



## LLC Operating Agreement

This Limited Liability Company Operating Agreement ("Agreement"), entered into on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ is a \_\_\_\_\_, entered into by:

Member Name	Address	Percentage Ownership

WHEREAS, the Member(s) desire to create a Limited Liability Company under the laws of the State of \_\_\_\_\_ ("State of Formation");

WHEREAS, the Member(s) desire(s) to set forth the terms herein of the Company's operation and the relationship to any and all Member(s).

NOW, THEREFORE, for and in consideration of the foregoing premises and other valuable consideration, the Member(s) agree to establish as follows:

### Name and Principal Place of Business

The name of the Company shall be \_\_\_\_\_, LLC with the following principal business address at \_\_\_\_\_, which may likewise be determined at another such place of business by the Member(s).

### Establishment

The Company was established on the \_\_\_\_\_ when the Articles of Organization was filed pursuant to the statutes governing limited liability companies in the State of Formation (the "Statutes").

### Purpose

## Member(s) Capital Contributions

The Member(s) have contributed the following capital amount(s):

Member	Contribution Amount

Single Member Capital Contributions may be made by the Member in such amounts and at such times as the Member may determine ("Capital Contribution") and which such Member shall not be obliged to make. The Member may take distributions of the capital from time to time in accordance with the law.

For Multi-Members, the Members shall not have any right to withdraw or reduce their capital contributions unless and until the Company has been terminated, unless otherwise as agreed upon herein.

Capital Contributions distributions shall be made in cash without interest.

The liability of any Member(s) for which in the case would compel the Company to pay for the losses, debts, liabilities, and obligations shall be limited to the Capital Contribution of the Member(s) plus any distributions paid to such Member(s), such Member(s)'s share of any undistributed assets of the Company, and any amounts previously distributed to such Member(s) by the Company as applicable in accordance with law.

### Administration

The business and affairs of the Company shall be managed by the Member(s) in accordance with this Agreement in accordance with the law of the State.

a.) Single-Member companies shall be managed and controlled by the sole member and shall have the power to act for or on behalf of the Company, to do any act that would be binding on the Company or incur any expenditures and liabilities thereof.

The Member shall not be personally liable for the debts, obligations, or liabilities of the Company, including under a judgment, decree, or order of a court. The Company is organized as a "member-managed" limited liability company. The Member is designated as the initial managing Member(s).

b.) Multi-Member Companies shall be managed and controlled by the Members(s) with all decisions and control of operations of the Company's business affairs shall be made as resulting from the affirmative vote or consent of Member(s) holding a majority of the Members' Percentage Interests.

No member shall, without the prior written approval of all the Member(s), sell, exchange, assign, or otherwise transfer all or substantially all of the assets of the Company; sell, exchange, lease (except in the ordinary course of business), assign or transfer the Company's assets; mortgage, pledge or encumber the Company's assets other than is expressly authorized by this Agreement; prepay, refinance, modify, extend or consolidate any existing mortgages or encumbrances; borrow money on behalf of the Company; lend funds of the Company or other assets to any person or entity; establish any reserves for working capital repairs, replacements, improvements or any other purpose; confess a judgment against the Company; settle, compromise or release, discharge or pay any claim, demand or debt, including claims for insurance; execute a merger or consolidation of the Company with another company, corporation, partnership or other entity; or change the nature or character of the business of the Company.

The Member(s) shall receive such sums for compensation as Member(s) of the Company as may be determined from time to time by the affirmative vote or resolution of Member(s) holding a majority of the Member(s)' Percentage Interests.

### **Definitions**

For purposes of this Agreement, "net profits" and "net losses" shall refer to income or losses deducted by expenses and other taxes of the Company, including depreciation allowance, incurred in connection with the conduct of the Company's business for which such expenses have been accounted.

The term "cash receipts" shall mean all cash receipts of the Company from any source derived, including, but not limited to, capital contributions made by the Member(s)(s), proceeds of sale, exchange, loans, proceeds of mortgage, insurance, or other disposition of all or any part of the assets of the Company.

The term "capital transactions" shall mean any of the following: the sale of all or any part of the assets of the Company; the refinancing of mortgages or other liabilities of the Company; the receipt of insurance proceeds; and any other receipts or proceeds are attributable to capital

The term "Members' Percentage Interests" shall mean the ownership percentage interests as mentioned in Section I of this Agreement.

### **Distributions**

a.) A Single-Member "Capital Account" shall reflect the Member's capital contributions and increases for any net income or gain of the Company and shall be maintained by the Company. The Member's Capital Account shall also reflect decreases for distributions made to the Member(s) and the Member(s)'s share of any losses and deductions of the Company.

b.) The "Capital Account" for each Member in a Multi-Member Company shall mean the account created and maintained for the Member(s) in accordance with Section 704(b) of the Internal Revenue Code and Treasury Regulation Section 1.704-1(b)(2)(iv).

During each fiscal year, the net profits or net losses of the Company (other than from capital transactions), and each item of income, gain, loss, deduction, or credit entering into the computation thereof, shall be credited or charged, as the case may be, to the capital accounts of each Member(s) in proportion to the Members' Percentage Interests.

The net profits or losses of the Company from capital transactions shall be allocated in the following order of priority:

- A. To offset any losses or profits resulting in a negative balance in the capital accounts of the Member(s) in proportion to the amounts of the negative balance in their respective capital accounts, until all negative balances in the capital accounts have been eliminated accordingly;
- B. to the Member(s) in proportion to the Members' Percentage Interests.

The cash receipts shall be applied in the following order of priority:

- A. to interest payment of obligations, loans, or amortization on any mortgages on the assets of the Company, amounts due on debts and liabilities of the Company other than those due to any Member(s), costs of the construction of the improvements to the assets of the Company and operating expenses of the Company;
- B. to the interest payment and establishment of cash reserves determined by the Member(s) to be necessary or appropriate, including without limitation, reserves for the operation of the Company's business, construction, repairs, replacements, taxes and contingencies; and (d) to the repayment of any loans made to the Company by any Member(s). Thereafter, the cash receipts of the Company shall be distributed among the Member(s) as hereafter provided.

Distributions of cash receipts of the Company, other than from capital transactions, shall be allocated among the Member(s) in proportion to the Members' Percentage Interests.

Distributions of cash receipts from capital transactions shall be allocated in the following order of priority:

- A. to the Member(s) in proportion to their respective capital accounts until each Member(s) has received cash distributions;
- B. to the Member(s) in proportion to the Members' Percentage Interests.

Should the provisions of this Agreement be inconsistent with or in conflict with the law, then the law shall prevail and the affected provision herein shall be stricken out. Any other requirements by law that fall under this Agreement is deemed incorporated and shall be deemed a part of this Agreement to the same extent as though they had been expressly set forth herein.

### **Registered Office and Resident Agent**

The Registered Office and Resident Agent of the Company shall be as designated in the initial Articles of Organization/Certificate of Organization or any amendment thereof. The Registered Office and/or Resident Agent may be changed from time to time. Any such change shall be made in accordance with the Statutes, or, if different from the Statutes, in accordance with the provisions of this Agreement. If the Resident Agent ever resigns, the Company shall promptly appoint a successor agent.

### **Company Term**

The term of the Company shall commence on the filing of the Articles of Organization of the Company, and shall perpetually continue until terminated under the provisions set forth herein.

## Bank Accounts

Company funds shall be deposited in the Company's name in a bank account assigned for the Company. Any withdrawals from the bank account(s) shall be made only in the regular course of business of the Company and shall be made upon such signature or signatures as the Member(s) designated or authorized.

## Miscellaneous

a.) Meetings of Members: The annual meeting of the Member(s) shall be held every \_\_\_\_\_ day of the month of \_\_\_\_\_ each year. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day.

The Member(s) shall pass a resolution prescribing the place and time of the meeting, in accordance with the prescribed rules in the law and the Articles of Organization.

b.) Assignment of Interests: No Member or other person holding any interest in the Company may assign, pledge, hypothecate, transfer or otherwise dispose of all or any part of their interest in the Company, including without limitation, the capital, profits or distributions of the Company without the prior written consent of the other Member(s) in each instance.

c.) Ownership of Company Property: All Company assets are deemed owned by the Company. No Member shall have any interest over such assets or any portion thereof.

d.) Other Businesses of Member: The Member may engage in other business ventures of any nature, including, without limitation by specification provided that such business is not directly in compete with the business of the Company.

e.) Right of First Refusal: At the time a Member decides to dispose of his or her interest in the Company, such Member shall first offer to sell and convey such interest to the other Member(s) which shall be made in writing. The failure to respond by the Member(s) of the Company shall be deemed a rejection of the offer and shall therefore grant the selling Member to sell his or her interest to third persons.

f.) Admission of New Members: Multi-Member Companies may admit new Member(s) or transferees of any interests of existing Member(s) into the Company by the unanimous vote or consent of the Member(s). However, no new Member(s) may be admitted to the Company if such admission would be in violation of applicable Federal or State securities laws or would adversely affect the treatment of the Company as a partnership for income tax purposes.

g.) Withdrawal Events: In case of an occurrence of which any Member(s) would terminate their relationship with the Company, the Company shall terminate sixty (60) days after notice to the Member(s) of such withdrawal Event unless the business of the Company is continued as hereinafter provided.

Any successor in interest to such Member(s) (including, but not limited to any executor, administrator, heir, committee, guardian, or other representative or successor) shall be entitled but only limited to the allocations and distributions to which such Member(s) is entitled, unless such successor in interest is admitted as a Member(s) in accordance with this Agreement.

h.) Certificates Evidencing Membership: Every membership interest in the Company shall be evidenced by a Certificate of Membership issued by the Company. Each Certificate of Membership shall set forth the name of the Member(s) holding the membership interest and the Members' Percentage Interest held by the Member(s), and shall bear the following: "The membership interest represented by this certificate is subject to, and may not be transferred except in accordance with, the provisions of the Operating Agreement of \_\_\_\_\_, dated effective as of \_\_\_\_\_, \_\_\_\_\_ as the same from time to time may be amended, a copy of which is on file at the principal office of the Company."

i.) Notices: All notices and communications sent by courier or by registered or certified mail shall be sent to:

- A. If to the Company - at the principal place of business of the Company designated by the Company;
- B. If to any Member(s) of the Company, to the address of said Member(s) or to such other address as may be designated by said Member(s) by notice to the Company.

j.) Arbitration: Should there be any dispute, controversy, or claim arising out of or in connection with this Agreement or alleged breach hereof, such shall be submitted to and settled by arbitration in the city in which the principal place of business of the Company is then located. Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in a court of competent jurisdiction. Any expense in the arbitration proceeding shall be borne equally by the parties to the arbitration except for attorney's fees which shall be borne by the client of such attorney.

k.) Amendments: No provision in this Agreement may be altered, modified, waived, supplemented or in any case, changed unless the same is made in writing and agreed to by the Member(s) holding a majority of the Company's Interests hereto.

l.) Indemnification: The Member(s) shall not be held liable or accountable, in damages or otherwise, to the Company or any other person for any act performed in the performance of the Company duties except by reason of acts or omissions found by a court of competent jurisdiction that constitutes fraud, gross negligence, recklessness or intentional misconduct; The Company, its receivers, trustees, successors, assignees and/or transferees shall indemnify, defend and hold the Member(s) harmless from and against any and all liabilities, damages, losses, costs, and expenses of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by the Member(s) and from and against all legal or other such costs as well as the expenses of investigating or defending against any Claim or threatened or anticipated Claim arising out of, connected with or relating to this Agreement, the Company or its business affairs in any way; provided, that the conduct of the Member(s) which gave rise to the action against the Member(s) is indemnifiable under the standards set forth herein.

### **Severability**

This Agreement and the rights and liabilities of the parties hereunder shall be governed by and determined in accordance with the laws of the State for which the Company has been formed or established.

### **Counterparts**

This Agreement and any amendments hereto may be executed in counterparts, each of which shall constitute a separate agreement but all of which taken together shall constitute one agreement.

**Assignment**

Subject to the limitations on transferability set forth above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, executors, administrators, successors, and assigns.

No provision of this Agreement is intended to be for the benefit of or enforceable by any third party.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first above written.

**Name of Member**

**Date Signed**

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**Name of Member**

**Date Signed**

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**Name of Member**

**Date Signed**



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