

OPERATING AGREEMENT

THIS AGREEMENT IS executed this _____ day of
_____, 20____ by and among
_____ hereinafter
referred to as the "Members."

RECITALS

The Members have formed a limited liability company pursuant to and in accordance with the New York Limited Liability Law as amended from time to time.

The Members desire to set forth their agreement as to the business and management of the company and their interests therein:

NOW, THEREFORE, in consideration of the contributions to be made as provided herein and of these premises, the parties hereto agree as follows:

ARTICLE I

FORMATION AND BUSINESS OF THE COMPANY

1.1 The Limited Liability Company (the "Company") was organized on _____
_____ in accordance with and pursuant to the Act.

1.2 The name of the Company is _____. The Company may do
_____ business under the name, as permitted by applicable law and under any other name as
determined from time to time by the Members.

1.3 The purposes of the Company shall be to conduct any lawful business or activity whatsoever,
permitted by applicable law and as determined by the Members. The Company may exercise all
powers necessary to or reasonably connected with the Company's business from time to time and
may engage in all activities necessary, customary, related or incidental to any of the foregoing.

1.4 The principal place of business of the LLC shall be _____ County or such other place
of business as determined by the Members.

1.5 The names, addresses and Capital Interests of the Members are set forth on the balance sheet
of the Company attached hereto as Schedule A.

ARTICLE II

MEMBERS

- 2.1 No Member shall be personally liable for any debt, losses or obligations of the Company by virtue of being a Member, except to the extent of its capital contribution and obligation to make a capital contribution.
- 2.2 The property, business and affairs of the Company shall be managed by the Members, who shall have full authority power and discretion to make all decisions with respect to the company's business. Each of the Members shall have an equal voice in the management and conduct of the Company business.

ARTICLE III

CAPITAL-CAPITAL ACCOUNTS

- 3.1 Upon the execution of this Agreement, the Member shall contribute to the company the cash and property as set forth in Schedule A.
- 3.2 An individual income account shall be maintained for each Member. Profits and losses shall be credited or debited to the individual income accounts as soon as practicable after the close of each fiscal year.
- 3.3 In the event that a Member is entitled to receive a return of a Capital Contribution, the Company may distribute cash, notes, property or a combination thereof to the Member in return of the Capital Contribution.

ARTICLE IV

PROFIT, LOSS AND DISTRIBUTIONS

- 4.1 The net profits or net losses of the Company shall be distributable or chargeable, as the case maybe, to each of the Members based on the Capital Interest of each Member.
- 4.2 No Distributions shall be declared as paid unless, after giving effect thereto, the assets of the Company exceed the Company's liabilities.
- 4.3 If there is no balance in the individual income accounts, net losses shall be debited to the individual capital accounts. If the capital account of a Member shall have been depleted by the debiting of losses under this paragraph, future profits of that Member shall not be credited to his income account until the depletion shall have been made good, but shall be credited to his capital account. After the depletion in his capital account shall have been made good, his share of the profit thereafter shall be credited to his income account.
- 4.4 If the Company is liquidated, the assets shall be distributed to the Members in accordance with their respective Capital Interests after taking into account allocations of profit and loss.

ARTICLE V
TRANSFERABILITY

- 5.1 No Member may transfer all, or any portion of, or rights in its Membership Interest.
- 5.2 Any such Transfer of an Interest in violation of the terms of this Agreement shall be null and void and have no effect.
- 5.3 No person acquiring an interest other than a Member shall become a Member without the vote of all of the interest of the Members. If no such approval is obtained, the Person's interest shall entitle the person to receive the distributions of the profits and losses to which the Member from whom or which such person received such interest would be entitled. Approval may be subject to terms and conditions imposed by the Members.
- 5.4 The provisions of this Section shall not apply to the transfer of an interest to a Member, the issuance of a new Membership Interest or the Transfer of an Interest of a Bankrupt, dissolved or incompetent Member to his or her successor in interest.

ARTICLE VI
WITHDRAWAL OF A MEMBER

- 6.1 Any Member may withdraw from the Company upon *six months* prior notice to the other Members.
- 6.2 If the business of the Company continues after a voluntary withdrawal, the Withdrawing Member shall not be entitled to receive any amount of liquidation until the dissolution and winding up of the company but shall on the date of the withdrawal event but shall become an assignee of the economic component of the former Membership interest.

6.3 If the business is not continued, the withdrawing member shall be entitled to have the interest repurchased.

6.4 In the event of an involuntary withdrawal of a member, the withdrawn Member shall be treated the same as any Member.

ARTICLE VII

DISSOLUTION AND TERMINATION

7.1 The Company shall be dissolved and wound up upon the first to occur of the following events:

- (a) the written consent of a majority of the Members in interest;
- (b) the retirement, expulsion, death, bankruptcy or insanity of a Member;
- (c) the sale of all or substantially all of the business; or
- (d) a judicial decree of dissolution

7.2 The events specified in Article 7.1 shall not result in the dissolution, winding up and termination of the Company unless within ninety 90 days of the occurrence of an event, a majority in Capital Interests of the remaining Members elect to discontinue the business of the company. The Company shall then commence the process of dissolution, winding up and termination.

7.3 Upon the dissolution of the Company, a proper accounting shall be made of the capital and income accounts of each partner and of the net profit or net loss of the Company from the date of the last previous accounting to the date of dissolution.

ARTICLE VIII
FINANCIAL MANAGEMENT

8.1 Checks shall be drawn on the company bank account for Company purposes only.

8.2 No Member may without the consent of the other Members

- A. Borrow money in the firm name for other than firm purposes or utilize collateral owned by the Company as security for such loans; borrowing in the firm name for firm purposes shall be approved by the Members;
- B. Assign, transfer, pledge, compromise, or release any of the claims of or debts due the Company except upon payment in full, or arbitrate or consent to the arbitration of any of the disputes or controversies of the Company;
- C. Make, execute, or deliver any assignment for the benefit of creditors, or any bond, confession of judgment, chattel mortgage, deed, guarantee, indemnity bond, surety bond, or contract to sell or contract of sale of all or substantially all of the property of the Company;
- D. Lease or mortgage any Company real estate or any interest therein or enter into any contract for any such purpose;
- E. Pledge or hypothecate or in any manner transfer his interest in the Company, except to another party to this agreement;
- F. Become a surety, guarantor, or accommodation party to any obligation.

8.3 The Members shall cause to prepare all necessary tax returns for the Company and shall make appropriate elections concerning the tax year, the manner of accounting and any other election that the Members deem to be in the best interest of the Company.

ARTICLE IX
GENERAL PROVISIONS

- 9.1 The Company shall maintain a bank account or bank accounts in such bank or banks as may be agreed upon by the Members.
- 9.2 All notices provided for under this agreement shall be in writing and shall be sufficient if sent by registered or certified mail to the last known address of the party to whom such notice is to be given.
- 9.3 Proper and complete books of account shall be kept at all times and shall be open to inspection by any partner or his accredited representative at any reasonable time during business hours. The books of account shall be examined and reviewed as of the close of each fiscal year by an accountant agreeable to the Members, who shall make a report thereon.
- 9.4 The parties hereto covenant and agree that they will execute any further instruments and that they will perform any acts which are or may become necessary to effectuate and to carry on the Company created by this agreement.
- 9.5 Any matter not specifically covered by a provision of this agreement shall be governed by the applicable provisions of the New York Limited Liability Company Act.
- 9.6 This Agreement shall be governed by the Laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Witnesses

_____	_____ [Seal]
_____	_____ [Seal]
_____	_____ [Seal]

OPERATING AGREEMENT OF

A NEW YORK LIMITED LIABILITY COMPANY

AGREEMENT dated this _____ day of _____, 20__ by and between
(individually a "Member" and collectively by the "Members").

WITNESSETH

WHEREAS, the Members have formed a Limited Liability company pursuant to and in accordance with the New York Limited Liability Law, as amended from time to time:

WHEREAS, the Members desire to set forth their agreement as to the business and management of the company and their interests therein:

NOW, THEREFORE, in consideration of the contributions to be made as provided herein and of these premises, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. In this Agreement, the following terms shall have the meanings set forth below:

- (A) Act shall mean the New York Limited Liability Company Law.
- (B) Agreement shall mean this operating Agreement, as originally executed and as amended from time to time in accordance herewith and with the Act.
- (C) Agreed Value of contributed Property means the fair market value of the property at the time of contribution as determined by the Members. The Members shall use such method as they deem reasonable and appropriate to allocate the Agreed Value of contributed Properties among each separate property.
- (D) Articles of Organization shall mean the Articles of Organization of the Company, as filed with the New York Secretary of State, as amended from time to time in accordance herewith and with the Act.

(E) Bankruptcy of a Member shall mean

1. the entry of an order for relief with respect to that Member in a proceeding under the United States Bankruptcy Code, as amended from time to time, or
2. the Member's initiation, whether by filing a petition, beginning a proceeding or in answer to a proceeding commenced by another Person, of any action for liquidation, dissolution, receivership or other similar relief, or the Member's application for, or consent to the appointment of, a trustee, receiver or custodian for its assets. For purposes of this definition, a Member's consent shall be deemed to have been given if an order appointing a trustee, receiver or custodian as entered by a court of competent jurisdiction and is not dismissed within ninety days (90) after its entry.

(F) Capital contribution of, or attributed to a Member shall mean the total contributions to the capital of the Company, whether in cash, property, services or any combination thereof, made, performed by, or attributed to or deemed attributed to, such Member, valued on the date of contribution or commitment to contribute and set forth herein.

(G) Capital Interest of a Member, as of any date, shall be expressed as a percentage determined by dividing

1. the amount of the balance of the positive Capital Account associated with the Member's Membership Interest
2. by the aggregate balances of the capital Accounts of all Members whose accounts have positive balances, as adjusted through such date in accordance herewith.

(H) Code shall mean the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law. Company shall refer to _____, LLC.

(I) Fiscal Year shall mean the Company's accounting, tax and fiscal year which shall be the calendar year.

(J) Initial Capital contribution of a Member shall mean its initial contribution to the capital of the company pursuant to this Agreement.

- (K) Involuntary withdrawal of a Member shall mean its withdrawal as a Member as a result of an event described in Section 1.1 (u) paragraphs (i), (ii), (iii), or (iv).
- (L) Management Interest of a Member shall mean its right to participate in the management of the business and affairs of the Company, including any right to vote on, consent to, or otherwise participate in, any decision or action of or by the Members hereunder or under the Act.
- (M) Member shall mean each Person who
1. executes a counterpart of this Agreement as a Member as of the date hereof or
 2. is admitted as a Member after the date hereof in accordance herewith, provided that, in each case, a Member shall always have a management interest.
- (N) Membership Interest of a Member shall mean a Member's entire interest in the Company, including its Capital Interest in the Company and Management Interest.
- (O) Net Profits and Net Losses shall mean, for each Fiscal Year (or other period for which they are determined), the Income and gain and the losses and deductions of the Company, respectively, in the aggregate or separately stated as appropriate, determined in accordance with generally accepted accounting principles consistently applied.
- (P) Person shall mean any individual, partnership limited liability company, corporation, joint venture, trust, association or any other entity, domestic or foreign, and its respective heirs, executors, administrators, legal representatives, successors and assigns where the context of this agreement so permits.
- (Q) Transfer shall mean any sale, assignment, transfer, gift, exchange or bequest or other disposition or an Interest, in any manner, voluntary or involuntary, by operation of law or otherwise but shall not include a pledge, hypothecation or other contingent transfer of rights unless or until such contingency occurs.
- (R) Treasury Regulations shall mean regulations promulgated under the Code in effect as of the date hereof or hereafter amended or adopted.
- (S) Voluntary withdrawal of a Member shall mean his or its withdrawal as a Member as a result of an event described in section 1.1 (u) paragraph (1) or (2).

- (T) Withdrawal Event with respect to any Member, shall mean its (i) death or disability of a Member, dissolution, expulsion as a Member or adjudication of incompetency, as applicable; (ii) Bankruptcy; (iii) making a general assignment for the benefit of creditors;
- (U) Interest becoming subject to enforcement of rights of any of his or its creditors, unless such rights are released within ninety (90) day he or it receives notice of the creditor's action
1. Voluntary retirement or withdrawal from the Company; or
 2. any other event that terminates a Member's membership in the Company or otherwise causes the dissolution of the Company under the Act.

ARTICLE II

FORMATION AND BUSINESS OF THE COMPANY

2.1 Formation. The Company was organized on _____, _____ in accordance with and pursuant to the Act.

2.2 Name. The name of the Company is _____
_____. The Company may do business under the name, as permitted by applicable law, under any other name determined from time to time by the Members.

2.3 Purpose of the Company. The purpose of the Company shall be to conduct any lawful business or activity whatsoever, as permitted by applicable law and as determined from time to time by the Members. The Company may exercise all powers necessary to or reasonable connected with the Company's business from time to time, and may engage in all activities necessary, customary, related or incidental to any of the foregoing. The authority granted to the Managing Member to bind the Company shall be limited to actions necessary or convenient to this business.

2.4 Principal Office, The Company's principal place of business shall be located at:

OR at such other place determined from time to time by the Members.

2.5 Members. The names, addresses and capital Interests of, the Members Are set forth as Exhibit A attached hereto, as amended from time to Time.

2.6 Management of the Company. Except as otherwise set forth in this Agreement the management of the Company and all decisions relating to the business affairs of the Company shall be made by the Managing Member.

ARTICLE III

MEMBERS

3.1 Liability for Company Debt. No Member shall be personally liable for any debts, losses or obligations of the Company by reason of its being a Member, except to the extent of its Capital contribution and any obligation to make a Capital contribution.

3.2 Conflicts of Interest. Except as limited by the provisions of Article VII, it shall not be a conflict of interest for a Member, including the Managing Member to engage in activities that may be competitive with the Company however nothing shall permit any Member, including the Managing Member, to use or appropriate Company property of any type or kind in the conduct of those other activities.

3.3 Dealings with the Company. Subject to the requirements of this Agreement, any Member thereof may make loans to, borrow from and transact such other business with, the Company as may be approved by the Members in accordance with this Agreement. Loans made pursuant to this section shall comply with the provisions of section 4.7.

3.4 Management Rights. No member other than the Managing Member shall have the right to bind the Company. Any Member making such unauthorized act shall indemnify the Company for any costs or damages incurred by the Company as the result of such act.

3.5 Acts Reserved to Members. The following actions shall require the consent of all of the Members:

- a) incur or refinance the indebtedness of the Company (or to make a guaranty or suretyship) in excess of \$_____.
- b) effect the sale of Company property in other than the normal course of business.
- c) Amend this Agreement.
- d) File a voluntary petition in bankruptcy or an assignment for the benefit of creditors.
- e) Merge, consolidate, liquidate or dissolve the Company.
- f) No Preemptive Rights. No Member shall have any preemptive, preferential or other right with respect to
 - (i) making additional Capital contributions,
 - (ii) the issuance or sale of Interests by the Company,
 - (iii) the issuance of any obligations, evidences of indebtedness or securities of the Company convertible into, exchangeable for, or accompanied by, any rights to receive, purchase, purchase or subscribe to, any Percentage Interests, or
 - (iv) the issuance of any right, of subscription to or right to receive, or any warrant or option for the purpose of, any of the foregoing.

ARTICLE IV

CAPITAL; CAPITAL ACCOUNTS

- 4.1 Initial Capital Contributions. Upon the execution of this Agreement, the Member shall contribute to the Company the cash and property as set forth in Exhibit A.
- 4.2 Additional Capital Contributions. Members shall be required to make the capital contributions as set forth in section 4.1 of this Agreement. No Member shall be required to make additional capital contributions unless required by the vote of member holding more than two-thirds (2/3) in interest to enable the Company to continue its business.
- 4.3 No Interest on Capital contribution. Members shall not be paid interest on their Capital contributions.
- 4.4 Return of Capital contributions. Except as otherwise provided in this Agreement, no Member shall have the right to receive any return of any Capital contribution.
- 4.5 Form of Return of Capital. If a member is entitled to receive a return of a Capital contribution, the Company may distribute cash, notes, property or a combination thereof to the Member in return of the Capital Contribution.
- 4.6 Capital Accounts. A separate Capital Account shall be maintained for each Member. If the Members determine that the Capital Accounts must be adjusted to comply with section 704(b) of the Code, then the method in which Capital Accounts are maintained shall be so modified. Any such change in the maintenance of the Capital Accounts shall not materially alter the economic agreement among or between Members.
- 4.7 Liability of Managing Member. The Managing Member shall have no personal liability for repayment of any Capital Contribution to any member.

ARTICLE V

PROFIT, LOSS AND DISTRIBUTIONS

- 5.1 Distributions. Cash available for distributions shall be distributed at such time and in such amounts as may be determined by the Members in accordance with the Capital Interest of each such Member.
- 5.2 Limitation on Distributions. No distributions shall be declared as paid unless, after giving effect thereto, the assets of the Company exceed the Company's liabilities.
- 5.3 Allocations of Profits and Losses. After giving effect to special allocations as may be required for any taxable year of the Company, Profits and Losses shall be allocated to the Members in accordance with the percentages interest of each such Members.
- 5.4 Offsets. The company shall offset all amounts owing to the Company by a Member against any Distribution to be made to such Members.
- 5.5 Liquidation and Dissolution. If the Company is liquidated, the assets of the Company shall be distributed to the Members in accordance with their respective Capital Interests, after taking into account the allocations of Profit or Loss, if any.
- 5.6 Amendment. The Members are hereby authorized, upon the advice of the Company's tax advisor, to amend this Article to comply with the Code and the Regulations promulgated under Code section 704(b); provided, however, that no amendment shall materially adversely affect distributions to a Member without the Member's prior consent.

ARTICLE VI

TAXES

6.1 Tax Returns. The Managing Member, at the expense of the Company, shall cause to be prepared and filed all necessary Federal and State income tax returns for the Company and shall prepare and deliver to each Member promptly at the end of the Company's Fiscal Year all information necessary for the preparation of the Member's tax returns.

6.2 Tax Elections. The Company shall make the following elections on the appropriate tax returns:

- A. To adopt the calendar year as the Fiscal Year;
- B. To adopt the cash method of accounting and to keep the Company's books and records on the income tax method;
- C. If a Distribution as described in section 734 of the Code occurs or if the Economic Interest of a Member is Transferred as described in section 743 of the Code occurs, upon the written request of any Member, to elect to adjust the basis of the property of the Company pursuant to section 754 of the Code;
- D. To elect to amortize the organizational expenses of the Company and the start-up expenses of the Company under section 195 of the Code ratably over a period of Sixty months as permitted by section 709(b) of the Code; and
- E. Any other election that the Members deem appropriate and in the best interest of the Company. Neither the Company nor any Member may make an election for The Company to be excluded from the application of Subchapter K of Chapter 1 of Subtitle A of the Code or any similar provisions of this Agreement shall be interpreted to authorize any such election.

6.3 Tax Matters Partners. The Managing Member shall be the "tax matters partner" of the Company pursuant to section 6213(a) (7) of the Code. The Managing Member shall not resign unless the Members have designated a new Managing Member or new "Tax Matters Partner."

ARTICLE VII

TRANSFERABILITY

7.1 Restriction on Transfers. No Member may transfer all, or any portion of, or rights in, its Membership Interest. The Members agree that the restriction on the transfer of Interests hereunder are fair and reasonable in light of the Code requirements affecting the company's classification as a partnership for tax purposes.

7.2 Certain Transfers of No Effect. Any Transfer or attempted Transfer of an Interest in violation of the terms of this Agreement shall be null and void and have no effect. Each Transferor hereby indemnifies the Company and remaining Members against any and all loss, liabilities and damages, including without limitation, tax liabilities or loss of tax benefits, arising directly or indirectly out of any Transfer or purported Transfer in violation of this Agreement.

7.3 Transferee Not a Member.

(a) No person acquiring any Interest pursuant to this section other than a Member shall become a Member unless such Person is approved by the consent of two thirds in Interest of the Members. If no such approval is obtained, the Person's Interest shall only entitle such Person to receive the distributions of profits and losses to which the Member from whom or which such person received such Interest would be entitled. Any such approval may be subject to any terms and conditions imposed by the Members. Acquirers of such an interest shall be subject to the same restrictions on Transfer as are Interests held by Members. The provisions of this section shall not apply to

- (I) the Transfer of Interests to any other Member
- (II) the issuance of a new Membership interest by the Company directly to a new Member or
- (III) the Transfer of an Interest of a Bankrupt, dissolved or incompetent Member or to his or its successor in interest.

ARTICLE VIII

WITHDRAWAL OF A MEMBER

8.1 Right to withdraw. The Voluntary withdrawal of a Member shall be permitted with the written consent of two-thirds (2/3) of the Percentage Interests, excluding the withdrawing Member or upon six months prior notice to the Company.

8.2 Effect of withdrawal.

- (A) If the business of the Company is continued in accordance with the provisions of this Agreement after a Voluntary withdrawal, the withdrawn Member shall not be entitled to receive any amount in liquidation of his or its Membership Interest until the dissolution and winding up of the Company but shall, on and as of the date of withdrawal Event, become an assignee of the economic component of his or its former Membership Interest, without the right to participate in the management of the Company. After any Voluntary Withdrawal, the relative Percentage Interests of the remaining Members for voting purposes only shall be determined as though the withdrawn Member's Membership Interest had been repurchased.
- (B) If the business of the Company is continued in Accordance with the provisions of this Agreement after an Involuntary withdrawal, the withdrawn Member shall be entitled to have its interest repurchased [receive an amount in liquidation of its Membership Interest determined as set forth herein] as provided in this Agreement.
- (C) If the withdrawal Event results in the dissolution of The Company, the withdrawn Member shall be treated as any other Member in the liquidation of the Company's assets pursuant to this Agreement.
- (D) Notwithstanding anything contained in this section to the contrary, the Company may, if it deems it appropriate to do so, repurchase the Member's Membership Interest as provided in section.

8.3 Damages for Breach. If a Voluntary withdrawal Event of a Member occurs in breach of this Agreement, such withdrawn Member shall pay to the Company within ninety (90) days following

the date of the Withdrawal event the sum of *ten thousand dollars* (\$10,000) as liquidated damages for such breach, and not as a penalty, the parties acknowledging that such amount is reasonable in light of the amount of damages that such breach would cause this Company.

8.4 Repurchase of Interest.

- (A) if the business of the Company is continued in accordance with the provisions of this Agreement after a withdrawal Event, the Company may repurchase the withdrawn Member's Membership interest at a purchase price determined and payable as set forth below. The closing of the purchase price shall take place within ten (10) days after the parties have agreed on the Purchase Price or it has otherwise been determined in accordance herewith.
- (B) If the Company, acting by its Members, and the Withdrawn Member or its successor-in-interest, as the case may be, cannot agree upon the purchase price within thirty (30) days after the Company receives notice of the withdrawal Event, the Purchase Price shall be equal to the book value of the withdrawn Member's equity in the Company, computed in accordance with generally accepted accounting principles, as of the end of the Fiscal Year preceding the year in which the withdrawal Event occurred. Book value shall be determined by the company's accountants, and determination shall be binding.
- (C) Where the Company repurchases the Membership interest of a Member who has withdrawn in breach of this Agreement, the purchase price shall be reduced by any amount to be paid by the withdrawn Member as liquidated damages pursuant to this Agreement.

ARTICLE IX

DISSOLUTION AND TERMINATION

9.1 Events causing Dissolution and Winding Up. The Company shall be dissolved and wound up upon the first to occur of the following events:

- (A) the written consent of two-thirds in Interest of the Members;
- (B) a withdrawal Event with respect to any Member unless the business of the Company is continued as provided below. Notice of any withdrawal Event shall be given to each of

the other Members by the withdrawn member or his or its successor-in-interests, if any, within sixty (60) days after the date thereof;

- (C) the sale or disposition of all or substantially all of the business or assets of the Company; or
- (D) the entry of a decree of a judicial dissolution under section 702 of this Act.

9.2 Election to continue the Business of the Company.

Notwithstanding in the provisions of section 9.1 of this Agreement, an event specified in section 9.1B shall not result in the dissolution, winding-up and termination of the Company, if within ninety (90) days after the occurrence of any such event, a majority in capital interests of the remaining Members holding the right to receive more than fifty percent (50%) of the remaining Member's aggregate rights to receive Net Profits over the life of the Company elect in their sole discretion to continue the business of the Company. If the business is continued, any Member that does not vote to do so shall nevertheless continue as a Member.

If the Members elect to continue the business of the Company, the Company shall continue as a limited liability Company pursuant to the Act under this Agreement until a subsequent event causing a dissolution hereunder or under the Act, in which event an election as to whether or not to continue the business of the Company will again be required.

9.3 Winding Up of the Company. Upon the dissolution of the Company the Managing Member, or if there is no Managing Member such other person or persons designated by the Members, may, in the name of and on behalf of the Company, prosecute and defend suits, whether civil, criminal or administrative, and sell and close the Company's business, dispose of the Company's property, discharge the Company's liabilities and distribute to the members any remaining assets of the Company, all without affecting the liability of Members. Upon winding up of the Company, the assets shall be distributed as follows:

- (A) To creditors, including any Member who is a creditor, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities or distribution to Members under section 507 or section 509 of the Act; and

(B) to Members and former Members in satisfaction of liabilities for Distribution under section 507 and 509 of the Act; and

(C) to Members first for the return of their Capital contributions, to the extent not previously returned, and second respecting their Interests, in the proportions in which the members share in Distributions in accordance with this Agreement.

9.4 Termination. Upon completion of the Dissolution, winding up, liquidation and distribution of assets of the Company, the Company shall be deemed terminated.

9.5 Articles of Dissolution. Within ninety (90) days following the dissolution and commencement of winding up of the Company, or at any other time when there are no Members, Articles of Dissolution shall be prepared, executed and filed in accordance with the Act.

9.6 Nonrecourse to Other Members. Except as provided by applicable law or as expressly provided in this Agreement, upon dissolution, each Member shall receive a return of his or its Capital Account solely from the assets of the Company. If the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Account of any Member, such Member shall have no recourse against any other Member.

ARTICLE X

MANAGEMENT AND CONTROL AGREEMENT

10.1 Managing Member.

A. _____ shall be the managing member of the Company (the "Managing Member") and, in such capacity, shall manage the Company in accordance with this Agreement, the Managing Member is an agent of the Company's business, and the actions of the Managing Member taken in such capacity and in accordance with this Agreement shall bind the Company.

B. Management of the Company. The Managing Member shall have full, exclusive and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company and to take all

such actions as it deems necessary or appropriate to accomplish the purpose of the Company as set forth herein. The Managing Member shall be the sole Person with the power to bind the Company, except and to the extent that such power is expressly delegated to any other Person by the Managing Member, and such delegation shall not cause the Managing Member to cease to be a Member or the managing Member of the Company. [Unless otherwise expressly authorized by this Agreement, an act of the Managing Member that is not apparently for carrying on the Company's business in the ordinary course shall not bind the Company.]

10.2 Powers of the Managing Member. The Managing Member shall have the right, power and authority, in the management of the business and affairs of the Company, to do or cause to be done any and all acts, at the expense of the Company, deemed by the Managing Member to be necessary or appropriate to effectuate the business, purposes and objectives of the Company. Without limiting the generality of the foregoing, the Managing Member shall have the power and authority to:

- A. Make expenditures for the benefit of the Company and to incur obligations on behalf of the Company in order to implement the business and purposes of the Company;
- B. Employ or retain Persons, including any Member and any Affiliate of any Member, whether full-time or part-time, at The expense of the Company, to perform services in connection with the operation and management of the Company's business on such terms and for such compensation as the Managing Member shall determine;
- C. Negotiate, do any act, or enter into or execute and deliver, in furtherance of any or all of the purposes of the Company, any and all agreements, contracts, documents, certifications and other instruments of any nature deemed necessary, convenient or desirable in connection with the business and affairs of the Company, all of which may contain such terms, provisions and conditions as the Managing Member, in its sole and absolute discretion, shall deem appropriate;
- D. Sell, exchange, convey, trade, surrender, release, abandon or otherwise dispose of all or any part of the assets of the Company, at such price or amount, for cash, securities or other property, and upon such terms and conditions as the Managing Member, in the exercise of its sole and absolute discretion, deems advisable, appropriate or convenient and to be in the best interests of the Company;

- E. Use the funds of the Company, including the Capital Contributions and borrowings, if any, for any purposes and on any terms that the Managing Member, in the exercise of its sole and absolute discretion, determines to be appropriate, including without limitation, the costs of conducting the business and activities of the Company, the payment of its obligations and the repayment of its borrowings, if any;
- F. Borrow money and incur indebtedness required for the business and affairs of the Company and, if security is required therefore, to secure the repayment of such borrowings by executing mortgages or deeds of trust, pledging or otherwise encumbering or subjecting to security interests, all or any part of the assets of the Company; [make a guaranty or suretyship]; to obtain replacements of any loan, and to repay, in whole or in part, refinance, increase, modify, consolidate, or extend the maturity of any indebtedness created by such borrowings, or any such mortgage, deed of trust, pledge, encumbrance, or other security device, all upon such terms as the Managing Member deems, in its sole and absolute discretion, to be in the best interests of the Company;
- G. Acquire and enter into any contract of insurance which the Managing Member deems necessary or appropriate for the protection of the Company and the Managing Member or for the conservation of Company assets;
- H. Prepare or cause to be prepared reports, statements and other relevant information for dissemination to Member;
- I. Open accounts and deposit and maintain funds in the name of the Company in banks, trust companies or securities broker dealers and designate the signatories thereon; provided, however, that the Company's funds shall not be commingled with the funds of any other Person;
- J. Establish a record date with respect to all actions to be taken hereunder that require a record date be established, including with respect to allocations and distributions; and
- K. Bring and defend on behalf of the Company actions and proceedings at law or in equity before any court or governmental, administrative or other regulatory agency, body or commission or otherwise. The expression of any power or authority of the Managing Member in this Agreement shall not in any way limit or exclude any other power or authority which is not specifically or expressly set forth in the Agreement.

- 10.3 Compensation of Managing Member. The Managing Member will not receive or be entitled to any fees of any other compensation from the Company for the services enumerated herein or for any other services, other than the Management Fee. The Management Fee shall be payable to the Managing Member Quarterly within ten (10) days after the of each Fiscal Quarter commencing with the Fiscal Quarter ending. The Management Fee is intended by the Members to constitute a guaranteed payment, as such term is used in section 707(c) of the Code.
- 10.4 Reimbursement. The Company shall reimburse the Managing Member for all ordinary and necessary out-for-pocket expenses incurred by the Managing Member on behalf of the Company against receipts and documentation in accordance with the practices of the Company.
- 10.5 No Management by Other Member. Except as otherwise expressly provided herein, no Member other than the Managing Member shall take part in the day-to-day management, or the operation or control of the business and affairs of the Company. Except and only to the extent expressly delegated by the Managing Member, no Member or other Person other than the Managing Member shall be an agent of the Company or have any right, power or authority to transact any business in the name of the Company or to act for or on behalf of or to bind the Company.
- 10.6 Reliance by Third Parties. Any Person dealing with the Company or the Managing Member may rely upon a certificate signed by the Managing Member as to;
- a. the identity of the Managing Member or any other Member hereof;
 - b. the existence or non-existence of any fact or facts which constitute a condition precedent to acts by the Managing Member or in any other manager germane to the affairs of the Company;
 - c. the Persons who are authorized to execute and deliver any instrument or document of or on behalf of the Company; or
 - d. any act or failure to act by the Company or as to any other matter whatsoever involving the Company or any Member.

10.7 Fiduciary Duties.

(A) Conflicts. Unless otherwise expressly provided herein,

- (1) whenever a conflict of interest exists or arises relating to the Managing Member, or
- (2) whenever this Agreement or any other agreement contemplated herein or therein provides that the Managing Member shall act in a manner that is, or provides terms that are, fair and reasonable to the Company or any Member, the Managing Member shall resolve such conflict of interest, taking such action or providing such terms, considering in each case the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and applicable generally accepted accounting practices or principles. In the absence of bad faith by the Managing Member, the resolution, action or term so made, taken or provided by the Managing Member shall not constitute a breach of its Agreement or any other agreement contemplated herein or of any duty or obligation of the Managing Member or otherwise, (b) Discretion. Whenever in this Agreement the Managing Member is permitted or required to make a decision

(1.1) in its "discretion" or under a grant of similar authority or latitude, the Managing Member shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company or any other Person, or

(1.2) in its "good faith" or under another express standard, the Managing Member shall act under such express standard and shall not be subject to any other or different standard imposed by this Agreement or other applicable law.

10.8 Removal of Managing Member. The Members may, for "cause" (as hereinafter defined) by:

(a) affirmative vote of Members holding at least of the Company Interests, remove the Managing Member by delivery of a written instrument, effective immediately upon written instrument shall also name a substitute Managing Member to replace the Managing Member being removed. The substitute Managing Member shall be admitted as a managing member of the Company immediately prior to the withdrawal of the removed Managing Member and shall continue the business of the Company.

As used in this section 10.9 only, "cause" shall mean fraud, malfeasance and or breach of the Managing Members standard of care.

(b) A Managing Member removed pursuant to section 10.9

(I) shall sell, and the substitute Managing Member appointed pursuant to section 10.9

(II) shall purchase, within ninety (90) days after the effective date of removal, the entire Company Interest of the Managing Member being removed for a purchase price equal to the positive balance of the removed Managing Member's Capital equal to the positive balance of the removed Managing Member's Capital Account, as determined by the Company's independent certified public accountants, and the substitute Managing Member shall succeed to the entire LLC Interest and capital Account of the removed Managing Member and shall possess all rights with respect thereto. If the removed Managing Member shall have a negative balance in its Capital Account on the effective date of removal, the removed Managing Member shall be obligated to restore such Capital Account to zero immediately upon its removal, and the substitute Managing Member shall succeed to the entire LLC Interest of the removed Managing Member. A Managing Member removed pursuant to this section 10.9 shall not be liable for any obligations of the Company arising after the effective date of its removal.

ARTICLE XI

MEETINGS OF MEMBERS

11.1 Call. Meetings of the members may be called at any time by the Managing Member [or by Members holding at least 51% of the LLC Interests]. Notice of any meeting shall be given to all Members not less than ten (10) days nor more than thirty (30) days prior to the date of such meeting which notice may be waived by a Member either in writing or by his participation in the meeting. The Company shall not be required to hold an annual meeting of Members. Each Member may authorize any Person to act for him by proxy on all matters in which a Member is entitled to participate, including waiving notice of any meeting, or voting or participating in a meeting. Every proxy must be signed by the Member or his attorney-in-fact. Whenever a vote, consent or approval of Members is permitted or required under this Agreement, such vote, consent or approval may be given at a meeting of Member or by written consent.

11.2 Conduct. Each meeting of Members shall be conducted by the Managing Member or by such other Person who the Managing Member may designate. The Managing Member, in its sole discretion, shall establish all other provisions relating to meetings of Members, including notice of the time, place or purpose of any meeting at which any matter is to be voted on by any Members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote.

ARTICLE XII

GENERAL PROVISIONS

12.1 Notices. Any notice, demand or other communication required or permitted to be given pursuant to this Agreement shall have been sufficiently give for all purposes if

- A. delivered personally to the party or to an executive office of the party to whom such notice, demand or other communication is directed or
- B. sent by registered or certified mail, postage prepaid, addressed to the Member or the Company at his or its address set forth this Agreement. Except as otherwise provided in the Agreement, any such notice shall be deemed to be given three business days after the date on which it was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and set as set forth in this section.

12.2 Books of Accounts and Records.

(A) At the expense of the Company, the Company shall maintain at the company's principal place of business, records and accounts of all operations and expenditures of the Company, including, without limitation, the following records:

1. current list in alphabetical order of the name and mailing address of each holder of an interest in the Company, their facsimile numbers and with respect to the holders of interest in the Company, their respective shares of Net Profits and Net Losses, or information from which such shares can be derived.
2. a copy of the Articles of organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any such amendment has been executed;
3. copies of the Company's Federal, state and local income tax returns and reports, if any, for the three most recent Fiscal Years;
4. copies of this Agreement, as in effect from time to time;
5. any writings or other information with respect to each Member's obligation to contribute cash, property or services to the Company,

including, without limitation, the amount of cash so contributed and a description and statement of the value of the property or services so contributed or to be contributed;

6. any financial statements of the Company for the three most recent Fiscal Years;
7. minutes of every annual, special and court-ordered meeting of the Members; and
8. any written consents obtained from the Members for actions taken by the Members without a meeting.

(B) Upon ten (10) days advance notice, during normal business hours, any member or its representatives may, at its expense, inspect and copy the record described in this section for any purpose reasonable related to such Member's interest.

12.3 Amendments. This Agreement contains the entire Agreement among the Members with respect to the subject matter of this Agreement, and supersedes each course of conduct previously Pursued or acquiesced in, and each oral Agreement and Representation previously made, by the Members with respect thereto, whether or not relied or acted upon. No usage of trade, whether or not relied or acted upon, shall amend this Agreement or impair otherwise affect any Member's obligations pursuant to this Agreement or any rights and remedies of a Member pursuant to this Agreement. No amendment to this Agreement shall be effective unless made in writing duly executed by all Members and specifically referring to the provision of this Agreement being amended.

12.4 Headings. The headings in this Agreement are for convenience only and shall not be used to interpret or construe any provision of this Agreement.

12.5 Waiver. No failure of a Member to exercise, and no delay by a Member in exercising, any right or remedy under this Agreement shall constitute a waiver of such right or remedy. No waiver by a Member of any such right or remedy under this Agreement shall be effective unless made in writing duly executed by all members and specifically referring to each such right or remedy being waived.

12.6 Severability. Whenever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement shall be prohibited by or invalid under such law, it shall be deemed modified to conform to this minimum requirements of such law or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity.

12.7 Binding. This Agreement shall be binding upon and insure to the benefit of all Members, and each of the successor and assignees of the Members, except that right or obligation of a Member under this Agreement may be assigned by such member to another Person without first obtaining the written consent of all other Members.

12.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one of the same instrument.

12.9 Governing Law. This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York applicable to the agreements and fully performed therein, and specifically the Act.

IN WITNESS WHEREOF, those signing this Agreement below conclusively evidence their agreement to the terms and conditions of this Agreement by so signing this Agreement.

_____ ls
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