

**OPERATING AGREEMENT OF \_\_\_\_\_, LLC**

**AGREEMENT** dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
\_\_\_\_\_ (“Member”).

**WITNESSETH:**

**WHEREAS**, the Member has formed a limited liability company pursuant to and in accordance with the New York State Limited Liability Company Law, as amended from time to time (the “LLCL”); and

**WHEREAS**, the Member desires to set forth his agreement as to the business and management of the Company and his interests therein;

**NOW, THEREFORE**, in consideration of the contributions to be made as provided herein, the party hereby agrees as follows:

**1. Formation.**

1.01. **Name.** The name of the limited liability company (the “Company”) is \_\_\_\_\_, LLC or such other name as the Member(s) may hereafter select.

1.02. **Term.** The term of the Company shall commence \_\_\_\_\_ and shall be perpetual, until dissolved in accordance with the LLCL or this Agreement.

1.03. **Purpose.** The Company is formed for any lawful purpose.

1.04. **Members.** The name and the residence address of the Member is as follows:

<u>Name</u>	<u>Address</u>
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or such other address as Member may hereafter give to the Company and any other future Member.

1.05. **Principal Office.** The principal office of the Company shall be located at \_\_\_\_\_ . The Company shall have such other offices as determined by the Member(s).

**2. Management.**

2.01. **Management.** Management of the Company shall be vested in its Member(s).

2.02. **Decisions.** The Member(s) shall have sole authority to manage the Company and to make all decisions regarding any actions or undertakings of or by the Company, including, but not limited to, financing and bank transactions.

2.03. **Managers.** The number of Managers shall be equal to the number of Members, but not less than one and each Member shall also be a Manager. Each Manager shall perform such takes as may be assigned to him by the Members. The Managers shall be compensated for their services in acting as managers of the Company in amounts as determined by the Members. The Managers may retain other persons to assist the Managers in managing the Company.

2.04. **Execution of Documents.** Any instrument may be executed and delivered on behalf of the Company by a Member or, at the direction of a Member, by a Manager. All persons dealing with the Company may rely upon a certificate from a Member to the effect that he is acting as a Member or upon the basis of documents executed on behalf of the Company by a designated Manager.

### 3. **Capital Contributions.**

3.01. **Original Contributions.** The Member's original contribution to the capital of the company is as follows:

<u>Member</u>	<u>Amount/Property</u>
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3.02. **Additional Contributions.** No Member shall be required to make additional capital contributions to the Company. In the event that the Company requires additional capital, the Member(s) may contribute such amounts in the form of cash or other property having monetary value as determined by the Member(s), and such additional contributions do not have to be proportionate with their then capital in the Company. In lieu of additional capital contributions, the Member(s) may loan monies to the Company, which loans shall be subordinate to any loans to the Company from banks or other financial institutions and shall bear interest at the prime rate. Upon the approval of the Member(s), the Company also may obtain such capital from third parties who shall become additional Members.

3.03. **Capital Account.** A capital account shall be established for each Member (the "Capital Account") on the books of the Company, and shall be adjusted as provided herein. A Member's Capital Account shall be credited with such Member's original capital contribution, any additional capital contribution and any net profits and gain allocated to such Member, and shall be debited with any net losses and deductions allocated to such Member and the amount of any distributions made to him. No Member shall have the right to demand the payment of the balance of his Capital Account, except to the extent provided herein upon distribution, dissolution or withdrawal, nor to be paid interest on the monies in his Capital Account.

3.04. **Tax Allocation.** Notwithstanding any provision in this Agreement to the contrary, each Member's Capital Account shall be maintained and adjusted, and allocations, to the extent

required, shall be made, in accordance with the Internal Revenue Code of 1986, as amended (“the Code”), and this Agreement.

#### 4. **Allocation of Profits and Losses.**

4.01. **Profits.** Except as otherwise provided herein, the profits of the Company for each fiscal year or other period shall be allocated between the Members as follows:

- (i) First, equally to the Members until the negative balance, if any, in each Member’s Capital Account equals zero.
- (ii) Thereafter, equally to the Members.

4.02. **Losses.** Except as otherwise provided herein, the losses of the Company for each fiscal year or other period shall be allocated as follows:

- (i) First, equally to the Members until the positive balance, if any, in any Member’s Capital Account is reduced to zero;
- (ii) Thereafter, equally to the Members.

4.03. **Tax Reporting.** The Members are aware of the income tax consequences of the allocations made by Articles 3 and 4 and hereby agree, except as otherwise required by the Code, to be bound by the provisions of Articles 4 and 5 in reporting their shares of Company income and loss for income tax purposes.

5. **Distributions.** The Company may make distributions to the Member(s) at the times and in the aggregate amounts as determined by the Member(s). Such distributions shall be made in amounts to each of the Members proportionate to their respective Capital Accounts. No distribution shall be made to a Member while the Company has outstanding loans to any Members or if such distribution would not be permitted under the L.L.C.L.

6. **Meetings.** This section shall apply if the number of Members is more than one.

6.01. **Notice.** Meetings of Members may be called by any Member specifying the actions to be considered by the Members. The Company shall not be required to hold an annual meeting of members. At any meeting of the Members, all Members, represented in person or by proxy, shall constitute a quorum. At all meetings of Members, a Member may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. Such proxy shall be filed with the Company before or at the time of the meeting.

6.02. **Voting.** Any act of the Members, whether at a meeting, by written consent or otherwise, shall require the approval of all Members, except to the extent otherwise specifically provided for in this Agreement.

6.03. **Written Consent.** Any action required to be taken at a meeting of the Members, or any other action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Members entitled to vote with respect to the subject matter thereof.

## **7. Transfer of Interests.**

7.01. **Transfer Among Members.** Any Member may Transfer all or any portion of his Interest to another Member. Upon any Transfer pursuant to this Section, the Interests of the transferor Member and the transferee Member shall be adjusted.

7.02. **Right of First Refusal.** In the event any Member should desire to transfer his Interest or any portion thereof (the “Withdrawing Member”) to a non-Member (the “Offeror”), he shall first deliver to the other Member (the “Offeree Member”) a written notice in which the Withdrawing Member shall (i) state his intent to transfer any or all of his Equity Interest (the “Offered Interest”), (ii) state the price and terms of the best bona fide offer (the “Offer”) the Withdrawing Member has received for such Interest, including the identity of the Offeror, and (iii) grant the Offeree Member a twenty (20) day option (the “Option”) to purchase any or all of the Withdrawing Member’s Offered Interest on the same terms and conditions set forth in the Offer. If the Option is not exercised in full by the Offeree Member within the twenty (20) day period, the Withdrawing Member may transfer the Offered Interest (not acquired by the Offeree Member) only to the original Offeror, provided that the Offeree Member consents to such sale (such consent to be granted or denied in the Offeree Member’s sole and absolute discretion), the sale is on the same terms as those in the Offer and the Offeree becomes a party to this Agreement. At the discretion of the existing Members, the purchasing Offeror shall become an additional Member, and if the purchasing Offeror acquires the entire remaining Interest of the Withdrawing Member, the purchasing Offeror shall become a Member as to the Offered Interest. Any other offers received must undergo the same procedure set forth in this Agreement.

7.03. **Withdrawal of a Member.** In any event that any Member wishes to withdraw from the Company, he shall notify any other Member (the “Offeree Member”) in writing of such desire and shall offer to sell all of his Interest to the Offeree Member at a price and on such other terms as are specified in such notice. Within twenty (20) days of the date of receipt of such notice, the Offeree Member shall do one of the following: (i) notify the Withdrawing Member of the acceptance of the Withdrawing Member’s offer at the price and on the other terms specified or (ii) permit the withdrawal, and upon the permitted withdrawal the Withdrawing Member shall be entitled to receive an amount equal to his Capital Account (less any reasonable reserves for liabilities or contingencies) in exchange for his Interest for which he shall be a creditor of the Company, and payment of any money loaned by him to the Company pursuant to the terms of such loan; provided that unless the Offeree Member consents in writing to the withdrawal, such withdrawal shall be deemed a violation of this Agreement and the Company may recover damages from the Withdrawing Member for such breach and offset such damages against amounts otherwise payable to the Withdrawing Member.

8. **Admission of Additional Members.** One or more additional persons may be admitted as Members of the Company with the consent of all of the then existing Members, in addition to the right to admit additional Members pursuant to Subsections 3.02 and 7.02 hereof.

## **9. Liability.**

9.01. **Members.** 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.

9.02. **Exculpation.** A Member or Manager shall not be liable for any breach of duty in either such capacity, except that if a judgment or other final adjudication adverse to him establishes that his acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled or that with respect to a distribution to Members his acts were not performed in accordance with the LLCL.

## 10. **Dissolution.**

10.01. **Events of Dissolution.** The Company shall be dissolved upon the earliest to occur of the following:

- (i) the Members unanimously elect to dissolve the Company;
- (ii) the Company holds no interest in property located within the State of New York; or
- (iii) except as otherwise herein provided, the occurrence of any other event causing a Dissolution of the Company under the LLCL.

10.02. **Procedures of Dissolution.** Upon dissolution of the Company, the Managers or other person as is designated by the then remaining Members shall proceed to wind up the business and affairs of the Company in accordance with the terms of this Agreement and the requirements of the LLCL. A reasonable amount of time shall be allowed for the period of winding up. This Agreement shall remain in full force and effect during the period of winding up.

10.03. **Liquidating Dissolution.** In connection with the winding up of the Company, the assets of the Company shall be distributed as follows:

- (i) to creditors, including Members or former Members who are creditors, in satisfaction of loans or other liabilities of the Company;
- (ii) to establishing any reserves deemed reasonably necessary for any contingent or unforeseen liabilities of the Company; and
- (iii) thereafter to the Members, in accordance with their respective Capital Account Balances in accordance with Subsection 9.02 hereof.

## 11. **Miscellaneous.**

11.01. **Governing Law.** This Agreement shall be governed by, and construed under, the laws of the State of New York, all rights and remedies being governed by said laws.

11.02. **Entire Agreement.** This Agreement sets forth the entire agreement with respect to the subject matter herein, and cannot be amended, modified or terminated except by any agreement in writing executed by the party hereto.

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

11.04. **Notices.** All notices to be given to Members hereunder shall be in writing, sent by mail or personally delivered to the address set forth in Section 1 hereof or such other address as any Member may hereafter duly give to the Company and the other Members.

11.05. **Waiver.** No waiver by a Member of any 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.

11.06. **Tax Returns.** The Members shall cause to be prepared and filed all necessary Federal, State and local income tax returns for the Company. Each Member shall furnish Members all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

11.07. **Books of Accounts and Records.** At the expense of the Company, the records and accounts of all operations and expenditures of the Company, shall be kept and maintained by \_\_\_\_\_ . Upon the addition of another Member, the records and accounts are to be kept at the Company's principal place of business.

11.08. **Severability.** Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or lack of enforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement, or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

11.09. **Binding.** This Agreement shall be binding upon and inure to the benefit of all Members, and each of the successors and assignees of the Members, except that a right or obligation of a Member under this Agreement may not be assigned by such Member to another Person without first obtaining the written consent of all other Members.

**IN WITNESS WHEREOF**, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the day and year first above-written.

\_\_\_\_\_  
Printed Name: (Signature above)