

## **OPERATING AGREEMENT**

**OPERATING AGREEMENT** made effective this            day of            , 2012, by and between            and            , residing at            , such individuals hereinafter being collectively referred to as “Members” and each individually as a “Member”.

### **WITNESSETH:**

**WHEREAS**, the parties have created a Limited Liability Company under the laws of the State of New Jersey; and

**WHEREAS**, the parties desire to promote their mutual interests by making provisions for the operation of such entity and by imposing certain restrictions and obligations upon the parties as hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual agreements and covenants contained herein, it is mutually agreed and covenanted by and between the parties hereto as follows:

### **ARTICLE I**

#### **NAME AND PURPOSE**

1.1     The parties have filed a Certificate of Formation creating a Limited Liability Company under the laws of the State of New Jersey which shall be trading under the name and style            , L.L.C. (said entity hereinafter being referred to as the “Company”).

1.2     The Company shall engage in            and such other activities as the members may designate from time to time.

**ARTICLE II**  
**REGISTERED OFFICE AND AGENT**

2.1 The registered office of the Company in the State of New Jersey will be located at \_\_\_\_\_, New Jersey. The Company may have other offices, either within or without the State of New Jersey, as the members may designate or as the business of the Company may require. The registered office of the Company required by the New Jersey Limited Liability Company Act to be maintained in the State of New Jersey may be, but need not be, identical with the principal office, and may be changed from time to time by the Members.

2.2 The registered agent of the Company, who shall be located at its registered office, shall be \_\_\_\_\_. The members may change the identity of such Registered Agent at any time by vote of a majority in interest of the Members.

**ARTICLE III**  
**DURATION OF THE COMPANY**

3.1 The Company will commence immediately, on the signing of this Agreement, and will continue until \_\_\_\_\_, unless terminated sooner by operation of law or by vote of a majority in interest of the Members. The Members may also elect by majority vote to extend such primary term for one or more specific periods.

**ARTICLE IV**  
**CAPITAL CONTRIBUTIONS**

4.1 The undersigned Members agree to share in all capital contributions, profits and surplus of the Company according to the percentage of their ownership. Each Member shall own an undivided interest in the business and Company as follows:

(name of Member)	- %
(name of Member)	- %

**ARTICLE V**  
**ADDITIONAL CAPITAL CONTRIBUTIONS**

5.1 The members may contribute in proportionate amounts any additional capital deemed necessary for the operation of the Company provided, however, that in the event that any Member deems it advisable to refuse or fails to contribute his share of any or all of the additional capital, then the other Members or any one of them may contribute the additional capital not paid in by the refusing Member and shall receive therefore an increase in the proportionate share of the ownership or interest in the entire Company in direct proportion to the additional capital contributed.

## **ARTICLE VI**

### **DIVISION OF PROFITS AND LOSSES**

6.1 Each of the Members will own an interest in the Company as set forth in Article IV, except as the same may hereafter vary or change as provided in Article V. All profits of the Company enterprise will be shared by each of the Members according to the percentage of interest each Member owns. A separate capital account will be maintained for each Member. No Member may make any withdrawals from capital without prior approval of the Company. If the capital account of the Member becomes impaired, his share of subsequent Company profits will be first credited to his capital account until that account has been restored.

## **ARTICLE VII**

### **RIGHTS AND DUTIES OF THE PARTIES**

7.1 All Members (other than Assignees) shall be entitled to vote on any matter submitted to a vote of the Members. Notwithstanding the foregoing, the following actions require the consent of Majority of the Members:

- (A) Any amendment to this Company Agreement,
- (B) The admission of Assignees to Management Rights,
- (C) The continuation of the Company after a Dissolution Event.

7.2 No Member shall be liable as such for the liabilities of the Company. The failure of a limited liability company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Act shall not be grounds for imposing personal liability on the Members or managers for liabilities of the limited liability company.

7.3 The Company shall indemnify the Members, Managing Members, and agents for all costs, losses, liabilities, and damages paid or accrued by such Member, Manager or agent in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State of New Jersey.

7.4 Each Member, and in the case of an organization, the person(s) executing the Company Agreement on behalf of the organization, hereby represents and warrants to the Company and each other Member that: (a) if that Member is an organization, that it is duly organized, validly existing, and in good standing under the law of its state of organization and that it has full organizational power to execute and agree to the Company Agreement to perform its obligations hereunder; (b) that the Member is acquiring its interest in the Company for the Member's own account as an investment and without an intent to distribute the interest; (c) the Member acknowledges that the interests have not been registered under the Securities Act of 1933 or any state securities laws, and may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements.

7.5 A Member, including a Managing Member, shall be entitled to enter into transactions that may be considered to be competitive with, or a business opportunity that may be beneficial to, the Company, it being expressly understood that some of the Members may enter into transactions that are similar to the transactions into which the Company may enter. Notwithstanding the foregoing, Members shall account to the Company and hold as trustee for it any property, profit, or benefit derived by the Member, without the consent of the other Members, in the conduct and winding up of the Company business or from a use or appropriation

by the Member of Company property including information developed exclusively for the Company and opportunities expressly offered to the Company.

7.6 A Member, including a Managing Member does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company. The rights and obligations of a Member who lends money to or transacts business with the Company are the same as those of a person who is not a Member, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member has a direct or indirect interest in the transaction if either the transaction is fair to the Company or the disinterested Managing Members or disinterested Members, in either case knowing the material facts of the transaction and the Member's interest, authorize, approve, or ratify the transaction.

**ARTICLE VIII**  
**MANAGEMENT**

8.1 The ordinary and usual decisions concerning the business affairs of the Company shall be made by the Managing Members. There shall be two Managing Members, who must be Members of the Company. The initial Managing Members shall be:

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

8.2 The Managing Members shall not have any contractual right to such position. Each Managing Member shall serve until the earliest of:

- (A) The termination of association of such Managing Member with the Company; or
- (B) The removal of the Managing Member.

8.3 No Member other than a Managing Member shall take any action to bind the Company. Each Managing Member has the power on behalf of the Company to do all things necessary to carry out the business and affairs of the Company, including without limitation:

- (A) The institution, prosecution and defense of any proceeding in the Company's name;
- (B) The purchase, receipt, lease or other acquisition, ownership, holding, improvement, use and other dealing with, property, wherever located;
- (C) The sale, conveyance, mortgage, pledge, lease, exchange, and other disposition of property;
- (D) The entering into contracts and guaranties, incurring of liabilities, borrowing money, issuance of notes, bonds, and other obligations; and the securing of any of its obligations by mortgage or pledge of any of its property or income;
- (E) The lending of money, investment and reinvestment of the Company's funds, and receipts and holding of property as security for repayment, including, without limitation, the loaning money to, and otherwise helping Members, offices, employees, and agents;
- (F) The conduct of the Company's business, the establishment of Company offices, and exercise of the powers of the Company within or without the State of New Jersey;
- (G) The appointment of employees and agents of the Company, the defining of their duties, the establishment of their compensation;
- (H) The payment of pensions and establishment of pension plans, pension trusts, profit sharing plans, and benefit and incentive plans for all or any of the current or former Members, employees, and agents of the Company;
- (I) The making of donations to the public welfare or for religious, charitable, scientific, literary or educational purposes;

(J) The payment or donation, or any other act that furthers the business and affairs of the Company;

(K) The payment of compensation, or additional compensation to any or all Members, and employees on account of services previously rendered to the limited liability company, whether or not an agreement to pay such compensation was made before such services were rendered;

(L) The purchase of insurance on the life of any of its Members, or employees for the benefit of the Company;

(M) The participation in partnership agreements, joint ventures, or other associations of any kind with any person or persons;

(N) The indemnification of Members or any other persons.

8.4 Each Managing Member has the power to bind the Company as provided in this Article VIII. No person dealing with the Company shall have any obligation to inquire into the power or authority of the Managing Member acting on behalf of the Company.

8.5 Each managing Member shall be reimbursed all reasonable expenses incurred in managing the Company and shall be entitled to compensation, in an amount to be determined from time to time by the affirmative vote of a majority of the Members.

8.6 A Managing Member's duty of care in the discharge of the Managing Member's duties to the company and the other Members is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law. In discharging its duties, a Managing Member shall be fully protected in relying in good faith upon the records required to be maintained hereunder and upon such information, opinions, reports or

statements by any of its other Managing Members, Members, or agents, or by any other person, as to matters the Managing Member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

8.7 Any Managing Member may be removed by the affirmative vote of a majority of the Members.

## **ARTICLE IX**

### **ACCOUNTING AND RECORDS**

9.1 The Company shall maintain the following records at the registered office:

- (A) A current list of the names and addresses of all Members;
- (B) A copy of the Certificate of Formation of the Company and all amendments thereto as filed with the Secretary of State of the State of New Jersey, together with executed copies of any powers of attorney pursuant to which any articles have been executed;
- (C) Copies of the Company's Federal and State income tax returns and reports for the three most recent years;
- (D) Copies of the Operating Agreement including any amendments thereto;
- (E) Copies of any financial statements for the Company for the three most recent years.

9.2 The Managing Member shall maintain records of the capital accounts of all Members in accordance with Articles IV and V.



9.3 The Managing Members will furnish annual financial statements to the Members, and cause tax returns to be prepared, with copies furnished to the Members at least seven (7) days before they are filed by the Company.

## **ARTICLE X**

### **BANKING**

10.1 All funds of the Company will be deposited in its name in the checking account or accounts as shall be designated by either Manager. All withdrawals are to be made on checks which must be signed by such individual or individuals as the Managers may designate.

## **ARTICLE XI**

### **BOOKS**

11.1 The Company books will be maintained at the registered office of the Company, and all Members will have access to the books. The books will be kept on a calendar year basis, and will be closed and balanced at the end of each fiscal year. All of the parties of this Agreement covenant and agree to cause all known business transactions pertaining to the purpose of the Company to be entered properly and completely into the books.

## **ARTICLE XII**

### **INSURANCE**

12.1 During the course of the term for which this Company is formed, the Company will carry liability insurance in amounts deemed appropriate by the Managing Members.

## **ARTICLE XIII**

### **VOLUNTARY TERMINATION**

13.1 The Company may be dissolved at any time by agreement of a majority in interest of its members, in which event the Members will proceed with reasonable promptness to liquidate the Company. The assets of the Company will be distributed in the following order:

(A) To pay or provide for the payment of all Company liabilities to creditors other than Members, and liquidating expenses and obligations;

(B) To pay debts owing to Members other than for capital and profits;

(C) To pay debts owing to Members in respect to capital; and

(D) To pay debts owing to Members in respect to profits.

#### **ARTICLE XIV**

##### **RESTRICTIONS ON SALE OR TRANSFER**

14.1 Sale or Transfer Defined As used in this Article, to “sell or transfer” an interest in the Company shall mean to dispose of or assign, with or without consideration, voluntarily or involuntarily, any legal or equitable interest in the Company. A sale or transfer shall include, without limitation, a sale, gift, exchange, pledge, hypothecation, encumbrance, transfer in trust, and contract or option to sell or transfer.

14.2 Transferee In the event of any transfer under this Agreement, each transferee shall receive and hold such interest subject to all of the terms and restrictions of this Agreement including this Article, and each such transferee or successive transferee shall be a Member.

14.3 Transfers To Third Persons No Member may sell or transfer any of his or her interest in the Company to any third person without the prior written consent of all other Members. If consent to transfer is not obtained within sixty (60) days of the date of a written request therefor, the Company shall be dissolved.

#### **ARTICLE XV**

##### **DISABILITY OF A MEMBER**

15.1 The disability of a Member shall not result in the dissolution of the Company. A Managing Member who becomes disabled (i.e. unable to carry on his or her duties as Manager

due to a medically diagnosed illness or condition) shall be replaced by majority vote in interest of the remaining Members. Alternatively, the position of the disabled Managing Member may be left vacant if so determined by majority vote in interest of the remaining Members.

## **ARTICLE XVI**

### **DISSOLUTION, WINDING UP, LIQUIDATION**

16.1 **EVENTS OF DISSOLUTION** The Company shall be dissolved and liquidated on the occurrence of any of the following events:

- (A) Upon agreement of all members;
- (B) Upon a sale of the real property commonly known as  
, New Jersey;
- (C) Upon consent to transfer to a third party not being given within sixty (60) days pursuant to Article XIV, hereinabove;
- (D) Upon an irreconcilable difference among the Members which causes a deadlock for the Company; or
- (E) Upon the demand of Members holding fifty (50%) per cent or more in interest in profit and loss in the Company;
- (F) The death of a member shall not automatically cause a dissolution of the Company. The personal representative of the deceased Member's estate shall be permitted to exercise all of the Member's rights and shall be permitted to transfer or assign the interest of the deceased Member in settlement of his or her estate, provided that any such assignee shall be bound by the terms, covenants and provisions of this Operating Agreement.

16.2 WINDING UP AND LIQUIDATION OR TERMINATION The liquidation or termination procedure shall be as follows:

(A) The members shall meet and review Company properties, assets and liabilities and attempt to arrive at an equitable formula for distribution of assets.

(B) If the members are unable to agree as to valuation and distribution, then any property in question shall be sold to third parties pursuant to a listing agreement with a real estate broker duly licensed by the State in which the property is located, at the highest price available. The net proceeds from such sale shall be divided among the Members in accordance to each Member's interest in the Company or as otherwise provided herein. Said purchase price shall be set by agreement of the parties, if obtainable, and if not by a mutually acceptable qualified appraiser.

(C) If the Members do not agree upon a distribution and cannot agree to sell the questionable parts of the Company's property to third parties, then the value of assets not agreed upon as to be sold shall be determined as follows:

(1) The Members will meet and attempt to agree on a price for such assets.

(2) If all Members cannot set a price by mutual agreement, then the Members will select a qualified appraiser and the value, as fixed by such appraiser, shall be deemed to be the fair market value of the assets.

Once the price is so set than any Member may purchase the assets in questions on an "All Cash" basis from the Company. If no Member wishes to make such purchase then the assets shall be listed for sale as hereinabove provided. If more than one Member wishes to purchase the assets then they shall endeavor to agree upon the purchase and if they cannot or if for any other reason agreement on the liquidation/termination procedure cannot be reached then any party may

consistent with the provisions herein contained commence an action for construction of this Agreement or for dissolution of the Company pursuant to applicable New Jersey law.

(D) After the sale or other disposition of all in-kind (i.e., non-cash) property of the Company, whether by agreement pursuant to this Article, or otherwise, the assets less the liabilities of the Company including the proceeds realized on the sales of Company assets, shall be distributed to each Member in accordance with his or her interest in the Company, adjusted for capital and income accounts and other amounts owed to the Member, less said Member's drawing account and amounts owed by the Member, if any, to the Company.

## **ARTICLE XVII**

### **DISTRIBUTION**

17.1 Prior to dissolution and at least annually as income has been received by the Company accounts determined and tax returns filed, the Members will determine funds available for distribution by approval of a majority in interest. On liquidation, a reasonable reserve as mutually determined in amount shall be established to cover anticipated claims. Liquidation of the Company need not be delayed provided that such amounts are properly escrowed and arrangement made for performance of such services as may be required in the interest of the Company. Escrows, reserves or liquidating accounts may be established as escrows or otherwise, which activity need not unduly delay the termination of the Company for all other purposes.

## **ARTICLE XVIII**

### **VIOLATION OF THIS AGREEMENT**

18.1 Any Member who violates any of the terms, conditions and provisions of this Agreement will keep and save harmless the Company property and will also indemnify the other then Members from any and all claims, demands and actions of every kind and nature whatsoever which may arise out of or by reason of the violation of any terms and conditions of this Agreement.

## **ARTICLE XIX**

## **SPECIFIC PERFORMANCE**

19.1 The Company, since its ownership interests are of a unique nature and cannot readily be purchased or sold in the open market, would be irreparably damaged in the event that any party to this Agreement fails to sell or transfer his interest pursuant to the terms and conditions of this Agreement. Additionally, the parties hereto stipulate that it would be impossible to measure in money the damages which would be suffered in the event of a sale in breach of this Agreement. As a result, should a sale or transfer be made which shall not be in conformity herewith, the parties' rights shall be enforceable by a decree of specific performance. Such remedy shall, however, be cumulative and nonexclusive and shall be in addition to any other remedy which may exist.

## **ARTICLE XX**

### **MISCELLANEOUS**

20.1 **NOTICES** Any notice to be given or to be served upon any party hereto in connection with this Agreement must be in writing, may be given by registered or certified mail and shall be deemed to have given and received when a registered or certified letter containing such notice, properly addressed, with postage prepaid is deposited in the United States mails. if given otherwise than by registered or certified mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be given to the parties hereto at the addresses set forth on the signature page of this Agreement.

20.2 **BINDING EFFECT** This Agreement and the covenants, obligations, undertakings, rights and benefits hereof shall be binding upon, and shall inure to the benefit of, the respective parties hereto and their respective heirs, executors, administrators, representatives, successors and assigns.

20.3 **INTERPRETATION** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context requires otherwise.

20.4 GOVERNING LAW This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey.

20.5 MODIFICATION This Agreement may not be amended or modified except in writing executed by the unanimous consent of all Members.

20.6 EXECUTION IN COUNTERPARTS This Agreement may be executed by one or more Members in several counterparts and all such counterparts so executed shall together be deemed to constitute one final agreement as if signed by all Members and each such counterpart shall be deemed to be an original.

20.7 HEADINGS Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

20.8 ENTIRE AGREEMENT This Agreement contains the entire understanding between the parties and supersedes any prior understanding and agreement among them pertaining to the creating and establishment of this Company. There are no representations, agreement, arrangements or understandings, oral or written, between and among the parties hereto relating to any of the provisions of this Agreement which are not fully expressed or incorporated by reference herein.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement on the day and date first above written.

**WITNESS:**

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

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