

LLC OPERATING AGREEMENT

OF

[NAME OF LLC]

A _____ **[INSERT NAME OF STATE] LIMITED LIABILITY COMPANY**

THIS AGREEMENT made effective as of the ____ day of _____, _____.

AMONG:

[NAME OF MEMBER #1]

- and -

[NAME OF MEMBER #2]

- and -

[NAME OF MEMBER #3]

{list all Members in this manner}

(hereinafter individually referred to as a "Member" and collectively as the "Members")

- and -

[NAME OF LIMITED LIABILITY COMPANY]

a limited liability company in the process of formation with a registered office address in the State of _____

RECITALS

- A. The Members desire to form a limited liability company (the "Company") under the laws of the State of _____.
- B. The Members desire to enter into this Agreement in order to form and provide for the governance of the Company and the conduct of its business, and to set out their respective rights and obligations with respect thereto.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements contained in this Agreement, the parties hereby agree as follows:

ARTICLE I - DEFINITIONS

Wherever used throughout this Agreement, the following terms shall have the means specified in this Article or elsewhere in this Agreement:

- 1.1 **"Act"** means the legislation enacted in the State of _____ applicable and pertaining to the formation and operation of limited liability companies, as amended, replaced or re-enacted from time to time.
- 1.2 **"Agreement"** means this Operating Agreement, and any amendments, modifications or replacements thereto or thereof.

- 1.3 **“Articles of Organization”** means the Articles of Organization required to be filed under the Act in order to establish a limited liability company in the State of _____.
- 1.4 **“Assignee”** means a person who has acquired a Member’s Financial Interest in the Company, by way of a Transfer in accordance with the terms of this Agreement, but who has not become a Member.
- 1.5 **“Assigning Member”** means a Member who, by means of a Transfer, has transferred his/her Financial Interest in the Company to an Assignee.
- 1.6 **“Capital Account”** means, as to any Member, a separate account maintained and adjusted in accordance with Section 3.3.
- 1.7 **“Capital Contribution”** means, with respect to any Member, the total amount of money, forgiveness of debt, and Fair Market Value of any services or property other than money contributed to the Company (net of liabilities secured by such contributed property that the Company shall assume) in consideration of a Percentage Interest held by such member. A Capital Contribution shall not be deemed to be a loan.
- 1.8 **“Capital Event”** means a sale or disposition of any of the Company’s capital assets, the receipt of insurance or other proceeds derived from the involuntary conversion of Company property, the receipt of proceeds from a refinancing of any Company property, or any similar event with respect to any of the Company’s property or assets.
- 1.9 **“Company”** means [NAME OF LIMITED LIABILITY COMPANY].
- 1.10 **“Encumbrance”** means, with respect to any Membership Interest or any element thereof, a mortgage, pledge, security interest, lien, proxy coupled with an interest (other than as contemplated in this Agreement), option or preferential right to purchase.
- 1.11 **“Fair Market Value”** means, with respect to any item of the Company’s property, such item’s adjusted basis for income tax purposes, except as follows:
- (a) the Fair Market Value of any property contributed by a Member to the Company shall be the value of such property, as mutually agreed upon between the Company and such contributing Member;
 - (b) the Fair Market Value of any item of the Company’s property distributed to any Member shall be the value of such item on the date of distribution, as mutually agreed upon between the Company and such distributee Member; and
 - (c) Fair Market Value for purposes of Section 8.7 and Section 9.3 shall be as set out in such sections.
- 1.12 **“Financial Interest”** means a Member’s right to share in the income, gains, losses, deductions, credit or similar items of, and to receive distributions from, the Company, but does not include any other rights of a Member, including the right to vote or to participate in management.
- 1.13 **“Initial Member”** or **“Initial Members”** means any one or more of those Persons who are set forth in the preamble of this Agreement.
- 1.14 **“Involuntary Transfer”** means, with respect to any Membership Interest or any element thereof, any Transfer or Encumbrance, whether by way of operation of law, court order, foreclosure, execution of a judgment or other legal process or otherwise, including a purported transfer to or from a trustee in bankruptcy, receiver or assignee for the benefit of creditors.
- 1.15 **“Majority of Members”** means one or more Members whose total Percentage Interest represents more than fifty percent (50%) of the Percentage Interests of all Members.

- 1.16 **"Manager"** means the person or persons named in Section 2.6 as the person(s) who will manage the business and day-to-day operations of the Company.
- 1.17 **"Meeting"** shall have the meaning set out in Section 5.4.
- 1.18 **"Member"** means an Initial Member or a Person who otherwise acquires a Membership Interest, as permitted under this Agreement, and who remains a Member.
- 1.19 **"Membership Interest"** means a Member's Financial Interest together with his/her Voting Interest.
- 1.20 **"Notice"** means any written notice required or permitted to be given under this Agreement. A Notice shall be deemed given (a) if hand delivered or sent by prepaid overnight delivery, on the date of delivery, or (b) if sent by prepaid certified mail, ___ days following deposit of same in the [insert name of country] mail, or (c) if sent by facsimile transmission or other electronic means, when such transmission is electronically confirmed as having been successfully transmitted.
- 1.21 **"Percentage Interest"** of each Member in the Company is the same percentage as each such Member's allocation of profits and Losses is to all Profits and Losses, as set forth in Section 4.1.
- 1.22 **"Person"** means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or any other entity, whether domestic or foreign.
- 1.23 **"Profits and Losses"** means, for each fiscal year or other period specified in this Agreement, an amount equal to the Company's taxable income or loss for such year or period.
- 1.24 **"Regulations"** means the income tax regulations promulgated by the United States Treasury Department, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.
- 1.25 **"Substituted Member"** shall have the meaning set out in Section 8.8.
- 1.26 **"Successor in Interest"** means an Assignee, a successor of a Person by merger or otherwise by operation of law, or a transferee of all or substantially all of the business or assets of a Person.
- 1.27 **"Transfer"** means any sale, assignment, gift, Involuntary Transfer or other disposition of a Membership Interest or any element thereof, either directly or indirectly, other than an Encumbrance that is expressly permitted under this Agreement.
- 1.28 **"Triggering Event"** shall have the meaning set out in Section 8.3.
- 1.29 **"Vote"** means a written consent or approval, a ballot cast at a Meeting, or a voice vote.
- 1.30 **"Voting Interest"** means a Member's right to Vote or participate in management and any right to information concerning the business and affairs of the Company provided under the Act, except as limited by the provisions of this Agreement. A Member's Voting Interest shall be directly proportional to that Member's Percentage Interest.

ARTICLE II - ARTICLES OF ORGANIZATION

- 2.1 The Members have filed Articles of Organization in accordance with the provisions of the Act. A copy of the Articles of Organization are attached to this Agreement as Exhibit A.
- 2.2 The name of the Company shall be [NAME OF LIMITED LIABILITY COMPANY]. The Company may also conduct its business under one or more assumed names.
- 2.3 The principal executive office of the Company shall be at _____ [insert full street address], or such other place or places as may be determined by the Members from time to time.

2.4 The Company is engaged in the business of _____ [insert description of the Company's business]. The Company shall engage in no other business or venture, except upon the unanimous written agreement of all Members.

2.5 The term of existence of the Company shall commence on the filing date of the Articles of Organization, and shall continue until [insert termination date], unless previously terminated pursuant to the terms of this Agreement or as provided by law.

2.6 The Company shall be managed by the following Member(s): [list name(s) of Member(s) who will be managing the business]

ARTICLE III - FINANCIAL MATTERS

3.1 Each Member shall initially contribute to the Company the following Capital Contributions:

Name of Member	Capital Contribution	Form of Contribution
	\$	[set out whether contribution is cash, non-cash assets of equivalent value, etc]

3.2 If a member fails to make the required initial Capital Contribution as set out above within ___ days after the effective date of this Agreement, that Member's entire Membership Interest shall terminate and the Member shall indemnify and hold the Company and the other Members harmless from any loss, cost or expense, including reasonable legal fees incurred, caused by the Member's failure to make such Capital Contribution.

3.3 An individual Capital Account shall be maintained for each Member, which will consist of that Member's Capital Contribution (i) increased by that Member's share of Profits, (ii) decreased by that Member's share of Losses, and (iii) adjusted as required in accordance with the provisions of applicable income tax legislation.

3.4 A Member shall not be entitled to withdraw any part of the Member's Capital Contribution or to receive any distributions of any kind from the Company, except as provided in this Agreement.

3.5 No interest shall be paid on funds or property contributed to the capital of the Company or on the balance of a Member's Capital Account.

3.6 A Member shall not be bound by, nor be personally liable for, the expenses, liabilities or obligations of the Company, except as otherwise provided in the Act, in this Agreement, or in a separate written agreement executed by such Member.

3.7 No Member shall have priority over any other Member with respect to the return of a Capital Contribution, or distributions or allocations of income, gain, losses, deductions, credits or items thereof.

ARTICLE IV - ALLOCATIONS AND DISTRIBUTIONS

4.1 The Profits and Losses of the Company and all items of Company income, gain, loss, deduction or credit shall be allocated, for internal accounting purposes and for tax purposes, to each Member as follows:

- (a) firstly, to return to the Members, in the same proportion as Capital Contributions made, any Capital Contributions and additional Capital Contributions made to the Company;
- (b) secondly, to the Members as follows:

Name of Member	Share of Profits / Losses
TOTAL:	<u> </u> % <u> </u> % 100%

4.2 If any Member unexpectedly receives any adjustment, allocation or distribution which causes the Member's Capital Account to go into a deficit balance, items of Company gross income and gain shall be specially allocated to such Member in an amount sufficient to eliminate the deficit balance as quickly as possible. Any special allocation under this Section 4.2 shall be taken into account in computing subsequent allocations of Profits and Losses so that the net amount of allocations of income and loss and all other items shall, to the extent possible, be equal to the net amount which would have been allocated if the unexpected adjustment, allocation or distribution had not occurred.

THIS IS A 14-PAGE DOCUMENT, INCLUDING SCHEDULES.