the Company: A maximum of 10 prospective Organizers may execute the Organizers’ Agreement (a) on or before August 30, 2024, or (b) the date Organizers have agreed to acquire at least 1,250,000 Series A Preferred Units by contributing \$1,250,000 to the Company, whichever first occurs.

Proposed Equity Structure: The Company’s initial Capitalization will be comprised of two classes of membership Units: 1,250,000 Common Units; and 1,250,000 Series A Preferred Units.

Common Units: Marfa, which is wholly owned by the Dynamite Principals, will acquire 1,250,000 Common Units for the capital contributions described in the Organizers’ Agreement. Common Units will constitute not more than 50% of the total issued and outstanding voting equity of the Company on a fully diluted basis post-formation and initial funding.

Preferred Units: Series A Preferred Units (the “**Series A Preferred Units**”), having the rights and obligations described in the Terms of Series A Preferred Units, which are included as an Exhibit to the Operating Agreement of the Company (the “**Operating Agreement**”). Organizers will contribute \$1.00 per Series A Preferred Unit.

Other Units: In addition to voting Preferred Units and Common Units, the Company will be authorized to issue Series K Non-Voting Common Units, having rights and obligations as may be authorized by the Company’s Board of Managers (the “**Board**”). Series K Non-Voting Common Units may be issued to employees of the Company, or may form the object of purchase options

granted to employees of the Company, in such number and subject to such restrictions determined by the General Manager in its discretion. The issuance of each Series K Unit shall dilute, on a *pari passu* basis, only the membership interests of Common Members and other Series K Members, and the Company shall take necessary and appropriate steps, as determined by the Board, to ensure that the membership interests of Series A Members are not affected by the issuance of Series K Non-Voting Common Units, which steps may include the issuance of a proportional number of additional Series A Units, or the redemption of a proportional number of Common Units, in each case for no consideration, without notice to or consent required by the Members so affected.

Use of Proceeds: Capital contributed by Organizers will be used primarily to construct the taproom and for working capital, as described in the Business Plan.

Organizers' Right of First Investment: In the event the Company, Marfa or the Dynamite Principals (collectively, the “**Venturers**” and individually a “**Venturer**”) propose to launch any new business venture for or relating to the manufacturing, marketing, and selling alcoholic beverages, and operating, managing, and promoting one or more taprooms, bars, or other establishment at which alcoholic beverages are served, in the State of Arizona (the “**Beverage Business**”), they shall give Organizers a first right to invest in such new venture upon terms determined by the Venturer in its sole discretion (the “**New Venture Offering**”).

Board of Managers: The Company will be managed by a Board of Managers (the “**Board**”) consisting of not more than five (5) members who will be elected pursuant to the Company's Operating Agreement. Holders of Series A Preferred Units will have the right to elect two (2) members of the Board (the “**Series A Managers**”), and holders of Common Units will have the right to elect three (3) members of the Board, and the General Manager shall be one of the Founders. The initial Members of the Board will be named in the Organizers' Agreement. Marfa will be the initial General Manager of the Company.

TERMS AND CONDITIONS

Capitalization: A capitalization table showing the Company's capital structure as of the date of this is attached as Exhibit A.

Annual Operating Budget: Until such time as holders of Series A Preferred Units have received distributions equal to their aggregate unreturned capital contributions, the Series A Managers shall have the right to review and approve the Company's Annual Operating Budget, which shall be proposed by the General Manager and shall clearly detail the total amount of funds needed to keep the business running in a smooth and effective manner, achieve revenue, profit, and growth targets, purchase any equipment, hire additional employees, and maintain adequate working capital.

Available Cash: All cash of the Company on hand as of any given time that is not needed for the continuing operations of the Company as detailed in the most recently approved Annual Operating Budget and is available for distribution to Members after the payment of all then due debts and liabilities of the Company, and after any prepayments of any debts and liabilities of the Company that the Board deems appropriate to cause the Company to make.

Distributions: Until such time as Holders of Series A Preferred Units have received 100% of their aggregate unreturned capital contributions, the Series A Managers shall control the timing and amount of distributions of available cash. Available cash from operations and from capital events shall be distributed in the following order of priority:

- 1) 100% to the Members holding Series A Preferred Units, until such time as all Members holding Series A Preferred Units have received 50% of their aggregate unreturned capital contributions; then
- 2) 50% to the Members holding Series A Preferred Units and 50% to the other Members until such time as all Members holding Series A Preferred Units have received their aggregate unreturned capital contributions; then
- 2) To all Members *pro rata* according to Unit ownership recorded in the Company's then current capitalization table.

Tax Distributions: The Company shall make cash distributions to each Member in amounts which are sufficient to pay such Member's income taxes on taxable income allocated to such Member under the Operating Agreement. Initially, all calculations of anticipated taxes shall utilize an estimated effective tax rate of 39.6%. A supermajority of voting members may change the estimated effective tax rate from time to time.

Protective Provisions: For so long as Holders of Series A Preferred Units have not received 100% of their aggregate unreturned capital contributions, consent of the Series A Managers shall be required for any action, whether directly or through any merger, recapitalization or similar event, that (i) alters or changes the rights, preferences or privileges of the Series A Preferred Members, (ii) increases or decreases the outstanding or authorized number of Common or Preferred Units, (iii) creates (by reclassification or otherwise) any new class or series of units having rights, preferences or privileges senior to or on a parity with the Series A Preferred Units, (iv) results in the redemption or repurchase of any Units (other than pursuant to a power specifically reserved to the Company or the Board), (v) results in any merger, other corporate reorganization, sale of control, or any transaction in which all or substantially all of the assets of the Company are sold, (vi) amends or waives any provision of the Company's Articles of Organization or Operating Agreement, (vii) increases or decreases the authorized size of the Company's Board of Managers, (viii) results in the payment or declaration of any distribution on any Membership Units, (ix) issues debt in excess of (a) amounts prescribed in an operating budget for the Company previously approved by the Series A Managers, or (b) \$25,000, (x) makes any voluntary petition for bankruptcy or assignment for the benefit of creditors, or (xi) enters into any exclusive license, lease, sale, distribution or other disposition of its products or intellectual property.

Drag Along Rights: After such time as Members holding Series A Preferred Units have received their aggregate unreturned capital contributions, in the event the Dynamite Principals receive and accept an offer to sell their Units of the Company, holders of Series A Preferred Units shall automatically, and without any separate approvals, be bound to sell their Units in the Company for the same consideration as the Dynamite Principals. Holders of Series A Preferred Units shall be deemed to have waived their appraisal, dissenters and similar rights.

Information Rights: The Company shall deliver customary reviewed annual financial statements to each of its Members. The Annual Budget will accompany the reviewed financial statements. Quarterly reports with key performance indicators chosen by the Board of Managers will be provided to holders of Series A Preferred Units in a timely manner. Holders of Series A Preferred Units shall also be entitled to standard inspection and visitation rights. Series A Managers have the right to audit the books of the Company at the expense of the Company in their sole discretion.

Preemptive Rights: Members of the Company shall have the right to purchase their *pro rata* portions of any future issuances of equity securities (or equivalents) by the Company, standard exceptions excluded.

Restrictions on Sales: The Company's Operating Agreement shall contain a Company right of first refusal on all proposed transfers of Units, subject to normal exceptions for permitted transfers (*e.g.*, for estate planning purposes). If the Company elects not to pursue its right, the Company shall assign its right to the voting members (excluding any transferor Organizer, as applicable), who may exercise those rights, *pro rata* in accordance with the number of voting Units held by such Members, relative to the total number of voting units held by all Members.

Use of Proceeds: In accordance with the budget presented by the Dynamite Principals and accepted by all Organizers.

Member Guaranty: Dynamite Principals will personally guarantee the Company's lease of the building located at 6025 E. Cave Creek Rd, Cave Creek, AZ.

OTHER MATTERS

Closing Deliverables: Within 30 days after formation of the Company, the General Manager shall provide each Member: (i) an updated, post-formation capitalization chart, (ii) a detailed budget for the 12 months following closing, acceptable to Holders of Series A Preferred Units. Terms for financial controls during the construction phase acceptable to the Series A Managers Units will be adopted promptly after formation of the Company.

Agreements: Each Organizer shall execute and deliver to the Company and all other Organizers: (a) the Organizers Agreement, (b) the Company's Articles of Organization, (c) The Operating Agreement, and (d) an Investment Letter in the form acceptable to all other Organizers, and such other documents required by the General Manager in its sole discretion.

Confidentiality: This Term Sheet and any related discussions and correspondence are to be held in strict confidence by all prospective Organizers, and may not to be disclosed by the Company or its principals to any party (other than counsel to, and the accountants of, the parties to the extent reasonably necessary for such persons to render advice in connection with the proposed transaction) without the prior written approval of the Dynamite Principals.

Governing Law: This Term Sheet and all documents relating to formation of the Company shall be governed in all respects by the laws of the State of Arizona, without regard to conflicts of laws principles.

Company Counsel: Charles R. Berry, Clark Hill Scottsdale, AZ (general counsel)