

**LIMITED LIABILITY COMPANY OPERATING AGREEMENT  
FOR**

\_\_\_\_\_

This Operating Agreement (the "Agreement"), effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), is entered into by and among \_\_\_\_\_ (insert full name) ("First Member") of \_\_\_\_\_ (insert name of City, County and State), and \_\_\_\_\_ (insert full name) ("Second Member") of \_\_\_\_\_ (insert name of City, County and State), each (for such period of time as (s)he or it shall remain a Member hereunder) referred to individually as a "Member" or "Party", and collectively as the "Members" or "Parties".

RECITALS:

WHEREAS, As of the date of \_\_\_\_\_ (insert date Articles were filed) \_\_\_\_\_ (insert full name of LLC), was granted status as a Limited Liability Company pursuant to the laws of the State of \_\_\_\_\_ (the "Company" or the "LLC").

AND WHEREAS, the parties hereto desire to set forth herein their rights, duties and responsibilities with respect to the LLC;

AND WHEREAS, capitalized terms used herein, and not otherwise defined herein, have the meanings ascribed to them in Appendix I annexed hereto, incorporated herein and made a part hereof;

AND WHEREAS, the Members collectively own one hundred percent (100%) of all of the membership units of the LLC, as set out further on Schedule A attached hereto and incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants herein expressed, the parties hereto hereby agree as follows:

WITNESSETH:

**ARTICLE I  
COMPANY FORMATION AND REGISTERED AGENT**

1.1 **FORMATION.** The Members hereby form a Limited Liability Company ("Company") subject to the provisions of the Limited Liability Company Act as currently in effect as of this date. A Certificate of Formation shall be filed with the Secretary of State.

1.2 **NAME.** The name of the LLC shall be: \_\_\_\_\_, LLC.

1.3 **PRINCIPAL OFFICE.** The principal office of the LLC shall initially be at \_\_\_\_\_ (insert full address).

1.4 **REGISTERED AGENT.** The name and address of the registered agent of the LLC for service of process pursuant to the Act shall initially be \_\_\_\_\_ (insert full name and address of Registered Agent – must be WITHIN State of Incorporation).

1.5 **CHANGES TO PRINCIPAL OFFICE OR REGISTERED AGENT.** The Managers may, upon compliance with the applicable provisions of the Act, change the LLC's principal office, its registered office, or its registered agent from time to time, provided that all of the Managers (defined below) agree to such change.

1.6 **PURPOSE OF LLC.** The LLC is formed for the purpose of engaging in any lawful act or activity for which limited liability companies may be formed under the Act and engaging in any and all activities necessary, advisable, convenient or incidental thereto. The LLC shall have all the powers necessary or convenient to carry out the purposes for which it is formed, including the powers granted by the Act.

1.7 **CONTINUANCE OF COMPANY.** Notwithstanding any changes in the operations of the LLC, if there are at least two remaining Members, said remaining Members shall have the right to continue the business of the LLC. Such right can be exercised only by the unanimous vote of the remaining Members within ninety (90) days after the occurrence of an event which would otherwise result in termination. If not so exercised, the right of the Members to continue the business of the LLC shall expire.

1.8 **ADMISSION OF ADDITIONAL MEMBERS.** Except as otherwise expressly provided in the Agreement, no additional members may be admitted to the LLC through issuance by the company of a new interest in the LLC without the prior unanimous written Consent of the Members.

## **ARTICLE 2 CAPITAL CONTRIBUTIONS**

2.1 **INITIAL CONTRIBUTIONS.** The Members initially shall contribute to the LLC capital as described in Exhibit 3 attached to this Agreement. The agreed value of such property and cash is \$ [insert amount] \_\_\_\_\_.

2.2 **ADDITIONAL CONTRIBUTIONS.** Except as provided in ARTICLE 6.2, no Member shall be obligated to make any additional contribution to the LLC's capital.

## **ARTICLE 3 PROFITS, LOSSES AND DISTRIBUTIONS**

3.1 **PROFITS/LOSSES.** For financial accounting and tax purposes the LLC's net profits or net losses shall be determined on an annual basis and shall be allocated to the Members in proportion to each Member's relative capital interest in the LLC as set forth in Exhibit 2 as amended from time to time in accordance with Treasury Regulation 1.704-1.

3.2 **DISTRIBUTIONS.** The Members shall determine and distribute available funds annually or at more frequent intervals as they see fit. Available funds, as referred to herein, shall mean the net cash of the LLC available after appropriate provision for expenses and liabilities, as determined by the Managers. Distributions in liquidation of the LLC or in liquidation of a

Member's interest shall be made in accordance with the positive capital account balances pursuant to Treasury Regulation 1.704-1(b)(2)(ii)(b)(2). To the extent a Member shall have a negative capital account balance, there shall be a qualified income offset, as set forth in Treasury Regulation 1.704-1(b)(2)(ii)(d).

## **ARTICLE 4 MANAGEMENT OF THE LLC**

### **4.1 MANAGEMENT OF THE COMPANY.**

(a) *Designation and Removal of Managers.* The LLC shall initially have \_\_\_\_\_ managers (each, a "Manager" and collectively the "Managers"). The Managers shall initially be \_\_\_\_\_ (insert name of Manager) and \_\_\_\_\_ (insert name of Manager), which Manager(s) can be changed from time to time, as follows:

- (i) A Manager's status as a Manager may be changed, removed, or terminated for any reason or for no reason, as follows:
  - a. Any Manager may be changed, removed, or terminated at any time upon the unanimous Consent of the Members; or
  - b. Any Manager may resign from, retire from, abandon or otherwise terminate its status as a Manager upon prior written notice to the LLC.

(b) *Appointment of Additional Managers.* Additional Managers may be appointed upon unanimous Consent of the Members.

(c) *General Responsibility of Managers.* In order to simplify the operations of the LLC, the Managers of the LLC are hereby delegated joint responsibility for the day-to-day management and ministerial acts of the LLC.

(d) *Rights and Powers of Managers.* The individual Managers of the LLC shall generally have the right and power to bind the LLC, subject to the conditions and limitations contained in this Section and elsewhere in this Agreement. The overall management and final determination of all questions relating to the usual daily business affairs and ministerial acts shall rest jointly in the Managers.

(e) *Unanimity Required for Various Acts.* The individual Members and Managers of the LLC shall not have any authority without the prior written unanimous consent of all of the LLC Members, unless otherwise stated, to engage in the following activities:

- (i) The creation, modification, amendment or repeal of the Articles of Organization or Bylaws of the LLC; or
- (ii) The incurrence by the LLC of any indebtedness for borrowed money and leases exceeding \_\_\_\_\_ (insert appropriate maximum amount) in the aggregate at any time; or
- (iii) The adoption or amendment of any LLC incentive plan or similar document or plan; or

- (iv) The conveyance of any units of the LLC, other than pursuant to an incentive or similar plan approved by the Members; or
- (v) The declaration or payment of any distributions in respect of the capital of the LLC or the repurchase of any LLC units; or
- (vi) The making of any expenditure or entering into any contract for an amount in excess of \_\_\_\_\_ (*insert appropriate maximum amount*); or
- (vii) The entering into any transaction with any officers, directors (except as otherwise provided herein) or affiliates of the LLC; or
- (viii) The entering into or consummation of any merger or consolidation, or any sale, encumbrance, lease, sublease or other transfer or disposition of any assets of the LLC (other than sales of assets in the ordinary course of business); or
- (ix) The acquisition by the LLC of any stock, indebtedness for borrowed money, obligations or liabilities of, or the acquisition by the LLC of all or a substantial portion of the properties or assets of, or the making by the LLC of any loans, advances, capital contributions or transfers of property to, any person; or
- (x) The taking of any action resulting in a material change to the LLC's business or in a material change to the LLC's business plan or significant personnel policies; or
- (xi) The employment of any person with a salary equal to or exceeding \_\_\_\_\_ (*insert appropriate maximum amount*) per year on a full time basis, and any part-time employee with a salary equal to or exceeding \_\_\_\_\_ (*insert appropriate maximum amount*) on an annualized basis; or
- (xii) The performance of any act in contravention of this Agreement; or
- (xiii) The possession of LLC property or assignment of the right(s) of the LLC on specific LLC property for other than an LLC purpose; or
- (xiv) The making, execution, or delivery any general assignment for the benefit of creditors, or any bond, guarantee, indemnity bond, or surety bond; or
- (xv) The assignment, transfer, pledge, compromise, or release any claim of the LLC except for full payment, or arbitrate, or consent to the arbitration of any of its disputes or controversies; or
- (xvi) A Confession of a judgment.

(f) *Appointment of Officers and Other Agents.* The Managers may appoint one or more individuals, including but not limited to an individual Manager, as agents of the LLC with, in each case, such title and duties and power and authority as the Managers shall determine from time to time, and such agents may be referred to as officers of the LLC; *provided, however,* that

no such appointment by the Managers by itself shall cause any Manager to cease to be a “manager” of the LLC within the meaning of the Act or this Agreement or restrict the ability of the Managers to exercise the powers so delegated. Unless the authority of the agent designated as the officer in question is limited in the document appointing such officer or is otherwise specified by the Managers, any officer so appointed shall have the same authority to act for the LLC as a corresponding officer of a \_\_\_\_\_ (*insert State name*) corporation would have to act for a \_\_\_\_\_ (*insert State name*) corporation in the absence of a specific delegation of authority.

(g) *Standard of Care for Managers.* Each Manager shall perform its duties hereunder in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the LLC. Each Manager shall be entitled to rely, in the performance of such duties, on information, opinions, reports or statements, including financial statements, in each case prepared by one or more agents or employees, counsel, certified public accountants or other Persons employed by the LLC, as to matters that such Manager believes to be within such Persons’ special competence.

*THE FOLLOWING SECTION IS INCLUDED IN A MULTI-MANAGER-MANAGED LLC:*

**4.2 ALTERNATIVE MANAGER.** *If at any time a change in a Manager’s status would result in the LLC being managed by only one (1) Manager, the Members shall unanimously consent to the immediate appointment of an alternative Manager, provided that said Manager agrees to such status.*

**4.3 INDEMNIFICATION OF MANAGERS.** The LLC shall indemnify any person who was or is a party defendant or is threatened to be made a party defendant, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the LLC) by reason of the fact that he is or was a Member of the LLC, Manager, employee or agent of the LLC, or is or was serving at the request of the LLC, for instant expenses (including attorney’s fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if the Members determine that he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the LLC, and with respect to any criminal action proceeding, has no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of “no lo Contendere” or its equivalent, shall not in itself create a presumption that the person did or did not act in good faith and in a manner which he reasonably believed to be in the best interest of the LLC, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was lawful.

## **ARTICLE 5 COMPENSATION**

**5.1 MANAGEMENT FEE.** Members and/or Managers may be compensated by the LLC or otherwise for services rendered to or on behalf of the LLC, provided that all Members and Managers approve such compensation in advance. In addition, Members and Managers shall be reimbursed for documented and approved expenses related directly to the operations of the LLC.

**5.2 EXPENSE REIMBURSEMENT.** The LLC shall reimburse the Managers and/or Members for all direct out-of-pocket expenses incurred by them in managing the LLC.

## **ARTICLE 6 BOOKS AND RECORDS**

6.1 **BOOKS.** The Managers shall maintain complete and accurate books of account of the LLC's affairs at the LLC's principal place of business. Such books shall be kept on such method of accounting as the Managers shall select. The company's accounting period shall be the calendar year.

6.2 **MEMBER'S ACCOUNTS.** The Managers shall maintain separate capital and distribution accounts for each member. Each member's capital account shall be determined and maintained in the manner set forth in Treasury Regulation 1.704-1(b)(2)(iv) and shall consist of his initial capital contribution increased by:

- (a) any additional capital contribution made by him/her;
- (b) credit balances transferred from his distribution account to his capital account; and decreased by:
  - (i) distributions to him/her in reduction of Company capital; or
  - (ii) the Member's share of Company losses if charged to his/her capital account.

6.3 **REPORTS.** The Managers shall close the books of account after the close of each calendar year, and shall prepare and send to each member a statement of such Member's distributive share of income and expense for income tax reporting purposes.

## **ARTICLE 7 TRANSFERS**

7.1 **ASSIGNMENT.** If at any time a Member proposes to sell, assign or otherwise dispose of all or any part of his interest in the LLC, such Member shall first make a written offer to sell such interest to the other Members at a price determined by mutual agreement. If such other Members decline or fail to elect such interest within thirty (30) days, and if the sale or assignment is made and the Members fail to approve this sale or assignment unanimously then, pursuant to the Florida Limited Liability statutes, the purchaser or assignee shall have no right to participate in the management of the business and affairs of the LLC. The purchaser or assignee shall only be entitled to receive the share of the profits or other compensation by way of income and the return of contributions to which that Member would otherwise be entitled.

**ARTICLE 8**  
**MEMBERSHIP INTEREST CLASSIFICATION**

8.1 **NATURE OF INTEREST.** A Member's Interest in the LLC shall be considered personal property, and will at no time be considered real property.

**ARTICLE 9**  
**BUY-SELL PROVISIONS**

9.1 **BUY-SELL NOTICE.**

(a) At any time, any Member (the "Initiating Member") may send a notice (a "Buy-Sell Notice"), to the other of the Members (the "Recipient Members") stating that the Initiating Member is invoking its option under this Section to cause a buyout of the Recipient Member's entire interest (but not less than the entire interest) in the LLC. The Buy-Sell Notice shall contain the Initiating Member's proposed purchase price for the LLC as a whole (the "Proposed Company Price"). The Buy-Sell Notice shall constitute an offer by the Initiating Member (i) to purchase all of the Recipient Member's Membership Interest for an amount equal to the amount the Recipient Member would receive under the terms of this Agreement if all of the LLC Property were sold for the Proposed Company Price, all the debts of the LLC were paid, and the LLC were dissolved and liquidated, or (ii) to sell to the Recipient Member all of the Initiating Member's Membership Interest for an amount equal to the amount the Initiating Member would receive under the terms of this Agreement if all of the LLC Property were sold for the Proposed Company Price, all the debts of the LLC were paid, and the LLC were dissolved and liquidated. Within sixty (60) days after receipt of a Buy-Sell Notice under this Section, the Recipient Member shall elect by written notice to the Initiating Member to either sell all of its Membership Interest to the Initiating Member or purchase all of the Membership Interest of the Initiating Member for the respective prices set forth in the foregoing sentence. In the event the Recipient Member fails to provide a timely notice, it shall be deemed to have elected to sell all of its Membership Interest to the Initiating Member at such price. Upon the election or deemed election by the Recipient Member to either sell all of its Membership Interest to the Initiating Member or purchase all of the Membership Interest of the Initiating Member, the Managers shall cause the Company Accountant, within thirty (30) days of such election or deemed election, to determine the amount that the Recipient Member or the Initiating Member, as the case may be, would receive under the terms of this Agreement if all of the LLC's Property were sold for the Proposed Company Price, all of the liabilities of the LLC were paid and the LLC were dissolved and liquidated (the "Buy-Sell Interest Price"). The closing of any transaction under this Section shall occur no later than one hundred and twenty (120) days following the date a Buy-Sell Notice is delivered (or, in the event either the Initiating Member or the Recipient Member disagrees with the Company Accountant's calculation, no later than thirty (30) days following the calculation of the Buy-Sell Interest Price under this Section). The closing date shall be designated by the purchasing Member. In the event either the Initiating Member or the Recipient Member disagrees with the Company Accountant's calculation of the Buy-Sell Interest Price (the "Buy-Sell Disputing Member"), the Buy-Sell Disputing Member shall have the option to notify the other Member of its own determination of the Buy-Sell Interest Price and select an independent accounting firm of national reputation (the "Buy-Sell Second Accountant") within thirty (30) days of the Company Accountant's calculation of the Buy-Sell Interest Price. The fees and expenses of the Buy-Sell Second Accountant shall be borne by the Buy-Sell Disputing Member. The Company Accountant and the Buy-Sell Second Accountant shall jointly calculate the Buy-Sell Interest Price within thirty (30) days of the selection of the Buy-Sell Second

Accountant. If the Company Accountant and the Buy-Sell Second Accountant cannot agree on the calculation within ten (10) days of the selection of the Buy-Sell Second Accountant, the Company Accountant and the Buy-Sell Second Accountant shall, within ten (10) days, jointly select a third independent accounting firm of national reputation (the "Buy-Sell Third Accountant"). The fees and expenses of the Buy-Sell Third Accountant shall be paid equally by the Initiating Member and the Recipient Member. Within ten (10) days of its selection, the Buy-Sell Third Accountant shall determine if the calculation of the Company Accountant or the calculation of the Buy-Sell Second Accountant is accurate but shall not have the power to choose another calculation. The joint calculation of the Company Accountant and the Buy-Sell Second Accountant or the determination of the Buy-Sell Third Accountant, as the case may be, shall be binding on both parties.

(b) The provisions of this Section shall apply according to their terms to any sale of one Member's Membership Interest to the other Member pursuant to this Section.

## 9.2 RESTRICTIONS

(i) If a Transfer of a Member's Membership Interest would otherwise result in the LLC's having only one Member, then the Member which would otherwise become the sole Member may cause any Person it may designate to be the transferee in such Transfer.

(ii) At the closing of the Transfer, the purchaser shall tender the consideration therefor, and the seller shall tender such documents of sale and transfer as the purchaser may reasonably require (including, without limitation, representations and warranties of the seller that it has good title to the Membership Interest and is transferring it free of any liens). The purchase price shall be paid by wire transfer of immediately available funds to an account which is designated by the seller. If the seller or an Affiliate of the seller is the Manager of the LLC, at the closing of the Transfer, the Manager shall be removed and replaced by the purchaser or an Affiliate of the purchaser.

(iii) At any time after a Buy-Sell Notice has been given pursuant to this Section, unless it has been agreed to between the Initiating Member and the Recipient Member that such Buy-Sell Notice is withdrawn, no Member shall give an additional Buy-Sell Notice pursuant to this Section.

(iv) Each party shall pay its own legal fees. Recording, transfer or similar taxes arising in connection with the sale, if any, shall be paid equally by the selling Member and the purchasing Member. Except as otherwise set forth in this Section, all other costs, if any, in the transaction shall be paid equally by the selling Member and the Purchasing member.

(v) It is the intent of the parties to this Agreement that the requirements or obligations, if any, of one Member to sell its Membership Interest to or purchase the Membership Interest or another Member shall be enforceable by an action for specific performance. In the event that a selling Member shall have created or suffered any unauthorized liens, encumbrances or other adverse interest against such selling Member's Membership Interest ("Defects"), the purchaser shall be entitled either to an action for specific performance to compel such selling Member to have such Defects removed, in which case the closing shall be adjourned for such purpose, or, at the purchaser's option, to an appropriate offset against the purchase price, as reasonably determined by the Company Accountant or by the mutual agreement of the purchaser and such selling Member.

(vi) If there is any outstanding guarantee, letter of credit or other collateral security provided by a selling Member (or by an Affiliate of a Member) which cannot be released without unreasonable loss or cost to the LLC or the other Members, then the purchasing Member shall provide an appropriate indemnification agreement and reasonable security (supported by a Person with sufficient net worth for such purpose) to the selling Member.

(vii) The time periods applicable to the Transfer shall be automatically extended to the extent necessary for the procurement of any material and necessary regulatory and other third-party approvals to the transaction.

(viii) In connection with any contemplated sale pursuant to this Section hereof, the Managers (A) shall allow all Representatives of the Members access at all reasonable times to the records and files, audits and properties of the LLC, as well as to all information relating to commitments, contracts, titles and financial position, or otherwise pertaining to the business and affairs, of the LLC, (B) shall provide all information regarding the business and affairs of the LLC that either the purchasing Member or the selling Member may request and (C) shall, and shall cause its Representatives to, be available at all reasonable times to answer questions regarding the business and affairs of the LLC.

(ix) All fees related to such purchase and sale such as consent fees, defeasance costs and related fees shall be borne equally by the purchasing Member and the selling Member.

## **ARTICLE 10 VALUATION OF MEMBERSHIP INTEREST**

10.1 **VALUATION OF MEMBERSHIP INTEREST.** In the absence of a written agreement setting out a specific value, the value of the LLC will be based on the fair market value appraisal of all LLC assets (less liabilities) determined in accordance with generally accepted accounting procedures. This appraisal will be conducted by an independent accounting firm agreed to by all of the Members. An appraiser shall be appointed within a reasonable period of the date of withdrawal or dissolution. The results of the appraisal will be binding on all of the Members. A withdrawing Member's interest will be in proportion to their profit and loss share in the LLC, less any outstanding liabilities that said Member may have to the LLC. The intent of this section is to ensure the survival of the LLC despite the withdrawal of any individual Member.

## **ARTICLE 11 TERM AND DISSOLUTION OF THE LLC.**

11.1 **TERM.** The term of the LLC shall be perpetual, unless sooner terminated as provided in this Agreement.

11.2 **EVENTS OF DISSOLUTION OR LIQUIDATION.** The LLC shall be dissolved upon the happening of any of the following events:

- (i) the Consent of all of the Managers;
- (ii) the sale of all or substantially all of the assets of the LLC under circumstances in which the Managers determine not to continue the business of the LLC; or
- (iii) the entry of a decree of judicial dissolution under the Act.

Following any of the foregoing events, the Managers shall proceed diligently to liquidate the assets of the LLC in a manner consistent with commercially reasonable business practices.

**11.3 DISTRIBUTIONS UPON DISSOLUTION OR LIQUIDATION.** In connection with the liquidation of the LLC, the assets of the LLC shall be applied and distributed in the following order of priority:

- (i) First, to creditors of the LLC, including Members, in the order of priority provided by law, and the creation of a reserve of cash or other assets of the LLC for contingent liabilities in an amount, if any, determined by the Managers to be appropriate for such purposes; and
- (ii) Second, to the Members in accordance with the provisions of this Agreement and applicable Treasury Regulations

## **ARTICLE 12 MISCELLANEOUS**

**12.1 BINDING EFFECT.** The terms of this Agreement shall be binding upon and shall inure to the benefit of the Members, their respective successors, successors-in-title, heirs and assigns; and each and every successor-in-interest to any Member, whether such successor acquires an Membership Interest by way of inheritance, gift, purchase, foreclosure or any other method, shall hold such Membership Interest subject to all of the terms and provisions of this Agreement. None of the provisions of this Agreement shall be for the benefit of or enforceable by any Person not a party hereto, including without limitation any creditor of the LLC (including any Member acting in its capacity as a creditor of the LLC) or any creditor of any Member.

**12.2 ASSIGNMENT.** No Member may assign his/her interest hereunder without the express written consent of the other Member(s).

**12.3 AMENDMENT.** No amendment of this Agreement shall be valid or binding unless such amendment is made with the Consent of all of the Members; *provided, however*, that no amendment that could materially adversely and disproportionately affect the economic rights and obligations of any Member shall be made without such Member's prior written consent. Notwithstanding the foregoing, this Agreement may be amended from time to time by the Managers, without the consent of any Member: (i) to cure any ambiguity, to correct or supplement any provision hereof which may be inconsistent with any other provision hereof, or to add any other provisions with respect to matters or questions arising under this Agreement which will not be inconsistent with the provisions of this Agreement; (ii) to preserve the status of the LLC as a "partnership" for federal income tax purposes; and (iii) to amend Schedule 'A' to reflect the admission or withdrawal of Members as authorized by this Agreement.

**12.4 FORCE MAJEURE.** No party to this Agreement shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God (such as hurricanes, tornadoes and/or other natural disasters), government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

**12.5 GOVERNING LAW.** This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted and enforced in accordance with the laws of the State of \_\_\_\_\_ (*insert State name*), notwithstanding any choice of law rules to the contrary.

12.6 **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, all of which together shall for all purposes constitute one Agreement, binding on all the Members notwithstanding that all Members have not signed the same counterpart.

12.7 **NOTICES.** All notices under this Agreement shall be effective (i) on the fifth business day after being sent by certified mail, return receipt requested, postage prepaid, (ii) when received, if delivered by hand, (iii) the following business day after having been timely sent by reputable overnight courier service for priority, next-day delivery, or (iv) upon confirmation of receipt by the recipient after having been sent by electronic mail or fax (but on the next business day after confirmation of receipt if such receipt is after business hours at the time and place of receipt). All such notices in order to be effective shall be in writing and shall be addressed (to the recipient's street address, electronic mail address or fax number, as the case may be), if to the LLC at its principal office address set forth in this Agreement and if to a Member at the last street address, electronic mail address or fax number, as the case may be, of record on the LLC's books, and copies of such notices shall also be sent to the last such address for the recipient which is known to the sender, if different from the address so specified. Notice addresses may be changed at any time by notice as provided in this Section.

12.8 **INTERPRETATION.** As used herein, the singular shall include the plural, and the masculine gender shall include the feminine and neuter, and vice-versa, unless the context otherwise requires.

12.9 **ENTIRE AGREEMENT.** This Agreement, including all Schedules and Appendices attached hereto and the Articles, which are hereby incorporated herein, embodies the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

12.10 **SEVERABILITY.** If any provision of this Agreement is held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of this Agreement shall be interpreted as if such provision were so excluded, and (iii) the balance of this Agreement shall be enforceable in accordance with its terms; *provided, however,* that this Agreement continues to reasonably and substantially reflect the intent of the parties expressed herein taking into account the exclusion of such unenforceable provision.

IN WITNESS WHEREOF, the Members and the Managers have executed this Agreement as of the date first above written.

FIRST MEMBER

SECOND MEMBER

\_\_\_\_\_  
NAME:

\_\_\_\_\_  
NAME:

MANAGER

MANAGER

\_\_\_\_\_  
NAME:

\_\_\_\_\_  
NAME:

**SCHEDULE 'A'  
TO  
OPERATING AGREEMENT  
OF**

\_\_\_\_\_ (insert full name of LLC)

**- MEMBERS' CAPITAL CONTRIBUTIONS -**

MEMBER NAME	CAPITAL CONTRIBUTIONS CREDITED	PERCENTAGE INTEREST
	\$	%
	\$	%
	\$	%
<b>TOTAL</b>	<b>\$</b>	<b>100.00%</b>

SIGNED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

## APPENDIX I

### DEFINED TERMS

*Capitalized terms used in this Agreement shall have the meanings specified in this Appendix I.*

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year, after adjusting such Capital Account as follows:

- (a) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5); and
- (b) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

"Affiliate" means, with respect to a specified Person, any other Person that directly or indirectly controls, is under common control with, or is controlled by, the specified Person. As used herein, the term "control" means the possession by a Person, directly or indirectly, of the power to direct or cause the direction of the management and policies of another Person, whether through ownership of voting securities, by contract or otherwise.

"Capital Contributions" means any money or other property contributed to the capital of the LLC pursuant to this Agreement.

"Consent of the Members" means the prior affirmative written consent or approval of Members holding more than 50% of the Percentage Interests. Whenever any action, event or other circumstance requires the Consent of the Members, the Managers shall deliver reasonable prior notice to all Members describing such action, event or circumstance and the action proposed to be taken by the LLC with respect thereto. Each Member shall deliver to the Managers notice of its approval or disapproval of any such proposed action on or before the 14<sup>th</sup> day after the Managers' delivery of the notice described in the immediately preceding sentence. If any Member fails to deliver such notice within such 14-day period, then such proposed action shall be deemed to have been not approved by such Member.

"Membership Interest" means the entire interest in the LLC of a Member including, without limitation, all economic and non-economic rights (including all voting or consent rights), duties and obligations and any other rights appertaining to such limited liability company interest under this Agreement.

"Operation of Law" means rights or duties that are cast upon a party by the law, without any act or agreement on the part of the individual including, but not limited to, an assignment for the benefit of creditors, a divorce, or a bankruptcy.

"Percentage Interests" means the respective percentage interests that the Members hold in the LLC as set forth on Schedule A (as Schedule A may be amended from time to time).

"Person" means any natural person or any general partnership, limited partnership, limited liability partnership, limited liability limited partnership, corporation, joint venture, trust, business trust, cooperative, association, limited liability company or other entity, including the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.