

OPERATING AGREEMENT

OF

A LIMITED LIABILITY COMPANY

*Immune
Defense*

STATE OF

New York

OPERATING AGREEMENT
OF
A LIMITED LIABILITY COMPANY
STATE OF

This OPERATING AGREEMENT is entered into and shall be effective as of
20 by the undersigned.

RECITAL

The undersigned entity or person (the "*Member*") desires to establish a limited liability company (the "*Company*") with a single member and desires to set forth in this declaration (referred to as the "*Operating Agreement*") the terms of the Company's organization and operation. The Member, intending legally to be bound by this Agreement, declares as follows:

Article 1
FORMATION, PURPOSE AND DEFINITIONS

1.1 Establishment of Limited Liability Company. The Member hereby establishes a limited liability company with a single member, pursuant to the provisions of the laws governing limited liability companies in the State of (the "*Act*") and upon the terms declared in this Operating Agreement.

1.2 Name. Pursuant to the terms of this Agreement, the Member intends to carry on the activities of the Company under the above name. The Company may conduct its activities under any other permissible name designated by the Member.

1.3 Principal Office of the Company. The principal office of the Company shall be located at such location as the Member may determine. The registered agent for the service of process and registered office of the Company shall be the person and location set forth in the Formation Document filed with the governing State authority, and the Member may, from time to time, change such agent and office by appropriate filings as required by law.

1.4 Purpose. The Company may engage in any lawful business, investment, or other activity permitted under the Act or the laws of any jurisdiction in which the Company may transact its affairs. The Company shall have the authority to do all things necessary or advisable in order to accomplish such purposes.

1.5 Term. The term of this Company shall begin on the date of filing of a Formation Document with the governing State authority. The duration of the Company shall be indefinite and shall continue until the Company is dissolved in accordance with the provisions of Article 6 of this Agreement or the Act, which shall constitute the time specified for dissolution of the Company, as contemplated by the Act.

1.6 Other Activities of the Member. The Member may engage in or possess an interest in other business or investment ventures of any nature, whether or not similar to or competitive with the activities

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1.4 Purpose. The Company may engage in any lawful business, investment, or other activity permitted under the Act or the laws of any jurisdiction in which the Company may transact its affairs. The Company shall have the authority to do all things necessary or advisable in order to accomplish such purposes.

1.5 Term. The term of this Company shall begin on the date of filing of a Formation Document with the governing State authority. The duration of the Company shall be indefinite and shall continue until the Company is dissolved in accordance with the provisions of Article 6 of this Agreement or the Act, which shall constitute the time specified for dissolution of the Company, as contemplated by the Act.

1.6 Other Activities of the Member. The Member may engage in or possess an interest in other business or investment ventures of any nature, whether or not similar to or competitive with the activities

of the Company. The Company may enter into transactions with the Member or the Member's affiliates.

1.7 Defined Terms. Capitalized words and phrases used in this Agreement shall have the meanings ascribed to such terms in the Glossary contained in Section 8.2 of this Agreement.

Article 2

CONTRIBUTIONS TO CAPITAL

2.1 Capital Contributions. Upon formation of the Company, the Member shall make the Capital Contribution set forth on **Schedule A**.

2.2 Withdrawal of Capital. The Member shall not be entitled to withdraw any part of the Member's Capital Contribution or to receive any distribution from the Company, except as provided in this Agreement.

2.3 Additional Capital Contributions. The Member shall not be required to make any additional capital contribution to the Company, except as provided in this Agreement.

2.4 Interest on Capital Contributions. No interest shall be due from the Company on any Capital Contribution of the Member.

2.5 Limitation on Liability of Member.

(a) Except as otherwise expressly required by applicable law of the State in which the Company is formed and organized, or as otherwise provided under this Agreement, no member (or holder of economic rights in the Company), manager, employee or agent of the Company shall be obligated personally for any debt, obligation, or liability of the Company, or for any debt, obligation or liability of another member, manager, employee or agent of the Company, by reason of being a member (or holder of economic rights), or by reason of acting in the capacity of a manager, employee or agent of the Company.

(b) A Member shall be personally obligated for any debt or liability that the Member expressly assumes in writing, including, without limitation, the obligation to make a specified Capital Contribution as provided in this Agreement.

Article 3

ALLOCATION OF PROFITS, LOSSES AND CASH FLOW

3.1 Profits & Losses. Profits and Losses for any fiscal year shall be allocated to the Member.

3.2 Net Cash Flow Distributions. Net Cash Flow shall be distributed in the following priority, subject to Article 6:

(a) First, to the Member in repayment of any advance of funds to the Company as a lender, to the extent of any advances still owed, including accrued and unpaid interest thereon, if any, and including, without limitation, amounts not then due and owing;

(b) Additional distributions, if any, will be made to the Member, in such amounts and at such times as determined by the Member.

Article 4

RIGHTS AND DUTIES OF MEMBER

4.1 Management. The business, investment, or other activities and affairs of the Company shall be managed by the Member. The Member shall have full and complete authority and power to manage and control the business, investment, or other activities and affairs and property of the Company, and to perform all acts or activity customary, necessary or advisable in connection with the Company's business. Nothing contained in this Agreement shall require any person to inquire into the authority of the Member to execute and deliver any document on behalf of the Company or to bind the Company pursuant to such document.

4.2 Powers of Employee and Agents. Unless authorized to do so by this Operating Agreement or by the Member, no attorney-in-fact, employee, or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose.

4.3 Liability for Certain Acts. To the extent permitted by applicable law of the State in which the Company is formed and organized, the Member shall not be personally liable to the Company for failure to perform in accordance with, or to comply with the terms and conditions of, the Operating Agreement or for any other reason, regardless of whether such failure to perform, or to comply or such other reason constitutes gross negligence or willful misconduct by the Member. Notwithstanding anything to the contrary in this Agreement, and to the extent permitted by the law of the State in which the Company is formed and organized, the Member shall not have any fiduciary duty or obligation to a holder of economic rights or any other transferee of an interest in the Company (other than a person admitted as a Member) or to any other creditor of the Company.

4.4 Indemnification. The Member shall be indemnified by the Company, to the fullest extent permitted by the law of the State in which the Company is formed and organized, against any losses, judgments, liabilities and expenses (including reasonable attorney fees) incurred by the Member by reason of any act or omission performed or omitted by the Member in good faith on behalf of the Company in a manner reasonably believed by the Member to be within the scope of the authority granted to the Member by this Agreement. The Company may also indemnify its employees and other agents who are not members, to the fullest extent permitted by the law of the State in which the Company is formed and organized, provided that the indemnification in any given situation is approved by the Member.

Article 5

TRANSFER OF MEMBERSHIP INTERESTS

5.1 Permitted Transfers. The Member may transfer, whether voluntarily or involuntarily, any portion of the Member's Membership Interest in the Company, as provided for in this Agreement. For purposes of this Agreement, a "transfer" includes, but is not limited to, any sale, assignment, gift, exchange, hypothecation, collateral assignment or subjection to any security interest.

5.2 Transfer of Membership Interest Without Substitution. Subject to compliance with the conditions of Section 5.5, the Member shall have the right to transfer all or part of such Member's Membership Interest by a written instrument of transfer, the terms of which are not in contravention of

any of the provisions of this Agreement. Unless and until admitted as a substitute or additional Member in accordance with this Agreement, a transferee shall only be a holder of economic rights and shall be entitled to receive distributions from the Company, and be allocated Profits and Losses of the Company, attributable to the Membership Interest acquired by reason of such transfer from and after the effective date of the transfer of such Interest. All other rights attributable to such transferred Interest, including, without limitation, the right to inspect Company books and to vote on Company matters, shall terminate until and unless such transferee becomes a substituted or additional Member.

5.3 Admission of Transferees as New Members.

(a) A transferee holding economic rights in the Company from the Member may become an additional Member in the Company if, in addition to the requirements of Section 5.5, (i) the transferee obtains the written consent of the Member, which consent may be withheld for any reason or without reason as a matter of absolute discretion; and (ii) the transferor and transferee named in such transfer have executed and acknowledged such other instruments as such Member may reasonably deem necessary or desirable to effect such admission, including, without limitation, an amendment of this Agreement to reflect the presence of more than one Member holding an interest in the Company.

(b) A transferee holding all of the economic rights in the Company, as assignee of the Member's entire Membership Interest, may become a substituted Member in the Company if, in addition to the requirements of Section 5.5, the transferee appoints a new Member as provided in Section 6.1(d).

(c) A transferee accepted as a substitute or additional Member under this Section 5.3 shall have all of the rights and obligations of such transferee's predecessor in interest in the Company, to the extent that they relate to the transferred interest, except as otherwise modified or altered pursuant to an amendment of this Agreement.

5.4 Issuance of New Membership Interests. Any person acceptable to the Member may become an additional Member in the Company by the issuance of additional Membership Interests in exchange for such consideration as the Member may determine as a matter of absolute discretion. Such person may become an additional Member in the Company only if, in addition to the requirements of Section 5.5, the person executes such instruments as such Member may deem necessary or desirable to effect such admission, including, without limitation, an amendment of this Agreement to reflect the presence of more than one Member holding an interest in the Company.

5.5 Conditions on Transfers of Membership or Economic Interest. A transfer of a Membership Interest or economic rights in the Company, and the admission of additional Members, otherwise permitted by this Article 5 shall be subject to the following additional limitations:

(a) No Membership or economic rights may be transferred or issued if such proposed action, in the opinion of counsel for the Company, (i) would directly result in the cancellation of the Formation Document or an obligation to file a Certificate of Cancellation or Articles of Dissolution or similar document of record, or (ii) would impair the ability of the Company to be taxed as a sole proprietorship or partnership for Federal income tax purposes.

(b) No Membership Interest (or economic rights) may be issued by the Company or transferred by the Member unless the transferee (whether such person is to be admitted as a Member or will merely be a holder of economic rights) confirms in writing (acceptable to the Member, if any) that such transferee has accepted, assumed, and agreed to be bound subject to and bound by all of the

terms and conditions of this Agreement, as amended to reflect the presence of more than one Member, if applicable, or the presence of one or more holders of economic rights in the Company. Any such amendment shall be determined in writing, as the case may be, by the sole Member (or the Member's successor(s) appointed pursuant to Section 6.1(d), or by the Member and any persons to be admitted as additional members of the Company. No interest in the Company may be transferred unless the assigning Member delivers to the Company a written instrument of assignment, duly executed by the transferor or such transferor's personal representative or authorized agent.

5.6 Allocations Upon Transfer of Membership or Economic Interest or Upon Admission.

(a) As between the Member and such Member's transferee, profits, losses and credits for any semi monthly period shall be apportioned to the person who is the holder of the Membership Interest transferred on the last day of such semi monthly period, without regard to the results of the Company's operations during the period before or after such transfer. However, in the event that it is determined by the Member that the convention adopted by the Company to allocate income, gain, loss, deduction or credit of the Company is not in compliance with Section 706(d) of the Code, as modified by Regulations promulgated thereunder, then the Member shall revise the method of allocation to comply with such Regulations.

(b) No new members or holders of economic rights shall be entitled to any retroactive allocation of Profits or Losses incurred by the Company.

(c) Any distributions of cash or other property shall be made to the holder of record of any portion of a Membership Interest (or economic rights) on the date of distribution.

Article 6 DISSOLUTION AND LIQUIDATION

6.1 Events Triggering Dissolution. The Company shall dissolve and commence winding up and liquidating upon the first to occur of any of the following ("*Liquidating Events*"):

- (a) the determination by the Member, that the Company should be dissolved;
- (b) the insolvency or bankruptcy of the Company;
- (c) the sale of all or substantially all of the Company's assets; or
- (d) the Dissociation of the Member or any other act that causes the Company to have no remaining members under the Act, provided that any such event shall not be a Liquidating Event if a new member is appointed, in writing, by the Member's successor in interest within ninety (90) days of such Dissociation, and if there is more than one successor in interest to the Member, then appointment of a new member shall be made by the affirmative decision of persons holding a majority of such successor interests in the Company; or
- (e) any event that makes it impossible, unlawful or impractical to carry on the business of the Company.

6.2 Liquidation. Upon dissolution of the Company in accordance with Section 6.1, the Company shall be liquidated. The proceeds of such liquidation shall be applied and distributed in the following order of priority:

(a) to the payment of the debts and liabilities of the Company (other than debts or liabilities owing to the Member) and the expenses of liquidation;

(b) the setting up of any reserves which the Member (or a Liquidating Manager, appointed by the successor in interest to the Member, in the event of the Member's Dissociation) may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company, which reserves shall be paid over to an attorney at law of the State in which the Company is formed and organized, as escrow holder, to be held for the purpose of disbursing (under the direction of the Member (or the Liquidating Manager) such reserves in payment of any of the aforementioned liabilities and, at the expiration of such period (not to exceed two (2) years) as the Member (or Liquidating Manager) may deem advisable, for distribution in the manner hereinafter provided;

(c) to the repayment of any outstanding advances or loans that may have been made by the Member to the Company, other than capital contributions, pro rata on the basis of such advances and loans to the Company; and

(d) the balance, if any, to the Member, or the Member's successor in interest.

6.3 Certificate of Cancellation. Upon the dissolution of the Company and the completion of the liquidation and winding up of the Company's affairs and business, the Member (or Liquidating Manager) shall prepare and file a Certificate of Cancellation or Articles of Dissolution or similar document, to be placed of record with the appropriate State authority or agency, as required by the Act. When such certificate is filed, the Company's existence shall cease.

Article 7

ACCOUNTING AND FISCAL MATTERS

7.1 Fiscal Year. The fiscal year of the Company shall be the calendar year.

7.2 Method of Accounting. The Member shall select a method of accounting for the Company as deemed necessary or advisable and shall keep, or cause to be kept, full and accurate records of all transactions of the Company in accordance with sound accounting principles consistently applied.

7.3 Records to be Maintained. The Company shall maintain the following additional records:

(a) a current list of the full name and mailing address, of the Member and each Economic Interest Owner, if any, together with date on which each acquired an interest in the Company, the information set forth on Schedule A relating to the Member's Capital Contributions and Membership Interest, and the amount of Capital Contribution, if any, the Member has agreed to make in the future ;

(b) a copy of the Formation Document and all amendments to such document, together with signed copies of any powers of attorney pursuant to which the Formation Document or any such amendments were signed;

(c) a copy of the Company's federal, state and local income or information tax returns and reports for the three most recent fiscal years; and

(d) a copy of this Agreement, including any and all amendments to this Agreement.

7.4 Bank Accounts. The Member shall open and maintain (in the name of the Company) bank or brokerage accounts in which shall be deposited all funds of the Company. Withdrawals from such account or accounts shall be made upon the signature or signatures of such person or persons as the Member shall designate.

Article 8 MISCELLANEOUS

8.1 Amendment. This Agreement may be amended by the Member, at any time and for any reason, provided that such amendments are declared by the Member in a writing signed by the Member.

8.2 Glossary. As used in this Agreement, capitalized words and phrases shall have the following meanings:

(a) **Code.** "*Code*" means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

(b) **Company.** "*Company*" means the limited liability company governed by this Agreement.

(c) **Dissociation.** A person shall cease to be a Member upon the happening of any of the following events:

(i) the bankruptcy of a Member;

(ii) the assignment or transfer by a Member of such person's entire Membership Interest in accordance with the terms of this Agreement;

(iii) in the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's personal estate;

(iv) in the case of a Member who is acting as a Member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(v) in the case of a Member that is a separate organization other than a corporation, the dissolution and commencement of winding up of the separate organization; or

(vi) in the case of a Member that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter.

(d) **Economic Interest.** "*Economic Interest*" means a share of the Company's Profits, Losses, Net Cash Flow, and other distributions of the Company's assets pursuant to this Agreement and the Act, but shall not include any right to participate in the management or affairs of the Company, including, without limitation, the right to vote on; consent to, or otherwise participate in any decision as a Member, all as provided in Section 5.2.

(e) **Formation Document.** "*Formation Document*" means the document initially filed of record with the applicable State agency or authority to establish the Company under the Act, including, without limitation, a Certificate of Formation or an Articles of Organization, as the case may be.

(f) **Net Cash Flow.** "*Net Cash Flow*" means the gross cash proceeds from Company operations (including all sales and dispositions) and all refinancings or placement of new mortgages on Company property, less the portion of such proceeds used to pay or establish reserves for all Company expenses, debt payments, capital improvements, replacements, and contingencies, all as determined by the Member. Net Cash Flow shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to Section 4.2. Payments of principal and interest on any debts or other obligations of the Company, whether or not secured by mortgages or liens on Company property, shall be considered as a deduction from Net Cash Flow. For purposes of this Agreement, Net Cash Flow shall also include any Capital Contributions of the Member as well as any incremental adjustment to the value of the Company's property. Actual or deemed distributions to the Member (other than payments then due and owing to the Member as a Lender) shall not be taken into account for purposes of calculating Net Cash Flow.

(g) **Profit and Losses.** "*Profits*" and "*Losses*" means, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with the Code, with the following adjustments. Any income of the Company that is exempt from federal income tax (or losses that are not deductible for federal income tax purposes) and not otherwise taken into account in computing Profits or Losses pursuant to this Subsection shall be added (or deducted, as the case may be) to such taxable income or loss.

8.3 Binding Effect. Except as otherwise provided in this Agreement to the contrary, this Agreement shall be binding upon and inure to the benefit of the Member, and the Member's personal representatives, successors and assigns.

8.4 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State in which the Company is formed and organized.

8.5 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

BASIC OPERATING AGREEMENT

TABLE OF CONTENTS

	Page
ARTICLE 1 Formation, Purpose and Definitions.....	1
1.1 Establishment of Limited Liability Company.....	1
1.2 Name	1
1.3 Principal Office of the Company	1
1.4 Purpose	1
1.5 Term	1
1.6 Other Activities of Members	2
1.7 Defined Terms	2
ARTICLE 2 Contributions and Capital Accounts	2
2.1 Capital Contributions.....	2
2.2 Maintenance of Capital Accounts	2
2.3 Withdrawal of Capital	2
2.4 Additional Capital Contributions	2
2.5 Interest on Capital Contributions	2
2.6 Limitation on Liability of Member	2
ARTICLE 3 Allocation of Profits and Losses	3
3.1 Profits & Losses	3
3.2 Qualified Income Offset Allocation	3
ARTICLE 4 Distributions of Cash Flow	3
4.1 Net Cash Flow Distributions.....	3
4.2 Restrictions on Distributions of Net Cash Flow.....	3
ARTICLE 5 Rights and Duties of Members	4
5.1 Management.....	4
5.2 Voting Decisions By Members	4
5.3 Powers of Employee and Agents	5
5.4 Liability for Certain Acts.....	5
5.5 Indemnification	6
ARTICLE 6 Transfer of Membership Interests	6
6.1 General Restriction.....	6
6.2 Transfer of Membership Interest Without Substitution.....	6
6.3 Admission of Transferees as New Members	6
6.4 Issuance of New Membership Interests	7
6.5 Conditions on Transfers of Membership or Economic Interest	7
6.6 Obligations of Transferring Member.....	7
6.7 Allocations Upon Transfer of Membership or Economic Interest or Upon Admission	7

ARTICLE 7 Dissociation of a Member	8
7.1 Dissociation	8
7.2 Rights of Dissociating Member	8
7.3 Withdrawal of Member.	9
7.4 Effect of Dissociation of a Member	9
ARTICLE 8 Dissolution and Liquidation	9
8.1 Events Triggering Dissolution	9
8.2 Effect of Dissolution.....	9
8.3 Liquidation.....	10
8.4 Revaluation.	10
8.5 Distributions in Kind	10
8.6 Timing of Liquidation.	10
8.7 Certificate of Cancellation.....	10
ARTICLE 9 Accounting and Fiscal Matters	11
9.1 Fiscal Year	11
9.2 Method of Accounting.....	11
9.3 Records to be Maintained	11
9.4 Inspection of Books and Records.	11
9.5 Bank Accounts	12
9.6 Tax Matters Partner	12
ARTICLE 10 Miscellaneous	12
10.1 Amendment.....	12
10.2 Glossary	12
10.3 Notices.....	15
10.4 Binding Effect.	15
10.5 Counterparts.....	16
10.6 Governing Law	16
10.7 Severability.	16
10.8 Gender	16

OPERATING AGREEMENT

OF

A LIMITED LIABILITY COMPANY

STATE OF

This OPERATING AGREEMENT is entered into and shall be effective as of
20 by and among the parties whose names are set forth on Schedule A attached
to this Agreement and incorporated by reference in this Agreement.

RECITAL

The persons or entities listed on attached Schedule A (the "*Members*") desire to establish a limited liability company (the "*Company*"). The Members desire to set forth in this Agreement the terms of their understandings and agreement. In consideration of the mutual promises in this Agreement, the parties, intending legally to be bound, agree as follows:

Article 1 FORMATION, PURPOSE AND DEFINITIONS

1.1 Establishment of Limited Liability Company. The Members hereby agree to establish a limited liability company pursuant to the provisions of the laws governing limited liability companies in the State of (the "*Act*") and upon the terms set forth in this Agreement.

1.2 Name. Pursuant to the terms of this Agreement, the Members intend to carry on the activities of the Company as co owners under the above name. The Company may conduct its activities under any other permissible name designated by the Members. The Members shall be responsible for complying with any registration requirements in the event an alternate name is used.

1.3 Principal Office of the Company. The principal office of the Company shall be located at such location as the Members may determine. The registered agent for the service of process and registered office of the Company shall be the person and location set forth in the Certificate of Formation filed with the applicable State agency or authority under the Act, and the Members may, from time to time, change such agent and office by appropriate filings as required by law.

1.4 Purpose. The Company may engage in any lawful business, investment, or other activity permitted under the Act or the laws of any jurisdiction in which the Company may transact its affairs. The Company shall have the authority to do all things necessary or advisable in order to accomplish such purposes.

1.5 Term. The term of this Company shall begin on the date of filing of a Formation Document with the applicable State agency or authority under the Act. The duration of the Company shall be indefinite and shall continue until the Company is dissolved in accordance with the provisions of Article 8 of this Agreement or the Act, which shall constitute the time specified for dissolution of the Company as contemplated by the Act.

1.6 Other Activities of Members. Any Member may engage in or possess an interest in other business or investment ventures of any nature, whether or not similar to or competitive with the activities of the Company.

1.7 Defined Terms. Capitalized words and phrases used in this Agreement shall have the meanings ascribed to such terms in the Glossary contained in Section 10.2 of this Agreement.

Article 2

CONTRIBUTIONS AND CAPITAL ACCOUNTS

2.1 Capital Contributions. Upon formation of the Company, the Members shall make the Capital Contributions set forth on Schedule A. The Company may, at its option, issue certificates representing ownership of a Membership Interest in the Company. Such certificates, if any, shall be representative only, and shall not be needed to sell, gift, surrender or otherwise transfer Membership Interests or an interest in the Company held by an Economic Interest Owner.

2.2 Maintenance of Capital Accounts. The Company shall establish and maintain a Capital Account for each Member, in accordance with the rules set forth in Treasury Regulation 1.704-1, or its successor provision.

2.3 Withdrawal of Capital. A Member shall not be entitled to withdraw any part of such Member's Capital Account or to receive any distribution from the Company, except as provided in this Agreement.

2.4 Additional Capital Contributions.

(a) No Member shall be required to make any additional capital contribution to the Company or to restore any deficit in such Member's Capital Account, except as provided in this Agreement, and such deficit, if any, shall not be considered a debt owed to the Company or to any other person for any purpose.

(b) If the Company is obligated, pursuant to federal, state or local law, to remit payment to a governmental entity in respect of a tax or other fee imposed directly on a Member, or a tax or fee imposed on the Company which is to be credited for tax purposes, by law or regulation, to the taxpayer account of a Member, then such payments shall be deemed, for purposes of this Agreement, to be a distribution to such Member. The Member shall be obligated to make an additional Capital Contribution to the Company in an amount equal to the payments by the Company on such Member's behalf, except to the extent the Company decides to treat such payments as a distribution of Net Cash Flow under this Agreement. The Capital Contribution to be made, if any, shall be made promptly after payment of such amounts by the Company, provided, however, that the Company reserves the right to require such Capital Contribution to be made in advance of the due date for the payment by the Company, in time sufficient to allow the Company to use such Capital Contribution to satisfy the Company's payment obligation.

2.5 Interest on Capital Contributions. No interest shall be due from the Company on any Capital Contribution of any Member.

2.6 Limitation on Liability of Member.

(a) Except as otherwise expressly required by applicable law of the State in which

the Company is formed and organized, or as otherwise provided under this Agreement, no member (or holder of economic rights in the Company), manager, employee or agent of the Company shall be obligated personally for any debt, obligation, or liability of the Company, or for any debt, obligation or liability of another member, manager, employee or agent of the Company, by reason of being a member (or holder of economic rights), or by reason of acting in the capacity of a manager, employee or agent of the Company.

(b) A Member shall be personally obligated for any debt or liability that the Member expressly assumes in writing, including, without limitation, the obligation to make a specified Capital Contribution as provided in this Agreement.

Article 3

ALLOCATION OF PROFITS AND LOSSES

3.1 Profits & Losses. After giving effect to the special allocations set forth in Section 3.2, Profits and Losses for any fiscal year shall be allocated, without priority, to the Members in proportion to their respective Membership Interests, unless the Members have agreed, in a writing signed by all Members and attached to this Agreement, to a different allocation of Profits and Losses permitted by law and applicable regulation.

3.2 Qualified Income Offset Allocation. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulation Section 1.704-1(ii), or which causes or increases a Member's Capital Account Deficit as of the end of the taxable year to which such allocation, distribution or adjustment relates, then items of Company income and gain shall be specially allocated (after the allocation required by the foregoing provisions of this Section 3.2) to such Member in an amount and manner sufficient to eliminate (to the extent required by the Regulations) the Capital Account Deficit balances, if any, created by such adjustments, allocations, or distributions as quickly as possible; provided that an allocation pursuant to this Section 3.2 shall be made only if and to the extent that such Member would have a Capital Account Deficit after all other allocations provided for in this Article 3 have been tentatively made as if this Section 3.2 was not in the Agreement.

Article 4

DISTRIBUTIONS OF CASH FLOW

4.1 Net Cash Flow Distributions. Net Cash Flow shall be distributed in the following priority, subject to Section 4.2 and Article 8:

(a) First, to any Member who has advanced funds to the Company as a Lender, to the extent of and in proportion to such advances still owed, including accrued and unpaid interest thereon, if any, and including, without limitation, amounts not then due and owing;

(b) Additional distributions, if any, will be made, without priority, to the Members in proportion to their respective Membership Interests, unless the Members have agreed, in a writing signed by all Members and attached to this Agreement, to a different division permitted by law and applicable regulation.

4.2 Restrictions on Distributions of Net Cash Flow.

(a) Distributions of Net Cash Flow shall be made in such amounts and at such times as determined in the absolute discretion of the Managers, subject to the Managers' fiduciary

responsibilities to the Members. The Company may distribute at least annually to the Members so much of its Net Cash Flow as is not, in the opinion of the Managers, necessary or advisable for the conduct of the Company's business, after setting aside such amounts as the Managers deem necessary to create adequate reserves for future capital or operating needs of the Company. The Managers may elect, notwithstanding anything to the contrary in this Agreement, to withhold any distributions of Net Cash Flow or return of capital to the Members in order to accomplish the business purposes of the Company as may be established from time to time.

(b) The Company shall have the right to offset against a distribution to a Member any loan or other indebtedness by such Member in favor of the Company and, to the extent so credited against the obligation, such loan or other indebtedness shall be deemed to be and shall be canceled and discharged. Such right of offset shall be immediately available to the Company regardless of the due date of any such loan or other indebtedness, but shall be applied against the amounts due in inverse order of maturity.

(c) If any assets of the Company are distributed in kind, such assets shall be distributed to the Members entitled thereto as tenants in common in the same proportions as such Members would have been entitled to cash distributions.

(d) No Member shall be entitled to demand and receive property other than cash in return for Capital Contributions to the Company.

(e) The Members irrevocably waive, during the term of the Company and during the period of any liquidation following the dissolution of the Company, any right to maintain any action or claim for partition with respect to any assets of the Company.

Article 5 RIGHTS AND DUTIES OF MEMBERS

5.1 Management. The business, investment, or other activities and affairs of the Company shall be managed by its Members. Any difference arising as to any matter within the authority of the Members shall be decided by the Members holding at least a majority of the Membership Interests in the Company (unless a higher or lower vote is expressly required in this Agreement or applicable law for a particular action or decision of the Members). Any Member may bind the Company, except that no Member may bind the Company in contravention of a determination by the Members with respect to persons having knowledge of such determination. Nothing contained in this Agreement shall require any person to inquire into the authority of any of the Members to execute and deliver any document on behalf of the Company or to bind the Company pursuant to such document.

5.2 Voting Decisions By Members.

(a) **General Rules.** Actions and decisions requiring the approval of the Members pursuant to any provision of this Agreement may be authorized or made either by vote of the required number of Members taken at a meeting of the Members or by unanimous written consent without a meeting. In addition, emergency actions may be taken in accordance with the provisions of Section 5.2 of this Agreement. Economic Interest Owners shall not be entitled to receive notices, vote, call meetings, or act as proxies, and their consent shall not be required for any purpose under this Agreement. The Interests in the Company held by such persons shall be excluded for purposes of determining the number of affirmative votes required for decisions or actions to be taken under this Agreement, except where expressly indicated otherwise.

(b) **Meetings.** Any Member may call a meeting to consider approval of an action or decision under any provision of this Agreement by delivering to each other Member notice of the time and purpose of such meeting at least ten (10) days before the day of such meeting. A Member may waive the requirement of notice of a meeting either by attending such meeting or executing a written waiver before or after such meeting. Any such meeting shall be held during the regular business hours at the Company's principal place of business unless all of the other Members consent in writing or by their attendance at such meeting to its being held at another location or time.

(c) **Unanimous Consent.** Any Member may propose that the Company authorize an action or decision pursuant to any provision of this Agreement by unanimous written consent of all Members in lieu of a meeting. A Member's written consent may be evidenced by such person's signature on a counterpart of the proposal or by a separate writing (including a facsimile) that identifies the proposal with reasonable specificity and states that the Member consents to such proposal.

(d) **Vote by Proxy.** A Member may vote (or execute a written consent) by proxy given to any other Member. Any such proxy must be in writing and must identify the specific meeting or matter to which the proxy applies or state that it applies to all matters (subject to specified reservations, if any) coming before the Members for approval under any provision of this Agreement prior to a specified date (which shall not be later than the first anniversary date on which such proxy is given). Any such proxy shall be revocable at any time and shall not be effective at any meeting at which the Member giving such proxy is in attendance.

(e) **Emergency Procedures.** Notwithstanding any provisions of this Section 5.2, in the event that Members who could authorize a Company action or decision at a duly called meeting reasonably determine, in writing, that the Company is facing a significant emergency that requires immediate action, such Members may, without complying with generally applicable procedures or meetings or actions by unanimous consent, authorize any action or decision that they deem reasonably necessary to allow the Company to benefit from a significant opportunity or to protect the Company from significant loss or damage, provided that they make reasonable efforts under the circumstances to contact and consult all Members concerning such action or decision and the reasons why such action or decision must be made without observing generally applicable procedures.

(f) **Records.** The Company shall maintain permanent records of all actions taken by the Members pursuant to any provision of this Agreement, including minutes of all Company meetings, copies of all actions taken by consent of the Members, and copies of all proxies pursuant to which one Member votes or executes a consent on behalf of another.

5.3 Powers of Employee and Agents. Unless authorized to do so by this Operating Agreement or by the Members of the Company, no attorney-in-fact, employee, or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose.

5.4 Liability for Certain Acts. To the extent permitted by applicable law of the State in which the Company is formed and organized, no Member of the Company shall be personally liable to the Company or its other Members for damages for breach of any duty owed to the Company or its Members except that a Member shall not be relieved from liability for any breach of duty based on an act or omission in breach of such person's duty of loyalty to the Company or its Members, not in good faith or involving a knowing violation of law or this Agreement, or resulting in receipt by such person of an improper personal benefit. Notwithstanding anything to the contrary in this Agreement, and to the extent permitted by applicable law of the State in which the Company is formed and organized, no

6.2 Transfer of Membership Interest Without Substitution. Subject to compliance with the conditions of Section 6.5, a Member shall have the right to transfer all or part of such Member's Membership Interest by a written instrument of transfer the terms of which are not in contravention of any of the provisions of this Agreement. Unless and until admitted as a substitute or additional Member in accordance with this Agreement, a transferee shall only be an Economic Interest Owner, who shall be entitled to receive distributions from the Company, and be allocated Profits and Losses of the Company, attributable to the Membership Interest acquired by reason of such transfer from and after the effective date of the transfer of such Interest, as specified in Section 6.6. All other Company rights attributable to such transferred Interest, including, without limitation, the right to inspect Company books and to vote on Company matters, shall terminate until and unless such transferee becomes a substituted or additional Member; provided, however, that the Managers and the Company shall be entitled to treat the assignor of such Membership Interest as the owner thereof in all respects, and shall incur no liability for distributions made in good faith to such transferor until such time as both the beneficiary of such transfer has been recognized by the Company as a transferee in accordance with Section 6.6 and the effective date of the transfer has passed.

6.1 General Restriction. Neither a Member nor an Economic Interest Owner may transfer, whether voluntarily or involuntarily, any portion of such person's Membership Interest or Economic Interest, except as otherwise expressly provided for in this Agreement. For purposes of this Agreement, a "transfer" includes, but is not limited to, any sale, assignment, gift, exchange, hypothecation, collateral assignment or subject to any security interest.

(b) The Members shall be indemnified by the Company, to the fullest extent permitted by the law of the State in which the Company is formed and organized, against any losses, judgments, liabilities and expenses (including reasonable attorney fees) incurred by the Members by reason of any act or omission performed or omitted by the Members in good faith on behalf of the Company in a manner reasonably believed by the Members to be within the scope of the authority granted to the Members by this Agreement, providing that this indemnity shall extend only to Members who were not guilty of gross negligence or willful misconduct. The Company may also indemnify its employees and other agents who are not Members, to the fullest extent permitted by the law of the State in which the Company is formed and organized, provided that the indemnification in any given situation is approved by Members owning a majority of the Membership Interests.

(a) Each Member shall indemnify and hold harmless the Company from any loss, damage, claim or liability (including reasonable attorney fees) incurred by reason of such Member's gross negligence or willful misconduct.

Member shall have any fiduciary duty or obligation to any Economic Interest Owner or other transferee of an interest in the Company or to any other creditor of the Company.

or without reason as a matter of absolute discretion; and (ii) the transferor and transferee named in such transfer have executed and acknowledged such other instruments as the Managers may deem necessary or desirable to effect such admission.

(b) A transferee accepted as a substitute or additional Member shall have all of the rights and obligations of its predecessor in interest in the Company, to the extent that they relate to the transferred interest. Admission of a substituted or additional Member shall be recognized by the Company as provided in Section 6.6.

(c) If there are no remaining Members in the Company, an Economic Interest Owner may become a substituted Member in the Company if, in addition to the requirements of Section 6.5, a new Member is appointed as provided in Section 0.

6.4 Issuance of New Membership Interests. Any person acceptable to the Managers and the Members may become an additional Member in the Company by the issuance of additional Membership Interests in exchange for such consideration as such Members and the Managers may determine as a matter of absolute discretion. Such person may become an additional Member in the Company only if, in addition to the requirements of Section 6.5, the person executes such instruments as the Managers may deem necessary or desirable to effect such admission. Admission of an additional Member shall be recognized by the Company as provided in Section 6.6.

6.5 Conditions on Transfers of Membership or Economic Interest. A transfer of a Membership Interest or Economic Interest, and the admission of additional Members, otherwise permitted by this Article 6 shall be subject to the following additional limitations:

(a) No Membership or Economic Interest may be transferred or issued if such proposed action, in the opinion of counsel for the Company, would result in the termination of the Company under Section 708 of the Code, or (ii) would result in the cancellation of the Formation Document or an obligation to file a Certificate of Cancellation or Articles of Dissolution or similar document of record, or (iii) would impair the ability of the Company to be taxed as a partnership for Federal income tax purposes.

(b) No Membership (or Economic Interest) may be issued by the Company or transferred by a Member unless the transferee (whether such person is to be admitted as a Member or will merely be an Economic Interest Owner) confirms in writing acceptable to the Members that such transferee has accepted, assumed, and agreed to be bound subject to and bound by all of the terms and conditions of this Agreement. No Membership (or Economic) Interest may be transferred unless the assigning Member or Economic Interest Owner delivers to the Members a written instrument of assignment in form and substance satisfactory to the Members, duly executed by the transferor or such transferor's personal representative or authorized agent. The assignment shall be accompanied by such assurances of genuineness and effectiveness and by such consents or authorizations of governmental or other authorities as may be reasonably required by the Members.

6.6 Obligations of Transferring Member. Except as otherwise agreed to by the Members, no transfer by a Member of all or any portion of an interest in the Company shall, to any extent, relieve the transferring Member of any of such Member's obligations to the Company or liability, if any, as a Member (whether or not such person remains as a Member).

Interest in accordance with this Agreement, then the rights and obligations of the dissociating Member (and such Member's successor) shall be subject to the provisions of Article 6.

7.3 Withdrawal of Member. Except as otherwise provided in Article 6, no Member shall be entitled to withdraw or resign from the Company.

7.4 Effect of Dissociation of a Member. Notwithstanding anything to the contrary in this Agreement, the Act or otherwise applicable state law, the dissociation of a Member shall not cause the dissolution, termination or liquidation of the Company.

Article 8

DISSOLUTION AND LIQUIDATION

8.1 Events Triggering Dissolution. The Company shall dissolve and commence winding up and liquidating upon the first to occur of any of the following ("Liquidating Events"):

(a) the determination by unanimous agreement of all of the Members, that the Company should be dissolved;

(b) the insolvency or bankruptcy of the Company;

(c) the sale of all or substantially all of the Company's assets; or

(d) ninety (90) days after the date of any act that causes the Company to have less than the minimum number of members required under the Act, provided that any such event shall not be a Liquidating Event if one or more new members (sufficient to satisfy the requirement of the Act regarding the minimum number of members) are appointed, in writing, by the successor in interest to the last remaining Member of the Company within ninety (90) days of such Member's dissociation, and if there is more than one successor in interest to the last remaining Member or if two or more Members dissociate at the same time, then appointment of a new member shall be made by the affirmative decision of persons holding a majority of such successor interests in the Company; or

(e) any event that makes it impossible, unlawful or impractical to carry on the business of the Company.

The Members agree that the Company shall not be dissolved or liquidated prior to the occurrence of a Liquidating Event, as set forth in this Article 8. If it is determined by a court of competent jurisdiction that the Company has dissolved prior to the occurrence of a Liquidating Event, then within a 90-day period after such determination, the Members may elect to reconstitute the Company and continue its business on the same terms and conditions set forth in this Agreement by forming a new limited liability company on identical terms. Upon such election within such 90-day period, all Members and Economic Interest Owners (and their successors in interest) shall be bound thereby and shall be deemed to have consented to such election.

8.2 Effect of Dissolution. No dissolution of the Company shall release any of the parties to this Agreement from their contractual obligations under this Agreement.

8.3 Liquidation. Upon dissolution of the Company in accordance with Section 8.1, the Company shall be liquidated. The Members shall select a Liquidating Manager (who may be any Member who shall serve only for purposes of winding up the Company. The proceeds of such liquidation shall be applied and distributed in the following order of priority:

(a) to the payment of the debts and liabilities of the Company (other than debts or liabilities owing to a Member or Economic Interest Owner) and the expenses of liquidation (including, if applicable, the reasonable fees of the Liquidating Manager);

(b) the setting up of any reserves which the Liquidating Manager may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company, which reserves shall be paid over to an attorney at law of the State in which the Company is formed and organized, as escrow holder, to be held for the purpose of disbursing (under the direction of the Liquidating Manager) such reserves in payment of any of the aforementioned liabilities and, at the expiration of such period (not to exceed two years) as the Liquidating Manager may deem advisable, for distribution in the manner hereinafter provided;

(c) to the repayment of any outstanding advances or loans that may have been made by any of the Members or Economic Interest Owners to the Company, other than capital contributions, pro rata among them on the basis of such advances and loans to the Company; and

(d) the balance, if any, to the Members or Economic Interest Owners (or to their permitted transferees of their interest in the Company, in whole or in part) in accordance with their respective Capital Accounts, after adjustment for all income, loss, and gain of the Company and after adjustment for all previous contributions and distributions of the Company.

8.4 Revaluation. If the Company's assets are not sold, but instead are distributed in kind, such assets, for purposes of determining the amount to be distributed to the parties, shall be revalued on the Company books to reflect their then current fair market value as of a date reasonably close to the date of liquidation. Any unrealized appreciation or depreciation shall be allocated among the Members (in accordance with the provisions of Article 3 as if such assets were sold at such fair market value) and taken into account in determining the Capital Accounts of the Members as of the date of liquidation.

8.5 Distributions in Kind. The Liquidating Manager may make distributions to the Members in cash or in kind, or partly in cash and partly in kind, in divided or undivided interests, and to allocate any property towards the satisfaction of any payment or distribution due to the Members in such manner as the Liquidating Manager may determine, whether or not such distributive shares may as a result be composed of differently. Distribution of any asset in kind to a Member shall be considered as a distribution of an amount equal to the asset's fair market value for purposes of this Article 8.

8.6 Timing of Liquidation. Distributions and liquidation of the Company shall be made in compliance with Treasury Regulation Section 1.704-1(iii).

8.7 Certificate of Cancellation. Upon the dissolution of the Company and the completion of the liquidation and winding up of the Company's affairs and business, the Liquidating Manager shall (or if the Liquidating Manager fails to act, then any Member may) prepare and file a Certificate of Cancellation or Articles of Dissolution or similar document, to be placed of record with the applicable State agency or authority, as required by the Act. When such certificate is filed, the Company's existence shall cease.

Article 9
ACCOUNTING AND FISCAL MATTERS

9.1 Fiscal Year. The fiscal year of the Company shall be the calendar year.

9.2 Method of Accounting. The Members shall select a method of accounting for the Company as deemed necessary or advisable and shall keep, or cause to be kept, full and accurate records of all transactions of the Company in accordance with sound accounting principles consistently applied.

9.3 Records to be Maintained. The Company shall maintain the following additional records:

(a) a current list of the full names, set forth in alphabetical order, and last known mailing address of each Member and Economic Interest Owner, together with date on which each became a Member, the information set forth on Schedule A relating to each Member's Capital Contributions and Membership Interest, and the amount of Capital Contribution, if any, a Member has agreed to make in the future ;

(b) a copy of the Formation Document and all amendments to such document, together with signed copies of any powers of attorney pursuant to which the Formation Document or any such amendments were signed;

(c) a copy of the Company's federal, state and local income or information tax returns and reports for the three most recent fiscal years; and

(d) a copy of this Agreement, including any and all amendments to this Agreement.

9.4 Inspection of Books and Records.

(a) Each Member shall have the right, subject to the conditions and limits set forth in subsection (b) below, to inspect and copy the following items:

(i) Each of the items described in Section 9.3 above;

(ii) True and full information regarding the status of the business and financial condition of the Company; and

(iii) Any other information regarding the affairs of the Company as is just and reasonable.

(b) Any inspection or copies of Company records under this Section 9.4 shall be subject to the following conditions:

(i) The inspection and copying must be for a purpose reasonably related to the Member's interest as a Member of the Company.

(ii) The demand for the inspection and copying must be reasonable and must be made in writing and must state the purpose of the demand.

(iii) The inspection and copying may be done only during regular business hours and shall be at the requesting Member's own expense.

(iv) The inspection and copying will be afforded only after a reasonable period of time for the Members to make available the information requested.

(v) The Members shall have the right to keep confidential, for such time period as the Members deem reasonable, any information that the Members reasonably deem to be in the nature of trade secrets or proprietary information, the disclosure of which the Members in good faith believe is not in the best interest of the Company or could damage the Company or its business or which the Company is required by law or by agreement with a third party to keep confidential.

(vi) The inspection and copying shall be subject to such additional standards or procedures as may be reasonably established by the Members.

9.5 Bank Accounts. The Members shall open and maintain (in the name of the Company) such bank accounts in which shall be deposited all funds of the Company. Withdrawals from such account or accounts shall be made upon the signature or signatures of such person or persons as the Members shall designate.

9.6 Tax Matters Partner. The Members may designate one of their number to act as the "Tax Matters Partner" under Section 6231 of the Internal Revenue Code of 1986, as amended, to manage administrative tax proceedings with the Internal Revenue Service.

Article 10 MISCELLANEOUS

10.1 Amendment. Except as otherwise provided in this Section 10.1 or elsewhere in this Agreement, this Agreement may be amended only with the consent of the Members holding at least 75% of the Membership Interests. Notwithstanding anything to the contrary in this Section 10.1, this Agreement may not be amended, without the consent of the Member or Members affected by any amendment to this Agreement, to modify the limited liability of a Member; (ii) alter the status of the Company as a partnership for federal income tax purposes; or (iii) otherwise modify the compensation, distributions, or rights of reimbursement to which such Member are entitled, or affect the duties of such Members serving as Managers or the indemnification to which such Members serving as Managers, and their affiliates, employees or agents, are entitled.

10.2 Glossary. As used in this Agreement, capitalized words and phrases shall have the following meanings:

(a) **Bankruptcy.** "Bankruptcy" of any individual, corporation or partnership shall be deemed to occur when such individual, corporation or partnership files a petition in bankruptcy, or voluntarily takes advantage of any bankruptcy or insolvency law, or is the subject of a petition or answer proposing the adjudication of such person as a bankrupt, and such individual, corporation or partnership either consents to the filing thereof, or fails to cause such petition or answer to be discharged or denied prior to the expiration of sixty (60) days from the date of such filing, or such person's or entity's assets are insufficient to pay his, her or its liabilities, or he, she or it has so admitted in writing.

(b) **Capital Account.** "*Capital Account*" means, with respect to any Member, the Capital Account maintained for such Member in accordance with the following provisions:

(i) To each Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's distributive share of Profits and any items in the nature of income

or gain that are specially allocated pursuant to Section 3.2 of this Agreement, and the amount of any Company liabilities that are assumed by such Member or that are secured by any Company property distributed to such Member.

(ii) To each Member's Capital Account there shall be debited the amount of cash and the value of any Company property distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Losses, such Member's distributive share of noncapital, nondeductible expenditures of the Company under Code Section 705(a)(2)(B) (including items treated as such expenditures pursuant to Treasury Regulation 1.704-1(b)(2)(iv)(i)), and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

(iii) In the event any Member transfers all or any portion of its Membership Interest in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

(iv) In the event the values of Company property are adjusted pursuant to this Agreement or under applicable Treasury Regulations, the Capital Accounts of all Members shall be adjusted simultaneously to reflect the aggregate net adjustment as if the Company recognized gain or loss equal to the amount of such aggregate net adjustment.

(v) In determining the amount of any liability for purposes of this Section 10.2(b), there shall be taken into account Code Section 752(c) and other applicable Code Sections and Treasury Regulations.

(vi) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with the Treasury Regulations. In the event the Members determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or the Members), are computed in order to comply with such Regulations, the Members may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to Article 8 of this Agreement upon the dissolution of the Company. The Members also shall (1) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g), and (2) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704(b).

(c) **Capital Account Deficit.** "Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year of the Company, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is obligated to restore (pursuant to the terms of any promissory note of such Member or otherwise) or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2 and 1.704-2; and

(ii) Debit to such Member's Capital Account the items described in Sections 1.704-1(ii), or of the Regulations.

The foregoing definition of Capital Account Deficit is intended to comply with Regulations Section 1.704-1(ii) and shall be interpreted consistently therewith.

(d) **Capital Contribution.** "Capital Contribution" means, with respect to any Member, the amount of money and the initial fair market value of any property (other than money) contributed to the Company with respect to a Membership Interest held by such Member. The principal amount of a promissory note which is not readily tradable on an established securities market and which is contributed to the Company by the maker of the note (or a person related to the maker of the note within the meaning of Treasury Regulation 1.704-1(ii)) shall not be included in the Capital Account of any Member until the Company makes a taxable disposition of the note or until (and to the extent that) principal payments are made on the note, all in accordance with Treasury Regulation 1.704-1(iv).

(e) **Code.** "Code" means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

(f) **Company.** "Company" means the limited liability company governed by this Agreement.

(g) **Economic Interest.** "Economic Interest" means a Member's or Economic Interest Owner's share of the Company's Profits, Losses, Net Cash Flow, and other distributions of the Company's assets pursuant to this Agreement and the Act, but shall not include any right to participate in the management or affairs of the Company, including, without limitation, the right to vote on, consent to, or otherwise participate in any decision of the Members, all as provided in Section 6.2.

(h) **Economic Interest Owner.** "Economic Interest Owner" shall mean the owner of an Economic Interest who is not a Member, including without limitation, a person who has acquired an Economic Interest as an assignee pursuant to Section 6.2, or (ii) as the personal representative, guardian or other successor in interest upon the death (in the case of a Member who is an individual), dissolution (in the case of a Member who is not an individual), bankruptcy or physical or mental incapacity of a Member pursuant to Article 7.

(i) **Formation Document.** "*Formation Document*" means the document initially filed of record with the applicable State agency or authority to establish the Company under the Act, including, without limitation, a Certificate of Formation or an Articles of Organization, as the case may be.

(j) **Lender.** "Lender" means any Member who advances (other than as a Capital Contribution) any money or property to the Company.

(k) **Members.** "Members" means the persons listed on attached Schedule A, and any person admitted to the Company as a Member in accordance with Article 6. The Members shall have the powers, rights and privileges provided to them in this Agreement.

(l) **Membership Interest.** "Membership Interest" means a Member's Economic Interest in the Company and such Member's right to participate in the management of the business and affairs of the Company, including, without limitation, the right to vote on, consent to, or otherwise participate in any decision or action of the Members pursuant to this Agreement or the Act. Unless otherwise agreed to in a writing signed by all of the Members and attached to this Agreement, the

Members' respective percentage Membership Interests shall be equal to the proportionate agreed-upon values of the Capital Contributions made by each Member, to the extent that such Contributions have been received by the Company and not returned. For this purpose, distributions pursuant to Article 4 shall not be considered as a return of Capital Contributions unless specifically identified as such by the Members in writing.

(m) **Net Cash Flow.** "Net Cash Flow" means the gross cash proceeds from Company operations (including all sales and dispositions) and all refinancings or placement of new mortgages on Company property, less the portion of such proceeds used to pay or establish reserves for all Company expenses, debt payments, capital improvements, replacements, and contingencies, all as determined by the Members. Net Cash Flow shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to Section 4.2. Payments of principal and interest on any debts or other obligations of the Company, whether or not secured by mortgages or liens on Company property, shall be considered as a deduction from Net Cash Flow. For purposes of this Agreement, Net Cash Flow shall also include any Capital Contributions of the Members as well as any incremental adjustment to the value of the Company's property in connection with a Revaluation under Section 8.4. Actual or deemed distributions to Members (other than payments then due and owing to a Member as a Lender) shall not be considered as a deduction from Net Cash from Operations.

(n) **Profit and Losses.** "Profits" and "Losses" means, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703 (and for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703 shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Subsection shall be added to such taxable income or loss; and

(ii) Any expenditures of the Company described in Code Section 705 or treated as Code Section 705 expenditures pursuant to Treasury Regulation Section 1.704-1(iv), and not otherwise required to be taken into account in computing Profits or Losses pursuant to this Subsection, shall be subtracted from such taxable income or loss.

(o) **Treasury Regulations.** "Treasury Regulations" means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

10.3 Notices. Unless otherwise provided in this Agreement or by written agreement of the Members, all notices or other communications required or permitted to be given under this Agreement shall be deemed given when delivered personally or mailed by registered or certified mail, return receipt required, postage prepaid, or delivered by overnight courier service, to the Members at their addresses on the records of the Company, or at such other addresses as a Member may designate to the Company in writing.

10.4 Binding Effect. Except as otherwise provided in this Agreement to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties, their personal representatives, successors and assigns.

10.5 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument which may be sufficiently evidenced by one counterpart.

10.6 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State in which the Company is formed and organized.

10.7 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

10.8 Gender. As used in this Agreement, the masculine gender shall include the feminine and the neuter, and vice versa.

STANDARD OPERATING AGREEMENT

TABLE OF CONTENTS

	Page
ARTICLE 1 Formation, Purpose and Definitions.....	1
1.1 Establishment of Limited Liability Company.....	1
1.2 Name	1
1.3 Principal Office of the Company	1
1.4 Purpose	1
1.5 Term	1
1.6 Other Activities of Members.....	2
1.7 Defined Terms.....	2
ARTICLE 2 Contributions and Capital Accounts	2
2.1 Capital Contributions.....	2
2.2 Maintenance of Capital Accounts	2
2.3 Withdrawal of Capital	2
2.4 Additional Capital Contributions	2
2.5 Interest on Capital Contributions	2
2.6 Priority and Return of Capital.....	2
2.7 Limitation on Liability of Member	3
2.8 Loans	3
2.9 Default in Capital Contribution.....	3
ARTICLE 3 Allocation of Profits and Losses	3
3.1 Profits & Losses	3
3.2 Special Allocations.....	3
ARTICLE 4 Distributions of Net Cash Flow	4
4.1 Net Cash Flow.....	4
4.2 Restrictions on Distributions of Net Cash Flow.....	4
ARTICLE 5 Rights and Duties of Members	5
5.1 Management.....	5
5.2 Voting Decisions By Members	5
5.3 Powers of Employee and Agents	6
5.4 Liability for Certain Acts.....	6
5.5 Indemnification	6
ARTICLE 6 Transfer of Membership Interests	7
6.1 General Restriction.....	7
6.2 Transfer of Membership Interest Without Substitution	7
6.3 Admission of Transferees as New Members	7
6.4 Issuance of New Membership Interests	8
6.5 Conditions on Transfers of Membership or Economic Interest	8
6.6 Recognition of Transferees and Substituted Members	8

6.7	Obligations of Transferring Member.....	8
6.8	Allocations Upon Transfer of Membership or Economic Interest or Upon Admission	9
ARTICLE 7 Dissociation of a Member		9
7.1	Dissociation.....	9
7.2	Rights of Dissociating Member.....	9
7.3	Withdrawal of Member.....	10
7.4	Effect of Dissociation of a Member.....	10
ARTICLE 8 Dissolution and Liquidation		10
8.1	Events Triggering Dissolution	10
8.2	Effect of Dissolution	10
8.3	Liquidation	10
8.4	Revaluation	11
8.5	Distributions in Kind	11
8.6	Timing of Liquidation.....	11
8.7	Certificate of Cancellation	12
ARTICLE 9 Accounting and Fiscal Matters		12
9.1	Fiscal Year	12
9.2	Method of Accounting	12
9.3	Records to be Maintained	12
9.4	Inspection of Books and Records	12
9.5	Bank Accounts	13
9.6	Tax Matters Partner.....	13
ARTICLE 10 Miscellaneous		13
10.1	Amendment	13
10.2	Glossary. As used in this Agreement, capitalized words and phrases shall have the following meanings:.....	13
10.3	Notices.	17
10.4	Binding Effect.....	17
10.5	Counterparts.....	17
10.6	Governing Law.	17
10.7	Severability.	17
10.8	Gender.....	17

OPERATING AGREEMENT
OF
A LIMITED LIABILITY COMPANY
STATE OF

This OPERATING AGREEMENT is entered into and shall be effective as of
20 by and among the parties whose names are set
forth on Schedule A attached to this Agreement and incorporated by reference in this Agreement.

RECITAL

The persons or entities listed on attached Schedule A (the "*Members*") desire to establish a limited liability company (the "*Company*"). The Members desire to set forth in this Agreement the terms of their understandings and agreement. In consideration of the mutual promises in this Agreement, the parties, intending legally to be bound, agree as follows:

Article 1
FORMATION, PURPOSE AND DEFINITIONS

1.1 Establishment of Limited Liability Company. The Members hereby agree to establish a limited liability company pursuant to the provisions of the laws governing limited liability companies in the State of (the "*Act*") and upon the terms set forth in this Agreement.

1.2 Name. Pursuant to the terms of this Agreement, the Members intend to carry on the activities of the Company as co owners under the above name. The Company may conduct its activities under any other permissible name designated by the Members. The Members shall be responsible for complying with any registration requirements in the event an alternate name is used.

1.3 Principal Office of the Company. The principal office of the Company shall be located at such location as the Members may determine. The registered agent for the service of process and registered office of the Company shall be the person and location set forth in the Formation Document filed with the applicable State agency or authority as required under the Act, and the Members may, from time to time, change such agent and office by appropriate filings as required by law.

1.4 Purpose. The Company may engage in any lawful business, investment, or other activity permitted under the Act or the laws of any jurisdiction in which the Company may transact its affairs. The Company shall have the authority to do all things necessary or advisable in order to accomplish such purposes.

1.5 Term. The term of this Company shall begin on the date of filing of a Formation Document with the applicable State agency or authority as required under the Act. The duration of the Company shall be indefinite and shall continue until the Company is dissolved in accordance with the provisions of Article 8 of this Agreement or the Act, which shall constitute the time specified for dissolution of the Company, as contemplated by the Act.

1.6 Other Activities of Members. Any Member may engage in or possess an interest in other business or investment ventures of any nature, whether or not similar to or competitive with the activities of the Company.

1.7 Defined Terms. Capitalized words and phrases used in this Agreement shall have the meanings ascribed to such terms in the Glossary contained in Section 10.2 of this Agreement.

Article 2

CONTRIBUTIONS AND CAPITAL ACCOUNTS

2.1 Capital Contributions. Upon formation of the Company, the Members shall make the Capital Contributions set forth on Schedule A. The Company may, at its option, issue certificates representing ownership of a Membership Interest in the Company. Such certificates, if any, shall be representative only, and shall not be needed to sell, gift, surrender or otherwise transfer Membership Interests or an interest in the Company held by an Economic Interest Owner.

2.2 Maintenance of Capital Accounts. The Company shall establish and maintain a Capital Account for each Member.

2.3 Withdrawal of Capital. A Member shall not be entitled to withdraw any part of such Member's Capital Account or to receive any distribution from the Company, except as provided in this Agreement.

2.4 Additional Capital Contributions.

(a) No Member shall be required to make any additional capital contribution to the Company or to restore any deficit in such Member's Capital Account, except as provided in this Agreement, and such deficit, if any, shall not be considered a debt owed to the Company or to any other person for any purpose.

(b) If the Company is obligated, pursuant to federal, state or local law, to remit payment to a governmental entity in respect of a tax or other fee imposed directly on a Member, or a tax or fee imposed on the Company which is to be credited for tax purposes, by law or regulation, to the taxpayer account of a Member, then such payments shall be deemed, for purposes of this Agreement, to be a distribution to such Member. The Member shall be obligated to make an additional Capital Contribution to the Company in an amount equal to the payments by the Company on such Member's behalf, except to the extent the Company decides to treat such payments as a distribution of Net Cash Flow. The Capital Contribution to be made, if any, shall be made promptly after payment of such amounts by the Company, provided, however, that the Company reserves the right to require such Capital Contribution to be made in advance of the due date for the payment by the Company, in time sufficient to allow the Company to use such Capital Contribution to satisfy the Company's payment obligation.

2.5 Interest on Capital Contributions. No interest shall be due from the Company on any Capital Contribution of any Member.

2.6 Priority and Return of Capital. Except as may be expressly provided in this Agreement, no Member or Economic Interest Owner shall have priority over any other Member or Economic Interest Owner, either for the return of Capital Contributions or for Net Cash Flow, provided that this section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

2.7 Limitation on Liability of Member.

(a) Except as otherwise expressly required by applicable law of the State in which the Company is formed and organized, or as otherwise provided under this Agreement, no member (or holder of economic rights in the Company), manager, employee or agent of the Company shall be obligated personally for any debt, obligation, or liability of the Company, or for any debt, obligation or liability of another member, manager, employee or agent of the Company, by reason of being a member (or holder of economic rights), or by reason of acting in the capacity of a manager, employee or agent of the Company.

(b) A Member shall be personally obligated for any debt or liability that the Member expressly assumes in writing, including, without limitation, the obligation to make a specified Capital Contribution as provided in this Agreement.

2.8 Loans. If any Member makes any loan or loans to the Company, or advances money on its behalf, the amount of any such loan or advance shall not be deemed an increase in, or contribution to, the Capital Account of the lending Member or entitle the lending Member to any increase in his, her or its share of the distributions of the Company. Interest shall accrue on any such loan at an annual rate agreed to by the Company and the lending Member (but not in excess of the maximum rate allowable under applicable usury laws).

2.9 Default in Capital Contribution. If any Member fails to make any Capital Contribution when due, such Member shall be in default, and the Company may exercise all legal rights including, without limitation, the commencement of an action to collect from such defaulting Member by legal process the entire amount of the unpaid Capital Contribution (including those not currently in default), together with all court costs and reasonable attorney fees.

Article 3 ALLOCATION OF PROFITS AND LOSSES

3.1 Profits & Losses. After giving effect to the special allocations set forth in Section 3.2, Profits and Losses for any fiscal year shall be allocated, without priority, to the Members in proportion to their respective Membership Interests, unless the Members have agreed, in a writing signed by all Members and attached to this Agreement, to a different allocation of Profits and Losses permitted by law and applicable regulation.

3.2 Special Allocations. The following special allocations shall be made in the following order:

(a) **Tax Allocations: Code Section 704.** In accordance with Code Section 704 and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial fair market value as of the date of contribution. Allocations pursuant to this Section 3.2(a) are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

(b) **Company Minimum Gain Chargeback.** If there is a net decrease in Company Minimum Gain during any Company fiscal year, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to

such Member's share of the net decrease in Company Minimum Gain (determined in accordance with Regulation Section 1.704-2). Allocations pursuant to the preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member. The items to be so allocated shall be determined in accordance with Regulation Section 1.704-2. This Section 3.2(b) is intended to comply with the minimum gain chargeback requirement in Regulation Section 1.704-2 and shall be interpreted consistent with such Section.

(c) **Qualified Income Offset Allocation.** In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulation Section 1.704-1(ii), or which causes or increases a Member's Capital Account Deficit as of the end of the taxable year to which such allocation, distribution or adjustment relates, then items of Company income and gain shall be specially allocated (after the allocation required by the foregoing provisions of this Section 3.2) to such Member in an amount and manner sufficient to eliminate (to the extent required by the Regulations) the Capital Account Deficit balances, if any, created by such adjustments, allocations, or distributions as quickly as possible; provided that an allocation pursuant to this Section 3.2(c) shall be made only if and to the extent that such Member would have a Capital Account Deficit after all other allocations provided for in this Article 3 have been tentatively made as if this Section 3.2(c) was not in the Agreement.

(d) **Company Nonrecourse Deductions.** Company Nonrecourse Deductions for any fiscal year or other period shall be specially allocated among the Members in accordance with their respective Membership Interests.

Article 4

DISTRIBUTIONS OF NET CASH FLOW

4.1 Net Cash Flow. Net Cash Flow shall be distributed in the following priority, subject to Section 4.2 and Article 8:

(a) First, to any Member who has advanced funds to the Company as a Lender, to the extent of and in proportion to such advances still owed, including accrued and unpaid interest thereon, if any, and including, without limitation, amounts not then due and owing;

(b) Additional distributions, if any, will be made, without priority, to the Members in proportion to their respective Membership Interests, unless the Members have agreed, in a writing signed by all Members and attached to this Agreement, to a different division permitted by law and applicable regulation.

4.2 Restrictions on Distributions of Net Cash Flow.

(a) Distributions of Net Cash Flow shall be made in such amounts and at such times as determined in the absolute discretion of the Members. The Company may distribute at least annually to the Members so much of its Net Cash Flow as is not, in the opinion of the Members, necessary or advisable for the conduct of the Company's business, after setting aside such amounts as the Members deem necessary to create adequate reserves for future capital or operating needs of the Company. The Members may elect, notwithstanding anything to the contrary in this Agreement, to withhold any distributions of Net Cash Flow or return of capital in order to accomplish the business purposes of the Company as may be established from time to time.

(b) The Company shall have the right to offset against a distribution to a Member any loan or other indebtedness by such Member in favor of the Company and, to the extent so credited against the obligation, such loan or other indebtedness shall be deemed to be and shall be canceled and discharged. Such right of offset shall be immediately available to the Company regardless of the due date of any such loan or other indebtedness, but shall be applied against the amounts due in inverse order of maturity.

(c) If any assets of the Company are distributed in kind, such assets shall be distributed to the Members entitled thereto as tenants in common in the same proportions as such Members would have been entitled to cash distributions.

(d) No Member shall be entitled to demand and receive property other than cash in return for Capital Contributions to the Company.

(e) The Members irrevocably waive, during the term of the Company and during the period of any liquidation following the dissolution of the Company, any right to maintain any action or claim for partition with respect to any assets of the Company.

Article 5

RIGHTS AND DUTIES OF MEMBERS

5.1 Management. The business, investment, or other activities and affairs of the Company shall be managed by its Members. Any difference arising as to any matter within the authority of the Members shall be decided by the Members holding at least a majority of the Membership Interests (unless a higher or lower vote is expressly required in this Agreement or applicable law for a particular action or decision of the Members). Any Member may bind the Company, except that no Member may bind the Company in contravention of a determination by the Members with respect to persons having knowledge of such determination. Nothing contained in this Agreement shall require any person to inquire into the authority of any of the Members to execute and deliver any document on behalf of the Company or to bind the Company pursuant to such document.

5.2 Voting Decisions By Members.

(a) **General Rules.** Actions and decisions requiring the approval of the Members pursuant to any provision of this Agreement may be authorized or made either by vote of the required number of Members taken at a meeting of the Members or by unanimous written consent without a meeting. In addition, emergency actions may be taken in accordance with the provisions of Section 5.2(e) of this Agreement. Economic Interest Owners shall not be entitled to receive notices, vote, call meetings, or act as proxies, and their consent shall not be required for any purpose under this Agreement. The Interests in the Company held by Economic Interest Owners shall be excluded for purposes of determining the number of affirmative votes required for decisions or actions to be taken under this Agreement, except where expressly indicated otherwise.

(b) **Meetings.** Any Member may call a meeting to consider approval of an action or decision under any provision of this Agreement by delivering to each other Member notice of the time and purpose of such meeting at least ten (10) days before the day of such meeting. A Member may waive the requirement of notice of a meeting either by attending such meeting or executing a written waiver before or after such meeting. Any such meeting shall be held during the regular business hours at the Company's principal place of business unless all of the other Members consent in writing or by their attendance at such meeting to its being held at another location or time.

(c) **Unanimous Consent.** Any Member may propose that the Company authorize an action or decision pursuant to any provision of this Agreement by unanimous written consent of all Members in lieu of a meeting. A Member's written consent may be evidenced by such person's signature on a counterpart of the proposal or by a separate writing (including a facsimile) that identifies the proposal with reasonable specificity and states that the Member consents to such proposal.

(d) **Vote by Proxy.** A Member may vote (or execute a written consent) by proxy given to any other Member. Any such proxy must be in writing and must identify the specific meeting or matter to which the proxy applies or state that it applies to all matters (subject to specified reservations, if any) coming before the Members for approval under any provision of this Agreement prior to a specified date (which shall not be later than the first anniversary date on which such proxy is given). Any such proxy shall be revocable at any time and shall not be effective at any meeting at which the Member giving such proxy is in attendance.

(e) **Emergency Procedures.** Notwithstanding any provisions of this Section 5.2, in the event that Members who could authorize a Company action or decision at a duly called meeting reasonably determine, in writing, that the Company is facing a significant emergency that requires immediate action, such Members may, without complying with generally applicable procedures or meetings or actions by unanimous consent, authorize any action or decision that they deem reasonably necessary to allow the Company to benefit from a significant opportunity or to protect the Company from significant loss or damage, provided that they make reasonable efforts under the circumstances to contact and consult all Members concerning such action or decision and the reasons why such action or decision must be made without observing generally applicable procedures.

(f) **Records.** The Company shall maintain permanent records of all actions taken by the Members pursuant to any provision of this Agreement, including minutes of all Company meetings, copies of all actions taken by consent of the Members, and copies of all proxies pursuant to which one Member votes or executes a consent on behalf of another.

5.3 Powers of Employee and Agents. Unless authorized to do so by this Operating Agreement or by the Members of the Company, no attorney-in-fact, employee, or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose.

5.4 Liability for Certain Acts. To the extent permitted by applicable law of the State in which the Company is formed and organized, no Member of the Company shall be personally liable to the Company or its other Members for damages for breach of any duty owed to the Company or its Members except that a Member shall not be relieved from liability for any breach of duty based on an act or omission in breach of such person's duty of loyalty to the Company or its Members, not in good faith or involving a knowing violation of law or this Agreement, or resulting in receipt by such person of an improper personal benefit. Notwithstanding anything to the contrary in this Agreement, and to the extent permitted by the law of the State in which the Company is formed and organized, no Member shall have any fiduciary duty or obligation to any Economic Interest Owner or other transferee of an interest in the Company or to any other creditor of the Company.

5.5 Indemnification

(a) Each Member shall indemnify and hold harmless the Company from any loss, damage, claim or liability (including reasonable attorney fees) incurred by reason of such Member's gross negligence or willful misconduct.

(b) The Members shall be indemnified by the Company, to the fullest extent permitted by the law of the State in which the Company is formed and organized, against any losses, judgments, liabilities and expenses (including reasonable attorney fees) incurred by the Members by reason of any act or omission performed or omitted by the Members in good faith on behalf of the Company in a manner reasonably believed by the Members to be within the scope of the authority granted to the Members by this Agreement, providing that this indemnity shall extend only to Members who were not guilty of gross negligence or willful misconduct. The Company may also indemnify its employees and other agents who are not Members, to the fullest extent permitted by the law of the State in which the Company is formed and organized, provided that the indemnification in any given situation is approved by Members owning a majority of the Membership Interests.

Article 6

TRANSFER OF MEMBERSHIP INTERESTS

6.1 General Restriction. Neither a Member nor an Economic Interest Owner may transfer, whether voluntarily or involuntarily, any portion of such person's Membership Interest or Economic Interest, except as otherwise expressly provided for in this Agreement. For purposes of this Agreement, a "transfer" includes, but is not limited to, any sale, assignment, gift, exchange, hypothecation, collateral assignment or subjection to any security interest.

6.2 Transfer of Membership Interest Without Substitution. Subject to compliance with the conditions of Section 6.5, a Member shall have the right to transfer all or part of such Member's Membership Interest by a written instrument of transfer the terms of which are not in contravention of any of the provisions of this Agreement. Unless and until admitted as a substitute or additional Member in accordance with this Agreement, a transferee shall only be an Economic Interest Owner, who shall be entitled to receive distributions from the Company, and be allocated Profits and Losses of the Company, attributable to the Membership Interest acquired by reason of such transfer from and after the effective date of the transfer of such Interest, as specified in Section 6.6. All other Company rights attributable to such transferred Interest, including, without limitation, the right to inspect Company books and to vote on Company matters, shall terminate until and unless such transferee becomes a substituted or additional Member; provided, however, that the Members and the Company shall be entitled to treat the assignor of such Membership Interest as the owner thereof in all respects, and shall incur no liability for distributions made in good faith to such transferor until such time as both the beneficiary of such transfer has been recognized by the Company as a transferee in accordance with Section 6.6 and the effective date of the transfer has passed.

6.3 Admission of Transferees as New Members.

(a) An Economic Interest Owner may become a substituted or additional Member in the Company if, in addition to the requirements of Section 6.5, the Economic Interest Owner obtains the written consent of the Members, which consent may be withheld for any reason or without reason as a matter of absolute discretion; and (ii) the transferor and transferee named in such transfer have executed and acknowledged such other instruments as the Members may deem necessary or desirable to effect such admission.

(b) A transferee accepted as a substitute or additional Member shall have all of the rights and obligations of its predecessor in interest in the Company, to the extent that they relate to the transferred interest. Admission of a substituted or additional Member shall be recognized by the Company as provided in Section 6.6.

(c) If there are no remaining Members in the Company, an Economic Interest Owner may become a substituted Member in the Company if, in addition to the requirements of Section 6.5, a new Member is appointed as provided in Section 8.1(d).

6.4 Issuance of New Membership Interests. Any person acceptable to the Members may become an additional Member in the Company by the issuance of additional Membership Interests in exchange for such consideration as such Members may determine as a matter of absolute discretion. Such person may become an additional Member in the Company only if, in addition to the requirements of Section 6.5, the person executes such instruments as the Members may deem necessary or desirable to effect such admission. Admission of an additional Member shall be recognized by the Company as provided in Section 6.6.

6.5 Conditions on Transfers of Membership or Economic Interest. A transfer of a Membership Interest or Economic Interest, and the admission of additional Members, otherwise permitted by this Article 6 shall be subject to the following additional limitations:

(a) No Membership or Economic Interest may be transferred or issued if such proposed action, in the opinion of counsel for the Company, would result in the termination of the Company under Section 708 of the Code, or (ii) would result in the cancellation of the Formation Document or an obligation to file a Certificate of Cancellation or Articles of Dissolution or similar document of record, or (iii) would impair the ability of the Company to be taxed as a partnership for Federal income tax purposes.

(b) No Membership (or Economic Interest) may be issued by the Company or transferred by a Member unless the transferee (whether such person is to be admitted as a Member or will merely be an Economic Interest Owner) confirms in writing acceptable to the Members that such transferee has accepted, assumed, and agreed to be bound subject to and bound by all of the terms and conditions of this Agreement. No Membership (or Economic) Interest may be transferred unless the assigning Member or Economic Interest Owner delivers to the Members a written instrument of assignment in form and substance satisfactory to the Members, duly executed by the transferor or such transferor's personal representative or authorized agent. The assignment shall be accompanied by such assurances of genuineness and effectiveness and by such consents or authorizations of governmental or other authorities as may be reasonably required by the Members.

6.6 Recognition of Transferees and Substituted Members. Amendments to the books and records of the Company and, as may be required by law, amendments to the Certificate of Formation, shall be made monthly (or less frequently to the extent that such transfers or substitutions occur less frequently) to recognize the transfer of a Membership Interest and, as applicable, admission of substituted or additional Members. Transfers of Membership Interests and admissions of new Members shall be recognized and effective on and as of the first day of the first month following the date of the satisfaction of the conditions to the transfer and substitution set forth in this Article, as applicable.

6.7 Obligations of Transferring Member. Except as otherwise agreed to by the Members, no transfer by a Member of all or any portion of an interest in the Company shall, to any extent, relieve the transferring Member of any of such Member's obligations to the Company or liability, if any, as a Member (whether or not such person remains as a Member).

6.8 Allocations Upon Transfer of Membership or Economic Interest or Upon Admission.

(a) As between a Member and such Member's transferee, profits, losses and credits for any semi monthly period shall be apportioned to the person who is the holder of the Membership Interest transferred on the last day of such semi monthly period, without regard to the results of the Company's operations during the period before or after such transfer. However, in the event that it is determined by the Members that the convention adopted by the Company to allocate income, gain, loss, deduction or credit of the Company is not in compliance with Section 706 of the Code, as modified by Regulations promulgated thereunder, then the Members shall revise the method of allocation to comply with such Regulations.

(b) No new Members or Economic Interest Owners shall be entitled to any retroactive allocation of Profits or Losses incurred by the Company. The Members may, at their option, at the time a Member is admitted, or an Interest transferred, close the Company's books or make an allocation of tax items using any reasonable method permitted under Section 706 of the Code and applicable Treasury Regulations.

(c) Any distributions of cash or other property shall be made to the holder of record of any portion of a Membership Interest (or Economic Interest) on the date of distribution.

Article 7 DISSOCIATION OF A MEMBER

7.1 Dissociation. A person shall cease to be a Member (referred to as "dissociation") upon the happening of any of the following events:

- (a) the bankruptcy of a Member;
- (b) the assignment or transfer by a Member of such person's entire Membership Interest in accordance with the terms of this Agreement;
- (c) in the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's personal estate;
- (d) in the case of a Member who is acting as a Member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);
- (e) in the case of a Member that is a separate organization other than a corporation, the dissolution and commencement of winding up of the separate organization; or
- (f) in the case of a Member that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter.

7.2 Rights of Dissociating Member. In the event any Member dissociates prior to the expiration of the term of the Company, then the Member who dissociates, or such Member's successor in interest shall, regardless of whether the dissociation was the result of a voluntary act by such Member, only be entitled to receive distributions to which the Member would otherwise have been entitled had the Member remained a Member, and the dissociating Member shall thereafter be an Economic Interest Owner. Further, if the dissociation occurs by virtue of an assignment of such person's entire Membership

Interest in accordance with this Agreement, then the rights and obligations of the dissociating Member (and such Member's successor) shall be subject to the provisions of Article 6.

7.3 Withdrawal of Member. Except as otherwise provided in Article 6, no Member shall be entitled to withdraw or resign from the Company.

7.4 Effect of Dissociation of a Member. Notwithstanding anything to the contrary in this Agreement, the Act or otherwise applicable state law, the dissociation of a Member shall not cause the dissolution, termination or liquidation of the Company.

Article 8

DISSOLUTION AND LIQUIDATION

8.1 Events Triggering Dissolution. The Company shall dissolve and commence winding up and liquidating upon the first to occur of any of the following ("Liquidating Events"):

(a) the determination by unanimous agreement of all of the Members, that the Company should be dissolved;

(b) the insolvency or bankruptcy of the Company;

(c) the sale of all or substantially all of the Company's assets; or

(d) ninety (90) days after the date of any act that causes the Company to have less than the minimum number of members required under the Act, provided that any such event shall not be a Liquidating Event if one or more new members (sufficient to satisfy the requirement of the Act regarding the minimum number of members) are appointed, in writing, by the successor in interest to the last remaining Member of the Company within ninety (90) days of such Member's dissociation, and if there is more than one successor in interest to the last remaining Member or if two or more Members dissociate at the same time, then appointment of a new member shall be made by the affirmative decision of persons holding a majority of such successor interests in the Company; or

(e) any event that makes it impossible, unlawful or impractical to carry on the business of the Company.

The Members agree that the Company shall not be dissolved or liquidated prior to the occurrence of a Liquidating Event, as set forth in this Article 8. If it is determined by a court of competent jurisdiction that the Company has dissolved prior to the occurrence of a Liquidating Event, then within a 90-day period after such determination, the Members may elect to reconstitute the Company and continue its business on the same terms and conditions set forth in this Agreement by forming a new limited liability company on identical terms. Upon such election within such 90-day period, all Members and Economic Interest Owners (and their successors in interest) shall be bound thereby and shall be deemed to have consented to such election.

8.2 Effect of Dissolution. No dissolution of the Company shall release any of the parties to this Agreement from their contractual obligations under this Agreement.

8.3 Liquidation. Upon dissolution of the Company in accordance with Section 8.1, the Company shall be liquidated. The Members shall select a Liquidating Manager (who may be any Member) who shall serve only for purposes of winding up the Company. The proceeds of such liquidation shall be applied and distributed in the following order of priority:

(a) to the payment of the debts and liabilities of the Company (other than debts or liabilities owing to a Member or Economic Interest Owner) and the expenses of liquidation (including, if applicable, the reasonable fees of the Liquidating Manager);

(b) the setting up of any reserves which the Liquidating Manager may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company, which reserves shall be paid over to an attorney at law of the State in which the Company is formed and organized, as escrow holder, to be held for the purpose of disbursing (under the direction of the Liquidating Manager) such reserves in payment of any of the aforementioned liabilities and, at the expiration of such period (not to exceed two years) as the Liquidating Manager may deem advisable, for distribution in the manner hereinafter provided;

(c) to the repayment of any outstanding advances or loans that may have been made by any of the Members or Economic Interest Owners to the Company, other than capital contributions, pro rata among them on the basis of such advances and loans to the Company; and

(d) the balance, if any, to the Members or Economic Interest Owners (or to their permitted transferees of their Interest in the Company, in whole or in part) in accordance with their respective Capital Accounts, after adjustment for all income, loss, and gain of the Company and after adjustment for all previous contributions and distributions of the Company.

8.4 Revaluation. If the Company's assets are not sold, but instead are distributed in kind, such assets, for purposes of determining the amount to be distributed to the parties, shall be revalued on the Company books to reflect their then current fair market value as of a date reasonably close to the date of liquidation. Any unrealized appreciation or depreciation shall be allocated among the Members (in accordance with the provisions of Article 3 as if such assets were sold at such fair market value) and taken into account in determining the Capital Accounts of the Members as of the date of liquidation.

8.5 Distributions in Kind. The Liquidating Manager may make distributions to the Members in cash or in kind, or partly in cash and partly in kind, in divided or undivided interests, and to allocate any property towards the satisfaction of any payment or distribution due to the Members in such manner as the Liquidating Manager may determine, whether or not such distributive shares may as a result be composed of differently. Distribution of any asset in kind to a Member shall be considered as a distribution of an amount equal to the asset's fair market value for purposes of this Article 8.

8.6 Timing of Liquidation. Distributions and liquidation of the Company shall be made in compliance with Treasury Regulation Section 1.704 1(ii). Distributions may be made to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the Company. The assets of any such trust shall be distributed to the Members and Economic Interest Owners from time to time in the reasonable discretion of the Liquidating Manager, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to such persons pursuant to this Agreement.

8.7 Certificate of Cancellation. Upon the dissolution of the Company and the completion of the liquidation and winding up of the Company's affairs and business, the Liquidating Manager shall (or if the Liquidating Manager fails to act, then any Member may) prepare and file a Certificate of Cancellation or Articles of Dissolution or similar document, to be placed of record with the applicable State agency or authority, as required by the Act. When such certificate is filed, the Company's existence shall cease.

Article 9

ACCOUNTING AND FISCAL MATTERS

9.1 Fiscal Year. The fiscal year of the Company shall be the calendar year.

9.2 Method of Accounting. The Members shall select a method of accounting for the Company as deemed necessary or advisable and shall keep, or cause to be kept, full and accurate records of all transactions of the Company in accordance with sound accounting principles consistently applied.

9.3 Records to be Maintained. The Company shall maintain the following additional records:

(a) a current list of the full names, set forth in alphabetical order, and last known mailing address of each Member and Economic Interest Owner, together with date on which each became a Member, the information set forth on Schedule A relating to each Member's Capital Contributions and Membership Interest, and the amount of Capital Contribution, if any, a Member has agreed to make in the future ;

(b) a current list of the full names, set forth in alphabetical order, and last known mailing address of each Manager of the Company;

(c) a copy of the Formation Document and all amendments to such document, together with signed copies of any powers of attorney pursuant to which the Formation Document or any such amendments were signed;

(d) a copy of the Company's federal, state and local income or information tax returns and reports for the three most recent fiscal years; and

(e) a copy of this Agreement, including any and all amendments to this Agreement.

9.4 Inspection of Books and Records.

(a) Each Member shall have the right, subject to the conditions and limits set forth in subsection (b) below, to inspect and copy the following items:

(i) Each of the items described in Section 9.3 above;

(ii) True and full information regarding the status of the business and financial condition of the Company; and

(iii) Any other information regarding the affairs of the Company as is just and reasonable.

(b) Any inspection or copies of Company records under this Section 9.4 shall be subject to the following conditions:

(i) The inspection and copying must be for a purpose reasonably related to the Member's interest as a Member of the Company.

(ii) The demand for the inspection and copying must be reasonable and must be made in writing and must state the purpose of the demand.

(iii) The inspection and copying may be done only during regular business hours and shall be at the requesting Member's own expense.

(iv) The inspection and copying will be afforded only after a reasonable period of time for the Members to make available the information requested.

(v) The Members shall have the right to keep confidential, for such time period as the Members deem reasonable, any information that the Members reasonably deem to be in the nature of trade secrets or proprietary information, the disclosure of which the Members in good faith believe is not in the best interest of the Company or could damage the Company or its business or which the Company is required by law or by agreement with a third party to keep confidential.

(vi) The inspection and copying shall be subject to such additional standards or procedures as may be reasonably established by the Members.

9.5 Bank Accounts. The Members shall open and maintain (in the name of the Company) such bank accounts in which shall be deposited all funds of the Company. Withdrawals from such account or accounts shall be made upon the signature or signatures of such person or persons as the Members shall designate.

9.6 Tax Matters Partner. The Members may designate one of their number to act as the "Tax Matters Partner" under Section 6231 of the Internal Revenue Code of 1986, as amended, to manage administrative tax proceedings with the Internal Revenue Service.

Article 10 MISCELLANEOUS

10.1 Amendment. Except as otherwise provided in this Section 10.1 or elsewhere in this Agreement, this Agreement may be amended only with the consent of the Members holding at least 75% of the Membership Interests. Notwithstanding anything to the contrary in this Section 10.1, this Agreement may not be amended, without the consent of the Member or Members affected by any amendment to this Agreement, to modify the limited liability of a Member; (ii) alter the status of the Company as a partnership for federal income tax purposes; or (iii) otherwise modify the compensation, distributions, or rights of reimbursement to which such Member are entitled, or affect the duties of such Members serving as Managers or the indemnification to which such Members serving as Managers, and their affiliates, employees or agents, are entitled.

10.2. Glossary. As used in this Agreement, capitalized words and phrases shall have the following meanings

(a) **Bankruptcy.** "*Bankruptcy*" of any individual, corporation or partnership shall be deemed to occur when such individual, corporation or partnership files a petition in bankruptcy, or voluntarily takes advantage of any bankruptcy or insolvency law, or is the subject of a petition or answer proposing the adjudication of such person as a bankrupt, and such individual, corporation or partnership

either consents to the filing thereof, or fails to cause such petition or answer to be discharged or denied prior to the expiration of sixty (60) days from the date of such filing, or such person's or entity's assets are insufficient to pay his, her or its liabilities, or he, she or it has so admitted in writing.

(b) **Capital Account.** "*Capital Account*" means, with respect to any Member, the Capital Account maintained for such Member in accordance with the following provisions:

(i) To each Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's distributive share of Profits and any items in the nature of income or gain that are specially allocated pursuant to Section 3.2 (other than Section 3.2(a) of this Agreement, and the amount of any Company liabilities that are assumed by such Member or that are secured by any Company property distributed to such Member.

(ii) To each Member's Capital Account there shall be debited the amount of cash (exclusive of amounts, if any, paid as compensation in exchange for management services of the Members) and the fair market value of any Company property distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Losses and any items in the nature of expenses or losses that are specially allocated pursuant to Section 3.2 (other than Section 3.2(a) of this Agreement, such Member's distributive share of noncapital, nondeductible expenditures of the Company under Code Section 705 (including items treated as such expenditures pursuant to Treasury Regulation 1.704-1(iv)), and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

(iii) In the event any Member transfers all or any portion of its Membership Interest in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

(iv) In determining the amount of any liability for purposes of this Section 10.2(b), there shall be taken into account Code Section 752 and other applicable Code Sections and Treasury Regulations.

(v) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation Section 1.704-1, and shall be interpreted and applied in a manner consistent with the Treasury Regulations. In the event the Members determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or the Members), are computed in order to comply with such Regulations, the Members may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to Article 8 of this Agreement upon the dissolution of the Company. The Members also shall make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(iv), and make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704.

(c) **Capital Account Deficit.** "*Capital Account Deficit*" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year of the Company, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is obligated to restore (pursuant to the terms of any promissory note of such Member or otherwise) or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2 and 1.704-2; and

(ii) Debit to such Member's Capital Account the items described in Sections 1.704-1(ii), or of the Regulations.

The foregoing definition of Capital Account Deficit is intended to comply with Regulations Section 1.704-1(ii) and shall be interpreted consistently therewith.

(d) **Capital Contribution.** "*Capital Contribution*" means, with respect to any Member, the amount of money and the initial fair market value of any property (other than money) contributed to the Company with respect to a Membership Interest held by such Member. The principal amount of a promissory note which is not readily tradable on an established securities market and which is contributed to the Company by the maker of the note (or a person related to the maker of the note within the meaning of Treasury Regulation 1.704-1(ii)) shall not be included in the Capital Account of any Member until the Company makes a taxable disposition of the note or until (and to the extent that) principal payments are made on the note, all in accordance with Treasury Regulation 1.704-1(iv).

(e) **Code.** "*Code*" means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

(f) **Company.** "*Company*" means the limited liability company governed by this Agreement.

(g) **Company Minimum Gain.** "*Company Minimum Gain*," which generally refers to the excess of the outstanding Company Nonrecourse Liability mortgage balance over the adjusted basis of any Company property securing such liability, shall have the meaning ascribed to such term under Regulation Section 1.704-2.

(h) **Company Nonrecourse Deductions.** "*Company Nonrecourse Deductions*" shall have the meaning set forth in Regulation Section 1.704-2, which provides generally that the amount of Company Nonrecourse Deductions (as identified in Regulation Section 1.704-2(ii)) for a Company fiscal year equals the excess, if any, of the net increase, if any, in the amount of Company Minimum Gain during that fiscal year over the amount of any distributions during that fiscal year of proceeds of a Company Nonrecourse Liability that are allocable to an increase in Company Minimum Gain.

(i) **Company Nonrecourse Liability.** "*Company Nonrecourse Liability*" shall have the meaning set forth in Regulation Sections 1.704-2 and 1.752-1, which generally refer to liabilities of the Company for which no Member (or person related to a Member) bears the economic risk of loss.

(j) **Depreciation.** "*Depreciation*" means, for each fiscal year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable, if any, with respect to a Company asset for such year or other period, except that if the fair market value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning fair market value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis.

(k) **Economic Interest.** "*Economic Interest*" means a Member's or Economic Interest Owner's share of the Company's Profits, Losses, Net Cash Flow, and other distributions of the Company's assets pursuant to this Agreement and the Act, but shall not include any right to participate in the management or affairs of the Company, including, without limitation, the right to vote on, consent to, or otherwise participate in any decision of the Members, all as provided in Section 6.2.

(l) **Economic Interest Owner.** "*Economic Interest Owner*" shall mean the owner of an Economic Interest who is not a Member, including without limitation, a person who has acquired an Economic Interest as an assignee pursuant to Section 6.2, or (ii) as the personal representative, guardian or other successor in interest upon the death (in the case of a Member who is an individual), dissolution (in the case of a Member who is not an individual), bankruptcy or physical or mental incapacity of a Member pursuant to Article 7.

(m) **Formation Document.** "*Formation Document*" means the document initially filed of record with the applicable State agency or authority to establish the Company under the Act, including, without limitation, a Certificate of Formation or an Articles of Organization, as the case may be.

(n) **Lender.** "*Lender*" means any Member who advances (other than as a Capital Contribution) any money or property to the Company.

(o) **Members.** "*Members*" means the persons listed on attached Schedule A, and any person admitted to the Company as a Member in accordance with Article 6. The Members shall have the powers, rights and privileges provided to them in this Agreement.

(p) **Net Cash Flow.** "*Net Cash Flow*" means the gross cash proceeds from Company operations (including sales and dispositions whether or not in the ordinary course of business and including the proceeds of all financings) less the portion of such proceeds used to pay or establish reserves for all Company expenses, debt payments, capital improvements, replacements, and contingencies, all as determined by the Managers. Net Cash Flow shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to Section 4.2. Payments of principal and interest on any debts or other obligations of the Company, whether or not secured by mortgages or liens on Company property, shall be considered as a deduction from Net Cash Flow. Actual or deemed distributions to Members (other than payments then due and owing to a Member as a Lender) shall not be taken into account for purposes of calculating Net Cash Flow.

(q) **Profit and Losses.** "*Profits*" and "*Losses*" means, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period, which shall be calculated after offset of all deductions of the Company including, but not limited to, compensation or guaranteed payments made to the Members in respect of personal services provided by them to or for the benefit of the Company as agreed upon by the Managers, and determined in accordance with Code Section 703 (and for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703 shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Subsection shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Code Section 705 or treated as Code Section 705 expenditures pursuant to Treasury Regulation Section 1.704-1(iv), and not

otherwise required to be taken into account in computing Profits or Losses pursuant to this Subsection, shall be subtracted from such taxable income or loss;

(iii) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to its fair market value (as of the time of receipt of the property by the Company), notwithstanding that the adjusted tax basis of such property differs from its fair market value;

(iv) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with Section 10.2(j) of this Agreement;

(v) To the extent that an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734 or Code Section 743 is required under Treasury Regulation 1.704-1(iv) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or an item of loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(vi) Any items that are specially allocated pursuant to Section 3.2 shall not be taken into account in computing Profits or Losses.

(r) **Treasury Regulations.** "*Treasury Regulations*" means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

10.3 Notices. Unless otherwise provided in this Agreement or by written agreement of the Members, all notices or other communications required or permitted to be given under this Agreement shall be deemed given when delivered personally or mailed by registered or certified mail, return receipt required, postage prepaid, or delivered by overnight courier service, to the Members at their addresses on the records of the Company, or at such other addresses as a Member may designate to the Company in writing.

10.4 Binding Effect. Except as otherwise provided in this Agreement to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties, their personal representatives, successors and assigns.

10.5 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument which may be sufficiently evidenced by one counterpart.

10.6 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State in which the Company is formed and organized.

10.7 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

10.8 Gender. As used in this Agreement, the masculine gender shall include the feminine and the neuter, and vice versa.

(i) Credit to such Capital Account any amounts which such Member is obligated to restore (pursuant to the terms of any promissory note of such Member or otherwise) or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2 and 1.704-2; and

(ii) Debit to such Member's Capital Account the items described in Sections 1.704-1(ii), or of the Regulations.

The foregoing definition of Capital Account Deficit is intended to comply with Regulations Section 1.704-1(ii) and shall be interpreted consistently therewith.

(d) **Capital Contribution.** "*Capital Contribution*" means, with respect to any Member, the amount of money and the initial fair market value of any property (other than money) contributed to the Company with respect to a Membership Interest held by such Member. The principal amount of a promissory note which is not readily tradable on an established securities market and which is contributed to the Company by the maker of the note (or a person related to the maker of the note within the meaning of Treasury Regulation 1.704-1(ii)) shall not be included in the Capital Account of any Member until the Company makes a taxable disposition of the note or until (and to the extent that) principal payments are made on the note, all in accordance with Treasury Regulation 1.704-1(iv).

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(g) **Company Minimum Gain.** "*Company Minimum Gain*," which generally refers to the excess of the outstanding Company Nonrecourse Liability mortgage balance over the adjusted basis of any Company property securing such liability, shall have the meaning ascribed to such term under Regulation Section 1.704-2.

(h) **Company Nonrecourse Deductions.** "*Company Nonrecourse Deductions*" shall have the meaning set forth in Regulation Section 1.704-2, which provides generally that the amount of Company Nonrecourse Deductions (as identified in Regulation Section 1.704-2(ii)) for a Company fiscal year equals the excess, if any, of the net increase, if any, in the amount of Company Minimum Gain during that fiscal year over the amount of any distributions during that fiscal year of proceeds of a Company Nonrecourse Liability that are allocable to an increase in Company Minimum Gain.

(i) **Company Nonrecourse Liability.** "*Company Nonrecourse Liability*" shall have the meaning set forth in Regulation Sections 1.704-2 and 1.752-1, which generally refer to liabilities of the Company for which no Member (or person related to a Member) bears the economic risk of loss.

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(k) **Economic Interest.** "*Economic Interest*" means a Member's or Economic Interest Owner's share of the Company's Profits, Losses, Net Cash Flow, and other distributions of the Company's assets pursuant to this Agreement and the Act, but shall not include any right to participate in the management or affairs of the Company, including, without limitation, the right to vote on, consent to, or otherwise participate in any decision of the Members, all as provided in Section 6.2.

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(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Subsection shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Code Section 705 or treated as Code Section 705 expenditures pursuant to Treasury Regulation Section 1.704-1(iv), and not

otherwise required to be taken into account in computing Profits or Losses pursuant to this Subsection, shall be subtracted from such taxable income or loss;

(iii) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to its fair market value (as of the time of receipt of the property by the Company), notwithstanding that the adjusted tax basis of such property differs from its fair market value;

(iv) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with Section 10.2(j) of this Agreement;

(v) To the extent that an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734 or Code Section 743 is required under Treasury Regulation 1.704-1(iv) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or an item of loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(vi) Any items that are specially allocated pursuant to Section 3.2 shall not be taken into account in computing Profits or Losses.

(r) **Treasury Regulations.** "*Treasury Regulations*" means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

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