

[New York LLC—Complex Operating Agreement with
Options for Various Situations]*

OPERATING AGREEMENT

OF {},

A NEW YORK LIMITED LIABILITY

COMPANY

Operating Agreement, dated as of {effective date -- may not be prior to filing of Articles of Organization}, by and between the Persons who have executed the signature page(s) hereof as Members {and the Persons who from time to time hereafter execute this Agreement as Members}.

WITNESSETH:

WHEREAS, the parties have formed a limited liability company (together with any successor limited liability company, the “Company”) under the New York Limited Liability Company Law (the “Act”) and upon the terms and conditions of this Agreement; and

WHEREAS, the Members wish to set forth their agreement as to how the business and affairs of the Company shall be managed and their rights and obligations with respect to the Company;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties hereby agree as follows:

ARTICLE I

Formation and Business of the Company

1.1 Formation. The Company was organized on {}, {}, in accordance with and pursuant to the Act. {Note that initial operating agreement should be executed within 90 days after filing of the Articles of Organization.}

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

1.3 Purpose of the Company. The purpose of the Company is to {conduct any lawful business or activity whatsoever, as permitted by applicable law and as determined from time to time by the {Members} {Managers}. 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.} {Alternate provision for specific real estate business:} {acquire, develop, manage, lease, finance, refinance, sell, exchange or otherwise dispose of or deal with interests in, the real estate {and improvements thereon} located at {}, and to do any and all other things necessary, customary, related or incidental to any of the foregoing.} {The Company shall not engage in any other business or activity without the consent of a Majority in Interest of the Members.}

1.4 Principal Office. The Company's principal place of business shall be located at {}, or such other place determined from time to time by the {Members} {Managers}. The Company may have such other business offices within or without the State of New York as determined from time to time by the {Members} {Managers}.

{1.5} Registered Agent. The name and address of the Company's registered agent in the State of New York is {}. The registered agent may be changed from time to time by the {Members} {Managers} {identify officer} upon the filing of the name and address of the new registered agent with the New York Secretary of State pursuant to the Act.}

{1.6} Term. The term of the Company shall commence on {the date hereof} and continue until {date}} {and shall be of unlimited duration}, unless the Company is earlier dissolved in accordance herewith and with the Act.

{1.7} Members. The names, addresses, facsimile numbers {, taxpayer identification numbers} {and Percentage Interests} of the Members are set forth on Exhibit A attached hereto, as amended from time to time.

ARTICLE II

Definitions

The following terms, as used in this Agreement, shall have the following meanings (unless otherwise expressly provided herein):

2.1 "Act" shall have the meaning set forth in the preamble of this Agreement.

2.2 "Affiliate" of a Person shall mean any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person, or an officer, director, partner or trustee of such Person. For purposes of this definition, "control" shall mean the right or ability to elect the majority of the directors of a corporation, to exercise more than fifty percent (50%) of the voting rights in the controlled entity or otherwise to direct the management or policies of the controlled entity.

2.3 "Agreement" shall mean this Operating Agreement, as originally executed and as amended from time to time in accordance herewith and with the Act.

{2.4} {"Annual Budget" shall have the meaning set forth in Section {5.21}.}

{2.5} {"Appraised Value" shall have the meaning set forth in Section {8.4(b)}.}

{2.6} “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.

{2.7} “Assignee” shall mean the holder of an Economic Interest who is not a Member.

{2.8} {“Assuming Member{s}” shall have the meaning set forth in Section {3.8}.}

{2.9} “Bankruptcy” of a Member shall mean (a) 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, (b) 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, (c) the Member’s application for, or consent to the appointment of, a trustee, receiver or custodian for its assets, (d) the Member’s making of a general assignment for the benefit of creditors or (e) the Member’s failure generally to pay its debts as such debts come due or admission in writing of its inability to pay its debts as they come due. 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 is entered by a court of competent jurisdiction and is not dismissed within {ninety (90)} days after its entry.

{2.10} {“Book Value” shall have the meaning set forth in Section {8.4(b)}. }

{2.11} “Capital Account” of an Interest Holder, as of any date, shall mean the account maintained for such Interest Holder pursuant to Section {3.4}, as adjusted through such date.

{2.12} “Capital Contribution” of, or attributed to, an Interest Holder shall mean the total contributions to the capital of the Company, whether in cash, property (net of liabilities) or services, made, performed or to be performed by, or attributed to, such Interest Holder {, to the extent actually performed}, valued on the date of contribution or commitment to contribute as set forth {herein} {in the Company’s books and records}.

{2.13} {“Capital Interest” of a Member, as of any date, shall be expressed as a percentage determined by dividing (a) the amount of the balance of the positive Capital Account associated with the Member’s Membership Interest {(whether or not such Member retains all of the Economic Interest related to such Membership Interest)} by (b) the aggregate balances of the Capital Accounts of all Members (or such class, classes or group of Members as may be entitled to vote on, consent to, or otherwise participate in, any decision or action) whose Capital Accounts have positive balances {(whether or not all such Members retain all of the Economic Interests related to such Membership Interests)}, as adjusted through such date in accordance herewith.}

{2.14} {“Capital Transaction” shall mean any transaction not in the ordinary course of the Company’s business, in respect of which the Company receives cash or other consideration (but not Capital Contributions), including, without limitation, proceeds from sales or exchanges not in the ordinary course, financings and refinancings, condemnations or insurance policies.}

{2.15} “Cash Available for Distribution,” as of any date, shall mean {, except as otherwise determined by the {Members} {Managers},} the excess of (a) all revenues received by

the Company from its operations and investments over (b) total current operating expenses and reasonable reserves for future operating expenses, including payments in respect of indebtedness of the Company, capital improvements and contingencies, as determined from time to time by the {Members} {Managers} {identify officer}. {Cash Available for Distribution shall not be reduced by noncash charges, including, without limitation, depreciation and amortization, and shall not include proceeds from Capital Transactions.}

{2.16} “Code” shall mean the Internal Revenue Code of 1986, as amended, in effect as of the date hereof and as amended from time to time hereafter.

{2.17} “Company” shall have the meaning set forth in the preamble to this Agreement.

{2.18} “Company Minimum Gain” shall mean the amount determined under Treas. Reg. Sections 1.704-2(i)(3) and 1.704-2(d), and shall be computed separately for each Interest Holder in a manner consistent with Code Section 704(b) and the Treasury Regulations thereunder.

{2.19} “Company Nonrecourse Deductions” shall mean the deductions of the Company determined under Treas. Reg. Section 1.704-2(c).

{2.20} “Controlled Subsidiary” shall have the meaning set forth in Section {5.3}.

{2.21} “Contributing Member” shall have the meaning set forth in Section {3.3(a)}.

{2.22} “Default Amount” shall have the meaning set forth in Section {3.3(a)}.

{2.23} “Defaulting Member” shall have the meaning set forth in Section {3.3(a)}.

{2.24} “Economic Interest” shall mean the right to share in the allocation of one or more of the Company’s allocable items, including, without limitation, Net Profits and Net Losses, and/or in distributions of the Company’s assets, in each case pursuant to this Agreement or the Act, but shall not include any Management Interest.

{2.25} “Fiscal Year” shall mean the Company’s accounting, tax and fiscal year, which shall be {the calendar year}.

{2.26} “Initial Capital Contribution” of a Member shall mean its initial contribution to the capital of the Company pursuant to this Agreement.

{2.27} “Interest” shall mean any of an Economic Interest, Management Interest and/or Membership Interest.

{2.28} “Interest Holder” shall mean a Member or Assignee, as applicable.

{2.29} “Involuntary Withdrawal” of a Member shall mean his or its withdrawal as a Member as a result of an event described in Section {2.57} {(a), (b), (c), (d), or (e)}.

{2.30} “Lending Members” shall have the meaning set forth in Section {3.3(b)}.

{2.31} Liquidator shall have the meaning set forth in Section {9.3(a)}.

{2.32} “Majority in Interest” shall mean the Members holding more than fifty percent (50%) of the aggregate {Capital Interests} {Percentage Interests} held by all Members (or such class, classes or group of Members as may be entitled to vote on, consent to, or otherwise participate in, any decision or action hereunder or under the Act).

{2.33} {“Manager” or “Managers” shall mean those charged with the management of the Company as set forth in Article V. {Specifically, “Manager” shall mean {}, or any other Person or Persons that succeed {him} {it} in that capacity.}}

{2.34} “Management Interest” of a Member shall mean his or its right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in, any decision or action of or by the Members hereunder or under the Act.

{2.35} “Member” shall mean each Person who (a) executes a counterpart of this Agreement as a Member as of the date hereof or (b) 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.

{2.36} “Membership Interest” shall mean a Member’s entire interest in the Company, including his or its Economic Interest (to the extent not Transferred) and Management Interest.

{2.37} {“Member-Manager” shall mean a Manager who is also a Member.}

{2.38} {“{Member} {Interest Holder} Nonrecourse Debt” shall mean nonrecourse debt of the Company under Treas. Reg. Section 1.704-2(b)(4).

{2.39} {“{Member} {Interest Holder} Nonrecourse Deductions” shall mean the losses, deductions and expenditures attributable to {Member} {Interest Holder} Nonrecourse Debt under Treas. Reg. Section 1.704-2(i)(2).

{2.40} “Negative Capital Account” shall mean a Capital Account with a balance less than zero and, where the context requires, the negative balance thereof, in each case as of the end of a Fiscal Year, after giving effect to the following:

(a) a credit for any amount required to be restored under Treas. Reg. Section 1.704-1(b)(2)(ii)(c), as well as any amounts in addition thereto pursuant to Treas. Reg. Sections 1.704-2(g)(1) and (i)(5), after taking into account any changes during such Fiscal Year in Company Minimum Gain and {Member} {Interest Holder} Nonrecourse Debt Minimum Gain; and

(b) a debit of the items described in Treas. Reg. Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

{2.41} “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, deductions {and credits} of the Company, respectively, in the aggregate or separately stated, as appropriate, determined in

accordance with generally accepted accounting principles consistently applied {, but not including any items that are specially allocated pursuant to Section {4.4}.}

{2.42} {"Offer" shall have the meaning set forth in Section {7.2(a)}.}

{2.43} {"Officer" shall mean any of the officers of the Company elected or designated pursuant to Section {5.18} {6.}}.

{2.44} {"Percentage Interest" of an Interest Holder shall mean his or its percentage share of the Net Profits, Net Losses, other regularly allocable items and distributions of the Company, {as set forth on Exhibit A attached hereto, as amended from time to time) {describe how otherwise determined}.}

{2.45} {"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.

{2.46} {"Prime Rate" shall mean the reference rate publicly announced by {bank} from time to time as its prime rate.

{2.47} {"Purchase Price" shall have the meaning set forth in Section {8.4(a)}.}

{2.48} {"Purchaser" shall have the meaning set forth in Section {7.2(a)}.}

{2.49} {"Regulatory Allocations" shall have the meaning set forth in Section {4.7}.}

{2.50} {"Special Contribution" shall have the meaning set forth in Section {3.3(a)}.}

{2.51} {"Transfer" shall mean any sale, assignment, transfer, gift, exchange, bequest or other disposition of 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}.

{2.52} {"Transferor" shall mean any {Member} {Interest Holder} which Transfers, or proposes to Transfer, an Interest.

{2.53} {"Treasury Regulations" or "Treas. Reg." shall mean regulations promulgated under the Code in effect as of the date hereof or hereafter amended or adopted.

{2.54} {"Two-thirds in Interest" shall mean the Members holding more than sixty-six and two-thirds percent (66-2/3 %) of the aggregate {Capital Interests} {Percentage Interests} held by all Members (or such class, classes or group of Members as may be entitled to vote on, consent to, or otherwise participate in, any decision or action hereunder or under the Act).

{2.55} {"Unreturned Capital Contribution" of a Member shall mean the amount, determined from time to time, equal to the excess of such Member's aggregate Capital

Contribution over the cumulative aggregate amount distributed to such Member under Section {4.1(b) or (d)}, as applicable.}

{2.56} “Voluntary Withdrawal” of a Member shall mean his or its withdrawal as a Member as a result of an event described in Section {2.57} {(f), (g) or (h)} .}

{2.57} “Withdrawal Event,” with respect to any Member, shall mean his or its (a) death, revocation of its certificate of incorporation, dissolution, expulsion as a Member or adjudication of incompetency, as applicable; (b) Bankruptcy; {(c) making a general assignment for the benefit of creditors; (d) failure to pay his or its debts as they become due, or admission of inability to pay his or its debts as they become due; (e) Interest becoming subject to the enforcement of rights of any of his or its creditors, unless such rights are released within {ninety (90)} days after he or it receives notice of the creditor’s action;} (f) voluntary retirement or withdrawal from the Company; {(g) except as otherwise provided herein, breach of any of his or its material obligations under this Agreement} or (h) any other event that terminates a Member’s membership in the Company or otherwise causes the dissolution of the Company under the Act.

ARTICLE III

Capital Contributions and Capital Accounts

3.1 Initial Capital Contributions. On the date hereof, {each Member shall contribute to the Company as its Initial Capital Contribution cash in the amount set forth in Exhibit A attached hereto.} {Alternate provision if some will contribute property:} {{identify Members or define as class} shall contribute to the Company the property described in Exhibit B attached hereto, having an agreed fair market value of \${} on the date hereof. Each Member contributing property as a Capital Contribution represents and warrants, as of the date of such Capital Contribution, that it has good and marketable title to such property, free and clear of all liens, claims, encumbrances, restrictions and other interests whatsoever {except as set forth in Exhibit B}. Each such Member shall bear all costs and expenses in connection with the Transfer of property to the Company.}

{3.2} {Additional Capital Contributions.} {Provision permitting additional capital calls:}

{(a) The {Members} {Managers} may, from time to time, in their discretion, determine that additional Capital Contributions from the Members, in proportion to their {Membership} {Percentage} Interests {, in an aggregate amount from all Members not to exceed \${}}, are necessary to enable the Company to conduct its business.

(b) Within {twenty (20)} days following their receipt of notice of a determination under Section {3.2(a)}, stating the total amount of additional capital sought, the Members’ shares thereof and the purpose for which such capital will be used, each Member shall contribute its share of the total amount required {in cash} to the Company. {Unless the Members unanimously consent, no Member shall be required to make any additional Capital Contribution

in excess of his or its share of the aggregate maximum additional Capital Contribution specified above.}}

{Alternate provision if Members may elect to make additional contributions:}

{3.2} {Additional Capital Contributions}. If and to the extent {unanimously} approved by the {Members} {Managers} from time to time, the Members may make additional Capital Contributions in such amounts as the {Members} {Managers} may determine. In such event, the Members shall have the opportunity, but not the obligation, to participate in such additional Capital Contributions pro rata in proportion to their Membership Interests, or as they may otherwise agree, and the Members' Membership Interests shall be recalculated after any such additional Capital Contributions as set forth in Section {3.3(c)}.

{Alternate provision if no additional capital calls permitted:}

{3.2} {No Additional Capital Contributions}. {Except as set forth in Section {3.1}}, no Member shall be required to make any Capital Contributions.}

{3.3} Defaults in Contribution. {The next two subsections constitute a simple default provision:}

{(a) If any Member (a "Defaulting Member") fails to make all or any portion of any Capital Contribution as required under Section {3.2}, such failure shall constitute a breach of this Agreement and the Defaulting Member shall be liable for any and all damages incurred by the other Members and the Company as a result thereof. Any fees or payments owed by the Company to the Defaulting Member, or to any Affiliate of the Defaulting Member, may be retained by the Company and applied towards the amount of the unpaid Capital Contribution of the Defaulting Member. In addition, any non-Defaulting Member shall have the option to make a Capital Contribution (a "Special Contribution") to the Company in any amount up to the amount of the Capital Contribution (the "Default Amount") not made by the Defaulting Member (a Member making such a contribution referred to as a "Contributing Member"). If more than one Member desires to make a Special Contribution, and the aggregate amount of the proposed Special Contributions exceeds the Default Amount, the Special Contributions shall be made, up to the Default Amount, by the Contributing Members in proportion to their relative {Capital} {Percentage} Interests.

{(b) Upon making {an additional Capital Contribution under Section {3.2}} {a Special Contribution}, the Membership Interest of each Member shall be recalculated, based on a fraction, the numerator of which shall be the total Capital Contribution of that Member, and the denominator of which shall be the aggregate Capital Contributions {actually made} by all Members, after increasing the Capital Contributions of each Contributing Member by the amount of the {additional Capital Contribution} {Special Contribution} made by it.}}

{The next four subsections are an alternate provision with ability to loan defaulted amounts:}

{(a) If a Member fails to pay any amount required to be paid under this Agreement (a "Defaulting Member"), the Company and the non-Defaulting Members may each pursue any and

all available legal or equitable remedies against the Defaulting Member, including, without limitation, actions to compel payment of the amount due. The amount in default (the “Default Amount”) shall bear interest from the date of default until payment in full at an annual rate equal to the lower of (i) the Prime Rate plus {five percent (5%)} or (ii) the maximum rate permitted by law, and shall include all reasonable fees, costs and expenses incurred by the Company in connection with the enforcement of its rights and the Defaulting Member’s obligations under this Agreement.

(b) In addition to the remedies described in Section {3.3(a)}, a non-Defaulting Member or Members may make a Capital Contribution to the Company on behalf of the Defaulting Member, pro rata in proportion to the {Capital} {Percentage} Interests represented by such Members (“Lending Members”), or as they may otherwise agree, up to, in the aggregate, the Default Amount. Such Capital Contributions shall be treated as a loan to the Defaulting Member, and shall bear interest from the date made until repayment in full at an annual rate equal to the lower of (i) the Prime Rate plus {five percent (5%)} or (ii) the maximum rate permitted by law.

(c) The Lending Members shall have a lien on, and security interest in, the Membership Interest of the Defaulting Member to secure repayment of any loan hereunder and interest accrued thereon. The Defaulting Member shall pay all fees, costs and expenses in connection with preparation and review of the instruments necessary to perfect such security interest and otherwise to enforce it.

(d) All distributions otherwise payable to the Defaulting Member while any principal or interest in respect of any loan hereunder remains unpaid shall be paid to the Lending Members in proportion to their respective shares of the total loan then outstanding, and applied first to the payment of interest on, and then to the principal of, each such loan. {A Defaulting Member shall not be entitled to vote on Company matters, except with respect to actions taken pursuant to Sections {7.4 and 9.2}, and, except with respect to such matters, its Interest shall be disregarded in determining whether the requisite consent has been obtained for other matters to be voted on, or consented to, hereunder.}}

{Additional or alternate provision for purchase of defaulting member’s interest:}

{{}} {In addition to the foregoing,} a non-Defaulting Member or Members may purchase, pro rata in proportion to their relative {Capital} {Percentage} Interests, or as they may otherwise agree, the Membership Interest of the Defaulting Member by giving {thirty (30)} days’ prior notice thereof to the Defaulting Member. The purchase price shall equal {ninety percent (90%)} of the {fair market value}} {Book Value} {Appraised Value} of the Defaulting Member’s Membership Interest {determined in accordance with Section 8.4}.

{Alternate membership interest recalculation provision, with penalty:}

{{}} {Upon any Special Contribution by a Contributing Member in accordance with Section {3.3(b)}, the Membership Interest of each Member shall be recalculated, with the Interest of the Defaulting Member reduced by a fraction, the numerator of which is the product of {2} multiplied by the excess of (i) the amount of the total Capital Contribution required to

have been made by the Defaulting Member through the date of recalculation, over (ii) the amount that the Defaulting Member has paid to the Company in respect thereof, and the denominator of which is the sum of all Capital Contributions made by all Members to such date. The amount by which the Defaulting Member's Interest is reduced shall be added to the Membership Interests of those Contributing Members that made up the Default Amount, in proportion to their respective shares of the total amount made up.}

{{}} {Each Defaulting Member hereby irrevocably constitutes and appoints, with full power of substitution, the non-Defaulting Members, and each of them, its true and lawful attorney-in-fact, with full power and authority in its name, place and stead, to execute and deliver any documents necessary or appropriate to effectuate the intent of this Section {3}. The appointment of the non-Defaulting Members as the Defaulting Member's attorneys-in-fact shall be deemed to be a power coupled with an interest and shall survive the incompetency, Bankruptcy or dissolution of the Member giving that power.}

{{}} {The remedies provided in this Section {3.3} shall be the sole and exclusive remedies for a Member's failure to comply with the requirements of Section {3.2}, all other remedies being hereby waived.}}

{3.4} Capital Accounts. {Simple provision:}

{(a)} The Company shall establish and maintain a Capital Account for each Interest Holder. The initial Capital Accounts shall be in amounts equal to the Members' Initial Capital Contributions. {Subject to Section {3.3(b)}, an} {An} Interest Holder's Capital Account shall be increased by the amount of any additional Capital Contributions made by, and the income and gain allocated to, such Interest Holder, and shall be decreased by any losses and deductions allocated, or distributions made, to such Interest Holder pursuant to the terms of this Agreement. It is the intention of the Members that Capital Accounts be maintained strictly in accordance with Treas. Reg. Section 1.704-1(b)(2)(iv).}

{Alternate description of Capital Account:}

{(a)} As of any date, an Interest Holder's Capital Account shall consist of (i) the sum of (A) the value of its Capital Contribution to such date, in whatever form, to the extent not in default, and (B) allocations to it of Net Profits (or items thereof), including income and gain exempt from tax, and any other items in the nature of income or gain that are specially allocated; minus (ii) the sum of (A) the amount of cash distributed to it by the Company, (B) the fair market value of property (net of liabilities) distributed to it by the Company, (C) allocations to it of Net Losses (or items thereof) and any other items in the nature of expenses or losses that are specially allocated, and (D) allocations to it of expenditures of the Company described in Code Section 705(a)(2)(B) or treated as such expenditures under the Treasury Regulations. For purposes of this Section {3.4(a)}, "Interest Holder" shall be deemed to include an Interest Holder's Transferor, if any. Capital Accounts are intended to be maintained hereunder in accordance with Code Section 704(b) and the Treasury Regulations thereunder.

{{{}} Notwithstanding anything contained herein to the contrary, the manner in which Capital Accounts are maintained shall be modified, if necessary, in the opinion of the

{Company's (accountants) {attorneys}} {Managers}, to comply with applicable law, provided that no such change shall materially alter the economic agreement between or among the Interest Holders.)

{{}} Except as otherwise required by the Act, and subject to Section{s} 3.1 {and 3.2}, no Interest Holder shall have any liability to restore all or any portion of any Negative Capital Account.}

{{}} {No Interest Holder shall be paid interest on the balance of its Capital Account from time to time.} {The balance of each Capital Account from time to time shall accrue interest at an annual rate equal to {the Prime Rate} and shall be paid {only upon the dissolution of the Company}. Interest payable hereunder shall be treated as a guaranteed payment pursuant to Code Section 707(c) and not a distribution of Company income or capital.}}

{3.5} Adjustments to Capital Accounts.

(a) The {Managers} {identify officer} may, in {his} {their} discretion, adjust the Capital Accounts to reflect a revaluation of the Company's assets upon the occurrence of any of the following events:

- (i) a Capital Contribution by a new or existing Member as consideration for the issuance of an Interest;
- (ii) the distribution of cash or other property by the Company to a retiring or continuing Member as consideration for the repurchase or redemption of an Interest; or
- (iii) events described in Treas. Reg. Section 1.704-1(b)(2)(iv)(f).

(b) Any adjustment pursuant to Section {3.5(a)} shall be based on the fair market value of Company property on the date of adjustment, and shall reflect the manner in which the unrealized income, gain, loss or deduction inherent in the property, not previously reflected in Capital Accounts, would be allocated among the Interest Holders if there were a taxable disposition of the property for fair market value on that date.

(c) If the book value of a Company asset differs from the adjusted tax basis of that asset, the Capital Accounts shall be adjusted in accordance with Treas. Reg. Section 1.704-1(b)(2)(iv)(g) for allocations of depreciation, depletion, amortization and gain or loss computed for book purposes rather than tax purposes.

(d) If there is any basis adjustment pursuant to an election under Code Section 754, the Capital Accounts shall be adjusted to the extent required by Treas. Reg. Section 1.704-1(b)(2)(iv)(m).

{3.6} Return of Capital Contributions. Except as otherwise provided in this Agreement, no Member shall have any right to demand or receive (a) any cash or property of the Company in

return of its Capital Contribution or in respect of its Membership Interest until the dissolution of the Company or (b) any distribution from the Company in any form other than cash.

{3.7} Transfer of Interest. If an Interest is Transferred as permitted by this Agreement, the transferee shall succeed to the Capital Account of the Transferor to the extent the Capital Account relates to the Transferred Interest in accordance with Treas. Reg. Section 1.704-1(b)(2)(iv)(I).

ARTICLE IV

Distributions and Allocations

4.1 Distributions. Cash Available for Distribution shall be distributed {quarterly} {annually} {at such time as may be determined by the {Members} {Managers}} to each Interest Holder in accordance with its {Percentage} {Capital} Interest.

{Alternate provisions for priority return:}

{4.1} Distributions. Cash Available for Distribution shall be applied {quarterly} {semi-annually} in the following manner:

(a) first, to {Member} in an amount equal to the excess of (i) an amount equal to a cumulative return of {ten percent (10%)} per annum on {Member's} Unreturned Capital Contribution, over (ii) the cumulative aggregate amount distributed to {Member} under this Section {4.1(a)} in prior years;

(b) then, to {Member identified in (a)} in an amount equal to the excess of {such Member's} aggregate Capital Contribution over the amount distributed to {such Member} under this Section {4.1(b)} in prior years;

(c) then, to {other Member} in an amount equal to the excess of (i) an amount equal to a cumulative return of {ten percent (10%)} per annum on {Member's} Unreturned Capital Contribution, over (ii) the cumulative aggregate amount distributed to {such Member's} under this Section {4.1(c)} in prior years;

(d) then, to {Member identified in (c)} in an amount equal to the excess of {such Member's} aggregate Capital Contribution over the amounts distributed to {such Member} under this Section {4.1(d)} in prior years; and

(e) then, to the Members in proportion to their {Percentage} {Capital} Interests.}

{If proceeds from Capital Transactions are to be distributed differently:}

{{}} Proceeds from Capital Transactions shall be applied as follows: first, to the payment of costs and expenses incurred in connection with the Capital Transaction, then to the payment of debts of the Company then due and outstanding, then to the Interest Holders {until their respective Unreturned Capital Contributions have been paid in full, with the balance to the

Interest Holders} {in accordance with their {Percentage} {Capital} Interests {other formulation}}.

{4.2} Limitation on Distributions. No distribution shall be declared and paid unless, after giving effect thereto, the assets of the Company exceed the Company's liabilities.

{4.3} Allocations of Net Profits and Net Losses. Except as otherwise required by the Code or as provided in this Agreement, the Net Profits and Net Losses for each Fiscal Year shall be determined in accordance with the accounting methods followed by the Company for federal income tax purposes and shall be allocated among the {Members} {Interest Holders} as follows:

(a) Net Losses shall be allocated:

- (i) first, to each Member, up to an amount of loss equal to the excess of (A) the aggregate amount of income allocated to such Member in prior years under Section {4.3(b)(v)}, over (B) the aggregate amount of loss allocated to such Member in prior years under this Section {4.3(a)(i)}, pro rata in proportion to the amount of such excess allocable to each Member;

{If priority provision above used:}

- {(ii) then, to {each Member receiving priority return identified above} in an amount equal to the excess of (A) the sum of (1) such Member's Capital Contribution, plus (2) the aggregate amount of income allocated in prior years to such Member under Section {4.3(b)(iv)}, over (B) the sum of (1) the cumulative aggregate amount distributed to such Member under Section {4.1(b)} or Section {4.1(d)}, as the case may be, plus (2) the aggregate amount of loss allocated in prior years to such Member under this Section {4.3(a)(ii)}, pro rata in proportion to the respective amounts of such excess;} and

- {(}) then, to the Members in proportion to their {Percentage} {Capital Interests.}

(b) Net Profits shall be allocated:

{If priority provision above used:}

- {(i) first, to {Member identified in Section {4.1(a)}}, up to an amount of income equal to the excess of (A) the cumulative aggregate amount distributed to {such Member} under Section {4.1(a)}, over (B) the cumulative aggregate amount of income allocated to {such Member} in prior years under this Section {4.3(b)(i)};

- (ii) then, to {Member identified in Section {4.1(c)}}, up to an amount of income equal to the excess of (A) the cumulative aggregate amount distributed to {such Member} under Section {4.1(c)}, over (B) the cumulative aggregate amount of income allocated to {such Member} in prior years under this Section {4.3(b)(ii)};
- (iii) then, to each Member, up to an amount of income equal to the excess of (A) the aggregate amount of loss allocated to such Member in prior years under Section {4.3(a)(iii)}, over (B) the aggregate amount of income allocated to such Member in prior years under this Section {4.3(b)(iii)}, pro rata in proportion to the respective amounts of such excess;
- (iv) then, to each Member, up to an amount of income equal to the excess of (A) the cumulative aggregate amount of loss allocated to such Member in prior years under Section {4.3(a)(ii)}, over (B) the cumulative aggregate amount of income allocated to such Member in prior years under this Section {4.3(b)(iv)}, pro rata in proportion to the respective amounts of such excess; and
- (v) then, to the Members in proportion to their {Percentage} {Capital} Interests.

{ } Notwithstanding any other provision of this Agreement to the contrary, for federal income tax purposes only, any item of income, deduction, gain or loss realized by the Company with respect to property contributed by a Member to the Company shall be allocated to the Members (or their Assignees) as required by Code Section 704(c) and such tax allocations shall not be reflected in the Capital Accounts.

{ } Consistent with Section {4.7} hereof, all allocations of income and loss for any Fiscal Year under Section {4.3} shall be made after the allocation of any item of gain under Section {4.5 or 4.6} that may arise in such year.

{4.4} Allocation of Gain or Loss on Liquidation. Net gain or loss realized by the Company upon the sale of all or substantially all of its assets or otherwise in connection with the dissolution and liquidation of the Company shall be allocated to the Members (after allocating to them (a) all other Net Profits or Net Losses for the then current Fiscal Year in accordance with Section {4.3} and (b) any items allocable under Section {4.5 or 4.6} (including items in connection with such sale)), in such amounts that, to the extent possible, the respective balances of their Capital Accounts shall equal the amounts to be distributed to them under Sections {9.3 and 4.3}. In the event such balances do not equal the amounts to be distributed as provided in Sections {9.3 and 4.3}, then, notwithstanding anything contained herein to the contrary, any shortfall or excess shall be allocated to the Members in proportion to their {Percentage} {Capital} Interests and all distributions shall be made in proportion to the positive Capital

Account balances after taking into account all allocations of Net Profits or Net Losses pursuant to this Section {4.4}.

{4.5} Qualified Income Offset. Notwithstanding anything in this Article IV to the contrary, in the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treas. Reg. Section 1.704-1(b)(2)(ii) (d)(4), (5) or (6) which cause a deficit or increase the deficit in the Member's Capital Account, items of Company gross income and gain shall be allocated to the Member in an amount and manner sufficient to eliminate the deficit in its Capital Account as quickly as possible; provided, however, that for this purpose, a Capital Account shall be increased by the Member's share of Company Minimum Gain as of the end of the Fiscal Year. It is the intention of the Members that this Section {4.5} be treated as a "qualified income offset" within the meaning of Treas. Reg. Section 1.704-1(b)(2)(ii)(d).

{4.6} Minimum Gain.

(a) Nonrecourse Deductions. Company Nonrecourse Deductions shall be allocated to the Capital Accounts as set forth in Section {4.3}. Member Nonrecourse Deductions shall be allocated to the Member that bears the economic risk of loss with respect to the debt to which such Member Nonrecourse Deduction is attributable.

(b) Distributions of Nonrecourse Financing Proceeds. If the Company makes a distribution to the Members that is allocable to the proceeds of any nonrecourse liability of the Company, or of any other entity in which the Company has an interest, such distribution shall be allocable to an increase in Company Minimum Gain as provided in Treas. Reg. Sections 1.704-2(h) and (i)(6).

(c) Company Minimum Gain. Each Member's share of Company Minimum Gain shall be determined as provided in Treas. Reg. Sections 1.704-2(g) and (i)(5).

(d) Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain for a Fiscal Year, items of Company income and gain shall be allocated to the Capital Accounts as provided in Treas. Reg. Section 1.704-2(f). Notwithstanding the foregoing, to the extent such net decrease is attributable to a Member Nonrecourse Debt, then any Member with a share of the minimum gain attributable to such debt shall be allocated items of income and gain as provided in Treas. Reg. Section 1.704-2(i)(4).

{4.7} Regulatory Allocations. The allocations set forth in Sections {4.5 and 4.6} (the "Regulatory Allocations") are intended to comply with certain requirements of Treas. Reg. Sections 1.704-1(b) and 1.704-2. The Regulatory Allocations might not be consistent with the manner in which the Members intend to divide Company distributions. Accordingly, {the Managers} {identify Manager or officer} {are} {is} hereby authorized to allocate other items of income, gain, loss, and deduction among the Members so as, to the extent possible, to prevent the Regulatory Allocations from causing the manner in which Company distributions will be divided between the Members pursuant to this Agreement to be different from the division intended by the Members. In general, the Members anticipate that this will be accomplished by specially allocating other items of Company income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of the Regulatory Allocations and such

other items to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not been required.

{4.8} Allocation of Nonrecourse Liabilities. For purposes of Treas. Reg. Section 1.752-3(a), the Members' interests in Net Profits shall be their respective {Percentage} {Capital} Interests.

{4.9} Distributions In Kind. All distributions of Company property in kind shall be valued at their fair market value as of the date of distribution, and the amount of any gain or loss that would be realized by the Company if it were to sell such property at such fair market value shall be allocated to the Members in accordance with Section {4.3}.

{4.10} Tax Returns and Other Elections. The {Managers} {identify officer or Member} shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all applicable laws of each jurisdiction in which the Company does business. Copies of all such returns, or summaries thereof, shall be furnished to the Members within a reasonable time after the end of each Fiscal Year. All elections permitted to be made by the Company under Federal or state laws shall be made by the {{Members} {Managers}, in their sole discretion} {, provided that the Managers shall make any tax election requested by the Members.}

{4.11} Mid-Year Transfers. If an Interest is Transferred during the Fiscal Year as permitted by this Agreement, unless otherwise agreed by the parties:

- (a) all Net Profits and Net Losses allocable to such Interest shall be allocated between the Transferor and the transferee in the ratio of the number of days in the year before and after the effective date of the Transfer, without reference to the dates during the year on which income was earned, losses were incurred or distributions were made, and distributions shall be made to the Interest Holders as determined on the date such distribution is declared; and
- (b) tax credits, if any, shall be allocated among the Interest Holders as determined at the time the property with respect to which the credit is claimed is placed in service.

ARTICLE V

Managers

5.1 Management and Authority.

(a) The property, business and affairs of the Company shall be managed by its Managers. Except where the Members' approval is expressly required by this Agreement or by the Act, the Managers shall have full authority, power and discretion to make all decisions with respect to the Company's business and to perform such other services and activities as set forth

in this Agreement. Every Manager shall be an agent of the Company for its business purposes and each Manager may bind the Company in the ordinary course, provided that the Managers have approved such action in accordance with this Agreement or the Act. Unless otherwise expressly authorized by this Agreement or the Members as set forth herein, the act of a Manager that is not apparently for carrying on the Company's business in the ordinary course shall not bind the Company.

(b) Except as otherwise expressly provided in this Agreement or the Act, the Members shall have no right to control or manage, nor shall they take any part in the control or management of, the property, business or affairs of the Company, but they may exercise the rights and powers of Members under this Agreement, including, without limitation, the right to approve certain matters as provided herein.

5.2 Number, Tenure and Qualifications. The Company shall initially have {} {Class {} and {} Class {} } Manager{s} who shall be elected by the {Class {} and Class {} } Members {, respectively,} in accordance with Article VI. The number of Managers {in each class} shall be fixed from time to time by the Members entitled to vote thereon, but in no event shall there be fewer than {one} Manager {in each class}. Each Manager shall serve until {the next annual meeting of Members or until} its successor shall have been elected and qualified {, provided that each Member-Manager shall serve until a Withdrawal Event occurs with respect thereto}. {Managers need not be individuals, residents of the State of New York or Members.} {Managers shall be individuals at least {21} years of age.} {Each Manager shall be a Member or an Affiliate of a Member, and shall automatically cease to be a Manager if it ceases to be a Member or an Affiliate of a Member.} {The {Members} {Managers} may from time to time create or designate additional classes of Managers having such relative rights, powers, duties, preferences and limitations as the {Members} {Managers} may determine, subject to the limitations set forth in this Agreement {, provided that the Members shall elect Managers to fill any vacancies created thereby.}}

5.3 Certain Powers of Managers. Without limiting the generality of Section {5.1}, but subject to Sections {5.4, 5.5, 5.6 and 5.16}, the Managers shall have the power and authority, on behalf of the Company and any other entity controlled by the Company (a "Controlled Subsidiary"), to:

(a) acquire property in the ordinary course of the Company's business from any Person (including Members, Managers or Affiliates of any thereof);

(b) purchase life, liability and other insurance to protect the Company's property and business;

(c) establish bank accounts in the name of the Company and establish the identity of all signatories entitled to draw against such accounts for the benefit of the Company;

(d) employ, and fix the terms of employment and termination of employment of, employees of the Company (including Members or Affiliates of Members or Managers), and accountants, legal counsel and consultants for the Company (but not including Managers in their capacity as such);

(e) invest Company funds in time deposits, short-term governmental obligations, commercial paper or other similar investments or in any other capital asset or investment in the ordinary course;

(f) execute on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, {documents providing for the acquisition or disposition of the Company's property,} assignments, bills of sale, leases, partnership agreements, and any other instruments or documents necessary, in the opinion of the Managers, to the business of the Company and relating to transactions that have been approved in accordance with this Agreement;

(g) borrow money for the Company in the ordinary course, on a secured or unsecured basis, from banks or any other Person (including Members, Managers or Affiliates of any thereof);

(h) enter into any and all other agreements on behalf of the Company with any other Person (including Members, Managers or Affiliates of any thereof), for any purpose in the ordinary course, in such forms as the Managers may approve;

(i) institute, prosecute and defend legal, administrative or other suits or proceedings in the Company's name;

(j) establish pension, benefit and incentive plans for any or all current or former Members, Managers, employees, and/or agents of the Company, on such terms and conditions as the Managers may approve, and make payments pursuant thereto; and

(k) do and perform any and all other lawful acts as may be necessary or appropriate to conduct the Company's business.

{Alternate provisions might distinguish between the areas of responsibility or specify differing terms of service and/or differing duties of different classes of Managers, if any.}

{5.4} {Decisions Requiring Approval of Members}. The approval of the Members entitled to vote thereon shall be necessary to authorize any of the following acts or transactions by the Managers on behalf of the Company or any Controlled Subsidiary:

(a) the purchase, construction or other acquisition of real property {, or the acquisition of any {significant} equity interest in {another Person} {that would be, after giving effect to such acquisition, a Controlled Subsidiary}};

(b) the purchase, construction or other acquisition of any capital asset or investment, the purchase price or value of which will exceed {\$100,000}, {and which is not specifically described in Section {5.3(a)}} {, including the repurchase of an Interest under Section {8.4}};

(c) the sale, exchange or other disposition of any real property, capital asset or investment not specifically described in Section {5.3(e)};

(d) {other than in the ordinary course,} the entry into any agreement or series of related agreements, including any agreement to borrow money, that, either individually or collectively, (i) creates a monetary obligation greater than {\$100,000}; (ii) grants a mortgage on, a security interest in, a pledge or otherwise encumbers, any material asset of the Company or a Controlled Subsidiary or (iii) has a term in excess of twelve months;

(e) {the fixing of the terms of employment and termination of employment of any Manager, to the extent such terms are not governed by this Agreement};

(f) any assignment for the benefit of creditors of the Company or a Controlled Subsidiary, the filing of a voluntary petition in bankruptcy, or the consent to the appointment of a receiver for the Company or a Controlled Subsidiary;

(g) the issuance of a Membership Interest by the Company to any Person {or the admission of any Assignee as a Member}; and

{(h) any other transaction not in the ordinary course and not otherwise requiring approval under Section {5.5}.}}

{5.5} Decisions Requiring {Unanimous Approval} {Vote of Two-thirds in Interest} of Members. The {unanimous approval} {approval of Two-thirds in Interest} of the Members entitled to vote thereon shall be necessary to authorize any of the following acts or transactions by the Managers on behalf of the Company or any Controlled Subsidiary:

(a) any act that is unrelated to the purpose of the Company or the Controlled Subsidiary {or that otherwise contravenes any provision of this Agreement};

(b) the payment (or causing any Controlled Subsidiary to pay) to any Member or Manager or any Affiliate of a Member or Manager any commissions, fees or remuneration, other than reasonable compensation for services rendered, unless expressly permitted under the terms of this Agreement;

(c) the loan of Company funds to, or the guaranty of any obligation or liability of, any Member, Manager or any Affiliate of any thereof, or the grant of a security interest in any assets of the Company or of any Controlled Subsidiary as collateral for any such loan;

(d) the sale, exchange or other disposition of all or substantially all of the Company's or a Controlled Subsidiary's assets, whether in a single transaction or series of related transactions {, or the merger or consolidation of the Company with or into another Person};

{(e) the adoption of any Annual Budget, as described in Section {5.21};} and

(f) the amendment of the Articles of Organization or this Agreement in any respect.

{5.6} Liability for Certain Acts. The Managers shall perform their duties in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances. A Manager who so performs his or its duties shall not have any liability by reason of being or having been a Manager. {A Manager shall not be liable to the Company or

to any Member for any loss or damage unless a judgment or other final adjudication adverse to the Manager establishes that such loss or damage was the result of fraud, {gross} negligence, willful misconduct, bad faith or a wrongful taking by the Manager.}

{Alternate or additional provision:}

{5.}} {Duty of Loyalty. In addition to its duties under {this Agreement and} the Act, each Manager shall:

(a) account to the Company, and hold as its trustee, any property, profit or benefit derived in the conduct or winding up of the Company's business or from the use of Company property, including the appropriation of a Company opportunity;

(b) refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company {unless the Members consent thereto}; and

(c) refrain from competing with the Company {as set forth in Section {5.8(b)}} in the conduct of the Company's business {unless the Members consent thereto}.

{Alternate or additional provision:}

{5.}} {Duty of Good Faith. In addition to its duties under {this Agreement and} the Act, each Manager shall be liable to the Company and the Members for mistakes of fact or judgment, and any act or omission in connection with the conduct of the Company's business, if (a) a judgment or other final adjudication adverse to the Manager establishes that the mistake, act or omission was the result of fraud, bad faith, {gross} negligence, willful misconduct or a wrongful taking by the Manager and (b) the mistake, act or omission has caused or resulted in loss or damage to the Company or its Members. {No Manager shall be responsible to any Member for any loss of its investment, unless such loss is the result of the conduct set forth above.}}

{Alternate provision if liability is to be eliminated as permitted by the Act:}

{5.}} {Limitation of Liability. Notwithstanding anything contained herein to the contrary, to the fullest extent permitted by applicable law from time to time, a Manager will have no liability to the Company or any Member by reason of being or having been a Manager, provided that this Section {5.}} shall not affect such Manager's liability:

(a) if a judgment or other final adjudication adverse to the Manager establishes that (i) its acts or omissions were in bad faith or involved intentional misconduct, (ii) it gained financial or other advantages to which it was not entitled, or (iii) it did not perform its duties as required under the Act with respect to a distribution made in violation of the Act;

(b) for any act or omission prior to the adoption of this Section {5.}}; or

(c) for its failure to perform its duties under this Agreement.}

{5.7} Reliance on Information. In performing its duties, a Manager shall be entitled to rely on information, opinions, reports or statements, including financial statements, in each case prepared or presented by:

(a) one or more agents or employees of the Company;

(b) counsel, public accountants or other persons, as to matters that the Manager reasonably believes to be within their respective professional or expert competence; or

{(c) a class of Managers of which such Manager is not a member, and which other class such Manager believes to merit confidence, as to matters within the designated authority of such other class, as long as the Manager relies thereon in good faith and has no knowledge that would cause such reliance to be unwarranted.}

{5.8} No Exclusive Duty {; Non-Competition}.

(a) {Subject to Section {5.8(b)},} the Managers may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of the Managers or in any income or revenues derived therefrom.

{Additional provision if non-competition required:}

{(b) Notwithstanding anything contained herein to the contrary, no Manager or any of its Affiliates shall, during the term of the Company {(as it may be extended in accordance with this Agreement)}, anywhere in {Canada, the United States or elsewhere in the world} (or for such smaller area as may be determined by a court of competent jurisdiction to be a reasonable limitation on such Persons' competitive activity), directly or indirectly, (i) engage in any activity competitive with the Company's business as conducted at any time during the term of the Company; for or on behalf of itself or any other Person engaged in a line of business which competes or has competed with the Company; (ii) solicit or attempt to solicit business of any customers of the Company for products or services the same or similar to those offered, sold or produced at any time by the Company; (iii) otherwise divert or attempt to divert from the Company any business whatsoever; (iv) solicit or attempt to solicit for any business endeavor any employee or prior employee of the Company; or (v) interfere with any business relationship between the Company and any other Person.

(c) At all times after the date hereof, no Manager or any Affiliate of any Manager shall disclose or use any confidential information of or with respect to the Company or its business, provided, that such obligation shall not apply to any information (i) to the extent that it legally is or becomes part of public or industry knowledge from authorized sources other than a Manager or any of its Affiliates, or (ii) which the Manager or its Affiliate is required by law to disclose (but only to the extent required to be so disclosed).

(d) Because the Company and the Members do not have an adequate remedy at law to protect the Company's business from any breach of the obligations in this Section {5.8}, each of

them shall be entitled to injunctive relief, in addition to such other remedies and relief that would, in such event, be available to it or them.}

{5.9} Execution of Documents.

(a) Except as otherwise determined by the Managers or the Members or as set forth herein or in the Act, any document or instrument may be executed and delivered on behalf of the Company by any Manager, including, without limitation, any deed, mortgage, note or other evidence of indebtedness, lease, security agreement, financing statement, contract of sale or other instrument purporting to convey or encumber, in whole or in part, any or all of the assets of the Company at any time held in its name, or any compromise or settlement with respect to accounts receivable or claims of the Company; and, subject to the authorization requirements set forth herein or in the Act, no other signature shall be required for any such instrument to bind the Company.

(b) Any third Person dealing with the Company, its Managers or Members may rely upon a certificate signed by a Manager as to (i) the identity of the Members or Managers, (ii) acts by the Members or Managers, (iii) any act or failure to act by the Company, or (iv) any other matter involving the Company or any Member.

{5.10} Powers of Managers in Bankruptcy. Subject to Sections {5.4, 5.5, 5.6 and 5.16}, the Managers {and each of them} shall have the power and authority, on behalf of the Company and any Controlled Subsidiary, to:(a) represent the Company or a Controlled Subsidiary in any Bankruptcy or insolvency proceedings to which it is a party, in whatever capacity;

(b) determine whether the Company or a Controlled Subsidiary should file any petition under the United States Bankruptcy Code or other applicable insolvency law; and

(c) execute and deliver, in the name of the Company or otherwise, any and all documents and instruments, including, without limitation, petitions and requests for relief, necessary or desirable in connection with actions under Section {5.10 (a) or (b)}, as determined by the Managers.

{5.11 } Resignation or Removal.

(a) Any Manager may resign at any time by giving notice to the Members, effective upon receipt thereof or at such later time specified therein. Unless otherwise specified in the notice, acceptance of a resignation shall not be necessary to make it effective. The resignation of a Member-Manager shall not affect its rights as a Member {and shall not constitute a Withdrawal Event}.

(b) At a meeting of Members called expressly for that purpose, any or all Managers may be removed at any time {, with or without cause,} by vote of {Two-thirds in Interest of} the Members entitled to vote for the election of such Manager{s}. The removal of a Member-Manager shall not affect its rights as a Member {and shall not constitute a Withdrawal Event}. {In no event shall any Member-Manager be removed, other than for good cause.} {All Managers shall be automatically removed, without any required vote of the Members, as of the

end of {specify Fiscal Year} if distributions to the Members since the date hereof have not, in the aggregate, exceeded {\${} } {specify formula}.

{5.12} Meetings of Managers.

(a) The Managers shall meet for the purposes of organization {, the election of officers} and the transaction of other business as soon as practicable after each annual meeting of the Members, on the same day and at the same place where such annual meeting is held.

(b) In addition to the annual meetings required by Section {5.12(a)}, regular {monthly} {quarterly} meetings of the Managers shall be held at such times and places within or without the State of New York as the Managers may from time to time determine.

(c) Special meetings of the Managers may be called at any time by any {two} Manager{s} and shall be held at such times and places within or without the State of New York as the Managers may from time to time determine.

(d) Notice of the time and place of each special meeting of the Managers, and of the first regular meeting under Section {5.12(b)}, shall be delivered to each Manager, either personally (including by courier) or by telephone, telegraph or facsimile, at least twenty-four (24) hours before the time at which such meeting is to be held, or shall be mailed to each Manager by first-class mail, postage prepaid, addressed to it at its mailing address set forth in {Exhibit A attached hereto} {the records of the Company}, at least three days before the day on which such meeting is to be held. Notice of the annual meeting or other regular meetings of the Managers need not be given unless such meeting is held at a time or place other than that set forth in Section {5.12(a)} or in the initial notice of such regular meeting, in which case notice thereof shall be given as set forth herein. Notice of a meeting need not be given to any Manager who, either before or after the meeting, executes a waiver of notice, or who attends such meeting without objecting, at its beginning, to the transaction of any business because the meeting is not lawfully called or convened.

(e) Except as otherwise provided in this Agreement, a {majority in number} of {each class of} Managers entitled to vote on, or take action with respect to, any matter, present in person at any meeting of Managers, shall constitute a quorum for the transaction of business at such meeting. In the absence of a quorum, a majority in number of the Managers present may adjourn any meeting to another time and place, or such meeting, unless it is the annual meeting of the Managers, need not be held. At any adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting as originally called may be transacted.

(f) Except as otherwise expressly required by the Act, if a quorum is present, the affirmative vote of a {majority in number} of {each class of} Managers present at any meeting and entitled to vote on, or take action with respect to, any matter shall be the act of the Managers.

{5.13} Action without Meeting. Any action required or permitted to be taken at any meeting of Managers may be taken without a meeting, without prior notice and without a vote, if {all Managers entitled to vote on any matter} {the number of Managers sufficient to authorize such action at a meeting at which all Managers entitled to vote thereon were present and voted}

consent thereto in writing, and such consents are filed with the minutes of proceedings of the Managers.

{5.14} Participation in Meetings by Telephone and Other Equipment. Any one or more Managers may participate in a meeting by conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

{5.15} Vacancies.

(a) Except as otherwise provided in this Agreement, any vacancy occurring for any reason among the Managers, whether resulting from an increase in the number thereof (but not the creation of new classes of Managers) or the death, resignation or removal of one or more Managers or otherwise, may be filled by vote of a majority of the remaining Managers then in office, provided that, if there are no remaining Managers, the vacancy(ies) shall be filled by vote of the Members.

(b) A Manager elected to fill a vacancy shall serve for the unexpired term of its predecessor and until its successor shall be elected and qualify, or until the Manager's earlier death, dissolution, resignation or removal.

(c) A Manager chosen by the other Managers to fill a position resulting from an increase in the number of Managers (or the creation of new classes of Managers) shall serve until the next annual meeting of Members and until its successor shall be elected and qualify, or until the Manager's earlier death, dissolution, resignation or removal, in each case in accordance with this Agreement.

{5.16} {Interested Managers.}

{(a) Notwithstanding anything contained in this Agreement to the contrary, a contract or other transaction between the Company and a Manager, an Affiliate of a Manager or a Person in which a Manager has a substantial financial interest shall not be void or voidable for such reason alone or because such Manager was present at the meeting approving such contract or transaction and its vote counted for such purpose, if the material facts with respect to the Manager's interest in such contract or transaction are disclosed in good faith or known to:

- (i) the other Managers entitled to vote thereon, and such other Managers approve the contract or transaction by a vote sufficient for such purpose without counting the vote of the interested Manager, or, if the vote of the disinterested Managers is insufficient for approval, by unanimous vote of the disinterested Managers; or
- (ii) the Members entitled to vote thereon, and the Members approve the contract or transaction.

(b) If the requirements of Section {5.16(a)} are not met, the Company may avoid a contract or transaction unless the parties thereto establish that it was fair and reasonable to the Company at the time of its approval.}

{5.17} Compensation and Expenses. The compensation of the Managers shall be fixed from time to time by the Members. No Member-Manager shall be prevented from receiving compensation for the performance of his duties as a Manager because it is a Member.

{5.18} Delegation to Agents and Officers. The Managers may delegate functions relating to the day-to-day operations of the Company to such officers, agents, consultants or employees as {they} {the Members} may from time to time designate. Such officers, agents, consultants and employees {need not be Members or Managers, and} shall have such duties, powers, responsibilities and authority as may from time to time be prescribed by the {Managers} {Members}, and may be removed at any time, with or without cause, by the {Managers} {or} {Members}.

{5.19} Reports. In addition to the tax returns, or summaries thereof, required to be provided under Section {4.11}, the Managers shall furnish to the Members:

(a) within {twenty (20)} days after the end of each calendar {month} {quarter} during the term of the Company, reports of operations of the Company for the {month} {quarter} and year-to-date then ended, which may be reviewed at the request of the Members by the Company's independent accountants, {and which shall compare the results for such period with the Annual Budget for that period and give explanations of any significant variances therein}; and

(b) within {sixty (60)} days after the end of each Fiscal Year during the term of the Company, an annual report containing (i) a balance sheet as of the end of such Fiscal Year, statements of income, Members' equity, and changes in financial position, and a cash flow statement, on a Federal income tax basis, and (ii) a report of distributions to each Member for the period covered by the report. {{If requested by any Member,} the Managers shall furnish the Company and the Members with a report, certified by the Company's independent accountants, containing the information described in the preceding sentence.}

{5.20} Other Duties of Managers. In addition to their other duties set forth herein, the Managers:

(a) shall determine, from time to time, the method of accounting and the independent accountants for the Company;

(b) may make, on behalf of the Company, the election permitted by Code Section 754 with respect to adjustments to the basis of Company property;

(c) shall, promptly following receipt thereof, give notice to the Members of any proposed audit or adjustments of any Company tax returns; and

(d) shall designate a Member-Manager to act as the "tax matters partner" for purposes of the Code.

{5.21} Annual Budget. Not less than {ninety (90)} days before the end of each Fiscal Year during the term of the Company, the Managers shall furnish to the Members for their approval {in accordance with Section {5.5}}, a budget in reasonable detail for the following Fiscal Year (the "Annual Budget"). If the Annual Budget has not been approved by the beginning of the next Fiscal Year, the Managers shall operate the Company on the basis of the Annual Budget for the prior Fiscal Year until a new Annual Budget has been adopted.}

ARTICLE VI

Rights and Obligations of Members; Meetings

6.1 Liability for Company Debt. No Member will 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. {Additional provision if all or certain Members will guarantee certain Company obligations:} {Notwithstanding anything contained herein to the contrary, {to the extent required by any lender to the Company,} {each Member} {identify Members} shall personally guarantee its share, based on such Members' relative {Capital} {Percentage} Interests, of the Company's obligations under or arising from {specify one or more debts or obligations} in such form as may reasonably be requested by the {lender or obligee}.}

6.2 Rights of Approval. The Members will {elect the Managers {annually}} in accordance with this Agreement, but will {have {only}} such {other} rights with respect to the management of the property, business and affairs of the Company, and such other powers, as are specified in this Agreement or under the Act.

{Alternate provision if Members are to manage:}

{6.2} Management by Members. {Except as otherwise provided in this Agreement,} the property, business and affairs of the Company will be managed by the Members, who will have full authority, power and discretion to make all decisions with respect to the Company's business, perform any and all other acts customary or incident to such management, and perform such other services and activities set forth in this Agreement in accordance herewith and with the Act. {Except as otherwise set forth in this Agreement or determined by the Members, each Member shall have authority to bind the Company with respect to any such act, provided that the Members have approved it in accordance herewith or with the Act.}}

{Additional provision if Members delegate authority to others:}

{6.}} Officers and Agents. The Members may from time to time designate such officers and agents as they may deem necessary to carry out the day-to-day operations of the Company. Such officers and agents {need not be Members, and} shall have such duties, powers, responsibilities and authority as may from time to time be prescribed by the Members, and may be removed at any time, with or without cause, by the Members.}

{6.3} Liability for Wrongful Distributions. A Member who receives a distribution from the Company which the Member knows to be in violation of this Agreement or the Act shall be

liable to the Company for the amount of such distribution for a period of three years after it was made.

{6.4} Dealings with the Company; Other Business Activity. Subject to the requirements of this Agreement, any Member or any Affiliate of a Member may make loans to, borrow from, and transact such other business with, the Company as may be approved by the Members or Managers in accordance with this Agreement. {Nothing contained in this Agreement shall be deemed to restrict or limit in any way any right of any Member, or any Affiliate of any Member, to pursue, conduct or participate in, directly or indirectly, any other business or activity whatsoever, including, without limitation, any business that competes with the Company's business from time to time.}

{6.5} Meetings of Members.

(a) The Members will meet annually for the purpose of transacting such business as may come before the meeting {, including, without limitation, the election of Managers,} on {the first Tuesday in March} at the principal office of the Company, or at such other time or place within or without the State of New York as shall be determined by the {Managers} {Members}.

{(b) In addition to the annual meetings required by Section {6.5(a)}, regular {monthly} {quarterly} meetings of the Members will be held at such times and places within or without the State of New York as the {Managers} {Members} may from time to time determine.}

(c) Special meetings of the Members may be called by any {{two} Manager{s} or by any} {Member or Members holding at least {ten per cent (10%)} of all {Capital} {Percentage} Interests}, for any purpose or purposes, unless otherwise prescribed by the Act, and will be held at such times and places within or without the State of New York as {the Persons calling such meeting} {Members} {Managers} may from time to time determine.

(d) Notice of the time, place and purpose or purposes of each meeting of the Members and of the first regular meeting under Section {6.5(b)} shall be delivered to each Member entitled to vote at the meeting either personally (including by courier) or by telephone, telegraph, facsimile or first class mail, postage prepaid, addressed to it at its mailing address set forth in {Exhibit A attached hereto} {the records of the Company}, at least ten (10) but not more than sixty (60) days before the date of the meeting. An affidavit of a Manager or other Person giving such notice shall, absent fraud, be prima facie evidence that notice of a meeting has been given. Notice of a meeting need not be given to any Member who, either before or after the meeting, executes a waiver of notice, or who attends such meeting without objecting, at its beginning, to the transaction of any business because the meeting is not lawfully called or convened.

(e) Except as otherwise provided in this Agreement, {Two-thirds in Interest} {a Majority in Interest} of {each class of} Members entitled to vote on, or take action with respect to, any matter {,present in person at any meeting,} shall constitute a quorum for the transaction of business at such meeting. In the absence of a quorum, a Majority in Interest of {each class of} Members present and entitled to vote thereat may adjourn any meeting from time to time for a

period not to exceed sixty (60) days without further notice. If the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each Member of record entitled to vote on, or take action with respect to, any matter at such meeting. At any adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting as originally noticed may be transacted. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of that number of Members whose absence would result in less than a quorum being present.

(f) Except as otherwise expressly required by the Act, the Articles of Organization or this Agreement, if a quorum is present, the affirmative vote of a Majority in Interest of {each class of} Members present and entitled to vote on, or take action with respect to, any matter shall be the act of {such class of} the Members.

{6.6} Proxies {and Voting Arrangements}. {At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. The proxy shall be filed with the {Managers} {Company} before or at the time of the meeting. No proxy shall be valid after {eleven (11) months} from the date of its execution, unless otherwise provided in the proxy.} {Any proxy, or other arrangement, by contract or otherwise, by which a Member grants to a non-Member any right to exercise any Management Interest, shall be null and void.}}

{6.7} Action without Meeting. Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting, without prior notice and without a vote, if Members holding voting interests sufficient to authorize such action at a meeting at which all of the Members entitled to vote thereon were present and voted consent thereto in writing. Such consent{s} shall be delivered to the {Company} {Managers} by hand or by certified or registered mail, return receipt requested, for filing with the Company records. Action taken under this Section {6.7} shall be effective when all necessary Members have signed a consent, unless the consent specifies a different effective date.

{6.8} Participation in Meetings by Telephone and Other Equipment. Any one or more Members may participate in a meeting by conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

{6.9} Record Dates. For the purpose of determining (a) Members entitled to notice of, or to vote at, any meeting of Members, (b) Interest Holders entitled to receive payment of any distribution, or (c) the identity of Members or Interest Holders for any other purpose, the date on which notice of the meeting is mailed, or on which the declaration of such distribution is adopted, as the case may be, shall be the record date for such determination. When a determination of Members entitled to vote at any meeting has been made as provided in this Section {6.9}, the determination shall apply to any adjournment of the meeting. The record date for determining Members entitled to take action without a meeting pursuant to Section {6.7} shall be the date the first Member signs a written consent.

{6.10} No Preemptive Rights. {Except as otherwise set forth in Section {3.3 or 7.2},} no Member shall have any preemptive, preferential or other right with respect to (a) making additional Capital Contributions, (b) the issuance or sale of Interests by the Company, (c) 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 or subscribe to, any Interests, (d) the issuance of any right of, subscription to or right to receive, or any warrant or option for the purchase of, any of the foregoing, or (e) the issuance or sale of any other interests or securities by the Company.

{6.11} Creation of Different Classes of Membership Interests. With the consent of the Members, the Company may issue Membership Interests from time to time in one or more classes, or one or more series of such classes, which classes or series shall have, subject to the provisions of applicable law, such designations, preferences and relative, participating, optional or other special rights as shall be fixed by the Members, including, without limitation, with respect to (a) the allocation of Net Profits or Net Losses to each such class or series; (b) the right of each such class or series to share in distributions; (c) the rights of each such class or series upon dissolution and liquidation of the Company; (d) the price at which, and the terms and conditions upon which, each such class or series of Membership Interests may be redeemed by the Company, if any such class or series is so redeemable; (e) the rate at which, and the terms and conditions upon which, each such class or series may be converted into another class or series of Membership Interests; and (f) the right of each such class or series to vote on, or take action with respect to, Company matters, including matters relating to the relative rights, preferences and privileges of such class or series, to the extent permitted by applicable law, if any such class or series is granted such voting rights.

{6.12} {Membership} Certificates. {Membership} Interests may be evidenced by certificates issued by the Company, provided that any such certificate shall carry a conspicuous legend noting the existence of the restrictions on transfer set forth in Article VII. {Nothing contained herein, nor the issuance of any such certificate, shall be deemed evidence of, or an admission that, any Interest constitutes a security for any purpose.}

ARTICLE VII

Transferability

{If transfers, including transfers of financial rights only, are permitted only by consent:}

{7.1} {General. Except as otherwise specifically provided in this Agreement, and subject in any event to Sections {7.3 and 7.4}, no Interest Holder shall have the right to Transfer any Interest to a non-Member without the consent of the {remaining Members} {the Member-Managers} {percentage of either group or identify consenting Member or Manager}, which may be withheld for any reason or no reason, in its or their sole discretion. {Upon the Transfer of all of a Member's Economic Interest, the Transferor shall cease to be a Member.}}

{Alternate consent provision:}

{7.1} {General. No Member may Transfer any Interest to a non-Member without the prior written consent of {the Members} {and} {the Managers}, which consent may be withheld for any reason.}

{Alternate provision if free transferability, or free transferability of a specified amount, is desired:}

{7.1} {General. Subject to Sections {7.3, 7.4 and 7.8}}, {an Interest Holder} {a Member} may, at any time and from time to time, Transfer all or any portion of, or any rights in, {up to {50%}} of its Interest to a non-Member. {Upon the Transfer of all of a Member's Membership Interest to a transferee and compliance with the requirements of Section {7.3}, the transferee shall automatically be admitted as a Member.}}

{7.2} {Right of First Refusal.}

{(a) If {an Interest Holder} {a Member} desires to Transfer {all or any portion of its Membership} {an} Interest for consideration to a Person who is not a Member or an Affiliate of a Member (a "Purchaser"), the Transferor shall obtain from the Purchaser a bona fide written offer (the "Offer") to purchase such Interest, stating the Purchaser's name and the terms and conditions upon which the purchase is to be made. The Transferor shall notify the Company and the remaining Members of its intention to so Transfer the Interest, including a copy of the Offer.

(b) The Company, or, if the Company fails to so elect, the remaining Members or any of them, pro rata based on their relative {Capital} {Percentage} Interests (or as they may otherwise agree), shall have a right of first refusal to purchase all (but not less than all) of the Interest proposed to be sold by the Transferor, upon the same terms and conditions, and for the consideration, stated in the Offer. The Company or such Members, as the case may be, shall notify the Transferor (and the remaining Members, if the Company gives notice, or the Company, if such Members give notice) of its or their intention to exercise such right, in the case of the Company, within {ten (10)} days after its receipt of the Transferor's notice and the Offer and, in the case of the remaining exercising Members, within {ten (10)} days following expiration of the {ten-day} period set forth for the Company if the Company fails to give notice of its election hereunder during such period. If the Company and all remaining Members fail to exercise their rights as set forth herein, the Transferor shall be entitled to sell the Interest to the Purchaser in accordance with the Offer, within {sixty (60)} days following the expiration of the second {ten-day} period referred to above. If not so sold, such Interest shall once again be subject to the requirements of this Section {7.2}, and the Transferor may not again seek to Transfer {all or any portion of its Membership} Interest for a period of {six months}. The Transferor shall not be entitled to vote on whether the Company should exercise its rights hereunder.

(c) If the Company or any remaining Members elect to exercise their right of first refusal as set forth in Section {7.2(b)}, it or they shall designate the time, date and place at which the closing of the purchase shall take place, provided that the date shall be within {ten (10)} days after the Transferor receives notice of the election to exercise such right.}

{Alternate "right of first offer" provision:}

{7.2} Right of First Offer. If {an Interest Holder} {a Member} desires to Transfer {all or any portion of its Membership} {an} Interest for consideration to a Person who is not a Member or an Affiliate of a Member, it shall so notify the Company and the remaining Members (an "Offer") {specifying the price, terms and conditions upon which it is willing to sell} {requesting the price, terms and conditions upon which the Company and/or the remaining Members, or any of them, would be willing to purchase} such Interest. {If the Company and the Members offer the terms:} {The Company, in the first instance, or, if the Company's price, terms and/or conditions are less favorable than those offered by the remaining Members or any of them, such remaining Members, shall have the option to purchase the Interest at the price and upon the terms and conditions set forth in their response to the Offer, which response shall be given within {ten (10)} days after receipt of the Offer. The Transferor shall, within {ten (10)} days after receipt of each such response, accept or deny it.} {If the Transferor offers the terms:} {The Company, in the first instance, or, if the Company is unwilling to exercise its rights hereunder, the other Members or any of them shall have the right to purchase the Interest at the purchase price, and on the terms and conditions, set forth in the Offer, which option may be exercised by notice to the Transferor given within {thirty (30)} days after receipt of the Offer by the Company and such other Members.} If the Transferor agrees to sell the Interest to the Company or the remaining Members, or any of them, the closing of the purchase shall take place on a date set by the Company or such Members, which shall be not more than {sixty (60)} days after their receipt of the Offer. If the Transferor does not agree to sell to the Company or any such Members {, or if neither the Company nor any of the remaining Members responds to an Offer as set forth herein,} the Transferor may Transfer the entire offered Interest at a price not below, nor upon terms or conditions more advantageous to the purchaser than, those contained {in the Offer} {in all responses to the Offer} {or, if the Transferor asks the Company and the Members to propose terms and no responses are delivered, on any terms and conditions desired by the Transferor}. If such Transfer is not consummated within {seventy-five (75)} days after receipt of the Offer by the Company and the remaining Members, the offering Member may not thereafter Transfer all or any part of its Interest without again complying with the requirements of this Section {7.2}.

{7.3} Other Conditions to Permitted Transfers.

(a) As conditions to recognizing the effectiveness of any Transfer permitted under this Article VII, and (subject to Section {7.4} below) the admission of a transferee as a new Member, the Transferor and the proposed transferee shall execute, acknowledge and deliver to the Company, at the Transferor's (and/or the transferee's) expense, such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and shall perform all other acts necessary or desirable, in the opinion of counsel to the Company, to:

- (i) constitute such transferee a Member, if applicable;
- (ii) confirm that the Person desiring to acquire an Interest, or to be admitted as a Member, has accepted, assumed, and agreed to be bound by, all of the terms, obligations and conditions of this Agreement, as in effect at the time of the Transfer;

- (iii) preserve the Company after such Transfer under the laws of each jurisdiction in which the Company is qualified, organized or does business;
- (iv) assure compliance with all applicable state and Federal laws, including, without limitation, securities laws; and
- (v) constitute the Company a third-party beneficiary of the rights of the Transferor and the obligations of the transferee under any arrangements or agreements to Transfer {or pledge} an Interest hereunder, with full power to enforce such rights and obligations directly against the transferee.

(b) If, as of the proposed effective date of a Transfer, there is a mortgage or other agreement in effect by which the Company or any of its assets are bound that permits the holder of indebtedness secured thereby to accelerate the indebtedness in the event of the Transfer of an Interest or more than a specified Interest, then, without the consent of {the Managers} {and} {Two-thirds in Interest} of the remaining Members} {(including all Member-Managers}, no Transferor may Transfer an Interest to the extent such Transfer would entitle the holder of such indebtedness to accelerate it.

(c) Notwithstanding compliance with the other provisions of this Article VII, no Transfer of an Interest may be made except pursuant to registration under applicable securities laws or if an opinion of counsel to the Company, prepared at the expense of the Transferor (or the transferee), indicates that such Transfer may be effected without registration.

{(d) Notwithstanding compliance with the other provisions of this Article VII, no Transfer of an Interest may be made to a minor or incompetent individual except by will, intestate succession or gift under applicable uniform transfers to minors acts or pursuant to the terms of an inter vivos trust.}

{7.4} Transferee Not Member. Except as otherwise set forth in Section {7.8}, a transferee of a Membership Interest pursuant to a Transfer otherwise complying with the provisions of this Article VII shall not be a Member, and shall have no right to participate in the management of the business of the Company or to become a Member, unless a {Majority in Interest of the remaining Members} {majority of the Managers} approve the admission as a Member of such transferee, which approval may be withheld in the sole discretion of any such {Member} {Manager}. A transferee not admitted as a Member hereunder will be an Assignee for all purposes, and shall be entitled to receive any share of Net Profits and Net Losses, other allocable items and distributions to which the Transferor would have been entitled, to the extent of the Interest transferred to such Assignee. {The Economic Interest held by an Assignee shall be subject to the same restrictions on Transfer as are Interests held by Members, as set forth in this Article VII.} {The Assignee shall have the same financial obligations to the Company as a Member holding the same Interest would have, including any obligation to contribute additional capital as provided in Section {3.2}, and including any unsatisfied obligation of the Transferor in respect of the Interest assigned.} A transferee who becomes a Member shall be treated as a Member for all purposes under this Agreement {, and shall be liable for the obligations of its

Transferor to make its Capital Contribution, but shall not be liable for obligations of such Transferor under Section {6.3 or 8.3}}.

{7.5} Effective Date.

(a) Any Transfer of an Interest or admission of a Member in accordance with this Agreement shall be effective as of the last day of the calendar month in which all of the conditions thereto were satisfied. No Transfer of an Interest shall be effective unless and until the Company has received notice of the name and address of the transferee and the date of such Transfer, and shall then be effective only to the extent set forth in this Agreement.

(b) No new Interest Holder shall be entitled to any retroactive allocation of Net Profits or Net Losses or other allocable items incurred by the Company. The Managers may, in their discretion, at the time a new Interest Holder obtains an Interest, close the Company books (as though the Fiscal Year had ended) or make pro rata allocations of such items to a new Interest Holder for that portion of the Fiscal Year in which it holds an Interest, in accordance with Code Section 706(d) and the Treasury Regulations promulgated thereunder.

{7.6} 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. {However, if a court of competent jurisdiction determines that any restrictions on Transfer contained herein are void or otherwise unenforceable, such restrictions shall be treated as though they were not included herein and the provisions of Section {8.4} shall be deemed to apply to such Transfers not otherwise specifically authorized by this Agreement.} Each Transferor hereby indemnifies the Company and the remaining Members against any and all loss, liabilities, damages and expenses, 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.

{7.7} {Pledge or Encumbrance of Interests. No Member may pledge or encumber an Interest, in any manner, whether voluntarily or involuntarily, by operation of law or otherwise, without the consent of the Managers.}

{7.8} Excluded Transfers.

(a) The restrictions set forth in Sections {7.1, 7.2 and 7.4} shall not apply to (i) the Transfer of an Interest to another Member, (ii) subject to Section {5.4(g)}, the issuance of a Membership Interest directly by the Company to a new Member, (iii) the Transfer of an Interest of a Bankrupt, dissolved or incompetent Member to his or its successor-in-interest, or (iv) the Transfer of an Interest by a Member to an Affiliate of that Member.

(b) The restrictions set forth in Sections {7.1 and 7.2} shall not apply to the Transfer of an Interest {(i) by an Interest Holder for no consideration to the Interest Holder's spouse, former spouse, siblings or lineal descendants (including adopted children)}, or (ii) from a deceased Member to his personal representative or estate. {If a Transfer under this Section {7.8(b)} is made to one or more transferees who are under 25 years of age, one or more trusts shall be established to hold the transferred Interest(s) for the benefit of such transferees until they reach the age of at least 25 years.}

{7.9} {Transfer of Entire Economic Interest. Notwithstanding anything contained herein or in the Act to the contrary, a Member who Transfers all or any portion of its Economic Interest in accordance herewith shall not cease to be a Member, but shall retain the entire Management Interest associated with its Membership Interest. Required votes or consents under this Agreement, and a Transferor Member's relative vote, shall, after any Transfer of an Economic Interest, be determined as though the Transferred Economic Interest were still held by the Transferor Member.}

ARTICLE VIII

WITHDRAWAL OF MEMBERS

{8.1} {No Voluntary Withdrawal. A Member shall have no right or power to surrender his or its Membership Interest voluntarily or otherwise take, or permit to be taken, any action that would constitute a Voluntary Withdrawal.}

{Alternate provision if voluntary withdrawals permitted:}

{8.1} {Right to Withdraw. The Voluntary Withdrawal of a Member {(other than a Voluntary Withdrawal specified in Section {2.57}}(g)} shall be permitted {with the written consent of {Two-thirds in Interest} of the remaining Members} {or} {upon at least {six months'} prior notice to the Company.}}

{8.2} {Effect of Withdrawal.

(a) {Unless the remaining Members elect to dissolve the Company in accordance with Section {9.2} 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 Interest associated with its former Membership Interest, with no right to participate in the management of the business of the Company or otherwise exercise any of the rights or privileges of a Member hereunder or under the Act}. After any Voluntary Withdrawal, the relative {Capital} {Percentage} Interests of the remaining Members for voting purposes only shall be determined as though the withdrawn Member's {Membership Interest had been repurchased} {Capital Account balance had been reduced to zero} {Percentage Interest were zero}. {For purposes of making distributions to Members after the liquidation of the Company, the withdrawn Member shall be treated as any other Member {of its class}.}

{Alternative provision:}

(a) {If the remaining Members do not elect to dissolve the Company in accordance with Section {9.2} after an Involuntary Withdrawal, the withdrawn Member shall be entitled to receive an amount in liquidation of its Membership Interest determined as set forth in Section {8.4}.}

(b) If a Withdrawal Event results in the dissolution of the Company, subject to Section {8.3}, the withdrawn Member shall be treated as any other Member in the liquidation of the Company's assets pursuant to Article IX.

{(c) Upon the occurrence of any Withdrawal Event, the Company shall have no further obligation or liability to any Assignee of the withdrawn Member.}

{8.3} Damages for Breach. If a {Voluntary} Withdrawal {Event} {of a Member} occurs in breach of Section {8.1}, such withdrawn Member shall {be liable to the Company for all damages incurred by the Company as a result of such breach, in an amount determined by {} {pay to the Company, within {} days following the date of the Withdrawal Event, the sum of \${} {or describe formula} as liquidated damages for such breach, and not as a penalty, the parties hereby acknowledging that such amount is reasonable in light of the damages that such breach would cause the Company}. {The amount payable by a withdrawn Member under this Section {8.3} shall be offset against any amounts payable to the withdrawn Member pursuant to Section {9.{} }}. {Alternate provision for liquidated damages to be offset against liquidation payment if the Company has a specific term:} {Because it will be impossible to compute with reasonable accuracy the damages that will result to the Company and to the other Members from a Member's {Voluntary} Withdrawal in violation of this Agreement, the Members agree that, in lieu of any other remedies they or the Company may have against such withdrawn Member, and as liquidated damages, {the withdrawn Member shall pay, within {60} days following the date of the Withdrawal Event, an amount equal to} {any amounts payable to such withdrawn Member pursuant to this Agreement shall be reduced by} the following percentage of the Member's positive Capital Account balance as of the date of the Withdrawal Event:

(a) if the remaining term of the Company as set forth in the {Articles of Organization} {this Agreement} as then in effect exceeds {ten} years, {fifty percent (50%)};

(b) if the remaining term of the Company set forth in the {Articles of Organization} this Agreement as then in effect is less than ten years but exceeds {five} years, {thirty-five percent (35%)}; and

(c) if neither section (a) nor (b) applies, {twenty percent (20%)}.

{8.4} Repurchase of Interest.

(a) If the remaining Members do not elect to dissolve the Company in accordance with Section {9.2} after {an Involuntary Withdrawal} a {permitted} Withdrawal Event, the Company shall repurchase the withdrawn Member's Membership Interest at a price (the "Purchase Price") determined and payable as set forth below. The closing of such purchase 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 {Involuntary Withdrawal} {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 immediately preceding the year in which the {Involuntary Withdrawal} {Withdrawal Event} occurred (“Book Value”), as determined by the Company’s accountants, whose determination shall be conclusive and binding on the parties. Notwithstanding anything contained herein to the contrary, Book Value shall not (i) include any proceeds collected or collectible by the Company in respect of any life or disability insurance policies with respect to any Member; (ii) be adjusted for the effects of any event occurring after the date as of which it is to be determined; (iii) take into account reserves established for contingent liabilities of the Company, or (iv) include any allowance for goodwill or other intangible assets {, except to the extent the value thereof is reflected on the most recent balance sheet of the Company prior to the date on which Book Value is determined.}} {Alternate provision for appraised value:} {the appraised value of the withdrawn Member’s equity in the Company, determined as of the date on which the {Involuntary Withdrawal} {Withdrawal Event} occurred (the “Appraised Value”), by {an} appraiser{s} designated by {each of} the Company and the withdrawn Member or its successor-in-interest within {ten (10)} days following the date on which the Company and the withdrawn Member or its successor-in-interest acknowledge that they cannot otherwise agree on the Purchase Price. {If the Company and the withdrawn Member or its successor-in-interest are unable within that {ten (10)}-day period to agree on an appraiser, then either shall, as promptly as possible thereafter, request {} to appoint such appraiser.} For the purpose of making the appraisal, the appraiser{s} shall be given access to, and may review, subject to appropriate confidentiality arrangements, all books and records and information available to the Company. The appraiser{s} shall prepare and submit {his} {their} written appraisal to the Company and to the withdrawn Member or its successor-in-interest. {If the two appraisers agree upon the Appraised Value, they shall jointly render a written report thereof. If they have not so agreed, within fifteen {15} days following their appointment, they shall appoint a third appraiser, who shall appraise the Company’s assets, determine the Appraised Value and render a written report thereof.} The appraiser{s} determination shall be conclusive and binding on the parties. Each party shall {pay the fees and expenses of the appraiser designated by that party, and shall bear one-half of the fees and expenses of the {third} appraiser.}} {Alternate provision for purchase price based on capital account balance:} {such withdrawn Member’s positive Capital Account balance as of the date of the {Involuntary Withdrawal} {Withdrawal Event}.}

{If repurchase is required even in situations where a breach occurs:}

{(c) The Purchase Price shall be reduced by {the amount of the damages suffered or likely to be suffered by the Company {over the remaining term of the Company} as of the date of the Withdrawal Event in any case in which such withdrawal violates this Agreement} {any amount required to be paid by the withdrawn Member as liquidated damages pursuant to Section {8.3}}.

(d) The Purchase Price shall be payable as follows:

- (i) {25%} in cash, by wire transfer or by bank check drawn on a national bank, on the closing date, and
- (ii) the balance by delivering a promissory note of the Company, dated as of the closing date, and bearing interest at the Prime Rate, with the principal amount thereof

payable in {five (5)} equal annual installments beginning on the first anniversary of the closing, in each case together with interest at {the Prime Rate} {the rate of __% per annum} on the unpaid principal amount thereof to such date.

(e) Effective upon the Company's payment of {a distribution in kind or} the initial installment of the Purchase Price under Section {8.4(d)(i)}, the withdrawn Member (and his or its personal representatives, heirs, successors and assigns) shall cease to own any Interest or to have any rights as a Member hereunder, and the Company shall have no obligation or responsibility to any Assignee of the withdrawn Member.}

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 {the Managers} {a Majority in Interest} {Two-thirds in Interest} {other percentage} {a majority} of the Members;

(b) a Withdrawal Event with respect to {any Member} if the remaining Members elect to dissolve the Company pursuant to Section {9.2}. Notice of any event specified in this Section {9.1(b)} shall be given to each of the other Members by the withdrawn Member or his or its successor-in-interest, if any, within sixty (60) days after the date thereof;

(c) the sale or other disposition of all or substantially all of the business or assets of the Company;

{(d) the expiration of the term of the Company;} or

(e) the entry of a decree of judicial dissolution under Section 702 of the Act.

9.2 Election to Dissolve the Company.

(a) Withdrawal Event with respect to any Member will not result in the dissolution, winding up and termination of the Company unless, within 180 days after the occurrence of such event, {a Majority in Interest of the remaining Members}, determined as of the date of such event, elect, in their sole discretion, to dissolve the Company.

(b) If the Members do not elect to dissolve the Company under Section {9.2(a)}, the Company shall continue as a limited liability company pursuant to the Act under this Agreement until {the first to occur of the end of the Company's term or} a subsequent event causing dissolution hereunder or under the Act.

9.3 Winding up of the Company.

(a) If the Company is to be dissolved in accordance with Section 9.1 or 9.2, then the {Managers or other} Person{s} selected by the Members (the “Liquidator”) shall wind up the affairs of the Company, including by selling or otherwise liquidating the Company assets in a bona fide sale or sales to third Persons at such prices and upon such terms as they may determine. If the Liquidator determines that an immediate sale would be financially inadvisable, it may defer sale of the Company assets for a reasonable time, or distribute the assets in kind. {During the winding up period, the Liquidator may exercise all powers granted to the Managers under this Agreement, and may adopt such plan, method or procedure as may be reasonable to effect an orderly winding up.}

(b) The proceeds of any liquidation of the Company shall be distributed in the following order of priority (to the extent that such order of priority is consistent with the laws of the State of New York):

- (i) first, to the payment of the debts and liabilities of the Company and the expenses of dissolution and liquidation;
- (ii) then, to the establishment of any reserves which the Liquidator shall deem reasonably necessary for payment of such other debts and liabilities of the Company (contingent or otherwise), as are specified by the Liquidator, such reserves to be held in escrow by a bank or trust company selected by the Liquidator and to be disbursed as directed by the Liquidator in payment of any of the specified debts and liabilities or, at the expiration of such period as the Liquidator may deem advisable, to be distributed in the manner hereinafter provided; and
- (iii) then, to the Members as set forth in Article IV.

(c) If any assets are distributed in kind, they shall be distributed on the basis of the fair market value thereof {as determined by appraisal}, and shall be deemed to have been sold at fair market value for purposes of the allocations under Article IV.

(d) The Company shall terminate when all assets of the Company have been sold and/ or distributed and all affairs of the Company have been wound up.

{9.4} Articles of Dissolution. Within ninety (90) days following the dissolution and the commencement of winding up of the Company, Articles of Dissolution shall be prepared, executed and filed in accordance with the Act.

ARTICLE X

Indemnification

10.1 Indemnification. To the fullest extent permitted by applicable law from time to time in effect:

(a) the Company shall indemnify and hold harmless the Manager{s}, Members {, officers, agents and employees of the Company} and their respective directors, trustees, shareholders, partners, officers, employees, agents and other Affiliates, against all costs, liabilities, claims, expenses, including reasonable attorneys' fees and disbursements, and damages (collectively, "Losses") paid or incurred by any such Person in connection with the conduct of the Company's business; and

(b) each Person who at any time is, or has been, a Member {, or} Manager {, officer, agent or employee of the Company} (an "Indemnitee"), and is threatened to be, or is, made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or it is, or was, a Manager {, or} Member {, officer, agent or employee of the Company}, or is serving, or has served, at the request of the Company as a manager, officer, member, employee or agent of another Person, shall be indemnified against all Losses actually and reasonably incurred in connection with any such pending, threatened or completed action, suit or proceeding.

{Alternate provision:}

{Alternate provision:}

{(b) The Company shall indemnify, defend and hold each Manager harmless from and against, and may, upon the approval of the Members, indemnify, defend and hold the Company's and the Manager's respective Affiliates, agents, employees, consultants and other independent contractors (collectively, "Indemnitees"), harmless from and against, all Losses arising from any demands, claims or lawsuits against any of the Indemnitees in connection with or resulting from his or its acts or omissions in his or its capacity as Manager, or as such an Affiliate, agent, employee, consultant or other independent contractor of the Company or the Manager, or in connection with, arising from or relating to, business or activities undertaken on behalf of the Company, including, without limitation, any demands, claims or lawsuits initiated by a Member, unless a judgment or other final adjudication adverse to such Indemnitee establishes that (i) such acts or omissions were committed in bad faith, or were the result of active and deliberate dishonesty, (ii) such Indemnitee personally gained a financial profit or other advantage to which he or she was not legally entitled or (iii) such acts or omissions violated such lesser standard of conduct as under applicable law affirmatively prevents indemnification hereunder. The termination of any action, suit or proceeding by judgment, order, settlement, plea of nolo contendere or its equivalent or conviction shall not, of itself, create a presumption that an Indemnitee shall not be entitled to indemnification hereunder or that the Indemnitee did not act in good faith and in a manner which it reasonably believed to be in or not opposed to the best interests of the Company.}

{10.2} {Advancement of Expenses}. An Indemnitee shall be entitled to receive, upon application therefor, advances from the Company to cover the costs of defending any pending, threatened or completed claim, action, suit or proceeding against it for Losses in connection with which it would be entitled to indemnification under this Article X, provided, that such advances shall be repaid to the Company (with interest thereon at an annual rate equal to the Prime Rate) if the Indemnitee receiving such advance is found by a court of competent jurisdiction upon entry

of a final judgment to have violated any of the standards set forth in Section { 10.1 } which preclude indemnification hereunder.}

{10.3} Rights Not Exclusive; Survival. The rights of an Indemnitee set forth in this Article X shall not be exclusive of any other rights to which it may be entitled, whether by separate agreement or otherwise, nor shall such rights limit or affect any other such rights. All rights of an Indemnitee under this Article X shall survive the dissolution of the Company and any Withdrawal Event with respect to such Indemnitee, and shall inure to the benefit of his or its heirs, personal representatives, successors and assigns.

{10.4} Source of Payment. Notwithstanding anything contained herein to the contrary, any amount to which an Indemnitee may be entitled under this Article X shall be paid only out of the assets of the Company and any insurance proceeds available to the Company for such purposes. No Member shall be personally liable for any amount payable pursuant to this Article X, or to make any Capital Contribution, return any distribution made to it by the Company, or restore any Negative Capital Account balance to enable the Company to make any such payment. {The Company shall, if commercially practicable, obtain insurance with per-claim and aggregate limits reasonably expected to cover its anticipated obligations hereunder.}

ARTICLE XI

Miscellaneous Provisions

11.1 Notices. Except as otherwise set forth herein, any notice, demand or communication required or permitted to be given under this Agreement shall be (a) in writing, (b) delivered by hand, nationally recognized overnight courier service or facsimile, addressed to a party at its mailing address or facsimile number set forth {in the books and records of the Company} {on Exhibit A attached hereto}, and (c) deemed to have been given on the date delivered by hand or sent by facsimile or one business day after deposit with such courier service.

11.2 Books of Accounts and Records.

(a) At the expense of the Company, the {Members} {Managers} 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:

- (i) a current list in alphabetical order of the name and mailing address of each Interest Holder {and Manager}, their facsimile numbers and, with respect to the Interest Holders, their respective shares of Net Profits and Net Losses, or information from which such shares can be derived;
- (ii) 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 was executed;

- (iii) copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent Fiscal Years;
- (iv) copies of this Agreement, as in effect from time to time;
- (v) any writings or other information with respect to each {Member's} {Interest Holder'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 agreed-upon fair market value of property or services so contributed or to be contributed;
- (vi) any financial statements of the Company for the three most recent Fiscal Years;
- (vii) minutes of every annual, {regular,} special and court-ordered meeting of the Members {and Managers}; and
- (viii) any written consents obtained from the Members {or Managers} for actions taken by Members {or Managers} without a meeting.

(b) Upon reasonable advance notice, during normal business hours, any {Member} {Interest Holder} or its representatives may, at its expense, inspect and copy the records described in Section {11.2(a)} for any purpose reasonably related to such Person's {Membership} Interest.

{(c) Notwithstanding Sections {11.2(a) and (b)} or any other provision of this Agreement, {identify certain Members} {the Managers} shall have the right to keep confidential, and not to disclose to the {other} Members, {during the term of the Company,} such information relating to the Company (i) reasonably believed by them to be in the nature of trade secrets, (ii) the disclosure of which is in good faith believed not to be in the best interests of the Company or (iii) required by law or by agreement with a third person to be kept confidential.}

11.3 Application of New York Law. This Agreement, and the application or interpretation hereof, shall be governed by and in accordance with the laws of the State of New York applicable to agreements made and fully to be performed therein, and specifically the Act.

11.4 Amendments.

(a) Except as otherwise required by this Agreement or the Act, this Agreement may be amended by the affirmative vote of {Two-thirds in Interest} {all} of the Members.

(b) Notwithstanding anything to the contrary contained in Section {11.4(a)}, the Managers may modify the provisions of this Agreement without the consent of the Members if,

upon advice of counsel to the Company, the modification is necessary to cause (i) the Company to be or to continue to be classified as a partnership for federal income tax purposes or (ii) the allocations under Article IV to have substantial economic effect or to be in accordance with the Members' interests under Section 704 of the Code and the Treasury Regulations thereunder. No modification hereunder may alter the limited liability of the Members or have a material effect on amounts distributable to any Member pursuant to this Agreement.

(c) Notwithstanding anything to the contrary contained in this Section {11.4}, any amendment to this Agreement that would adversely affect (i) the federal income tax treatment to be afforded a Member, (ii) the liabilities of a Member, or (iii) the consent and approval rights reserved by the Members, or which would otherwise change the method of calculating allocations or distributions under Article IV, shall require the consent of each Member affected.

11.5 Amendment by Agreement of Merger. Notwithstanding anything to the contrary contained in this Agreement, in accordance with Section 1004(e) of the Act, an agreement of merger or consolidation approved by the Members as required by this Agreement may effect (a) amendments to this Agreement contained in the agreement of merger or consolidation or necessitated thereby or (b) the adoption of a new operating agreement for the Company if it is the surviving or resulting entity, in each case without further action by the Members.

11.6 Execution of Additional Instruments. Each Member hereby agrees to execute such other and further documents and instruments, including, without limitation, statements of their Interests and powers of attorney, as necessary to comply with applicable law or otherwise as reasonably requested by the {Managers} {Members}.

11.7 Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the neuter gender shall include the feminine and masculine genders and vice versa.

11.8 Headings. The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.

11.9 Waivers; Rights and Remedies Cumulative. The failure of any party to pursue any remedy for breach, or to insist upon the strict performance, of any covenant or condition contained in this Agreement shall not constitute a waiver of any such right with respect to any subsequent breach. Except as otherwise expressly set forth herein, rights and remedies under this Agreement are cumulative, and the pursuit of any one right or remedy by any party shall not preclude, or constitute a waiver of, the right to pursue any or all other remedies. All rights and remedies provided under this Agreement are in addition to any other rights the parties may have by law, in equity or otherwise.

11.10 Severability. If any provision, or portion thereof, of this Agreement, or its application to any Person or circumstance, shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement, such provision and their application shall not be affected thereby, but shall be interpreted without such unenforceable provision or portion thereof

so as to give effect, insofar as is possible, to the original intent of the parties, and shall otherwise be enforceable to the fullest extent permitted by law.

11.11 Successors and Assigns. All of the covenants, terms, provisions and agreements contained in this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and permitted assigns.

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

{11.13 Investment Representations. Each Interest Holder hereby represents and warrants to the Company and each other Interest Holder as follows:

- (a) Such Interest Holder acknowledges that:
 - (i) the Interest owned by it has not been registered under the Securities Act of 1933, the New York State securities act or any other state securities laws (collectively, the “Securities Acts”) because the Company is issuing (or an Interest Holder has Transferred) such Interest in reliance upon exemptions from the registration requirements contained in the Securities Acts for issuances not involving a public offering;
 - (ii) the Company (or the Transferor) has relied upon the fact that the Interest is to be held by such Interest Holder for investment purposes only, and not with a view to any resale or distribution thereof; and
 - (iii) the Company is under no obligation to register or qualify the Interest or to assist any Interest Holder in complying with any exemption from registration under the Securities Acts if such Interest Holder wishes to dispose of the Interest.

(b) Each Interest Holder is acquiring the Interest for his or its own account, for investment purposes only, and not with a view to the resale or distribution thereof, unless there are effective registrations or other qualifications relating thereto under applicable Securities Acts, or unless the Interest Holder delivers to the Company the opinion of counsel required under Section {7.3(c)}.

(c) Before acquiring the Interest, each Interest Holder investigated the Company and its business, and the Company made available to it all information necessary to make an informed decision to acquire the Interest.

{Nothing contained herein is intended to be construed as an admission that any Interest is a “security” for purposes of any of the Securities Acts or other applicable law.}}

{ 11.14} {No Right to Petition for Dissolution}. The Members agree that irreparable harm would be done to the business and goodwill of the Company if any Member were to bring an action in Court under the Act for the judicial dissolution of the Company. Accordingly, each Member, in his capacity as such, hereby irrevocably waives any such right to petition for dissolution of the Company under the Act {, and all similar rights under other applicable law,} except to the extent such relief may be sought by the Company itself as authorized by the Members in accordance with this Agreement.}

{11.15} No Third Party Beneficiaries. The covenants, obligations and rights set forth in this Agreement are not intended to benefit any creditor of the Company or of any Interest Holder, or any other third Person, and except as permitted by applicable law after the obligation to make an additional Capital Contribution has been fixed, or in connection with certain wrongful distributions, no such creditor or other third Person shall, under any circumstances, have any right to compel any actions or payments by the {Managers and/or the} Members or shall, by reason of any provision contained herein, be entitled to make any claim in respect of any debt, liability, obligation or otherwise against the Company or any Interest Holder.

{11.16} Managers as Attorney-in-Fact for Members.

(a) Each Member hereby irrevocably constitutes and appoints, with full power of substitution, the Managers {and each of them}, its true and lawful attorney-in-fact, with full power and authority in its name, place and stead, to execute, certify, acknowledge, deliver, file and record at the appropriate public offices:

- (i) all certificates and other instruments, and any amendment thereto, which the Managers deem appropriate to form, qualify or continue the business of the Company as a limited liability company;
- (ii) any other instrument or document which may be required to be filed by the Company under the laws of any state, or which the Managers deem advisable to file; and
- (iii) any instrument or document, including amendments to this Agreement, which may be required to continue the business of the Company, admit a Member {or successor Manager,} or dissolve and liquidate the Company (provided that such continuation, admission or dissolution are in accordance with this Agreement), or to reflect any reductions in the amount of Members’ capital.

(b) Each Member’s appointment of the Managers {and each of them} as its attorney-in-fact shall be deemed to be a power coupled with an interest and shall survive the incompetency, Bankruptcy or dissolution of the Member giving such power, except that, in the event of a Member’s Transfer of an Interest in accordance with this Agreement, this power of

attorney shall survive such Transfer only until such time, if any, as the Assignee shall have been admitted to the Company as a Member and all required documents and instruments shall have been duly executed, filed and recorded to effect such substitution.

{11.17} Entire Agreement. This Agreement, and the Articles of Organization, embody the entire understanding and agreement between the Members concerning the subject matter hereof and supersede any and all prior negotiations, understandings or agreements with respect thereto. {To the extent the Act addresses a matter not otherwise addressed by this Agreement, it is the intention of the Members that the provisions of the Act shall apply, but no such application shall otherwise affect any provision of this Agreement.}

IN WITNESS WHEREOF, the undersigned have executed this Operating Agreement as of the date first above written.

{Members' signatures}

SAMPLE