

## Operating Agreement

THIS OPERATING AGREEMENT ("Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the sole Member of \_\_\_\_\_, a limited liability formed under the laws of the State of \_\_\_\_\_ (the "LLC") and who desire to enter into this Agreement to provide for the governance of the LLC.

### ARTICLE I: ARTICLES OF ORGANIZATION

1.1. Articles. The Articles of Organization of the LLC were filed with the Secretary of State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

1.2. Name. The name of the LLC is \_\_\_\_\_, LLC.

1.3. Principal Office. The Principal Office of the LLC is \_\_\_\_\_.

The LLC may maintain such other offices as determined by the Members from time to time.

1.4. Business Purpose(s). The LLC is organized to engage in any lawful act or activity for which a limited liability company may be organized under the laws of the State of \_\_\_\_\_.

1.5. Term. The term of the LLC's existence shall commence upon the filing of the Articles pursuant to Article 1.1 and continue until terminated in accordance with this Agreement or applicable law.

### ARTICLE II: CAPITALIZATION

2.1. Capital Contributions by Member. The Member has contributed, or immediately upon the execution of this Agreement shall contribute, to the LLC the money, property, or services ("Capital Contribution") specified opposite his name in Schedule A to this Agreement, incorporated herein by reference. The fair market value of each contribution and the corresponding percentage of ownership of the LLC ("Membership Interest") is also shown on Schedule A.

2.2. Additional Capital Contributions. Unless otherwise agreed in writing by the Member, no Member shall not be required to make additional capital contributions to the LLC.

2.3. Capital Accounts. An individual Capital Account shall be maintained for the Member consisting of the Member's Capital Contribution pursuant to Article 2.1, increased by the Member's share of profits, decreased by the Member's share of losses, and adjusted as required in accordance with the applicable provisions of the Internal Revenue Code (the "Code") and the Treasury Regulations promulgated thereunder.

No interest shall be paid on capital contributed to the LLC.

2.4. Withdrawals. The Member shall not be entitled to withdraw his capital contribution or any part of it, nor to receive any distributions of money or property, except as provided by this Agreement or the Act.

2.5. Limited Liability. Except as otherwise provided herein or by the Act, the Member shall not be personally liable for the expenses, debts, or liabilities of the LLC.

### **ARTICLE III: ALLOCATION OF PROFITS AND LOSSES**

3.1. Profits and Losses. The profits and losses, deductions, credits, and the like shall be allocated for purposes of the LLC's internal records and for purposes of tax reporting, to the Member in accordance with the Member's Membership Interest, and in accordance with Code Section 704(b) and the Treasury Regulations promulgated thereunder.

3.2. Allocations Between Assignor and Assignee. If a Membership Interest or any portion thereof has been transferred during any fiscal year, the assigning Member ("Assignor") and the Assignee shall be allocated a share of profits, losses, deductions, credits, and the like based on the number of days each was the beneficial owner of the Membership Interest during that fiscal year.

3.3. Distributions. All cash resulting from the normal business operations of the LLC, and from the sale or disposition of LLC assets, or other extraordinary events other than capitalization, shall be distributed to the Member at such times as the Member may provide.

3.4. Distributions Upon Liquidation. When there is a distribution due to liquidation of the LLC, or when any Membership Interest is liquidated, all items of profit and loss first shall be allocated to the Member's Capital Account pursuant to this Article 3, and other deductions and credits, if any, shall be made before the final distribution is made. The final distribution shall be made to the Member(s) in proportion to their Membership Interests.

### **ARTICLE IV: MEMBERS AND MANAGEMENT**

4.1. Members. There shall be only one class of Member, and each Member shall be entitled to one vote, regardless of Membership Interest.

4.2. Management. The LLC shall be managed by its Member. Unless otherwise provide by this Agreement or by the Act, all management decisions concerning the LLC shall be made by the Member.

4.3. Compensation. The Member shall not be compensated for his management of the LLC.

4.4. Meetings. The Member is not required to hold meetings, and decisions may be reached by consensus and made by unanimous consent, so long as decisions significantly affecting the LLC or its business are documented in writing and signed by the Member whenever possible.

The Member shall keep full and accurate minutes and records of any meetings, any notice of meetings, and all written consents, all of which shall be available for inspection and copying by the Member or his authorized representatives at his own expense during normal business hours at the LLC's Principal Office.

4.5. Title to Assets. All assets of the LLC shall be held in the name of the LLC.

4.6. Banking. All funds of the LLC shall be deposited in the name of the LLC in one or more accounts with one or more financial institutions, as shall be determined by the Member.

4.7. Compliance. The affairs of the LLC shall be managed in all respects so as to maintain the limited liability status of the LLC and its federal taxation as a disregarded entity (or, if an additional Member or Members are later admitted, as a partnership, unless and until the Member(s) agree by resolution to be taxed as a corporation. Any other resolution or action of the Member(s) which alters or jeopardizes the LLC's status as a limited liability company, or as a disregarded entity or partnership for purposes of federal taxation, is void and without effect, and, unless otherwise agreed in writing, the Member(s) shall immediately take steps to correct any such resolution or action.

## **ARTICLE V: TRANSFER OF OWNERSHIP**

5.1. Withdrawal. The Member may withdraw from the LLC at any time by giving written notice to the LLC no less than one-hundred-twenty (120) calendar days prior to the effective date of such withdrawal. Withdrawal shall not relieve the Member of any obligations or liabilities incurred under this Agreement prior to the effective date of such withdrawal.

5.2. Triggering Events. Immediately upon the death or incapacity of the individual Member, or the dissolution, merger, reorganization, or winding up of the corporate Member, the Member shall have been deemed to withdraw in accordance with Section 5.1.

5.3.1. Marital Dissolution. Notwithstanding any other provision of this Agreement, if, in connection with the divorce or dissolution of the marriage of the Member, any court issues a decree or order that transfers, awards, or confirms an Membership Interest, or any part thereof, to the Member's spouse, the Member shall have the right to purchase from his former spouse the Membership Interest, or any part thereof, that was so transferred, and such former spouse shall sell the Membership Interest to the Member at the price set forth in this Article 5. If the Member has failed to purchase hereunder within ninety (90) calendar days after the court's decree or order, then the remaining Members, if any, shall have the option to purchase from the former spouse the Membership Interest, or any part thereof, at the same price, upon notice, within ninety (90) calendar days.

5.3.2. Death of Spouse. Notwithstanding any other provision of this Agreement, if, by reason of the death of a spouse of the Member, any part of an Membership Interest is transferred to a transferee other than the Member or a trust created for the benefit of the Member (or for the benefit of the Member and any combination between or among the Member and the Member's issue) in which the Member is the sole trustee and the Member, as trustee or individually, possesses all of the voting

interest included in that Membership Interest, then the Member shall have the right to purchase the Membership Interest, or any part thereof, from the estate or other successor in interest of his deceased spouse, and the estate, successor, or other transferee shall sell the Membership Interest to the Member at the price set forth in this Article 5. If the Member has failed to purchase hereunder within ninety (90) calendar days after the court's decree or order, then the remaining Members, if any, shall have the option to purchase from the estate or other successor of the deceased spouse the Membership Interest, or any part thereof, at the same price, upon notice, within ninety (90) calendar days.

5.4. Option Period. Upon receipt of notice of any Triggering Event (hereinafter, the "Option Date"), the LLC shall promptly give notice of the same to the Member(s), and the LLC shall have the option, for a period of thirty (30) calendar days from the determination of the purchase price under this Article 5, to purchase the Membership Interest, or any part thereof, at the price and on the terms provided in this Article 5, and the other Member(s), pro rata in proportion to their respective Membership Interests, shall thereafter have thirty (30) calendar days during which to purchase, at the same price and on the same terms, any part of the Membership Interest not purchased by the LLC. If the other Member(s) do not choose to purchase the entire remaining part of the Membership Interest, then the Members choosing to purchase shall have the right, pro rata in proportion to their respective Membership Interests, to purchase the remaining part of the Membership Interest. The transferee of any Membership Interest not purchased shall hold such Membership Interest in the LLC subject to all of the provisions of this Agreement.

5.5. Interested Member. No Member shall participate in any vote or decision in any matter pertaining to the disposition of that Member's Membership Interest in the LLC under this Agreement, unless he is the sole Member of the LLC.

5.6. Purchase Price. The Purchase Price of any Membership Interest subject to an option under this Article 5 shall be the fair market value of such Membership Interest as determined by the mutual agreement of the selling and purchasing parties. Each party shall use best efforts to arrive at a fair market value in good faith. If the parties cannot arrive at a mutually agreeable fair market value by negotiation within thirty (30) calendar days, then the parties shall cooperate to agree on a third-party appraiser, and shall hire the same, the cost of such appraiser to be borne equally by the buyer on the one hand, and the purchaser(s) on the other hand. If the parties cannot agree on an appraiser, any party refused to participate, or both parties mutually agree not to use an appraiser, then the parties shall arbitrate the dispute in accordance with Article 8 of this Agreement. The purchase price determined hereunder shall be payable in cash.

5.7. Substituted Member. Except as expressly permitted herein, a prospective transferee (other than an existing Member) may be admitted as a Member of the LLC ("Substituted Member") only (a) on the unanimous vote of the other Member(s), if any, and (b) upon executing this Agreement. Until admitted as a Substituted Member, any prospective transferee of an Membership Interest shall be deemed an Assignee, and therefore the owner of only an Economic Interest in the Membership Interest, and shall not be entitled to vote or otherwise participate in the management of the LLC.

5.8. Securities Laws. The initial sale of the Membership Interests in the LLC to the initial Member has not been qualified or registered under the securities laws of any state or country. No attempt has been made to qualify the offering under state or federal law. No Membership Interest may be transferred that would require such qualification or registration, or violate the securities laws of any state or country in which the LLC operates. Where any doubt exists, the burden and cost of obtaining a legal clearance and providing evidence of the same to the LLC shall be on the Member desiring to transfer his Membership Interest.

## **ARTICLE VI. DISSOLUTION AND WINDING UP**

6.1. Dissolution. The LLC shall be dissolved upon the first to occur of the following: (a) the written consent of the Member to dissolve the LLC; or (b) entry of a judicial dissolution pursuant to applicable law.

6.2. Winding Up. Upon the dissolution of the LLC, the LLC shall engage in no further business other than that necessary to expeditiously and efficiently wind up the business and affairs of the LLC. The Member(s) who has not wrongfully dissolved the LLC shall participate in the winding up of the LLC. The Member(s) winding up the LLC shall give written notice of the same to all of the other Member(s) of the LLC, if any, and to all known creditors of, and claimants against, the LLC. After paying or adequately providing for the payment of all known debts of the LLC (except debts owed to the Member(s)), the remaining assets of the LLC shall be distributed in the following order of priority: (a) to pay the expenses of dissolution and wind up; (b) to repay outstanding loans to Member(s), pro rata in proportion to Membership Interests if remaining assets are insufficient to repay all loans, together with accrued interest thereon; and then (c) to the Member(s) in accordance with Article 3.4.

6.3. Deficits. The sole recourse of the Member(s) for the return of the Member's investment in the LLC shall be the assets of the LLC, and, if the LLC assets remaining following the payment or discharge of the debts and liabilities of the LLC are insufficient to provide for the return of the investment to the Member, the Member shall have no recourse against any other Member(s) for indemnification, contribution, or reimbursement, except to the extent that any such Member has failed to fulfill his Capital Contribution obligations under Article 2.2 of this Agreement.

## **ARTICLE VII: RECORDS**

7.1. Records. Full and complete books and records of the LLC and its business shall be kept at the LLC's Principal Office, all of which shall be available for inspection and copying by the Member(s) or his authorized representatives at his own expense during normal business hours. Such records shall include, without limitation, this Agreement; all documents filed with, received from, and correspondence with, the Secretary of the State, the Internal Revenue Service, and state or local taxation authorities; the Capital Accounts and profit, loss, and other credit/deduction allocations of the Member(s); a list of the current names, addresses, telephone and fax numbers, and e-mail addresses of the Member(s); financial statements; and bank account statements.

7.2. Accounting. The books of the LLC shall be kept on the cash method of accounting. The fiscal year of the LLC shall be the calendar year.

7.3. Income Tax Returns. Within ninety (90) calendar days after the end of each taxable year, the LLC shall provide to the Member all information necessary for the Member to complete his federal, state, and local tax returns, along with copies of the LLC's federal, state, and local income and sales/use tax or information returns for that year.

#### **ARTICLE VIII: ARBITRATION**

8.1. Arbitration. Any dispute concerning this Agreement, the Member(s), or the LLC that cannot be resolved through good-faith negotiation shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in the County of Cuyahoga State of Ohio. Any Member may commence arbitration by sending a written demand to the other party(ies) Such demand shall set forth the matter(s) in dispute and propose an arbitrator. If the parties cannot agree on an arbitrator, any party may apply to a court to appoint one. The cost of such arbitration shall initially be borne equally by the parties, but the parties shall at the outset request of the arbitrator that the prevailing party be awarded all of the costs and expenses of arbitration, including reasonable attorneys' fees, and that the arbitrator determine the prevailing party for this purpose, or the lack thereof, in which case each party shall bear their own costs, expenses, and attorneys' fees. The determination(s) of the arbitrator shall be final, binding, and conclusive on all parties. Judgment thereon may be entered by any party in any court of competent jurisdiction.

8.2. Choice of Law. The arbitrator of any dispute hereunder shall apply the substantive law of the State of \_\_\_\_\_ and of the United States of America.

#### **ARTICLE IX: GENERAL PROVISIONS**

9.1. Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to any party hereto by the other party hereto shall be in writing and shall be deemed duly served and given when personally delivered to party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first class, postage prepaid, addressed to the party at their address of record. Any Member may change his address of record by written notice to the LLC. The address of record of the LLC shall be its Principal Office.

9.2. Headings. The headings in this Agreement are inserted for convenience reference only and shall not be deemed to constitute a part of this Agreement.

9.3. Pronouns. Whenever context and meaning may require in this Agreement, the singular shall include the plural, the plural shall include the singular, and the neuter gender shall include the male, the female, and a firm, company, corporation, or trust.

9.4. Counterparts. This Agreement may be executed in any number of counterparts, or on facsimile copies, each of which shall constitute an original and which taken together shall constitute one single legal document.

9.5. Benefit. This Agreement shall be binding upon and inure to the benefit of the Members and their heirs, personal representatives, and permitted successors and assigns.

9.6. Waiver. The waiver of any breach, item, provision, term, covenant, and/or condition of this Agreement by any Member or by the LLC shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of any other additional or different provision, term, covenant, or condition.

9.7. Interpretation. If any provisions of this Agreement, or the application thereof to any person or circumstances, shall, for any reason and to any extent, be determined to be invalid or unenforceable, the remainder of this Agreement and the application of such provisions to the other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

9.8. Further Assurances. The parties to this Agreement shall promptly execute and deliver any and all additional documents, instruments, notices, and other assurances, and shall do any and all other acts and things reasonably necessary in connection with the performance of their respective obligations hereunder and to carry out the intent of the parties.

9.9. Integration. This Agreement contains the entire understanding among the parties hereto and supersedes any prior understanding and agreements between them respecting the within subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

Signed and agreed on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Managing Member

\_\_\_\_\_  
Witness