

This form contributed by Brian Rolfe of The Kemp Klein Law Firm as referenced in his chapter on Business Entity Choice.

Exhibit 1

Sample Bylaws of a Corporation

BYLAWS OF
[Corporation Name]

ARTICLE I
Meetings

SECTION 1 - PLACE OF MEETING. Any or all meetings of the shareholders and of the board of directors of this corporation may be held within or out of the State of _____, provided that no meeting shall be held at a place other than within the county in which the registered office or operating office of the corporation in _____ is located, except pursuant to bylaw or resolution adopted by the board of directors.

SECTION 2 - ANNUAL MEETING OF SHAREHOLDERS. An annual meeting of the shareholders shall be held each year on the first Wednesday of the second month of the fiscal year of the corporation, unless otherwise determined by the shareholders by majority vote. One (1) of the purposes of the annual meeting of the shareholders shall be the election of a board of directors.

SECTION 3 - NOTICE OF ANNUAL MEETING OF SHAREHOLDERS. At least ten (10) days, and no longer than thirty (30) days prior to the date fixed by Section 2 of this Article for the holding of the annual meeting of shareholders, written notice of the time, place and purposes of such meeting shall be mailed, as hereinafter provided, or shall be delivered personally to each shareholder entitled to vote at such meeting.

SECTION 4 - DELAYED ANNUAL MEETING. If, for any reason, the annual meeting of the shareholders shall not be held on the day hereinbefore designated, such meeting may be called and held as a special meeting, and the same proceedings may be had thereat as at an annual meeting; provided, however, that the notice of such meeting shall be the same herein required for the annual meeting, namely, not less than a ten (10) nor more than a thirty (30) day notice.

SECTION 5 - ORDER OF BUSINESS AT ANNUAL MEETING. The order of business at the annual meeting of the shareholders shall be as follows:

- (a) Roll call;
- (b) Reading of notice and proof of mailing or personal service;
- (c) Report of president;
- (d) Report of secretary;
- (e) Report of treasurer;
- (f) Election of directors;

- (g) Transaction of other business mentioned in the notice;
- (h) Transaction of such other business as may properly come before the meeting;
- (i) Adjournment.

Provided that, in the absence of any objection, the presiding officer may vary the order of business at the presiding officer's discretion.

SECTION 6 - SPECIAL MEETINGS OF SHAREHOLDERS. A special meeting of the shareholders may be called at any time by the president, or by a majority of the board of directors, or by shareholders entitled to vote not less than an aggregate of twenty-five percent (25%) of the outstanding shares of the corporation having the right to vote at such special meeting. The method by which such meeting may be called is as follows: upon receipt of a specification in writing setting forth the date and objects of such proposed special meeting, signed by the president, or by a majority of the board of directors, or by shareholders as above provided, the secretary of this corporation shall prepare, sign and mail the notices requisite to such meeting. If the secretary shall fail or refuse to do so within five (5) days, then any other officer, director or shareholder of the corporation may mail such notice and/or cause the same to be personally served.

SECTION 7 - NOTICE OF SPECIAL MEETING OF SHAREHOLDERS. At least ten (10) days prior to the date fixed for the holding of any special meeting of shareholders, written notice of the time, place and purposes of such meeting shall be mailed, as hereinafter provided, or shall be delivered personally to each shareholder entitled to vote at such meeting. No business not mentioned in the notice shall be transacted at such meeting, except by unanimous consent of all shareholders present at such meeting, whether personally or by proxy.

SECTION 8 - ORGANIZATIONAL MEETING OF BOARD. At the place of holding the annual meeting of the shareholders, and immediately following the same, the board of directors as constituted upon final adjournment of such annual meeting shall be convened for the purpose of electing officers and transacting any other business properly brought before it, provided that the organizational meeting in any year may be held at a different time and place than that herein provided by consent of a majority of the directors of such new board.

SECTION 9 - REGULAR MEETINGS OF BOARD. Regular meetings of the board of directors shall be held not less frequently than once in each calendar year at such time and place as the board of directors shall from time to time determine. Notice of regular meetings of the board shall be given in the same manner as is provided in Section 10 of this Article for special meetings of the board.

SECTION 10 - SPECIAL MEETINGS OF BOARD. Special meetings of the board of directors may be called by the president, or any director, at any time by means of transmitting written notice, delivered personally or by mail, of the time, place and purpose thereof to each director as the president or such director, in his/her discretion, shall deem sufficient, but action

taken at any such meeting shall not be invalidated for want of notice if such notice shall be waived as hereinafter provided.

SECTION 11 - NOTICE AND MAILING. All notices required to be given by any provision of these Bylaws shall state the authority pursuant to which they are issued (as, "by order of the president", or "by order of the board of directors", "or by order of shareholders", as the case may be) and shall bear the written or printed signature of the president or the secretary or other person herein authorized to give such notice. Every notice shall be deemed duly served when the same has been delivered personally or has been deposited in the United States mail, with the postage fully prepaid, plainly addressed to the addressee at his, her or its last address appearing upon the books and records of this corporation at its registered office in [State].

SECTION 12 - WAIVER OF NOTICE. Notice of the time, place and purpose of any meeting of the shareholders or of the board of directors, or of both, may be waived by telegram, radiogram, cablegram or other writing, either before or after such meeting has been held. Any and all requirements of the laws of the [State], and of the Articles of Incorporation, and all of the bylaws with respect to the calling of any meeting of the shareholders, or of the board of directors, may be waived by telegram, radiogram, cablegram or other writing, either before or after such meeting has been held.

ARTICLE II Quorum

SECTION 1 - QUORUM OF SHAREHOLDERS. A majority of the outstanding shares of this corporation entitled to vote, present by the recordholders thereof in person or by proxy, shall constitute a quorum of any meeting of the shareholders.

SECTION 2 - QUORUM OF DIRECTORS. A majority of the directors shall constitute a quorum.

ARTICLE III Voting, Elections and Proxies

SECTION 1 - WHO IS ENTITLED TO VOTE. Except as in the Articles of Incorporation, or in any amendment(s) thereto otherwise provided, each shareholder of this corporation shall, at every meeting of the shareholders, be entitled to one (1) vote, in person or by proxy for each share of capital stock of this corporation held by such shareholder, subject, however, to the full effect of the limitations imposed by the fixed record date for determination of shareholders set forth in Section 2 of this Article III.

SECTION 2 - RECORD DATE FOR DETERMINATION OF SHAREHOLDERS. Unless another day is fixed by the board of directors, twenty (20) days preceding (a) the date of any meeting of shareholders, (b) the date for the payment of any dividends, (c) the date for the allotment of rights, or (d) the date when any change or conversion or exchange of capital stock shall go into effect, is hereby fixed as a record date for the determination of shareholders entitled to notice of, and to vote at, any such meeting, or entitled to receive payment of any such

dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, notwithstanding any transfer of any stock on the books of the corporation or otherwise after any such record date fixed as aforesaid. Nothing in this Section shall affect the rights of a shareholder and his/her transferee or transferor as between themselves.

SECTION 3 - PROXIES. No proxy shall be deemed operative unless and until signed by the stockholder and filed with the corporation. In the absence of language to the contrary contained in the proxy, the same shall extend to all meetings of the shareholders and shall remain in force three (3) years from its date.

SECTION 4 - VOTE BY SHAREHOLDER CORPORATION. Any other corporation owning voting shares in this corporation may vote the same by the president of such shareholder corporation, or by proxy appointed by him/her, unless some other person shall be appointed to vote such shares by resolution of the board of directors of such shareholder corporation.

SECTION 5 - INSPECTORS OF ELECTION. Whenever any person entitled to vote at any meeting of the shareholders shall request the appointment of inspectors, a majority of the shareholders shall appoint not more than three (3) inspectors, who need not be shareholders. If the right of any person to vote at such meeting shall be challenged, the inspectors shall determine such right. The inspectors shall receive and count the votes either upon an election or for the decision of any questions and shall determine the result. Their certificate of any vote shall be prima facie evidence thereof.

ARTICLE IV Board of Directors

SECTION 1 - NUMBER AND TERM OF DIRECTOR. The business, property and affairs of this corporation shall be managed by a board of directors composed of at least one and not more than three members, who need not be a shareholder. A director shall hold office for the term for which he/she is elected and until his/her successor is elected and qualified, whichever shall later occur. Nothing contained in this Section is intended to be construed or shall be construed to prevent the removal of any director of the corporation at any time, with or without cause.

SECTION 2 - VACANCIES. Vacancies in the board of directors shall be filled by appointment made by the shareholders at a special meeting duly called for that purpose. Each person so elected to fill a vacancy shall remain a director until the earliest to occur of the succeeding annual meeting of shareholders or execution of a consent resolution in lieu thereof, the election and qualification of his/her successor or the effective date of his/her resignation or removal by the shareholders, who may make such election at their next annual meeting or at any special meeting, duly called for that purpose, held prior thereto.

SECTION 3 - ACTION BY WRITTEN CONSENT. If and when the director shall consent in writing to any action to be taken by the corporation, such action shall be as valid a corporation action as though it had been authorized at a meeting of the board of directors.

SECTION 4 - POWER TO ELECT OFFICERS. The board of directors shall select a president, one (1) or more vice presidents, a secretary and a treasurer, as well as one (1) or more assistant secretaries and/or assistant treasurers. No officers except the president need be a member of the board of directors, but a vice president who is not a director shall not succeed to nor fill the office of president unless and until he/she shall become a director.

SECTION 5 - POWER TO APPOINT OTHER OFFICERS AND AGENTS. The board of directors shall have the power to appoint such other officers and agents as the board may deem necessary for the transaction of the business of the corporation.

SECTION 6 - REMOVAL OF OFFICERS AND AGENTS. Any officer or agent may be removed by the board of directors by majority vote of the board whenever, in the judgment of the board, the business interests of the corporation will be served thereby.

SECTION 7 - POWER TO FILL VACANCIES. The board shall have the power to fill any vacancy in any office occurring for any reason whatsoever.

SECTION 8 - DELEGATION OF POWERS. For any reason deemed sufficient by the board of directors, whether occasioned by absence or otherwise, the board may delegate all or any of the powers and duties of any officer to any other officer or director, but no officer or director shall execute, acknowledge or verify any instrument in more than one (1) capacity.

SECTION 9 - POWER TO APPOINT EXECUTIVE COMMITTEE. The board of directors shall have the power to appoint by resolution an executive committee composed of one (1) or more directors who, to the extent provided in such resolution, shall have and exercise the authority of the board of directors in the management of the business of the corporation between meetings of the board.

SECTION 10 - POWER TO REQUIRE BONDS. The board of directors may require any officer or agent to file with the corporation a satisfactory bond conditioned on faithful performance of his/her duties.

SECTION 11 - COMPENSATION. The compensation of the director, as well as of officers and agents, shall be fixed and from time to time adjusted by the board by majority vote.

SECTION 12 - POWER TO ESTABLISH BONUS, PROFIT SHARING OR OTHER TYPES OF INCENTIVE PLANS. The board of directors shall have the power and authority to establish bonus, pension, profit sharing, or other types of incentive or compensation plans for the employees, including officers and directors, of the corporation, and to fix the amount of profits to be shared or distributed, and to determine the persons to participate in any such plans and the amount of their respective participations.

ARTICLE V
Officers

SECTION 1 - PRESIDENT. The president shall be selected by, and from the membership of, the board of directors. He/she shall be the chief executive officer of the corporation and shall preside as Chairman of all meetings of the board of directors. He/she shall have general and active management of the business of the corporation and shall see that all orders and resolutions of the board are carried into effect. He/she shall be ex officio a member of all standing committees and shall have the general powers and duties of supervision and management usually vested in the office of the president of a corporation.

SECTION 2 - VICE PRESIDENT. The vice president(s), if any, in the order of their seniority, shall perform the duties and exercise the powers of the president during the absence or disability of the president.

SECTION 3 - SECRETARY. The secretary shall attend all meetings of the stockholders, and of the board of directors and of the executive committee(s), and shall preserve in the books of the corporation true minutes of the proceedings of all such meetings. He/she shall safely keep in his/her custody the seal of the corporation, if any, and shall have authority to affix the same to all instruments where its use is required. He/she shall give all notices required by statute, bylaw or resolution. He/she shall perform such other duties as may be delegated to him/her by the board of directors or by the executive committee(s).

SECTION 4 - TREASURER. The treasurer shall have custody of all corporate funds and securities and shall keep in books belonging to the corporation full and accurate accounts of all receipts and disbursements; he/she shall deposit all moneys, securities and other valuable effects in the name of the corporation in such depositories as may be designated for that purpose by the board of directors. He/she shall disburse the funds of the corporation as may be ordered by the board, taking proper vouchers for such disbursements, and shall render to the president and directors at the regular meetings of the board, and whenever requested by them, an account of all his/her transactions as treasurer and of the financial condition of the corporation. If required by the board he/she shall deliver to the president of the corporation, and shall keep in force, a bond in form, amount and with a surety or sureties satisfactory to the board, conditioned for faithful performance of the duties of his/her office, and for restoration to the corporation in the case of his/her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and property of whatever kind in his/her possession, or under his/her control, belonging to the corporation.

SECTION 5 - ASSISTANT SECRETARY AND ASSISTANT TREASURER. The assistant secretary, if any, in the absence or disability of the secretary, shall perform the duties and exercise the powers of the secretary. The assistant treasurer, if any, in the absence or disability of the treasurer, shall perform the duties and exercise the powers of the treasurer.

ARTICLE VI
Indemnification of Directors or Officers

The corporation shall, to the fullest extent authorized or permitted by the [State statutes], (a) indemnify any person who is or was a director or officer of the corporation, and his or her heirs, personal representatives, executors, administrators and legal representatives, who was, is or is threatened to be made, a party to any threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative or investigative or by or in the right of the corporation itself) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation (including a subsidiary corporation), limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise, whether or not for profit, or by reason of anything done by such person in such capacity (collectively, "covered matters"); and (b) advance, pay or reimburse the reasonable expenses, including attorneys' fees, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by such person and his or her heirs, executors, administrators and legal representatives in connection with any covered matter in advance of or at the end of final disposition of such covered matter. The corporation may provide such other indemnification to directors, officers, employees and agents by insurance, contract or otherwise as is permitted by law and authorized by the board of directors.

ARTICLE VII
Stock and Transfers

SECTION 1 - CERTIFICATES FOR SHARES. Every shareholder shall be entitled to a certificate of his/her shares signed by the president or a vice president under the seal of the corporation, if any, certifying the number and class of shares, represented by such certificates, which certificates shall state the terms and provisions of all classes of shares and, if such shares are not fully paid, the amount paid, provided that where such certificate is signed by a transfer agent or an assistant transfer agent or by a transfer clerk acting on behalf of such corporation, and by a registrar, the signature of any such president or vice president and the seal of the corporation, may be a facsimile. A certificate may, but need not, also be signed by the secretary or treasurer, or by the assistant secretary or the assistant treasurer.

SECTION 2 - TRANSFERABLE ONLY ON BOOKS OF CORPORATION. Shares shall be transferable only on the books of the corporation by the person named in the certificates, or by attorney lawfully constituted in writing, and upon surrender of the certificate therefor. A record shall be made of every such transfer and issue. Whenever any transfer is made for collateral security, and not absolutely, the fact shall be so expressed in the entry of such transfer.

SECTION 3 - REGISTERED STOCKHOLDERS. The corporation shall have the right to treat the registered holder of any share as the absolute owner thereof, and shall not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not the corporation shall have express or other notice thereof, save as may be otherwise provided by the statutes of [State].

SECTION 4 - TRANSFER AGENT AND REGISTRAR. The board of directors may appoint a transfer agent and a registrar of transfers, and may require all certificates of shares to bear the signature of such registrar of transfers, or as the board may otherwise direct.

SECTION 5 - REGULATIONS. The board of directors shall have the power and authority to make all such rules and regulations as the board shall deem expedient regulating the issue, transfer and registration of certificates for shares in this corporation.

ARTICLE VIII
Dividends and Reserves

SECTION 1 - SOURCES OF DIVIDENDS. The board of directors shall have the power and authority to declare dividends from the "net worth" of the corporation, as the "net worth" of the corporation is defined under [State] law.

In determining whether the corporation may make a legal distribution, the judgment of the board shall be conclusive in the absence of bad faith or gross negligence.

SECTION 2 - MANNER OF PAYMENT OF DIVIDEND. Dividends may be paid in cash, in property, in obligations of the corporation or in shares of the capital stock of the corporation.

SECTION 3 - RESERVES. The board of directors shall have the power and authority to set funds apart as a reserve, out of any funds available, as the board, in its discretion, shall approve; and the board shall have power and authority to abolish any reserve created by the board.

ARTICLE IX
Right of Inspection

SECTION 1 - INSPECTION OF LIST OF SHAREHOLDERS. At least ten (10) days before every election of directors, a complete list of shareholders entitled to vote at such election shall be open to examination by any registered shareholder entitled to vote at such election, provided that no shareholder holding less than two percent (2%) of the outstanding capital stock of the corporation shall be entitled to exercise such privilege of inspection in advance of such meeting.

SECTION 2 - INSPECTION OF BOOKS OF ACCOUNT AND STOCK BOOKS. The books of account and stock books of this corporation shall be open to inspection at all reasonable times and for any proper purpose by the shareholders, provided that no shareholder holding of record in the aggregate less than two percent (2%) of the outstanding shares of some one (1) class of the stock of this corporation, and no person, whatever his/her holding, who has not then been a shareholder of record of this corporation for at least three (3) months prior to making such application, shall be permitted to exercise such privilege of inspection, except pursuant to resolution of the board of directors.

ARTICLE X
Execution of Instruments

SECTION 1 - CHECKS, ETC. All checks, drafts and orders for the payment of money shall be signed in the name of the corporation in such manner and by such officers or agents as the board of directors shall from time to time designate for that purpose.

SECTION 2 - CONTRACTS, CONVEYANCES, ETC. When the execution of any contract, conveyance or other instrument has been authorized without specification of the executing officers, the president, acting alone, may execute the same in the name and on behalf of this corporation and may affix the corporate seal, if any, thereto. The board of directors shall have authority to execute any instruments on behalf of this corporation.

ARTICLE XI
Amendments to Bylaws

SECTION 1 - AMENDMENTS, HOW EFFECTED. These Bylaws may be amended, altered, changed, added to or repealed by the affirmative vote of a majority of the shares entitled to vote at any regular or special meeting of the shareholders if notice of the proposed amendment, alteration, change, addition or repeal is contained in the notice of the meeting, or by the affirmative vote of a majority of the board of directors if the amendment, alteration, change, addition or repeal be proposed at a regular meeting; provided that any bylaws made by the affirmative vote of a majority of the board of directors as provided herein may be amended, altered, changed, added to or repealed by the affirmative vote of a majority of the shareholders; also provided, however, that no change in the date of the annual meeting of the shareholders shall be made within thirty (30) days next before the day on which such meeting is to be held, unless consented to in writing, or by a resolution adopted at a meeting, by all shareholders entitled to vote at an annual meeting.

ARTICLE XII
Fiscal Year

The fiscal year of the corporation for accounting purposes shall be as determined by the board of directors.

Exhibit 2

Sample Operating Agreement of a Single-Member LLC

OPERATING AGREEMENT

for

**_____ , LLC,
a [State] Limited Liability Company**

1. **Formation; Name; Purpose.** The LLC has been formed pursuant to the provisions of the [State] Limited Liability Act, being [Statute], as amended (the “Act”) by the filing of its Articles of Organization (the “Articles) on _____, 20__ (the “Effective Date”).

2. **Offices.** The principal office and any additional office of the LLC will be at such place or places inside or outside the [State] as the Member may designate from time to time. The initial registered office of the LLC and its resident agent are as set forth in the Articles.

3. **Member.** The LLC was formed as a limited liability company with one member. The name and address of the Member are set forth on the signature page.

4. **Management of LLC.**

a. The Member of the LLC will have management authority over the business of the LLC to the fullest extent permitted by the Act. The Member may appoint, employ, or otherwise contract with any persons for the transaction of the business of the LLC or the performance of services for or on behalf of the LLC, and the Member may delegate to any such person such authority to act on behalf of the LLC as the Member may from time to time deem appropriate.

b. Any action required or permitted by [State] law to be taken by the Member may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is dated and signed by the Member of the LLC.

c. The Member is authorized, without limitation, to have the following powers on behalf of the LLC with respect to any third party lenders (each called, for convenience, the “Lender”) (1) negotiate and procure loans, letters of credit and other credit or financial accommodations from the Lender for or on behalf of the LLC up to an unlimited amount; (2) discount, with Lender, commercial or other business paper belonging to the LLC, made or drawn by or upon third parties, without limit as to amount; (3) purchase, sell, exchange, assign, endorse or transfer and/or deliver certificates and/or instruments representing stocks, bonds, evidences of indebtedness or other securities owned by the LLC, whether or not registered in the name of the LLC; (4) give security for any liabilities of the LLC to the Lender by grant, security interest, assignment, lien, mortgage or deed of trust upon any real or personal property, whether tangible or intangible, of the LLC; and (5) execute and deliver in form and

content as may be required by the Lender any and all notes, evidences of indebtedness, applications for letters of credit, guaranties, subordination agreements, loan agreements, security agreements, financing statements, assignments liens, mortgages, deeds of trust and other agreements, instruments or documents to carry out the purposes of any loan(s) extended by the Lender, any or all of which may relate to all or to substantially all of the Company's property and assets.

d. The Member is also authorized, without limitation, to have the power, on behalf of the LLC, to lease or purchase real or personal property, of whatsoever kind or nature, upon such economic and other terms and conditions as it shall determine and approve, and to conduct any type of business or investment activity.

5. **Capital Contributions; Accounting.**

a. The sole member has subscribed and paid for ____ units of member interests in the LLC.

b. The LLC will be treated for federal tax purposes as a "disregarded entity." The LLC may obtain a tax identification number distinct from that of the Member.

c. The fiscal year of the LLC will be the fiscal year of the Member. The financial and accounting books and records of the LLC will be maintained in accordance with recognized accounting practices.

d. Real and personal property owned by the LLC will be held, and conveyance made, in the LLC's name or any assumed name adopted by it. Funds of the LLC will be deposited in the name or any assumed name of the LLC with the financial institutions and in the accounts as determined by the Member, subject to authorized signatures that the Member may determine.

6. **Limitation on Liability.** Except as expressly provided by law or unless liability is expressly assumed in a written instrument, a person who is a member or agent of the LLC is not liable for the acts, debts or obligations of the LLC.

7. **Indemnification.** The monetary liability of the Member for breach of any duty established under Section __ of the Act or otherwise is limited to the fullest extent permitted by the Act. The LLC will indemnify and hold harmless the Member from and against any and all losses, expenses, claims, and demands sustained by reason of any acts or omissions or alleged acts or omissions of the Member, including judgments, settlements, penalties, fines, or expenses

incurred in a proceeding to which the Member is a party or threatened to be made a party because such person or entity is or was a Member to the fullest extent permitted by law or contract and not subject to any restriction by this Agreement.

8. **Amendment.** This Agreement may be amended only in writing signed by the Member and the LLC specifically stating that this Agreement is amended.

9. **Operating Agreement.** This Agreement shall constitute an Operating Agreement.

The undersigned has executed this Agreement as of the Effective Date.

Member:

Address:

LLC:

_____, LLC, a [State]
limited liability company

By:

Member

Exhibit 3

Sample Operating Agreement of a Multi-Member LLC

OPERATING AGREEMENT

for

**_____ , LLC,
a [State] Limited Liability Company**

SAMPLE

OPERATING AGREEMENT

This Operating Agreement (the "Agreement") is made between _____ and _____ (the "Members"), and _____, LLC (the "Company"). The parties to the Agreement are referred to in the plural as "Parties" and in the singular as a "Party."

RECITALS:

- A. The Parties have formed a limited liability company under the Act by filing Articles of Organization with the [State];
- B. The Parties contemplate that the Company will be used for various business purposes;
- C. The Parties desire to set forth their understandings as to the formation of the Company and as to the operation of the business of the Company, on the terms and conditions set forth in this Agreement,

AGREEMENT: On the basis of the foregoing Recitals, in consideration of the mutual promises and undertakings set forth in this Agreement and for other valuable consideration, the receipt and sufficiency of which are mutually acknowledged by the Parties, the Parties agree as follows:

SECTION 1 - DEFINITIONS

1.1 Any capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Glossary of Defined Terms attached to this Agreement as **Exhibit A** and incorporated in this Agreement by reference, unless the context clearly requires another meaning.

SECTION 2 - GENERAL PROVISIONS

2.1 **Formation.** The Members hereby form a limited liability company (the "Company") effective as of _____, 20__ (the "Effective Date"). The Members hereby ratify all actions taken prior to and following the formation of the Company after the Effective Date.

2.2 **Name.** The name of the Company is _____, LLC.

2.3 **Purpose.** The Company may engage in any activity for which limited liability companies may be formed under the Act.

2.4 **Registered Office and Resident Agent.** The registered office of the Company and the name of the resident agent are as stated in the Articles.

2.5 **Duration.** The Company shall commence upon the Effective Date and shall continue for the period set in the Articles unless sooner dissolved in accordance with the Act or this Operating Agreement.

2.6 **Intention for Company.** The Members specifically intend that the Company be a limited liability company under the Act and not a partnership or any other venture but the Members do intend that the Company be taxed as a partnership for federal and state tax purposes. No Member shall be construed to be a partner in the Company or of any other Member for other than tax purposes.

SECTION 3 - **MANAGEMENT PROVISIONS**

3.1 **General Management.** The business of the Company will be managed by the Company's Members. Every Member shall be an agent of the Company for the purpose of the Company's business, and the acts of each Member, including the execution of the Company's name on any instrument, for apparently carrying on in the usual way the business of the Company, bind the Company, unless the Member so acting does not have the authority to act for the Company in the particular matter and the person with whom that Member is dealing has knowledge of the fact that the Member has no such authority.

3.2 **Day to Day Business.** One or more specified Members, or any third person upon mutual consent of the Members, may be authorized by the Members to take care of the Company's day to day business, subject to the limitations contained in this Agreement; ***provided, however,*** any such authorization may be amended, modified, extended or revoked by the vote of the Members at any time.

3.3 **Compensation.** No Member will receive compensation for any services rendered to the Company unless the compensation has been approved by an affirmative vote of the Members.

3.4 **Reimbursement for Expenses.** Each Member or former Member of the Company will be entitled to be reimbursed by the Company, as an expense of the Company, for the actual, reasonable, and necessary expenses incurred on behalf of the Company, upon filing an itemized account of the expense in the records of the Company. Members will not be entitled to reimbursement for expenses incurred in attending any annual or special meetings of Members.

3.5 **Duties of Members.** Each Member will discharge his, her or its duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner each such Member reasonably believes to be in the best interests of the Company.

3.6 **Reliance on Reports.** In discharging his, her or its duties, each Member may rely on information, opinions, reports, or statements, including, but not limited to, financial statements or other financial data, if prepared or presented by any of the following:

3.6.1 One or more other Members or employees of the Company whom the Member reasonably believes to be reliable and competent in the matter presented;

3.6.2 Legal counsel, public accountants, engineers, or other persons as to matters the Member reasonably believes are within the person's professional or expert competence; or

3.6.3 A committee of Members of which he, she or it is not a member if the Member reasonably believes the committee merits confidence.

3.7 **Unwarranted Reliance on Reports.** A Member is not entitled to rely on the information described in Section 3.6 if the Member has knowledge concerning the matter in question that makes the reliance unwarranted.

3.8 **Liability of Members.** No Member will be monetarily liable to any other Member or to the Company for any act or omission performed or omitted by such Member. This Section 3.8 shall not eliminate or limit the liability of any Member for any of the following:

3.8.1 The receipt of a financial benefit to which the Member is not entitled;

3.8.2 Liability for voting for or assenting to an improper distribution under Section ___ of the Act and/or Section 5 and/or Section 7 of this Agreement;

3.8.3 A knowing violation of law; or

3.8.4 A knowing violation of the Articles.

3.9 **Company Property.** Real and personal property owned or purchased by the Company shall be held and owned, and any conveyances of the same shall be made, in the Company's name.

3.10 **Banking.** All funds of the Company shall be deposited in the name of the Company with the financial institutions and in the account or accounts as determined by the Members, subject to such authorized signatures as the Members may determine.

3.11 **Transactions Involving a Member.** Members may engage in transactions involving an actual or potential conflict of interest between a Member and the Company notwithstanding any other provision in this Agreement or at law to the contrary. A Member shall account to the Company and hold as trustee for the Company any profit or benefit derived by the Member (without the informed consent of all of the other Members) from any transaction connected with the conduct or winding up of the Company's business or from any personal use by the Member of the Company's property or business opportunities. Any loan from the Company to a Member shall be documented.

3.12 **Books and Records.** Proper and complete records and books of account of all Company business shall be kept in accordance with the Act. The Members shall furnish accounting and other information to each Member as required by Section 4.7. The books and records shall be kept at the Company's registered office.

SECTION 4 – MEMBERS

4.1 **Tax Matters; Accounting Period.** The Tax Member shall initially handle tax matters, and may be removed and replaced by a vote of the Members. The Tax Member, if a Member, shall be entitled to vote on his, her or its removal and replacement as the Tax Member. The Tax Member shall take such action as may be necessary or appropriate to cause each other Member to become a “notice partner” within the meaning of Section 6223 of the Code. The Company’s accounting period and its tax year shall be the calendar year.

4.2 **Voting Rights.** The affirmative vote of all of the Members is required to approve matters on which Members are voting. A Member shall have one vote for each one (1%) percentage of Membership Interest owned by such Member. In the event of a deadlock vote, then the status quo shall remain in effect.

4.3 **Meetings of Members.**

4.3.1 **Annual Meetings.** It is not currently contemplated that the Members will have an annual meeting. However, the Members may determine at any time to conduct one or more annual meetings. In such event, each such annual meeting of the Members shall be held in the Company’s principal office, or at such other place as the Members shall determine, on such date and at such time as the Members shall determine. The Company shall give the Members notice of any such annual meeting not less than ten (10) nor more than sixty (60) days before the date of such annual meeting. For the meeting to be valid, all Members must attend.

4.3.2 **Special Meetings.** A special meeting of the Members may be called by any Member by giving notice to all other Members not less than ten (10) nor more than sixty (60) days before the date of such special meeting, which notice shall (a) identify the time and place of such special meeting and (b) specifically state the business to be conducted at such special meeting. All business transacted at any special meeting will be limited to that stated in such notice. For the meeting to be valid, all Members must attend.

4.3.3 **Waiver of Notice.** Any notice of any annual or special meetings of Members may be waived in writing by any such Member. The attendance of a Member at any annual or special meeting of Members shall constitute a waiver of notice of such meeting by each such attending Member, unless any such Member objects at the beginning of such meeting to the transaction of any business because the meeting is not properly called or convened and such Member does not vote for or give written consent to any action taken at such meeting (or after such meeting as to any item of business that had not been included in the notice of such meeting). Any Member may waive notice in writing before, at or after any annual or special meeting of Members.

4.3.4 **Attendance by Conference Telephone.** Any Member may participate in any Annual or Special Meeting with the same effect as being present in person by a conference telephone or by other similar communications equipment through which all persons participating in the meeting may communicate with all other participants. Any such participation in any such meeting shall constitute presence in person at the meeting. Any Member must be permitted to

participate in any such meeting by means of conference telephone or by other similar communications equipment if any such Member so requests.

4.4 **Action Requiring a Unanimous Vote.** All Members must give their affirmative written consent before the Company can do any of the following:

4.4.1 Amend the Articles; or

4.4.2 Amend the Operating Agreement.

4.5 **Member Authorization.** Any Member may assent with the same effect as a vote:

4.5.1 By submitting a written ballot to any meeting;

4.5.2 Without a meeting and without notice pursuant to written consent, executed before or after the action, in accordance with Section 4.6 below; or

4.5.3 In any other manner that reasonably expresses the intent of the Member, including by submitting a proxy signed by such Member(s) granting the right to vote the Member's Membership Interest to any other Member.

4.6 **Action by Written Consent of Members.** Any written consent of Members must state the action taken and be signed by the Members having not less than the minimum number of votes that would be necessary to take the action at a meeting at which the holders of all Membership Interests who are entitled to vote on the action were present and voted. Prompt notice of the action being taken by less than unanimous written consent shall be given to all Members who have not consented in writing.

4.7 **Inspection of Records.** Upon reasonable request and during ordinary business hours, or at other reasonable times, any Member or such Member's designated representative may inspect and copy, at such Member's expense, any of the records required to be maintained under Section 3.12 above.

4.8 **Maintain Existence.** Any Member that is not a natural person shall maintain its existence and continue or reinstate its existence upon dissolution, and within thirty (30) days of such Member's dissolution shall inform the Company of that event.

4.9 **Indemnification of Members.** The Company will indemnify and hold harmless, to the fullest extent permitted by the Act, each of the Members from and against any and all losses, expenses (including attorneys' fees), claims, and demands sustained by reason of any acts or omissions, or alleged acts or omissions, in the operation of the Company, including judgments, penalties, fines, or expenses (including attorneys' fees) incurred in a proceeding to which the Member is a party or threatened to be made a party because the Member was involved in the operation and/or ownership of the Company.

SECTION 5 - FINANCIAL PROVISIONS

5.1 Capital of the Company; Membership Interests.

5.1.1 Initial Contributions. Upon their execution of this Operating Agreement, the Members shall make the capital contributions, in exchange for the percentages of Membership Interest set forth on **Exhibit B**. No Member shall be paid interest on any capital contribution and no Member shall have any right to withdraw or be repaid any capital contribution except as provided in this Operating Agreement.

5.1.2 Additional Capital Contributions. In addition, the Members shall be obligated to make other capital contributions in excess of the capital contributions described herein if such additional capital contribution(s) shall be authorized by all Members unanimously. Non pro rata capital contributions must be authorized by the unanimous vote of all Members. If a call for additional capital is properly authorized, the Company may accept from any or all of the Members an amount equal to all or a portion of the total additional capital so required. If any Member shall fail to make, in whole or in part, a properly authorized capital contribution (a "Non-Contributing Member"), the other Members' sole remedy shall be that the Non-Contributing Member's percentage of Membership Interest shall be reduced based upon the amount of each Member's capital account as a percentage of the aggregate capital accounts of all Members including the amount of additional capital contributed by any Member as a result of the call for additional capital.

5.1.3 Compromise of Contribution Obligations. If a Member is obligated to make a capital contribution, that obligation may be compromised only with the consent of all of the other Members. Notwithstanding a valid compromise, any creditor of the Company that extends credit or otherwise acts in reliance on that obligation, after the obligation is incurred and before the amendment to reflect the compromise, may enforce the original obligation.

5.2 Capital Accounts.

5.2.1 Maintenance. A Capital Account shall be established and maintained for each Member as follows:

(a) Each Member's Capital Account shall be increased by (i) the amount of money contributed by that Member to the Company, (ii) the Agreed Value of Contributed Property contributed by that Member to the Company (net of liabilities secured by the Contributed Property that the Company is considered to assume or take subject to under the provisions of Section 752 of the Code), and (iii) allocations to that Member of Company income and gain (or items thereof), including income and gain exempt from tax and income and gain described in Section 1.704-1(b)(2)(iv)(g) of the Regulations, but excluding income and gain described in Section 1.704-1(b)(4)(i) of the Regulations, and

(b) Each Member's Capital Account shall be decreased by (i) the amount of money distributed to that Member by the Company, (ii) the fair market value of property distributed to that Member by the Company (net of liabilities secured by the distributed property that the Member is considered to assume or take subject to under the provisions of

Section 752 of the Code), (iii) allocations to that Member of expenditures of the Company described in Section 705(a)(2)(B) of the Code, and (iv) allocations of the Company's losses and deductions described in Section 1.704-1(b)(2)(iv)(g) of the Regulations (but excluding items described in clause (b)(iii) above and losses or deductions described in Section 1.704-1(b)(4)(i) or Section 1.704-1(b)(4)(iii) of the Regulations).

(c) Except as otherwise provided in this Agreement, whenever it is necessary to determine the Capital Account of any Member for purposes of this Agreement, the Capital Account of the Member shall be determined after giving effect to (i) all Capital Contributions made to the Company on or after the date of this Agreement, (ii) all allocations of income, gain, deduction, and loss pursuant to Section 5.4 for operations and transactions effected on or after the date of this Agreement and prior to the date such determination is required to be made under this Agreement, and (iii) all distributions made on or after the date of this Agreement.

5.2.2 ***Transfers.*** Upon the transfer of an interest in the Company after the date of this Agreement, if such transfer does not cause a termination of the Company within the meaning of Section 708(b)(1)(B) of the Code, the Capital Account of the transferor Member that is attributable to the transferred interest shall be carried over to the transferee Member(s).

5.2.3 ***Book/Tax Disparities.*** The realization, recognition, and classification of any item of income, gain, loss, or deduction for Capital Account purposes shall be the same as its realization, recognition, and classification for federal income tax purposes, provided, however, that:

(a) Any deductions for depreciation, cost recovery, or amortization attributable to Contributed Property shall be determined as if the adjusted tax basis of such property on the date it was acquired by the Company was equal to the Agreed Value of such property. Upon adjustment pursuant to Section 5.2 of the Carrying Value of the Company Property subject to depreciation, cost recovery, or amortization, any further deductions for such depreciation, cost recovery, or amortization shall be determined as if the adjusted tax basis of such property were equal to its Carrying Value immediately following such adjustment. Any deductions for depreciation, cost recovery, or amortization under this Section 5.2.3 shall be computed in accordance with Section 1.704-1(b)(2)(iv)(g)(3) of the Regulations.

(b) Any income, gain, or loss attributable to the taxable disposition of any property shall be determined by the Company as if the adjusted tax basis of such property as of such date of disposition were equal in amount to the Carrying Value of such property as of such date.

(c) All items incurred by the Company that can neither be deducted nor amortized under Section 709 of the Code shall, for purposes of Capital Accounts, be treated as an item of deduction and shall be allocated among the Members according to Section 5.2.1.

5.2.4 Adjusted for Contribution/Distribution.

(a) Upon the contribution to the Company by a new or existing Member of cash or Contributed Property, the Capital Accounts of all Members and the Carrying Values of all Company Properties immediately prior to such contribution shall be adjusted (consistent with the provisions of this Operating Agreement and with the Regulations under Section 704 of the Code) upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to each Company Property, as if such Unrealized Gain or Unrealized Loss had been recognized upon an actual sale of each such Property immediately prior to such contribution and had been allocated to the Members in accordance with Section 5.4.

(b) Immediately before the actual distribution of any Company Property (other than cash or deemed cash) or the distribution of cash or deemed cash in redemption of all or a portion of a Member's Membership Interest in the Company, the Capital Accounts of all Members and the Carrying Value of all Company Property shall be adjusted (consistent with the provisions hereof and Regulations under Section 704 of the Code) upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to each Company Property, as if such Unrealized Gain or Unrealized Loss had been recognized upon an actual sale of each such Property immediately prior to such distribution and had been allocated to the Members at such time in accordance with Section 5.4.

5.2.5 General Requirement. In addition to the adjustments required by the foregoing provisions of this Section 5.2, the Capital Accounts of the Members shall be adjusted in accordance with the capital account maintenance rules of Section 1.704-1(b)(2)(iv) of the Regulations. The provisions of this Section 5.2 are intended to comply with Section 1.704-1(b)(2)(iv) of the Regulations and shall be interpreted and applied in a manner consistent with such Regulations. If the Members shall determine that it is prudent to modify the manner in which the Capital Accounts are computed in order to comply with such Regulations, the Members may make such modification, provided that such modification is not likely to have a material adverse effect on the amounts distributable to any Member pursuant to this Agreement and all the Members are notified in writing of such modification prior to its effective date. The Members shall have no liability to any Member for any failure to exercise any such discretion to make any modifications permitted under this Section 5.2.5.

5.3 Distributions.

5.3.1 When Made. Distributions of cash or property may be made from time to time as approved by the Members, *provided, however*, that the Company shall make a Tax Distribution to each Member [or the shareholder(s) of any "S" corporation Member] no later than ten (10) days before the day that the Member is required to file the Member's federal income tax return on which the Member reports profits of the Company allocated to the Member for a tax year of the Company ending with or within the Member's tax year for which the filing of such return is required, but only to the extent that the Company has, in the reasonable judgment of the Members considering the operating and other needs of the Company, cash available to make the distribution.

5.3.2 **Timing of Distributions.** Any distributions made to the Members shall generally be recognized on the books of the Company on the day of the distribution. All distributions shall be made at times approved by the Members, subject to 5.4 below.

5.3.3 **Distributions in Cash and Kind.** Unless specifically provided otherwise in this Agreement, no Member has a right to demand and receive a distribution in any form other than cash. Distributions in kind shall be made only by a vote of the Members.

5.4 **Profits and Losses.** Net profits and net losses for any tax year of the Company shall be allocated among the Members in accordance with their respective Membership Interests as the same may be adjusted from time to time after the Effective Date.

5.5 **Book/Tax Disparities and Other Tax Matters.**

5.5.1 **Section 704(c) Requirements.** In the case of Contributed Property, items of income, gain, loss, deduction, and credit, as determined for federal income tax purposes, shall be allocated first in a manner consistent with the requirements of Section 704(c) of the Code to take into account the difference between the Agreed Value of such property and its adjusted tax basis at the time of contribution. In the case of Adjusted Property, such items shall be allocated in a manner consistent with the principles of Section 704(c) of the Code to take into account the difference between the Carrying Value of such property and its adjusted tax basis. Any elections or other decisions relating to the allocations shall be made by the Company in any manner permitted by Section 1.704-3(b), (c), and (d) of the Regulations, including the “traditional method,” the “traditional method with curative allocations,” and the “remedied allocation method” as described in the Regulations. If the item of Adjusted Property was originally Contributed Property, the allocation required by this Section 5.5.1 also shall take into account the requirements of Section 5.2. All items of income, gain, loss, deduction, and credit recognized by the Company for federal income tax purposes and allocated to the Members in accordance with the provisions hereof shall be determined with regard to any election under Section 754 of the Code which may be made by the Company and shall be adjusted as necessary or appropriate to take into account those tax basis adjustments permitted by Section 734 and 743 of the Code.

5.5.2 **Recapture Allocations.** Whenever the income, gain, and loss of the Company allocable hereunder consists of items of different character for tax purposes (e.g., ordinary income, long-term capital gain, interest expense, etc.), the income, gain, and loss for tax purposes allocable to each Member shall be deemed to include the Member’s pro rata share of each such item, except as otherwise required by the Code and the Regulations. Notwithstanding the foregoing, if the Company realizes depreciation recapture income pursuant to Section 1245 or Section 1250 (or other comparable provision) of the Code as the result of the sale or other disposition of any asset, the allocations to each Member hereunder shall be deemed to include the same proportion of such depreciation recapture as the total amount of deductions for tax depreciation of such asset previously allocated to such Member bears to the total amount of deductions for tax depreciation of such asset previously allocated to all Members, as provided in the Regulations. This Section 5.5.2 shall be construed to affect only the character, rather than the amount, of any items of income, gain, and loss.

5.5.3 **754 Elections.** If any Member, successor trustee of any Member or the estate of any Member shall reasonably request the Company to make an election under Section 754 of the Code, the Company shall make such election. Any change in the amount of the depreciation deducted by the Company, and any change in the gain or loss of the Company for Federal income tax purposes resulting from such election, shall be allocated entirely to the transferee of the Membership Interest so transferred; provided, however, neither the capital contribution obligations of, nor the percentage of Membership Interests of, nor the amount of any cash distributions to the Members shall be affected as a result of such election, and the making of such election shall have no effect, except for Federal income tax purposes. Further, a subsidiary account shall be established on the books of the Company for each asset, the basis of which is adjusted as a result of such election, and each such subsidiary account be debited (in the case of an increase in basis) or credited (in the case of a decrease in basis) by the amount of such basis adjustment, and the offsetting credit or debit shall be made to a subsidiary capital account established on the books of the Company for the transferee Member. Any change in the amount of the depreciation deducted by the Company, and any change in the gain or loss of the Company for Federal income tax purposes attributable to the basis adjustment made as a result of such election shall be debited or credited, as the case may be, to the appropriate subsidiary asset account and the offsetting credit or debit shall be made to the subsidiary capital account of the appropriate Member.

5.6 **Allocation of Nonrecourse Deductions.** Items of loss, deduction, and Section 705(a)(2)(B) Expenditures attributable under Section 1.704-2(c) of the Regulations to increases in the Company's Minimum Gain shall be allocated, as provided in Section 1.704-2(e) of the Regulations, to the Members in accordance with the allocation provisions set forth in Section 5.4.

5.7 **Allocation of Member Nonrecourse Deductions.** Notwithstanding the provisions of Section 5.4, items of loss, deduction, and Section 705(a)(2)(B) Expenditures attributable under Section 1.704-2(i) of the Regulations to Member Nonrecourse Debt shall (prior to any allocation pursuant to Section 5.4) be allocated, as provided in Section 1.704-2(i) of the Regulations, to the Members in accordance with the ratios in which they bear the economic risk of loss for such debt for purposes of Section 1.752-2 of the Regulations.

5.8 **Minimum Gain Chargeback.** Notwithstanding anything in this Agreement to the contrary, if there is a net decrease in Company Minimum Gain as defined in Regulations Section 1.704-2(d) during any tax year of the Company, then, prior to any other allocations provided for in this Agreement, a Member shall be specially allocated items of Company income and gain for the year (and, if necessary, for succeeding years) equal to that Member's share of the net decrease in Company Minimum Gain in accordance with Section 1.704-2(f) of the Regulations and other applicable Regulations. The items to be allocated shall be determined in accordance with Section 1.704-2(f)(6) of the Regulations.

5.9 **Member Minimum Gain Chargeback.** If during a taxable year of the Company there is a net decrease in Member Nonrecourse Debt Minimum Gain, any Member with a share of that Member Nonrecourse Debt Minimum Gain (determined under Section 1.704-2(i)(5) of the Regulations) as of the beginning of the year shall be allocated items of income and gain for the year (and, if necessary, for succeeding years) equal to that Member's share of such net

decrease in accordance with Section 1.704-2(i) of the Regulations and other applicable Regulations.

5.10 **Qualified Income Offset.** If any Member unexpectedly receives any adjustments, allocations, or distributions described in subparagraphs (4), (5), or (6) of Section 1.704-1(b)(2)(ii)(d) of the Regulations, then items of income and gain shall be specially allocated to the Member in an amount and manner sufficient to eliminate as quickly as possible, to the extent required by the Regulations, any deficit in a Member's capital account caused by the unexpected adjustment, allocation, or distribution, but only to the extent that the Member does not otherwise have an obligation to restore the Member's capital account deficit. This Section 5.10 is intended to satisfy the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

5.11 **Loans and Advances.**

5.11.1 **Interest Bearing Loans.** If at any time or times the Company needs additional funds that for any reason the Company does not raise through an increase in the capital of the Company or through advances, the funds may be borrowed from any one or more of the Members to whatever extent, at a rate of interest, if any, and on payment terms as may be agreed upon by the lender(s) and the Company. These loans will be evidenced by promissory notes signed on behalf of the Company.

5.11.2 **Non-Interest Bearing Advances.** Any Member may advance money to the Company. The amount of the advance shall not increase any Member's interest in the Company, but, rather, the amount of the advance shall be an obligation of the Company to that Member and shall be fully repaid, without interest, before any drawings, whether in distribution of profits or otherwise, or any withdrawals of capital, are made with respect to any Member.

5.12 **Modifications.** The Members shall be permitted to modify this Section 5 in any manner permitted by the Code to simplify bookkeeping and tax matters, decrease expenses, or for any other reason(s) such Members deem good and sufficient.

SECTION 6 - ASSIGNMENT OF MEMBERSHIP INTERESTS; TRANSFERS

6.1 **Permitted Assignments.** Notwithstanding anything contained in this Operating Agreement to the contrary, a Member may Assign or cause all or part of his, her or its Membership Interest to be issued in the name of, or may transfer or Assign all or part of his, her or its Membership Interests to, a Grantor Trust, so long as the Member is the sole trustee thereof during the Member's lifetime (although another party may serve as trustee of any such Grantor Trust during the lifetime of the Member during any period in which a Member is incapacitated). In addition, (i) a sale or other transfer of a Member Interest (in whole or in part) from one Member to another Member shall be permitted and; (ii) any Member who is a corporation may assign all or a part of its Member Interest to the shareholder(s) of such corporation; provided, however, that the transferee of such Membership Interest shall acknowledge in writing that he or she shall receive and hold the transferred Membership Interest subject to all of the terms of this Agreement. Membership Interests owned by a Grantor Trust shall be treated for the purposes of the restrictions thereon imposed under this Agreement as if owned by, and standing in the name

of, that Grantor who shall individually be deemed a Member while such Membership Interests are held by that Grantor Trust.

6.2 **Restrictions on Assignment.** Except as provided in Section 6.1 above or as provided in Sections 6.3 and 6.4 below, no Member may Assign such Member's Membership Interests in the Company, and any attempted Assignment in violation of this Section 6.2 shall be null and void and of no force or effect, unless:

6.2.1 The proposed Assignment does not close the Company's taxable year with respect to all Members and/or terminate the Company as provided under the Code, and does not terminate any other rights of any original Members, except for the Member making the Assignment; and

6.2.2 The Member making the Assignment has obtained the prior written consent of the Members to such transfer, the granting of which shall be within the sole and absolute discretion of the Members other than the Member making the Assignment; and

6.2.3 The Member making the Assignment and the assignee of the Assigning Member have executed and delivered to the Company an instrument reflecting the Assignment in form and substance acceptable to the Company, which instrument shall, among other matters, (1) contain an acknowledgment by the assignee(s) that the assignee(s) shall assume and shall be subject to the terms of this Agreement, (2) shall set forth the intention of the Assigning Member that each assignee shall become a substituted Member in the Assigning Member's place, and (3) the Assigning Member and assignee(s) agree to execute and acknowledge such other instrument(s) as the Company may deem reasonably necessary or desirable to effect such admission, including the written acceptance and adoption by the assignee(s) of the provisions of this Agreement. The admission of a substitute Member shall release the Member originally Assigning the Membership Interest from any liability to the Company that may have existed prior to the admission of the assignee Member other than that listed in Section 3.8 and/or 6.10; and

6.2.4 The Member making the Assignment gives written notice to the Company and all of its Members of the proposed Assignment, setting forth in detail the portion of the Membership Interest being Assigned, to whom and the bona fide terms and conditions pursuant to which such Membership Interest is proposed to be Assigned to any such Person (the "Notice of Proposed Assignment") and completes the Right of First Refusal process set forth below.

6.3 **Right of First Refusal.** Upon the occurrence of an event requiring the issuance of a Notice of Proposed Assignment, the Company and all of its Members except the Assigning Member shall have an option to acquire all or any part of the portion of the Membership Interest being Assigned that is the subject matter of the Notice of Proposed Assignment, on the same price, terms and conditions as set forth in the Notice of Proposed Assignment, or its fair market value and on such reasonable terms and conditions as the Members other than the Assigning Member shall determine; ***provided, however,*** if any consideration expressed in the Notice of Proposed Assignment shall be other than cash in United States currency, the value of the same in United States currency may be substituted in exercising the option. This option must be exercised, if at all, by written notice (the "Notice of Exercise") given to the Assigning Member

within thirty (30) days of receipt of the Notice of Proposed Assignment or, if none is issued, within thirty (30) days of the date upon which the other Members discovered the occurrence of an event requiring the issuance of a Notice of Proposed Assignment (the "Discovery Date"). If this option is exercised by the Members (except the Assigning Member), it shall be exercised by them in proportion to their Capital Accounts as of the date the Notice of Proposed Assignment was given or as of the Discovery Date, as the case may be, or in such other proportions as the Members (except the Donee Member or the Assigning Member, as the case may be) shall agree.

6.4 **Failure to Exercise.** Upon the failure of the Company or its other Members to exercise timely the option granted above, the Assigning Member involved may proceed with the Assignment, but only with respect to the portion of the Membership Interest being Assigned described in, and upon the same terms and conditions as set forth in, the Notice of Proposed Assignment. **Further, provided,** if such Assigning Member fails to close and consummate such Assignment within ninety (90) days of the Notice of Proposed Assignment, the Assigning Member's Membership Interests shall become subject to the restrictions of this Agreement and shall not be Assigned again without compliance with the foregoing option procedures.

6.5 **Reserved.**

6.6 **Void Assignments.** Any attempted Assignment in violation of this Section 6 shall be null and void and shall not have the effect of Assigning any interest or rights to the proposed assignee.

6.7 **No Assumption of Liability.** An assignee of a Membership Interest, who is not admitted as a Member, shall have no liability as a Member of the Company solely as a result of the Assignment.

6.8 **Rights of Assignees.** The assignee of a Membership Interest, even one who is already a Member, has no right to exercise any rights of a Member (including voting on or otherwise assenting to Company action), with respect to the Assigned Membership Interest, unless admitted as a substitute Member as provided in this Section 6.

6.9 **Termination of Membership; Liability.** A Member ceases to be a Member upon Assignment or transfer of all of his, her or its Member's Membership Interest. The assignor is not released from the Member's liability to the Company under Section ___ of the Act, even if the assignee becomes a Member.

6.10 **Admission of Additional Members.** Additional Members may be admitted only by the unanimous consent of the Members, which consent shall establish the capital contributions required of the additional Members, if any.

6.11 **Withdrawal.** No Member shall have the right to withdraw from the Company, except upon vote by the Members.

6.12 **Approval of Merger.** The Company may merge with one or more entities as permitted by the Act, upon approval of the Members.

6.13 **Events Causing Dissolution.** The Company shall dissolve and its business wind up upon the occurrence of the first of any of the following events:

6.13.1 By the written consent of the Members; or

6.13.2 Upon the finding by a court of competent jurisdiction at the time that a final order becomes non-appealable that:

(a) one or more Members have willfully or persistently breached this Agreement or are otherwise acting in relation to the Company's business in a way that it is not reasonably practicable to carry on the business of the Company; or

(b) the acts of one or more Members in control of the Company are illegal, fraudulent, or willfully unfair and oppressive to the Company or to a Member.

6.14 **Certificate.** As soon as practicable following the occurrence of any of the events specified above that cause the dissolution of the Company, the Company shall execute and file a Certificate of Dissolution as provided for by the Act.

SECTION 7- DISSOLUTION

7.1 Dissolution Procedure.

7.1.1 Upon dissolution of the Company, the Members shall promptly wind up the affairs of the Company, shall liquidate and discharge all debts and liabilities of the Company, and shall distribute all assets in accordance with the Act and this Operating Agreement. One or more liquidating agents appointed by a vote of the Members (the "Liquidator") shall wind up the affairs of the Company and liquidate its assets. The Liquidator shall determine whether the assets of the Company are to be sold or whether the assets are to be distributed in kind to the Members.

7.1.2 If assets are distributed in kind to the Members, all assets shall be valued at their then fair market value as determined by the Members, and the capital accounts shall be adjusted accordingly, as provided for in the 704(b) Regulations. This fair market value shall be used for purposes of determining the amount of any distribution to a Member pursuant to Section 7.4. If the Members are unable to agree on the fair market value of any asset of the Company, the asset shall be sold.

7.2 **Profits or Losses in Winding Up.** The Members shall continue to share profits and losses during the winding up process in the same proportion as before the dissolution except as set forth in Section 5.4. Any gain or loss on the disposition of Company assets in the process of winding up shall be allocated among the Members in accordance with the provisions of Section 5, except as may be otherwise required by the Code or the Regulations.

7.3 **Tax Obligations.** Before any assets of the Company are distributed pursuant to Section 7.4, the Company shall file tax returns and pay tax obligations as required by

7.4 **Distributions at Liquidation.** Subject to the right of the Liquidator to establish cash reserves as may be deemed reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company, the proceeds of the liquidation and any other funds of the Company shall be distributed as follows:

7.4.1 First, to the payment and discharge of all of the Company's debts and liabilities to creditors; and

7.4.2 Second, an amount equal to the positive Capital Account balance of each Member, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs, and such amount shall be paid to the Members in accordance with the provisions of Regulations Section 1.704-1(b)(2)(ii)(b)(2).

7.5 **Final Report.** Within a reasonable time following the completion of the liquidation of the Company, the Liquidator shall supply to each Member a statement that states the assets and liabilities of the Company as of the date of complete liquidation and each Member's portion of payments and distributions pursuant to Section 7.4.

7.6 **Rights of Member; Restoration of Capital Account.** Each Member shall look solely to the assets of the Company for all distributions with respect to the Company and no Member shall have recourse (upon dissolution or otherwise) against any other Member, except as provided in this Agreement. No Member shall be entitled to receive property other than cash upon dissolution and termination of the Company. No Member shall be obligated to restore a negative balance of the Member's Capital Account.

7.7 **Termination.** Upon the completion of the liquidation of the Company and the distribution of all Company assets, the Company shall terminate. The Liquidator shall have the authority to execute and record a Certificate of Dissolution as well as any and all other documents required to effect the dissolution and termination of the Company.

SECTION 8 – MISCELLANEOUS

8.1 **Binding Provisions.** The covenants and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

8.2 **Governing Law.** This Agreement has been entered into in the State of _____ and all questions relating to its interpretation or enforcement shall be construed according to the laws of the State of _____.

8.3 **Severability.** Each provision of this Agreement will be considered severable, and if for any reason any provision of this Agreement is determined to be invalid and contrary to any existing or future law, the invalidity shall not impair the operation of or affect those portions of this Agreement that are valid.

8.4 **Specific Performance and Damages.** A Member may suffer irreparable damage if this Operating Agreement is not specifically performed according to its terms. Accordingly,

all of the terms of this Operating Agreement shall be enforceable in a court having equity jurisdiction by a decree of specific performance or by injunction or by both; *provided, however*, that the foregoing shall not be construed as prohibiting any of the Members from pursuing any additional remedies for a breach or threatened breach of this Operating Agreement, including the recovery of damages.

8.5 Notices.

8.5.1 Notice on Death or Incapacity. Any notice which any Party is required or permitted to give to a Member may, in the event of the death, incapacity or incompetence of such Member, be given to such Member's successor trustee(s) or personal representative(s), or other person(s) validly acting in a fiduciary capacity, as the case may be.

8.5.2 Notice to Company. Any notice which a Member is required or permitted to give to the Company may be given to any Member of the Company other than the Member who is also the party giving said notice.

8.5.3 Notice Procedures. Any notice to be given pursuant to this Agreement must be in writing and shall be deemed to have been given and received, and to be effective for all purposes, when delivered personally or when sent by certified or registered mail, with first class postage fully prepaid thereon, with respect to a Member, to the Member's most current address appearing in the records of the Company; and with respect to the Company, to the registered office of the Company according to the records of the State of _____.

8.6 Prior Agreements. This Operating Agreement constitutes the entire agreement among the Parties and constitutes the contract pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements and understandings of the Parties.

8.7 Section/Subsection Headings. Section and subsection headings are used in this Agreement solely for the convenience of the Parties and are not intended to be used, and shall not be used, in the interpretation of this Agreement.

8.8 No Third Party Beneficiaries. Nothing contained in this Agreement shall create or be deemed to create any rights or benefits in any third parties.

8.9 Review of Counsel. The Members acknowledge that _____ Law Firm., prepared this Agreement in the course of its representation of the Company (the "Company Counsel") and that each of the Members:

8.9.1 has been advised that a conflict of interest may exist between his interests and those of the other Member and/or of the Company;

8.9.2 has been advised by Company's Counsel to seek the advice of independent counsel;

8.9.3 has had the opportunity to seek the advice of independent counsel;

8.9.4 has been advised by Company's Counsel that this Agreement may have tax consequences;

8.9.5 has been advised by Company's Counsel to seek the advice of independent tax counsel;

8.9.6 has had the opportunity to seek the advice of independent tax counsel; and

8.9.7 has had all information necessary to make an informed decision with regard to this Operating Agreement and that any claims against such law firm regarding any possible conflict of interest with regard to this Operating Agreement, or any other document, instrument, agreement or writing delivered or executed pursuant to this Operating Agreement are waived.

8.10 Amendment. This Operating Agreement may be amended only by a written agreement signed by all of the Members.

Executed effective as of the Effective Date.

WITNESSES:

"Parties"

_____, Member

_____, Member

WITNESS:

(NAME OF LLC)

By: _____
_____, Member

GLOSSARY OF DEFINED TERMS

“Act” means the [State] Limited Liability Company Act, being [Statute], as the same may be amended from time to time hereafter.

“Adjusted Property” means any property the Carrying Value of which has been adjusted pursuant to Section 5.

“Agreed Value” means the fair market value of Contributed Property, as determined by the Members using any reasonable method of valuation.

“Agreement” or **“Operating Agreement”** shall mean the Operating Agreement to which this Glossary is attached as the same may be amended in accordance with the Act or the Agreement.

“Assign,” “Assigned” or **“Assignment”** shall mean and include any assignment, transfer, sale, exchange, conveyance, disposition, pledge, hypothecation, gift, testamentary bequest or other disposition or encumbrance of whatsoever nature or description, whether voluntary, involuntary or by the operation of law, excepting only assignments by a Member to his or her Grantor Trust.

“Capital Account” shall mean and include the account of each Member of the Company which reflects the interests of each such Member in the total capital of the Company.

“Carrying Value” means (i) with respect to a Contributed Property, the Agreed Value of such property reduced (but not below zero) by all depreciation, cost recovery, and amortization deductions charged to the Capital Accounts pursuant to Section 5.2 with respect to such property, as well as any other reductions as a result of sales, retirements, and other dispositions of assets included in a Contributed Property, as of the time of determination, (ii) with respect to an Adjusted Property, the value of such property immediately following the adjustment provided in Section 5.2 reduced (but not below zero) by all depreciation, cost recovery, and amortization deductions charged to the Capital Accounts pursuant to Section 5.2 with respect to such property, as well as any other reductions as a result of sales, retirements, or dispositions of assets included in Adjusted Property, as of the time of determination, and (iii) with respect to any other property, the adjusted basis of such property for federal income tax purposes as of the time of determination.

“Code” shall mean and include the Internal Revenue Code of 1986, as amended, and as the same may be amended from time to time hereafter.

“Company Property or Properties” means all interests, properties, whether real or personal, and rights of any type owned or held by the Company, whether owned or held by the Company at the date of its formation or thereafter acquired.

“Contributed Property” means property or other consideration (other than cash) contributed to the Company in exchange for a Membership Interest in the Company.

“Department” means the [relevant State Department], or any successor.

“Grantor Trust” shall mean a self-trusted grantor-type revocable inter vivos trust established by a Member primarily for the benefit of the Member, his or her spouse, ancestors, lineal descendants, spouses of lineal descendants, and/or other objects of his or her bounty.

“Initial Capital Contribution” means the cash contribution identified in each Member’s Capital Account conveyed by the respective Members to the Company in exchange for the Membership Interests identified on **Exhibit B** attached hereto.

“Member” means at any time a Person who owns a Membership Interest in the Company.

“Membership Interest” means, with respect to any Member at any time, the ownership interest of such Member in the Company at such time.

“Member Nonrecourse Debt” means any liability (or portion thereof) of the Company that constitutes debt which, by its terms, is nonrecourse for purposes of Regulations Section 1-1001-2 to the Company and the Members, but for which a Member or a related person [within the meaning of Regulations Section 1.752-4(b)(4)] bears the economic risk of loss as determined under Section 1.704-2(b)(4) of the Regulations.

“Minimum Gain” means the amount determined by computing with respect to each Nonrecourse Liability of the Company the amount of gain, if any, that would be realized by the Company if it disposed of the property securing such liability in full satisfaction thereof, and by then aggregating the amounts so computed.

“Nonrecourse Liability” means a liability (or that portion of a liability) with respect to which no Member personally bears the economic risk of loss as determined under Section 1.704-2(b)(3) of the Regulations.

“Person” shall mean and include any individual, partnership, trust, corporation, limited liability company or other legal entity of whatsoever kind or nature.

“Regulations” shall mean and include the regulations promulgated under the Code.

“Section 705(a)(2)(B) Expenditure” means any expenditure of the Company described in Section 705(a)(2)(B) of the Code and any expenditure considered to be an expenditure described in Section 705(a)(2)(B) of the Code pursuant to Section 704(b) of the Code and the Regulations thereunder.

“Tax Distribution” means an amount required to pay the Member’s actual federal, state, and local income tax obligations created as a result of profits of the Company being allocated to the Member as of the end of a tax year of the Company but not distributed to the Member during such tax year or within sixty (60) days after the end of such tax year.

“Tax Member” shall mean the Member indicated on **Exhibit B** as such or such other Member as the Members may elect hereafter who or which will serve the Company in the capacity of a Tax Member as that term is defined in Section 6231(a)(7) of the Code.

“Unrealized Gain” means the excess (attributable to a Company Property), if any, of the fair market value of such property as of the date of determination (as reasonably determined by the Members) over the Carrying Value of such property as of the date of determination (prior to the adjustment to be made pursuant to Section 5.2 as of such date).

“Unrealized Loss” means the excess (attributable to a Company Property), if any, of the Carrying Value of such property as of the date of determination (prior to the adjustment to be made pursuant to Section 5.2 as of such date) over its fair market value as of such date of determination (as reasonably determined by the Members).

SAMPLE

NAME OF MEMBER

INITIAL CAPITAL
CONTRIBUTION

PERCENTAGE
OR
SHARE OF INTEREST

\$__

__%

\$__

__%

Total

\$__

100%

SAMPLE

Exhibit 4

Choice of Entity Summary Chart

	C Corporation	S Corporation	Partnership	LLC
Formation & Structure	<ul style="list-style-type: none"> • Must file Articles of Incorporation with state. • Shareholders adopt bylaws. • No restrictions on the number and types of shareholders. 	<ul style="list-style-type: none"> • Must file Articles of Incorporation with state. • Shareholders adopt bylaws. • Restrictions on number and types of shareholders. 	<ul style="list-style-type: none"> • Partnership agreement may not be filed for general partnership, but generally required for limited partnerships. 	<ul style="list-style-type: none"> • Must file Articles of Organization with state. • Members adopt operating agreement. • No restrictions on the number and types of members.
Operation	<ul style="list-style-type: none"> • Must file Annual Reports with the state. • Must record meetings and resolutions of shareholder and board of directors. 	<ul style="list-style-type: none"> • Must file Annual Reports with the state. • Must record meetings and resolutions of shareholder and board of directors. 	<ul style="list-style-type: none"> • Generally, no formal operational requirements. 	<ul style="list-style-type: none"> • Generally, no formal requirements, but records of meetings and resolutions recommended.
Taxation	<ul style="list-style-type: none"> • Double taxation of income—once at corporate level, and, upon distributions, at shareholder level. 	<ul style="list-style-type: none"> • Corporation taxed as a partnership by passing income through to shareholders, resulting in single taxation. 	<ul style="list-style-type: none"> • Income taxed at partner level. 	<ul style="list-style-type: none"> • LLC may elect whether its income should be taxed at the LLC level or at the member level.
Protection from Liabilities	<ul style="list-style-type: none"> • Protects shareholders from liabilities. 	<ul style="list-style-type: none"> • Protects shareholders from liabilities. 	<ul style="list-style-type: none"> • Limited partners of a limited partnership only liable to the extent of their investments. 	<ul style="list-style-type: none"> • Protects members from liabilities.