**PLEASE NOTE: This sample LLC operating agreement is provided for informational purposes only. This sample template is not intended in any way to provide tax or legal advice,and is not intended as a substitute for advice from a licensed attorney and/or tax professional in your state or jurisdiction. Laws vary from state to state and jurisdiction to jurisdiction, and every LLC is likely to have unique circumstances and needs that should be carefully considered.

InterNACHI® encourages anyone using this sample template to seek out the advice of tax and legal professionals in their own state or jurisdiction. Use of this form is at your own risk; no person may rely on any information contained in this sample template for any purpose whatsoever. InterNACHI® disclaims any liability whatsoever that may be related to, arise out of, or result from the use of this sample template.**

**Limited Liability Company Operating Agreement of**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC**

Formed in the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (date),
this agreement is entered into by and between members:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Address),

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Address),

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Address).

**PLEASE NOTE: In a multi-member LLC, each member should be encouraged to seek out their own tax advice and legal counsel.**

The Members desire to create a limited liability company under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and set forth the terms herein of the Company’s operation and the relationship between Members.

Therefore, in consideration of the mutual covenants set forth in this document and other valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Members and the Company agree as follows:

1. **Name and Principal Place of Business**

The name of the Company will be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC. The principal place of business of the Company will be at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1. **Formation**

The Company was formed on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (date), when the Members filed the Articles of Organization with the office of the Secretary of State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, pursuant to the statutes governing limited liability companies in the State.

1. **Purpose**

The purpose of the Company is to engage in and conduct any and all lawful business, activities or functions, and to carry on any other lawful activities in connection with or incidental to the foregoing, as the Members in their discretion shall determine.

1. **Term**

The term of the Company is perpetual, commencing on the filing of the Articles of Organization of the Company, and continuing until terminated under the provisions set forth in this document.

1. **Member Capital Contributions**

**PLEASE NOTE: There are many ways that members of an LLC can chose to make and handle capital contributions. The language below demonstrates one way that capital contributions can be made and handled. The decision on how capital contributions are made and handled should reflect the unique needs and desires of the members of the LLC.**

 (a) Each Member has contributed the following capital amounts to the Company as set forth below and are not obligated to make any additional capital contributions:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (b) Members have no right to withdraw or reduce their contributions to the capital of the Company until the Company has been terminated, as provided for by this Operating Agreement, or as may be agreed upon by unanimous vote of all members. Members have no right to demand and receive any distribution from the Company in any form other than cash, and members will not be entitled to interest on their capital contributions to the Company.

 (c) The liability of any Member for the losses, debts, liabilities and obligations of the Company will be limited to the amount of the capital contribution of each Member, plus any distributions paid to such Member, the Member’s share of any undistributed assets of the Company, and any amounts previously distributed to such Member by the Company (only to the extent as might be required by applicable law).

1. **Distributions**

**PLEASE NOTE: There are many ways that members of an LLC can agree to make distributions. The language below demonstrates one way distributions can be made. The decision on how to make distributions should reflect the unique needs and desires of the members of the LLC.**

 (a) For purposes of this Agreement, “net profits” and “net losses” mean the profits and losses of the Company resulting from the conduct of the Company’s business, after all expenses, including depreciation allowance incurred in connection with the conduct of its business for which expenses have been accounted.

 (b) The term “cash receipts” means all cash receipts of the Company from whatever source derived, including, without limitation: capital contributions made by the Members; the proceeds of any sale, exchange, condemnation or other disposition of all or any part of the assets of the Company; the proceeds of any loan to the Company; the proceeds of any mortgage or refinancing of any mortgage on all or any part of the assets of the Company; the proceeds of any insurance policy for fire or other casualty damage payable to the Company; and the proceeds from the liquidation of assets of the Company following termination.

 (c) The term “capital transactions” means 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.

 (d) The “Capital Account” for each Member means the account created and maintained for the Member in accordance with Section 704(b) of the Internal Revenue Code and Treasury Regulation Section 1.704-1(b)(2)(iv).

 (e) The term “Members’ Percentage Interests” means the percentages set forth opposite the name of each Member Below:

Member Percentage Interest

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_%

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_%

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_%

 (f) During each fiscal year, the net profits and 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, will be credited or charged, as the case may be, to the capital accounts of each Member in proportion to the Members’ Percentage Interests. The net profits of the Company from capital transactions will be allocated in the following order of priority: (a) to offset any negative balance in the capital accounts of the Members 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; then, (b) to the Members in proportion to the Members’ Percentage Interests. The net losses of the Company from capital transactions will be allocated in the following order of priority: (a) to the extent that the balance in the capital accounts of any Members are in excess of their original contributions, to such Members in proportion to the excess balances until all such excess balances have been reduced to zero; then, (b) to the Members in proportion to the Members’ Percentage Interests.

 (g) The cash receipts of the Company will be applied in the following order of priority: (a) to the payment of interest 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, costs of the construction of the improvements to the assets of the Company and operating expenses of the Company; (b) to the payment of interest and establishment of cash reserves determined by the Members to be necessary or appropriate, including, without limitation, reserves for the operation of the Company’s business, construction, repairs, replacements, taxes and contingencies; and (c) to the repayment of any loans made to the Company by any Member. After this, the cash receipts of the Company will be distributed among the Members as provided.

 (h) Except as otherwise provided in this Agreement or required by law, distributions of cash receipts of the Company, other than from capital transactions, will be allocated among the Members in proportion to the Members’ Percentage Interests.

 (i) Except as otherwise provided in this Agreement or otherwise required by law, distributions of cash receipts from capital transactions will be allocated in the following order or priority: (a) to the Members in proportion to their respective capital accounts until each Member has received cash distributions equal to any positive balance in their capital account; then, (b) to the Members in proportion to the Members’ Percentage Interests.

 (j) It is the Members’ intention that the allocations under this Agreement be deemed to have “substantial economic effect” within the meaning of Section 704 of the Internal Revenue Code and Treas. Reg. Section 1.704-1. Should the provisions of this Agreement be inconsistent with or in conflict with Section 704 of the Code or the Regulations thereunder, then Section 704 of the Code and the Regulations will be deemed to override the contrary provisions thereof. If Section 704 or the Regulations at any time require that limited liability company operating agreements contain provisions which are not expressly set forth herein, such provisions will be incorporated into this Agreement by reference and will be deemed a part of this Agreement to the same extent as though they had been expressly set forth.

1. **Books, Records and Tax Returns**

**PLEASE NOTE: There are many options available to LLCs and their members for the treatment of taxes. This sample template demonstrates only one way in which LLCs sometimes provide for tax planning. Each LLC should select tax treatment in accordance with the specific needs and desires of its members. LLCs and their members are encouraged to seek out the advice of tax professionals when making those selections. It is also important for an LLC to take all necessary steps not to commingle company funds, accounts and finances with those of its members. Commingling could result in a court determining that the members of the LLC are not entitled to the protection from personal liability that an LLC is intended to provide.**

 (a) The Company's fiscal year will be the calendar year, ending in December.

 (b) The Members, or their designees, will maintain complete and accurate records and books of the Company’s transactions in accordance with generally accepted accounting principles.

 (c) Within seventy-five days after the end of each fiscal year, the Company will furnish an annual report to each Member, including a balance sheet, a profit and loss statement, a capital account statement, and the amount of the individual Member’s share of the Company’s income, gains, losses, deductions, and other relevant items for federal income tax purposes.

 (d) The Company will prepare all federal, state and local income tax and information returns for the Company, and file tax and information returns timely. Within seventy-five days after the end of each fiscal year, the Company will forward a true copy of the Company’s information return filed with the Internal Revenue Service for the preceding fiscal year to each person who was a Member during the preceding fiscal year.

 (e) All elections required or permitted by the Company under the Internal Revenue Code, and the designation of a tax matters partner, pursuant to Section 6231(a)(7) of the Internal Revenue Code for all purposes permitted or required by the Code, will be made by the Company by the affirmative vote or consent of Members holding a majority of the Members’ Percentage Interests.

 (f) Upon request, the Company will furnish to each Member a current list of the names and addresses of all of the Members of the Company and any other persons or entities with any financial interest in the Company.

1. **Bank Accounts**

All funds of the Company will be deposited in the Company’s name in a bank account or accounts as chosen by the Members. Withdrawals from any bank accounts will be made only in the regular course of business of the Company and will be made upon such signature or signatures as the Members from time to time may designate.

1. **Management of the Company**

**PLEASE NOTE: There are many options available to LLCs regarding management. An LLC may be member-managed or manager-managed, for example. Each LLC should select a management structure in accordance with the specific needs and desires of its members. The sample language below provides one example for a member-managed LLC.**

 (a) The business and affairs of the Company will be conducted and managed by the Members in accordance with this Agreement and the laws of the state.

 (b) Except as expressly provided elsewhere in this Agreement, all decisions respecting the management, operation and control of the business and affairs of the Company, and all determinations made in accordance with this Agreement will be made by the affirmative vote or consent of Members holding a majority of the Members’ Percentage Interests.

 (c) Notwithstanding any other provision of this Agreement, the Members will not, without the prior written consent of the unanimous vote or consent of the Members: sell, exchange, lease, assign or otherwise transfer all or substantially all of the assets of the Company; sell, exchange, lease (other than space leases 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 in excess of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.00; lend any Company funds or other assets to any person in an amount or with a value in excess of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.00; establish any reserves for working capital repairs, replacements, improvements or any other purpose in excess of an aggregate of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.00; confess a judgment against the Company; settle, compromise or release, discharge or pay any claim, demand or debt in excess of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.00, including claims for insurance; approve a merger or consolidation of the Company with or into any other limited liability company, corporation, partnership or other entity; or change the nature or character of the business of the Company.

 (d) The members will receive sums for compensation as Members of the Company determined from time to time by the affirmative vote or consent of Members holding a majority of the Members’ Percentage Interests.

1. **Meetings of Members**

**PLEASE NOTE: There are many options available to LLCs and their members for holding meetings. This sample language demonstrates only one way in which an LLC sometimes provides for its member meetings. Each LLC should select provisions for member meetings in accordance with the specific needs and desires of its members. It is also important for an LLC to follow the provisions of its operating agreement when holding meetings. Failure to hold meetings as provided for in an operating agreement could result in a court determining that the members of the LLC are not entitled to the protection from personal liability that an LLC is intended to provide.**

 (a). The annual meeting of the Members will be held on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at the principal office of the Company, or at another time and place as Members determine, for the purpose of transacting lawful business which may come before the meeting. If the day fixed for the annual meeting is a legal holiday, the meeting will be held on the next succeeding business day.

 (b) The Members may, by resolution, prescribe the time and place for holding regular meetings, and may provide that adopting a resolution doing so constitutes notice of regular meetings.

 (c) Special meetings of the Members, for any purpose, may be called by any \_\_\_\_\_ Members (or other numbers as specified by the Members).

 (d) Written or electronic notice stating the place, day and hour of the meeting, and, in the case of a special meeting, the purpose that the meeting is being called for, will be delivered at least three days before the date of the meeting, either personally or by mail, to each Member of record entitled to vote at the meeting. When all the Members of the Company are present at any meeting, or if those not present sign a written waiver of notice, or subsequently ratify all the proceedings thereof, the transactions of the meeting will be valid as if a meeting had been formally called and notice had been given.

 (e) At any meeting of the Members, the presence of Members holding a majority of the Members’ Percentage Interests, as determined from the books of the Company, represented in person or by proxy, will constitute a quorum for the conduct of the general business of the Company. However, if any particular action by the Company requires the vote or consent of some other number or percentage of Members pursuant to this Agreement, a quorum for the purpose of taking the action will require such other number or percentage of Members. If a quorum is not present, the meeting may be adjourned from time to time without further notice, and if a quorum is present at the adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally notified. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

 (f) At all meetings of the Members, a Member may vote by proxy, executed in writing by the Member, or by a duly authorized attorney-in-fact of the Member. Any proxy will be filed with the Company before or at the time of the meeting.

 (g) A Member of the Company who is present at a meeting of the Members where action on any matter is taken will be presumed to have assented to the action taken, unless the dissent of the Member is entered in the minutes of the meeting, or unless that Member files a written dissent to the action with the person acting as the secretary of the meeting before the meeting’s adjournment. The right to dissent will not apply to a Member who voted in favor of the action.

 (h) Unless otherwise provided by law, any action required or allowed for at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action, is signed by all of the Members entitled to vote with respect to the subject.

 (i) Members of the Company may participate in any meeting of the Members by means of telephone conference or similar communication if all persons participating in the meeting can hear one another for the entire discussion of the matters to be voted upon. Participation in a meeting pursuant to this paragraph will constitute presence in person at that meeting.

1. **Assignment of Interests**

**PLEASE NOTE: There are many options available to LLCs and their members for providing for the assignment of members’ interests. This sample language demonstrates one method in which members sometimes agree to provide for assignment. Each LLC should select provisions for assignment in accordance with the specific needs and desires of its members.**

 (a) Except as otherwise provided in this Agreement, 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 Members in each instance.

 (b) The Members agree that no Member may voluntarily withdraw from the Company without the unanimous vote or consent of the Members.

 (c) A Member may assign all or any part of their own interest in the allocations and distributions of the Company to any of the following (collectively, the “permitted assignees”): any person, corporation, partnership or other entity as to which the Company has given consent to the assignment of such interest in the allocations and distributions of the Company by the affirmative vote or consent of Members holding a majority of the Members’ Percentage Interests. An assignment to a permitted assignee will only entitle the permitted assignee to the allocations and distributions that the assigned interest is entitled to, unless the permitted assignee applies for admission to the Company and is admitted to the Company as a Member in accordance with this Agreement.

 (d) An assignment, pledge, hypothecation, transfer or other disposition of all or any part of the interest of a Member in the Company or other person holding any interest in the Company in violation of the provisions hereof will be null and void for all purposes.

 (e) No assignment, transfer or other disposition of all or any part of the interest of any Member permitted under this Agreement will be binding upon the Company unless and until a duly executed and acknowledged counterpart of the assignment or instrument of transfer, in form and substance satisfactory to the Company, has been delivered to the Company.

 (f) No assignment or other disposition of any interest of any Member may be made if alone or when combined with other transactions would result in the termination of the Company within the meaning of Section 708 of the Internal Revenue Code, or under any other relevant section of the Code, or any successor statute. No assignment or other disposition of any interest of any Member may be made without an opinion of counsel satisfactory to the Company that the assignment or disposition is subject to an effective registration under, or exempt from the registration requirements of, the applicable Federal and State securities laws. No interest in the Company may be assigned or given to any person below 21 years of age or to a person who has been adjudged to be insane or incompetent.

 (g) Anything contained in this Agreement to the contrary, the Company will be entitled to treat the record holder of the interest of a Member as the absolute owner thereof, and incur no liability by reason of distributions made in good faith to the record holder, unless and until the assignment or other instrument of transfer and such other evidence as may be reasonably required by the Company to establish to the satisfaction of the Company that an interest has been assigned or transferred in accordance with this Agreement has been delivered to the Company.

**12.** **Right of First Refusal**

**PLEASE NOTE: There are many ways that members of an LLC can agree to conditions for transferring or otherwise terminating members’ interests. The language below demonstrates only one way that members sometimes decide to agree. It is important for members of an LLC to carefully consider how a member’s interest will be transferred or terminated in as clear and comprehensive a manner as possible in order to avoid protracted litigation in the event of a dispute.**

 (a) If a Member desires to sell, transfer or otherwise dispose of all or any part of their interest in the Company, that Member (the “Selling Member”) will first offer to sell and convey the interest to the other Members before selling, transferring or otherwise disposing of it to any other person, corporation or other entity. The offer will be in writing, will be given to every other Member, and will set forth the interest for sale, the purchase price, the date the closing is to take place (which will be between thirty and sixty days after the delivery of the offer), the location where the closing is to take place, and all other material terms and conditions of the sale, transfer or other disposition.

 (b) Within fifteen days after the delivery of the offer, the other Members will deliver the Selling Member a written notice either accepting or rejecting the offer. Failure to deliver the notice within fifteen days conclusively will be deemed a rejection of the offer. Any or all of the other Members may elect to accept the offer, and if more than one of the other Members elects to accept the offer, the interest being sold and the purchase price for it will be allocated among the accepting Members in proportion to their Members’ Percentage Interests, unless they agree otherwise in writing.

 (c) If any or all of the other Members elect to accept the offer, then the closing of title will be held in accordance with the offer, and the Selling Member will deliver an assignment of the interest being sold to the other Members who have accepted the offer, and said other Members will pay the purchase price prescribed in the offer.

 (d) If no other Member accepts the offer, or if the Members who have accepted default in their obligations to purchase the interest, then the Selling Member may sell the interest to any other person or entity at a purchase price more than that prescribed in the Member offer and with terms and conditions substantially the same as the terms and conditions in the Member offer, provided all other applicable requirements of this Agreement are complied with within 120 days after the delivery of the offer. An assignment of interest to a person or entity who is not a Member of the Company shall only entitle that person or entity to the allocations and distributions which the assigned interest is entitled to, unless the person or entity applies for admission to the Company and is admitted to the Company as a Member in accordance with this Agreement.

 (e) If the Selling Member does not sell the interest within 120 days, then the Selling Member may not sell the interest without again offering it to the other Members in accordance with this Agreement.

**13.** **Admission of New Members**

**PLEASE NOTE: There are many ways that members of an LLC can agree to conditions on the admission of new members. The language below demonstrates only one way members sometimes decide to agree how to admit new members.**

 (a) The Company may admit new Members (or transferees of any interests of existing Members) into the Company by the unanimous vote or consent of the Members.

 (b) As a condition to the admission of a new Member, the Member will execute and acknowledge the methods, in form and substance satisfactory to the Company, as deemed necessary or desirable by the Company to effectuate the admission and to confirm the agreement of the Member to be bound by all of the terms, covenants and conditions of this Agreement, and its potential amendments. A new Member will pay all reasonable expenses in connection with admission, including, without limitation, reasonable attorneys’ fees and the cost of the preparation, filing or publication of any amendment to this Agreement or the Articles of Organization, which the Company may deem necessary or desirable in connection with such admission.

 (c) No new Member will be entitled to any retroactive allocation of income, losses, or expense deductions of the Company. The Company may make pro rata allocations of income, losses or expense deductions to a new Member for that portion of the tax year in which the Member was admitted, in accordance with Section 706(d) of the Internal Revenue Code and regulations thereunder.

 (d) In no event shall a new Member be admitted to the Company if 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.

**14.** **Withdrawal Events**

**PLEASE NOTE: There are many events that members can agree would require the withdrawal of members. The language below demonstrates only one way that members sometimes decide to agree that a member can withdraw upon the occurrence of certain events. The events that constitute withdrawal should be carefully agreed upon between the members and crafted to meet the needs and desires of the members of the LLC.**

 (a) In the event of the death, retirement, withdrawal, expulsion, or dissolution of a Member, or in the event of bankruptcy or insolvency, as defined in the Agreement, with respect to a Member, or the occurrence of any other event that terminates the continued membership of a Member in the Company pursuant to the statutes (each of the foregoing being hereinafter referred to as a “Withdrawal Event”), the Company shall terminate sixty days after notice to the Members of such Withdrawal Event unless the business of the Company is continued as hereinafter provided.

 (b) Notwithstanding a Withdrawal Event, the Company will not terminate, irrespective of applicable law, if, within the sixty-day period, the remaining Members elect to continue the business of the Company by the unanimous vote or consent (other than the Member who caused the Withdrawal Event).

 (c) If there is a Withdrawal Event for any member, any successor in interest to that Member (including, without limitation, any executor, administrator, heir, committee, guardian, or other representative or successor) will not become entitled to any rights or interests of the Member in the Company other than the allocations and distributions the Member is entitled to, unless the successor in interest is admitted as a Member in accordance with this Agreement.

 (d) An “event of bankruptcy or insolvency” with respect to a Member will occur if the Member: (1) applies for or consents to the appointment of a receiver, trustee or liquidator of all or a substantial part of their assets; or (2) makes a general assignment for the benefit of creditors; or (3) is adjudicated as bankrupt or insolvent; or (4) files a voluntary petition in bankruptcy, or a petition or an answer seeking an arrangement with creditors or to take advantage of any bankruptcy, insolvency, readjustment of debt or similar law or statute, or an answer admitting the material allegations of a petition filed against them in any bankruptcy, insolvency, readjustment of debt or similar proceedings; or (5) takes any action for the purpose of effecting any of the foregoing; or (6) an order, judgment or decree will be entered, with or without the application, approval or consent of the Member, by any court of competent jurisdiction, approving a petition for or appointing a receiver or trustee of all or a substantial part of the assets of the Member, and an order, judgment or decree will be entered, with or without the application, approval or consent of the Member, by any court of competent jurisdiction, approving a petition for or appointing a receiver or trustee of all or a substantial part of the assets of the Member, and the order, judgment or decree will continue unstayed and in effect for thirty days.

**15.** **Dissolution and Liquidation**

**PLEASE NOTE: There are many ways that members of an LLC can agree to the conditions upon which an LLC will be dissolved. The language below demonstrates only one way members sometimes decide to agree. It is important for the members of an LLC to carefully consider how the LLC can be dissolved or liquidated in as clear and comprehensive a manner as possible in order to avoid protracted litigation in the event of a dispute.**

 (a) The Company will terminate upon the occurrence of any of the following: (i) the election by the Members to dissolve the Company made by the unanimous vote or consent of the Members; (ii) a Withdrawal Event and the failure of the remaining Members to elect to continue the business of the Company as provided for above; or (iii) any other event which, pursuant to this Agreement, causes a termination of the Company, allowing for future amendments.

 (b) The liquidation of the Company will be conducted and supervised by a person designated for such purposes by the affirmative vote or consent of Members holding a majority of the Members’ Percentage Interests (the “Liquidating Agent”). The Liquidating Agent is authorized and empowered to execute any and all documents and to take actions necessary or desirable to effectuate the dissolution and liquidation of the Company in accordance with this Agreement.

 (c) Promptly after the termination of the Company, the Liquidating Agent will prepare and furnish Members with a statement establishing the assets and liabilities of the Company as of the date of termination. The Liquidating Agent, to the extent practicable, will liquidate the assets of the Company as promptly as possible, but in an orderly and businesslike manner so as not to involve undue sacrifice.

 (d) The proceeds of the sale and all other assets of the Company will be applied and distributed in the following order of priority: (1) to the payment of the expenses of liquidation and the debts and liabilities of the Company, other than debts and liabilities to Members; (2) to the payment of debts and liabilities to Members; (3) to the setting up of any reserves which the Liquidating Agent may deem necessary or desirable for any contingent or unforeseen liabilities or obligations of the Company, which reserves will be paid over to a licensed attorney to hold in escrow for a period of two years for the purpose of payment of any liabilities and obligations, at the expiration of which period the balance of the reserves will be distributed as provided; (4) to the Members in proportion to their respective capital accounts until each Member has received cash distributions equal to any positive balance in their capital account, in accordance with the rules and requirements of Treas. Reg. Section 1.704-1(b)(2)(ii)(b); and (5) to the Members in proportion to the Members’ Percentage Interests.

 (e) The liquidation will be completed within the period required by Treas. Reg. Section 1.704-1(b)(2)(ii)(b).

 (f) Upon compliance with the distribution plan, the Members will no longer be Members, and the Company will execute, acknowledge and file any documents or instruments that may be necessary or appropriate to evidence the dissolution and termination of the Company pursuant to the statutes.

**16.** **Representations of Members**

**PLEASE NOTE: The individual representations made by members upon entering into an operating agreement will vary according the circumstances, needs and desires of the members forming the LLC. The language below demonstrates only some of the representations members commonly make when entering into an operating agreement.**

 (a) Each of the Members represents, warrants and agrees that the Member is acquiring the interest in the Company for the Member’s own account for investment purposes only, and not for the purpose of selling or distributing the interest.

 (b) Each Member, if an individual, represents s/he is over the age of 21. Each Member, if an organization, represents it is duly organized, validly existing, and in good standing under the laws of its state of organization, and that it has full power and authority to execute this Agreement and perform its obligations hereunder.

 (c) Each Member represents that the execution and performance of this Agreement by the Member does not conflict with, and will not result in any breach of, any law or any order, writ, injunction or decree of any court or governmental authority against or which binds the Member, or of any agreement or instrument to which the Member is a party.

 (d) Each Member represents that the Member will not dispose of such interest or any part thereof in any manner which would constitute a violation of the Securities Act of 1933, the Rules and Regulations of the Securities and Exchange Commission, or any applicable laws, rules or regulations of any state or other governmental authorities, as the same may be amended.

**17.** **Certificates Evidencing Membership**

**PLEASE NOTE: In many jurisdictions, it is optional whether or not members will be issued certificates. Many LLCs decide not to issue certificates.**

 (a) A Certificate of Membership will be issued by the Company for every Membership. Each Certificate of Membership will give the name of the Member holding the membership interest and the Member’s Percentage Interest held, and will bear the following legend:

“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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC, dated effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and its amendments, a copy of which is on file at the principal office of the Company.”

**18.** **Notices**

All notices, demands, requests or other communications that any of the parties to this Agreement desire or are required to give hereunder will be in writing and will be deemed to have been properly given if sent by courier or by registered or certified mail, return receipt requested, with postage prepaid, and addressed as follows: (a) if to the Company, at the principal place of business of the Company as designated; and (b) if to any Member, to the address of the Member first above written, or to other addresses designated by the Member, by notice to the Company and the other Members pursuant to this Article 18.

**19.** **Dispute Resolution**

**PLEASE NOTE: There are many options available to LLC members to resolve disputes including, but not limited to: requiring mandatory mediation of any disputes prior to initiating an action; resolving disputes through arbitration; resolving disputes through the courts; and waiving trial by jury. The sample language below demonstrates just one way that members sometimes agree. It is important for the members to craft a plan for resolving disputes that fits the individual needs, desires and circumstances of all members.**

 (a) Any dispute, controversy, or claim arising out of or in connection with this Agreement, or breach of the Agreement, must be submitted to mediation prior to any member initiating any court action or arbitration. The member seeking resolution of the dispute must first serve a demand for mediation by certified mail upon all members at the addresses provided for notices in this agreement. Mediation shall be before a retired judge or experienced lawyer, as agreed upon by unanimous agreement of all parties to the dispute. If the parties cannot unanimously agree on a mediator, the dispute shall be submitted to the American Arbitration Association and a mediator will be appointed according to its rules. If a member refuses to agree to mediation or the mediation cannot be accomplished in thirty days from the demand for mediation, or some other time as may be agreed by unanimous agreement of the members, the members may proceed to arbitration, as provided below.

 (b) If the parties are unable to resolve the dispute through mediation, any dispute, controversy, or claim arising out of or in connection with this Agreement, or breach of the Agreement, will be submitted to and settled by arbitration in the city of the Company’s principle place of business, pursuant to the commercial arbitration rules then in effect of the American Arbitration Association (or at any other time or place or under any other form of arbitration mutually acceptable to the parties involved). Any award rendered will be final and conclusive on the parties, and a judgment on them may be entered in a court of competent jurisdiction. The expenses of the arbitration will be borne equally by the parties to the arbitration, provided that each party pays for and bears the cost of its own experts, evidence and attorneys’ fees, except that in the discretion of the arbitrator, any award may include the attorney’s fees of a party if the arbitrator expressly determines that the party against whom the award is entered has caused the dispute, controversy or claim to be submitted to arbitration as a dilatory tactic or in bad faith.

**20. Amendments**

**PLEASE NOTE: There are many options available to LLC members for how the operating agreement may be amended. The sample language below demonstrates just one way that members sometimes agree. It is important for the members to craft a plan for amending the operating agreement that fits the individual needs, desires and circumstances of all members.**

This Agreement may not be altered, amended, changed, supplemented, waived or modified in any respect or particular way unless it is in writing and agreed to by the affirmative vote or consent of Members holding a majority of the Members’ Percentage Interests. No amendment may be made to Articles that apply to the financial interest of the Members except by the vote or consent of all of the Members. No amendment of any provision of this Agreement relating to the voting requirements of the Members on any specific subject will be made without the affirmative vote or consent of at least the number or percentage of Members required to vote on the subject.

 **21. Miscellaneous**

 (a) **Choice of Law.** This Agreement and the rights and liabilities of the parties hereunder will be governed by and determined in accordance with the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 (b) **Severability.** If any provision of this Agreement is deemed invalid or unenforceable, that will not affect the other provisions of this Agreement, which will remain in full force and effect.

 (c) **Captions.** The captions in this Agreement are for convenience only and are not to be considered in construing this Agreement. All pronouns will be deemed to be the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require. References to a person or persons will include partnerships, corporations, limited liability companies, unincorporated associations, trusts, estates, and other types of entities.

 (d) **Executed in Counterparts.** This Agreement, and any amendments hereto, may be executed in counterparts, all of which, taken together, will constitute one agreement.

 (e) **Entire Agreement / Modification.** This Agreement sets forth the entire agreement of the parties with respect to the subject matter it contains. It is the Members’ intention that this Agreement will be the sole agreement of the parties, and, except to the extent a provision of this Agreement provides for the incorporation of federal income tax rules or is expressly prohibited or ineffective under the statutes, this Agreement will govern even when inconsistent with, or different from, the provisions of any applicable law or rule. To the extent any provision of this Agreement is prohibited or otherwise ineffective under the statutes, that provision will be considered ineffective to the smallest degree possible in order to make this Agreement effective under the statutes.

 (f) Subject to the limitations on transferability set forth above, this Agreement will 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 have executed this Agreement on this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Member Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Member Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Member Signature