

MEMORANDUM
LIMITED LIABILITY COMPANY

Overview

This information summarizes how a limited liability company operates and what needs to be done to preserve the limited liability company status once the documents have been filed by the State and an organizational meeting has been held. To insure the continued existence of the separate limited liability company entity, the following considerations should be reviewed and observed by the limited liability company employees, managers, and members. The managers or members should devise an operating agreement to govern the operations of the limited liability company, and should maintain proper records consistent with the forms contained herein.

A limited liability company is neither a corporation nor a partnership. It is instead a distinct type of entity mingling the characteristics and powers of a corporation and a partnership. The owners of an LLC are called “members,” not partners or shareholders. Unlike a corporation, which has Articles of Incorporation accompanied by By-Laws, an LLC uses an “Operating Agreement” that details how the entity will be run.

Purchasers and users of this LLC start up kit should be advised to consult with an attorney and check all cited and applicable laws to insure that they are still current. This LLC kit is not meant to be a substitute for the services of an attorney. The authors are not licensed to practice in the state of sale. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service.

Tax Issues

Federal Taxes – Default Treatment as a Partnership

Once an LLC has been successfully formed under state law, if the LLC does not elect its classification, it will automatically be classified as a partnership (for a multi-member LLC) or a sole proprietorship (for a single-member LLC) for federal income tax purposes. Regulation 301, 26 CFR Part 1. Absent an election to be taxed like a corporation, an LLC will be required to file the same federal tax forms as a partnership or sole proprietorship and can take advantage of the tax allocation methods used for partnerships. Partnerships and LLCs specify in their partnership or operating agreement how the profits and losses of the company will be allocated among the members. This allows members to customize their allocations and not base them solely upon the percentage of ownership they possess in the company. Profits and losses from the LLC that are passed through to the members are reported on their individual income tax forms and paid at their individual tax rate.

An LLC may elect to be treated and taxed as a corporation by the IRS. The LLC's members or managers should consult a tax professional regarding the consequences and/or benefits of such an election.

Other Federal Taxes

Funds collected by a limited liability company as FICA taxes and payroll withholding taxes must be paid as provided by law, or the persons responsible for not doing so may be held personally liable. This liability is separate from that imposed upon the LLC as an employer. The statutes imposing such liability are broad in scope and may be enforced against all officers or other personnel whose duties relate to the withholding function.

Required record keeping

- List of the names and addresses of all members and managers
- Copy of the Articles of Organization and all Amendments
- Copy of the then-effective Operating Agreement and financial statements for three years
- If not already included in the Articles of Organization or Operating Agreement, a writing describing: the amount of cash and agreed value of any capital contributions, the time at which any additional contributions are to be made, any events that would require dissolution and winding up
- Copy of all Certificates of Conversion and Executed Powers of Attorney related to organization or conversion
- Copies of federal, state, and local income tax returns and financial statements for the past three years

Accounting Procedures

The managers and officers of the limited liability company are responsible for making certain that the LCC follows accounting practices and auditing procedures customarily followed by similar businesses and that these procedures are properly carried out in a timely fashion. Furthermore, certain types of LLCs may be prohibited from using the cash method of accounting, and must use the accrual method of accounting.

Accordingly, the LLC's tax professional should be kept informed about all of the limited liability company's business activities. All assets transferred to the limited liability company should be appropriately entered in the company's books, and any such assets become the property of the limited liability company. A tax professional should also advise the company regarding whether the company's fiscal year should end on a date other than the calendar year end, whether any tax elections should be made, and how to prepare and file required tax returns.

Insurance

Make certain that any business insurance is transferred to the LLC, either by assignment or binder. Promptly consult with an insurance agent regarding how such transfers should be accomplished and what other forms of insurance may be recommended for the LLC.

Limited Liability Company Formalities must be followed

It is extremely important to maintain the formal integrity of the limited liability company entity. The LLC is considered by the law to be a separate person, apart from its members and organizers. This structure, and the limited personal liability that goes with it, must be protected. To ensure proper adherence to limited liability company formalities, it is vital that all-important transactions in the business be reflected in written minutes of meetings of managers or members, even where there is only one member. The following items should always be acted upon formally and evidenced by written minutes:

All major contracts, including employment contracts, buy-sell agreements, profit sharing plans, pension plans, insurance plans, trust agreements, loans, leases, purchase contracts, and limited liability brokerage and investment accounts should be made in the name and on behalf of the limited liability company and with the required approval.

The establishment and adjustment of all salaries and bonuses of officers and employees of the limited liability company.

Any change in membership interest, including issuing additional interests or any transfers of interests. Such changes should not only be reported to the company's accountant but should also be entered on the certificates of membership interest and the membership register in the limited liability company minute book.

Placing restrictions on the ability to transfer membership interests.

Accepting the resignation, terminating, or appointing managers.

Changing the LLC name, registered office, or registered agent.

Changing bank accounts.

Any other significant LLC activities.

Whenever people sign on behalf of or for the limited liability company, they should add their title next to the signature so that it will be clear that they are acting as an agent of the company rather than in their individual capacity. For instance, if you sign a contract with just your name and do not state your relationship to the limited liability company next to your name in the contract, you may be held personally liable for the contract. An example of a correct signature would be:

ABC Farms, L.L.C.

By: _____

John Smith, Manager

Any LLC bank and checking accounts should also reflect the company name. If necessary, a new bank account should be opened in the name of the limited liability company. This transaction should be accomplished easily by completing a limited liability company resolution that authorizes the company to open a bank account.

Any loans or banking activities should be conducted in the company's name rather than in the name of any individual or that individual could become personally liable for the obligations. If a loan is made and the lender requires someone to endorse or guarantee the loan personally, such an action should be approved by the managers and reflect the approval in an appropriately drafted resolution that is adopted and inserted into the company's minute book.

Meetings, Minutes, and Acting by Unanimous Consent

Actions of the managers or members may be taken at an actual meeting or by unanimous written consent. Whenever a meeting is held, written minutes must be created documenting the actions taken at the meeting. The written minutes should include at least the following information: (1) the type of meeting, (2) the date, time, and place of the meeting, (3) whether or not the meeting had a special or specific purpose, (4) the name and title of the persons who acted as chairperson and secretary of the meeting, (5) whether (if required by the operating agreement) the meeting was held pursuant to notice or that notice had been waived by those entitled to receive it, (6) a listing of members

present either in person or by proxy and their voting power, (7) whether managers will vote at the meeting and identification of those present and voting and whether a quorum was present, (8) identity of any other persons present at the meeting, (9) whether minutes from a previous meeting were distributed and approved or approved as corrected, (10) a description of any reports presented and identification of the presenters, (11) any resolutions or other votes presented, discussed, approved, disapproved, etc., (12) any other business presented, and (13) time of adjournment. Ideally, the secretary should prepare minutes within a few days of a meeting-taking place and copies should be distributed before the next meeting so they can be reviewed.

The Act also provides that actions may be taken using a unanimous written consent action embodying the desired resolutions. Unanimous written consent actions must be executed by all of the members or managers entitled to vote on the matters contained therein. If a limited liability company has relatively few managers and members, it is generally simpler and more convenient to take action by unanimous written consent rather than through actual meetings.

If the limited liability company proposes to engage in a transaction affecting the basic structure or existence of the limited liability company, such as a merger or conversion with or an acquisition of another limited liability company, a reorganization in another state, or a dissolution of the company, it is strongly recommended that counsel be consulted to insure that all of the necessary documents and consents are prepared, executed, and where necessary, filed with the appropriate governmental authorities. Failure to execute the proper documents and make the filings required by law could result in any such transaction being void and ineffective.

Management of the Limited Liability Company

The LLC will be a member-managed company, unless the Articles of Organization or the Operating Agreement state otherwise. In a member-managed company, management is vested in the members in proportion to the current percentage of the company owned by all the members. If the LLC determines that management should be allocated otherwise, the Articles of Organization or the Operating Agreement should so state. The decision of a majority-in-interest of the members shall be controlling. The members may vote in person or by proxy.

If the LLC is to be managed by managers, the Articles of Organization or the Operating Agreement must indicate that the LLC is a manager-managed company. In a manager-managed company, the decision of the manager (if only one manager) or a majority of the managers (if more than one manager) shall be controlling. The managers may vote in person or by proxy.

Managers' Responsibilities

Principal officers and managers of every limited liability company must be mindful of the following specific and important duties and responsibilities:

Payments of Salaries to Employees. Officers responsible for the payment of salaries must see that the limited liability company pays those salaries. Managers establish salaries for officers.

Payroll Taxes. The limited liability company must pay all payroll taxes. Nonpayment may result in personal, civil or criminal liability to the officers and managers.

Duty to Inspect. Managers have the absolute right to inspect all company record books, records, documents and property at any time. If they do not exercise that right, they may be held liable for negligence in the event that the company suffers loss or its creditors suffer loss by reason of failure to exercise diligence in such matters.

Members' Rights

The limited liability company must allow the members to access company records. Additionally, the company must provide each member with information necessary for the exercise of the member's duties under the operating agreement. This requirement cannot be waived in the Operating Agreement.

The Organizational Minutes

The Organizational Minutes are agreed upon at the Organizational Meeting of the members. The minutes document the following actions and have the following effects:

The Articles of Organization are reviewed and accepted.

The Operating Agreement/Regulations are reviewed and accepted.

Identifies the first officers of the LLC.

The certificates of membership interest form in the minute book are reviewed and adopted.

Identifies to whom membership interest certificates have been issued.

Identifies any organizational expenses incurred are authorized to be paid.

Authorization is given to open a bank account.

The location of the office of the limited liability company is established.

The authorization for the necessary license, permits, etc. is given.

Authorization is given for necessary documents needed to operate in other states.

A fiscal year ending on December 31 is selected.

All of the managers and members need to sign the Organizational Minutes as appropriate.

Annual Meeting

The limited liability company should hold an annual members' meeting. At that meeting, there should be a discussion and review of the business activities that have transpired during the previous year at the annual meeting. The waiver of notice of the annual meeting should be used to set the time and place of the meeting and, if signed by all members, will dispense with the requirement of giving formal notice of the annual meeting.

The Operating Agreement of the Limited Liability Company

The members of the company may develop the basic operating rules for the limited liability company, called the Operating Agreement. The Operating Agreement functions similarly to "by-laws" in a corporation. It reflects the structural framework of the limited liability company and should be consulted any time the limited liability company intends to take action. Members may not include provisions in the Operating Agreement that are contrary to the Act, but many of the default provisions in the Act can be modified by consent in the Operating Agreement.

The Operating Agreement provided in these forms supposes that the limited liability company will be a manager-managed company and that unanimous consent of the members will be required for most company actions.

COMPANY INFORMATION SHEET

Name of Limited Liability Company

Organization Date:

Organization State:

Principal Place of Business:

Officers:

Operating Manager:

Secretary:

Treasurer:

Bank Accounts:

Fiscal Year:

Date of Annual Meeting:

Members

Units

MINUTES OF THE ORGANIZATIONAL MEETING

OF

The organizational meeting of the members of the above named limited liability company was held on the date time and place stated below. There were present at the meeting the following members:

being all the members of the Limited Liability Company. The meeting was called to order by_____. It was moved, seconded and unanimously carried that_____ act as temporary chairperson and that_____ act as temporary secretary.

The meeting then proceeded to the election of managers. Upon nominations duly made and seconded, the following were elected:

Managing Member 1:

Managing Member 2:

Secretary:

Treasurer:

The managing member of the above-mentioned Limited Liability Company thereupon assumed the chair, and the secretary of the above-mentioned Limited Liability Company assumed the duties as secretary of the meeting.

The Secretary presented to the meeting:

1. Copy of the Articles of organization
2. Specimen certificate of ownership
3. Copy of the Operating Agreement of the Limited Liability Company
4. The Company seal
5. Conformed Copy of banking resolutions

RESOLVED, that the Articles of Organization and the Operating Agreement be, and they are, approved, ratified and adopted by the members.

There was presented to the meeting a specimen of a proposed certificate to represent the ownership of an interest in the company. Upon motion duly made, seconded and unanimously carried, it was

RESOLVED, that the specimen form of the certificate at this meeting be, and the same hereby is, approved and adopted as the certificate to represent ownership of an interest in the Limited Liability Company, and that the specimen certificate so presented to the meeting be annexed to the minutes thereof.

The Secretary submitted to the meeting a seal proposed for the use as the company seal. Upon motion duly made, seconded and unanimously carried, it was

RESOLVED, that the form of the seal submitted to this meeting be, and it hereby is, approved and adopted as and for the Company seal of this Limited Liability Company, and that an impression thereof be made on the margin of these minutes.

RESOLVED, that upon receipt of consideration therefore certificates representing ownership in the company be issued by the Secretary as follows:

<u>Name and Address</u>	<u>Interest in the LLC</u>
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There was presented to the meeting a conformed copy of banking resolutions. Upon motion duly made, seconded and unanimously carried, it was

RESOLVED, that the banking resolutions presented at this meeting be, and the same hereby are, approved and adopted and that a copy of the aforementioned resolutions so presented to the meeting be annexed to the minutes thereof.

RESOLVED, that the managing members of the Limited Liability Company be, and they hereby are, authorized, empowered and directed to take any and all steps, and to execute and deliver any and all instruments in connection with carrying the foregoing resolutions into effect.

There being no further business to come before the meeting, upon motion duly made, seconded and unanimously carried, the meeting was adjourned.

Members:	_____
	Secretary
_____	_____
_____	_____
_____	_____

CONFORMED COPY OF BANKING RESOLUTIONS

SPECIMEN CERTIFICATE OF OWNERSHIP

MINUTES OF THE ANNUAL MEETING OF MEMBERS
OF

The annual Meeting of Members of the above named Limited Liability Company was held on the date and time and at the place set forth in the written waiver of notice signed by all the members, fixing such time and place, and prefixed to the minutes of this meeting.

There were present at the meeting all of the members of the above named Limited Liability Company.

The meeting was called to order by _____ it was moved, seconded and unanimously carried that _____ act as Chairman and that _____ act as Secretary.

The Chairman then stated that all of the members were present.

The managing member presented his/hers annual report and, after discussion, the report was accepted and ordered filed with the Secretary.

The Chairman noted that it was in order to consider electing managing members for the ensuing year. Upon nominations duly made and seconded, the following were unanimously elected managing members of the Limited Liability Company, to serve for the ensuing year and until their successors are elected and qualified:

Managing Member:

Secretary:

Treasurer:

There being no further business to come before the meeting, upon duly made, seconded and unanimously carried, it was adjourned.

Secretary

Members:

WAIVER OF NOTICE OF ANNUAL MEETING OF MEMBERS
OF

We, the undersigned, being all of the members of the above named Limited Liability Company, hereby agree and consent that the annual meeting of the members of the Limited Liability Company be held on the date and time and at the place designated hereunder, and do hereby waive all notice whatsoever of such meeting and of any adjournment or adjournments thereof.

We do further agree and consent that any and all lawful business may be transacted at such meeting or at any adjournment or adjournments thereof, the members present may deem as advisable thereat. Any business transacted at such meeting or at any adjournment or adjournments thereof shall be as valid and legal and of the same force and effect as if such meeting or adjourned meeting were held after notice.

Place of Meeting:

Date of Meeting:

Time of Meeting:

Dated:

Member

Member

Member

Member

**CAPITAL CONTRIBUTION OF MEMBERS AND ADDRESSES OF MEMBERS
AND MANAGERS AS OF _____**

Member's Name: _____
Member's Address _____
Member's Capital Contribution: \$_____ (ex: equipment and supplies)
Member's Percentage Interest _____

Member's Name: _____
Member's Address: _____
Member's Capital Contribution \$_____ (ex: services and cash)
Member's Percentage Interest: _____

Member's Name: _____
Member's Address _____
Member's Capital Contribution: \$_____ (ex: equipment and supplies)
Member's Percentage Interest _____

Member's Name: _____
Member's Address _____
Member's Capital Contribution: \$_____ (ex: equipment and supplies)
Member's Percentage Interest _____

Member's Name: _____
Member's Address _____
Member's Capital Contribution: \$_____ (ex: equipment and supplies)
Member's Percentage Interest _____

Member's Name: _____
Member's Address _____
Member's Capital Contribution: \$_____ (ex: equipment and supplies)
Member's Percentage Interest _____

Member's Name: _____
Member's Address _____
Member's Capital Contribution: \$_____ (ex: equipment and supplies)
Member's Percentage Interest _____

Manager's Name: _____
Manager's Address _____

SERIES OPERATING AGREEMENT

OF

_____ LLC

A Delaware Limited Liability Company

Dated as of _____, 200_

LIMITED LIABILITY COMPANY SERIES OPERATING AGREEMENT

dated as of _____, 200_ (this "**Agreement**"), of _____, LLC, a Delaware limited liability company (the "**Company**") organized under the Delaware Limited Liability Company Act, as amended from time to time (the "**Act**"), by and among the sole Person listed on Schedule A attached hereto, who has executed a counterpart of this Agreement (the "**Class A Member**," and all members of all classes collectively referred to as the "**Members**").

RECITAL

WHEREAS, the Company has been formed in accordance with the provisions of the Act and the Class A Member desires to enter into a written agreement pursuant to the Act governing the affairs of the Company and the conduct of its business.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions.

"Cash Available For Distribution" shall mean for any period, the excess, if any, of: (i) the sum of (A) the cash on hand of the Company and (B) any reasonable amounts withdrawn from the reserves of the Company at the discretion of the Class A Members over (ii) the amount of any reasonable additional reserves of the Company set aside during such period at the discretion of the Class A Members.

"Termination Event" shall mean with respect to each Member or Manager (i) filing of a petition or commencing other proceedings seeking reorganization, liquidation, arrangement or other similar relief under any federal or state law relating to bankruptcy or insolvency, (ii) consenting to or seeking the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official for itself or for a substantial part of its property, (iii) the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official for itself or for a substantial part of its property, (iv) making an assignment for the benefit of creditors, (v) admitting in writing its inability to pay its debts generally as they become due, (vi) consenting to the commencement or

continuation of bankruptcy, reorganization, liquidation, insolvency or similar proceedings against it, (vii) filing an answer or other pleading admitting or failing to contest the material allegation of a petition or other pleading filed against it in any bankruptcy, reorganization, liquidation, insolvency or other similar proceedings involving such Member or Manager, (viii) taking any corporate, partnership, limited liability company, association, business trust, or any other company or entity action in furtherance of the foregoing, or (ix) becoming subject to involuntary proceedings under any bankruptcy, reorganization, liquidation, insolvency or other similar proceedings, which proceedings are not dismissed within 90 days after their commencement.

"Unit Percentage" with respect to a Member shall mean the percentage obtained by multiplying (i) a fraction where the numerator is the number of Units held by such Member and the denominator is the total number of Units held by all Members by (ii) 100%.

ARTICLE II

GENERAL PROVISIONS

Section 2.1 Formation. Upon the execution and delivery of this Agreement by the initial Class A Member, a certificate of formation (the "**Certificate of Formation**") for the Company shall be prepared, executed and filed in the office of the Delaware Secretary of State for the purpose of forming the Company as a Delaware limited liability company under the Act. Harvard Business Services, Inc. hereby is authorized to prepare, execute and file such Certificate of Formation and, if deemed necessary or desirable by the person or persons vested under this Agreement with the right to file amendments to and/or restatements of such Certificate of Formation, such other certificates and documents with the Delaware Secretary of State and other filing offices within and without the State of Delaware. Subject to the preceding sentence, for purposes of executing any certificates to be filed with the Delaware Secretary of State under the Act, Harvard Business Services, Inc. is and shall be deemed to be an "authorized person" (as such term is used in the Act). The Company and, if required, each of the Class A Members shall execute or cause to be executed from time to time all other instruments, certificates, notices and documents and shall do or cause to be done all such acts and things (including keeping books and records and making publications or periodic filings) as may now or hereafter be required for the formation, valid existence and, when appropriate, termination of the Company as a limited liability company under the laws of the State of Delaware.

Section 2.2 Company Name. The name of the Company is " _____, LLC" or such other name or names as may be selected by the Class A Members from time to time, and its business shall be carried on in such name with such variations and changes as the Class A Members deem necessary to comply with requirements of the jurisdictions in which the Company's operations are conducted.

Section 2.3 Registered Office; Registered Agent. The Company shall maintain a registered office in the State of Delaware at 16192 Coastal Highway, Lewes, DE 19958, and the name of the Company's registered agent in the State of Delaware is Harvard

Business Services, Inc. _____ The Class A Members may, from time to time, change the Company's registered office and/or registered agent and shall forthwith amend the Certificate of Formation to reflect such change(s).

Section 2.4 Place of Business. The business address of the Company shall be determined by the Class A Members. The Company may from time to time have such other place or places of business within or without the State of Delaware or the United States of America as the Class A Members may deem advisable.

Section 2.5 Purpose; Nature of Business Permitted; Powers. The purposes of the Company shall be to engage in any lawful activity for which limited liability companies may be formed under the Act. The Company shall possess and may exercise all the powers and privileges granted by the Act or by any other law or by this Agreement, together with any powers incidental thereto, insofar as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business purposes or activities of the Company.

Section 2.6 Business Transactions of a Member with the Company. In accordance with Section 18-107 of the Act, a Member may lend money to, borrow money from, act as surety, guarantor or endorser for, guarantee or assume one or more obligations of, provide collateral for, and transact other business with, the Company and, subject to applicable law, shall have the same rights and obligations with respect to any such matter as a Person who is not a Member.

Section 2.7 Company Property. No real or other property of the Company shall be deemed to be owned by any Member individually, but shall be owned by and title shall be vested solely in the Company. The interests of the Members in the Company shall constitute personal property.

Section 2.8 Term. The existence of the Company shall commence on the date of the filing of the Certificate of Formation in the office of the Secretary of State of the State of Delaware in accordance with the Act, and, subject to the provisions of Article X hereof, the Company shall have a perpetual life.

Section 2.9 No State Law Partnership. The Members intend that the Company not be a partnership (including a limited partnership) or joint venture and that, with respect to the Company's business, no Member or Manager be a partner or joint venturer of any other Member for any purposes other than applicable tax laws. This Agreement may not be construed to suggest otherwise.

Section 2.10 Fiscal Year. The fiscal year of the Company (the "**Fiscal Year**") for financial statement and federal income tax purposes shall be determined by the Class A Members.

ARTICLE III

SERIES DESIGNATIONS

Pursuant to Section 18-215 of the Act, the Company designates the following series of members, managers or limited liability company interests as having separate rights, powers or duties with respect to specified property or obligations of the Company or profits and losses associated with specified property or obligations:

Section 3.1 Series One. Series One is associated with an asset described as _____, and located at _____, in the City of _____, County of _____, State of _____, and Country of _____, commonly referred to as _____.

(a) The Company shall keep and maintain Series One records that are separate and distinct from any and all other series' records.

(b) The Company shall hold and account for Series One assets that are separate and distinct from any and all other series' assets.

(c) The debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to Series One shall be enforceable against the assets of Series One only, and not against the assets of the Company generally or any other series thereof.

(d) None of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the Company generally or any other series thereof shall be enforceable against the assets of Series One.

(e) In no case shall a Member of Series One be personally obligated for any or all of the debts, obligations and liabilities of this Series One, any other series, or the Company generally.

(f) Series One shall have Class A, Class B, and Class C Members and said Members shall have all of the rights and responsibilities as otherwise stated in this Agreement (specifically, but not limited to, Article IV below). Class Members of one series shall have no rights or responsibilities with respect to Class Members of other series, and vice versa.

(g) Any event that causes a Member to cease to be associated with this series shall not, in itself, cause such Member to be associated with any other series or terminate the continued membership of a Member in the Company, or cause the termination of the entire series, regardless of whether such Member was the last remaining Member associated with such series.

(h) Series One may be terminated and its affairs wound up without causing the dissolution of the Company.

Section 3.2 Series Two. Series Two is associated with an asset described as _____, and located at _____, in the City of _____.

_____, County of _____, State of _____, and Country of _____, commonly referred to as _____.

(a) The Company shall keep and maintain Series Two records that are separate and distinct from any and all other series' records.

(b) The Company shall hold and account for Series Two assets that are separate and distinct from any and all other series' assets.

(c) The debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to Series Two shall be enforceable against the assets of Series Two only, and not against the assets of the Company generally or any other series thereof.

(d) None of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the Company generally or any other series thereof shall be enforceable against the assets of Series Two.

(e) In no case shall a Member of Series Two be personally obligated for any or all of the debts, obligations and liabilities of this Series Two, any other series, or the Company generally.

(f) Series Two shall have Class A, Class B, and Class C Members and said Members shall have all of the rights and responsibilities as otherwise stated in this Agreement (specifically, but not limited to, Article IV below). Class Members of one series shall have no rights or responsibilities with respect to Class Members of other series, and vice versa.

(g) Any event that causes a Member to cease to be associated with this series shall not, in itself, cause such Member to be associated with any other series or terminate the continued membership of a Member in the Company, or cause the termination of the entire series, regardless of whether such Member was the last remaining Member associated with such series.

(h) Series Two may be terminated and its affairs wound up without causing the dissolution of the Company.

Section 3.3 Series Three. Series Three is associated with an asset described as _____, and located at _____, in the City of _____, County of _____, State of _____, and Country of _____, commonly referred to as _____.

(a) The Company shall keep and maintain Series Three records that are separate and distinct from any and all other series' records.

(b) The Company shall hold and account for Series Three assets that are separate and distinct from any and all other series' assets.

(c) The debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to Series Three shall be enforceable against the assets of Series Three only, and not against the assets of the Company generally or any other series thereof.

(d) None of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the Company generally or any other series thereof shall be enforceable against the assets of Series Three.

(e) In no case shall a Member of Series Three be personally obligated for any or all of the debts, obligations and liabilities of this Series Three, any other series, or the Company generally.

(f) Series Three shall have Class A, Class B, and Class C Members and said Members shall have all of the rights and responsibilities as otherwise stated in this Agreement (specifically, but not limited to, Article IV below). Class Members of one series shall have no rights or responsibilities with respect to Class Members of other series, and vice versa.

(g) Any event that causes a Member to cease to be associated with this series shall not, in itself, cause such Member to be associated with any other series or terminate the continued membership of a Member in the Company, or cause the termination of the entire series, regardless of whether such Member was the last remaining Member associated with such series.

(h) Series Three may be terminated and its affairs wound up without causing the dissolution of the Company.

ARTICLE IV

MEMBERS

Section 4.1 Members. The name, address and Unit Percentage of the Members are set forth on Schedule A hereto, which shall be amended from time to time to reflect the admission of new Members or additional capital contributions of Members. Members may not be removed without cause, except by the unanimous consent of the Class A Members.

Section 4.2 Classes. The membership interests of the Company and/or each series shall consist of Class A membership interests ("**Class A Units**"), Class B membership interests ("**Class B Units**"), and Class C membership interests ("**Class C Units**," and together with the Class A and B Units, the "**Units**").

(a) Class A Members have the right to receive distributions of profit, and assets upon dissolution, according to their Unit Percentage prior to any distributions being made to Class B or C Members.

(b) Immediately upon the absence of any Class A Members, all Class B Members shall automatically become Class A Members, without any further action

necessary, in the same capacity and Unit Percentage as they possessed in their previous class.

(c) Immediately upon the absence of any Class B Members, all Class C Members shall automatically become Class B Members, without any further action necessary, in the same capacity and Unit Percentage as they possessed in their previous class.

(d) Each new class member may elect to have new Membership Unit Certificates issued to them that represent their new class of membership.

Section 4.3 Admission of New Members. New members may be admitted to the Company upon the unanimous approval of all Class A Members and the full and final execution of an LLC Membership Unit Interest Purchase Agreement between the new member and all Class A Members, subject to applicable laws and the following criteria:

- (i) each new member will have to satisfy such financial, technical and other criteria, which shall have been prepared by the Class A Members and approved by a majority of the Class A Members, in order to purchase a membership unit interest;
- (ii) the Class A Members shall determine the class and total number of Units being sold, and no new member will be permitted to purchase Units representing more than ___% of the total number of Units outstanding on a fully diluted basis; and
- (iii) the purchase price for each Unit will be determined by the Class A Members.

Section 4.4 No Liability of Members. All debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member.

Section 4.5 Actions by the Members; Meetings; Quorum.

(a) Class A Members may vote, approve a matter or take any action authorized by the vote of the Class A Members at a meeting, in person or by proxy, or without a meeting by written consent in accordance with Section 4.5(b). Class B and C Members may not vote, but may attend meetings of the Members. Meetings of the Members may be conducted in person or by conference telephone facilities. Each Class A Member shall be entitled to vote upon all matters upon which Members have the right to vote.

(b) Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting if a majority of Class A Members consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of the Members. In no instance where action is authorized by written consent shall it be required that a meeting of Members be called or notice be given; however, a copy of the action taken by written consent shall be sent promptly to all Members and filed with the records of the Company.

(c) Notwithstanding any other provision of this Agreement, the following actions or types of transactions shall require the affirmative vote of all Class A Members:

- (i) (A) any merger, consolidation or other business combination, (B) filing of a petition or

commencing other proceedings seeking reorganization, liquidation, arrangement or other similar relief under any federal or state law relating to bankruptcy or insolvency, (C) consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official for itself or for a substantial part of its property, (D) making an assignment for the benefit of creditors, (E) admitting in writing its inability to pay its debts generally as they become due, (F) consenting to the commencement or continuation of bankruptcy, reorganization, liquidation, insolvency or similar proceedings against it, and (G) filing an answer or other pleading admitting or failing to contest the material allegation of a petition or other pleading filed against it in any bankruptcy, reorganization, liquidation, insolvency or other similar proceedings;

- (ii) the amendment or modification of any provision of this Agreement;
- (iii) the disposition of all or substantially all of the Company's assets;
- (iv) the issuance of additional Units to any Member or other party including any other individual, trust, estate, corporation, partnership, limited liability company or any other incorporated or unincorporated entity ("**Person**") permitted to be a member of a limited liability company under the Act; and
- (v) the removal of any Member.

Section 4.6 Power to Bind the Company. No Member or group of Members (acting in its or their capacity as such) shall have any authority to bind the Company to any third party with respect to any matter except pursuant to a resolution duly adopted by the Class A Members by the affirmative vote required for such matter pursuant to this Agreement or the Act.

Section 4.7 Representations and Warranties. Each Member hereby represents and warrants to the Company and each other Member as follows:

(a) Such Member is either a natural person or is duly incorporated or formed (as the case may be), validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. All requisite actions (corporate or otherwise) necessary for the due authorization, execution, delivery and performance of this Agreement by such Member have been duly taken.

(b) Such Member has duly executed and delivered this Agreement. This Agreement constitutes a valid and binding obligation of such Member enforceable against such Member in accordance with its terms (except as may be limited by bankruptcy, insolvency, or similar laws of general application and by the effect of general principles of equity, regardless of whether considered at law or in equity).

(c) Such Member's authorization, execution, delivery and performance of this Agreement does not and will not (i) conflict with, or result in a breach, default or violation of (A) the certificate or articles of incorporation and by-laws or other organizational documents of such Member, (B) any material contract or agreement to which that Member is a party or is otherwise subject, or (C) any law, order, judgment, decree, writ, injunction, or arbitration award to which that Member is subject; or (ii) require any consent, approval, or authorization from filing, or registration with, or notice to, any governmental authority or other Person, other than those that have already been obtained.

(d) Such Member is familiar with the proposed business, financial condition, properties, operations, and prospects of the Company; has asked such questions and conducted such due diligence concerning such matters and concerning its acquisition of Units as it has desired to ask and conduct, and all such questions have been answered to its full satisfaction. Such Member has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of an investment in the Company. Such Member understands that owning Units involves various risks, including the restrictions on transferability set forth in this Agreement, lack of any public market for Units, the risk of owning its Units for an indefinite period of time, and the risk of losing its entire investment in the Company. Such Member is an "accredited investor" as the term is defined in Regulation D promulgated under the Securities Act of 1933, as amended (the "**1933 Act**"). Such Member is able to bear the economic risk of such investment; is acquiring its Units for investment and solely for its own beneficial account and not with a view to or any present intention of directly or indirectly selling, transferring, offering to sell or transfer, participating in any distribution, or otherwise disposing of all or a portion of its Units; and such Member acknowledges that the Units have not been registered under the 1933 Act or the Securities Exchange Act of 1934, as amended, or any other applicable federal or state securities laws, and that the Company has no intention, and shall not have any obligation, to register or to obtain an exemption from registration for the Units or to take action so as to permit sales pursuant to the 1933 Act (including Rules 144 and 144A thereunder).

(e) Such Member has not dealt with any broker or finder in connection with the formation of the Company or the transactions contemplated herein and agrees to indemnify and hold harmless the other Members and the Company from and against any actions, claims or demands for any commissions or fees arising from a breach of the foregoing representation and warranty.

ARTICLE V

MANAGEMENT

Section 5.1 Management of the Company. Management of the Company shall be vested in its Class A Members. The decision of the Class A Members shall be controlling and, unless otherwise expressly provided in this Agreement, shall be required for any decision, determination, consent or approval of Members under this Agreement. The Class A Members are hereby granted all rights, powers, authority and authorization necessary, appropriate, advisable and/or convenient to manage the Company and determine and carry out its affairs.

Section 5.2 Officers. The Class A Members can appoint officers to perform such duties and have such powers as may from time to time be assigned to them by the Class A Members.

Section 5.3 No Liability of Managers and Officers. All debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Manager or Officer shall be

obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Manager or Officer.

ARTICLE VI

CAPITAL STRUCTURE AND CONTRIBUTIONS

Section 6.1 Capital Structure. The capital structure of the Company shall consist of Class A Units, Class B Units, and Class C Units.

Section 6.2 Capital Contributions. The Members of the Company have contributed amounts, in cash, and other property, to the Company as listed on Schedule A to this Agreement.

Section 6.3 Additional Contributions. No Member of the Company is required to make any additional capital contribution to the Company.

Section 6.4 No Withdrawal Of Capital Contributions. Except upon the dissolution and liquidation of the Company as set forth in Article X hereof, no Member shall have the right to withdraw its capital contributions.

Section 6.5 Maintenance of Capital Accounts

(a) The company will maintain a separate capital account for each Member and each Member will be furnished with a statement of its capital account as of the close of each fiscal year of the Company.

(b) The capital account of each Member will be equal to said Member's cash capital contributions increased by the profits (as determined for federal income tax purposes of the Agreement, and decreased by the amount of any cash distributions or the fair market value of any property distributions made to said Member, and decreased by the losses (as determined for federal income tax purposes) of the Company allocated to said Member pursuant to Section 7.1 of this Agreement.

(c) No interest will be paid by the Company to any Member on any amount credited to the Member's capital account.

(d) In the event of a transfer of all or a portion of a Member's limited liability company interest in the Company pursuant to the provisions of this Agreement, a separate capital of such transfer, in which will be reflected the portion of the transferring Member's capital account transferred to the transferee, and the capital account of the transferring Member will be correspondingly adjusted as of such date. In addition, appropriate adjustments shall also be made to the transferee member's capital account if an election under Section 754 of the Internal Revenue Code of 1986, as amended, is in effect at the time of the transfer.

ARTICLE VII

ALLOCATIONS AND DISTRIBUTIONS AND OTHER PAYMENTS

Section 7.1 Allocations of Profits and Losses from Operations. The company's profits and losses (as determined for federal income tax purposes) shall be allocated in proportion to the capital account balances of the Members of the Company.

Section 7.2 Distributions. At the time determined by the Class A Members but at least once during each fiscal year of the Company, the Class A Members shall cause the Company to distribute any cash held by it which is not reasonably necessary for the operation of the Company. Cash available for distribution shall be distributed to the members of the Company in the same proportion as their then capital account balances.

Section 7.3 No Right to Distributions. No Member shall have the right to demand or receive distributions of any amount, except as expressly provided in this Article VII.

Section 7.4 Restrictions on Distributions. The foregoing provisions of this Article VII to the contrary notwithstanding, no distribution (including any Tax Distribution) shall be made if, and for so long as, such distribution would violate any contract or agreement to which the Company is then a party or any law, rule, regulation, order or directive of any governmental authority then applicable to the Company.

Section 7.5 Withholding. The Company is authorized to withhold from distributions to a Member, or with respect to allocations to a Member, and to pay over to a federal, foreign, state or local government, any amounts required to be withheld pursuant to the Code, or any provisions of any other federal, foreign, state or local law or, if no sufficiently large distribution is imminent, the Company may require the relevant Member to promptly reimburse the Company for the amount of tax withheld and paid over by the Company. Any amounts so withheld shall be treated as having been distributed to such Member pursuant to this Article VII for all purposes of this Agreement, and shall be offset against the current or next amounts otherwise distributable to such Member.

ARTICLE VIII

BOOKS AND REPORTS

Section 8.1 Books and Records; Accounting. The Company shall keep or cause to be kept at the office of the Company (or at such other place as the Board in its discretion shall determine) full and accurate books and records regarding the status of the business and financial condition of the Company.

ARTICLE IX

WITHDRAWAL; TRANSFERS OF UNITS; CESSATION OF MEMBERSHIP

Section 9.1 Right to Withdraw; Payment Upon Withdrawal, Removal. Members shall have the right to resign or withdraw at any time from the Company and such Members shall have no continuing obligations to the Company other than pursuant to the Act, this Agreement or other applicable laws or such obligations as expressly assumed by such Members. The Company shall, within a reasonable period as determined by the

Class A Members but in no event later than five months after the withdrawal or resignation of a Member, pay or cause to be paid to such Member, cash, property or a note equal to the fair market value of such Member's Units as determined by the Class A Members.

Section 9.2 Transfers of Units.

a) A Member of the Company may assign all or any part of his limited liability company interest in the Company only with the consent of all Class A Members. A Member has no right to grant an assignee of his limited liability company interest in the Company the right to become a substitute Member of the Company.

(b) An assignee of a limited liability company interest in the Company shall be admitted as a substitute Member of the Company with respect to the portion of the limited liability company interest in the Company assigned to such assignee in accordance with this Agreement only upon (i) the approval of such admission by all of the Class A Members of the Company other than the member assigning his limited liability company interest in the Company, and (ii) such assignee's permitted admission being reflected in the records of the Company.

(c) The admission of substitute Members shall be accomplished by the amendment of this Agreement.

Section 9.3 Cessation of Membership. Any Member shall automatically cease being a Member of the Company upon the occurrence of a Termination Event, as defined in Section 1.1 above, in respect of any such Member. The Company shall, within a reasonable period as determined by the Class A Members, pay or cause to be paid to such Member, cash, property or a note equal to the fair market value of such Member's Units as determined by the Class A Members or the initial investment made by such Member for the purchase of such Units.

Section 9.4 Limitation on Transfers. All Transfers in violation of this Article IX are null and void. Notwithstanding any of the forgoing provisions of this Article IX, any transfer of a Unit that would cause the Company to be treated as a publicly traded partnership taxable as a corporation shall be null and void.

ARTICLE X

DISSOLUTION OF THE COMPANY

Section 10.1 Dissolution. The Company shall be dissolved upon the occurrence of either of the following events (each such event, a "**Liquidation Event**"):

- (a) a determination by all Class A Members to dissolve the Company; or
- (b) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

No other event, including the retirement, insolvency, liquidation, dissolution, insanity, expulsion, bankruptcy, death, incapacity or adjudication of incompetency of a Member, shall cause the existence of the Company to terminate.

Section 10.2 Liquidation.

(a) In the event that a Liquidation Event shall occur, then the Company shall be liquidated and its affairs shall be wound up by the Class A Members. All

proceeds from such liquidation shall be distributed in accordance with the provisions of Section 18-804 of the Act, and all Units shall be cancelled. Distributions to the Members shall be made in accordance with the Members' relative Capital Account balances.

(b) Prior to any liquidation or dissolution of the Company, a proper accounting shall be made to the Members from the date of the last previous accounting to the date of dissolution.

(c) In the event the Class A Members determine that a portion of the Company's assets are best distributed in kind to the Members, then such assets shall be so distributed in kind to the Members in undivided shares therein as tenants in common in accordance with the Members' relative Capital Account balances.

(d) Upon the completion of the distribution of the Company's assets, the Company shall be terminated and the Class A Members shall cause the Company to execute and file a certificate of cancellation in accordance with Section 18-203 of the Act.

ARTICLE XI

EXCULPATION AND INDEMNIFICATION

Section 11.1 Exculpation. Notwithstanding any other provisions of this Agreement, whether express or implied, or obligation or duty at law or in equity, none of the Members, or the officers, directors, stockholders, partners, employees, representatives or agents of any of the foregoing, nor any officer, employee, representative or agent of the Company or any of its affiliates (individually, a "**Covered Person**" and, collectively, the "**Covered Persons**") shall be liable to the Company or any other Person for any act or omission relating to the Company and the conduct of its business, this Agreement, any related document or any transaction contemplated hereby or thereby, taken or omitted in good faith by a Covered Person and in the reasonable belief that such act or omission is in or is not contrary to the best interests of the Company, provided that such act or omission is not found by a court of competent jurisdiction or an arbitration panel to constitute fraud, willful misconduct, bad faith or gross negligence.

Section 11.2 Indemnification. To the fullest extent permitted by law, the Company shall indemnify and hold harmless each Covered Person from and against any and all losses, claims, demands, liabilities, expenses, judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative ("**Claims**"), in which the Covered Person may be involved, or threatened to be involved, as a party or otherwise, by reason of its management of the affairs of the Company or which relates to or arises out of the Company or its property, business or affairs. A Covered Person shall not be entitled to indemnification under this Section 11.2 with respect to any Claim in which such Covered Person is found by a court of competent jurisdiction to have engaged in fraud, willful misconduct, bad faith or gross negligence. Expenses incurred by a Covered Person in investigating or defending any Claim shall be paid by the Company in advance of the final disposition of such Claim upon receipt by the Company of an undertaking by or on

behalf of such Covered Person to repay such amount if it shall be ultimately determined that such Covered Person is not entitled to be indemnified by the Company in accordance with this Section 11.2. The Company may maintain insurance at its expense to protect itself and any Member, Manager, officer, trustee, employee or agent of the Company or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such person against such expense, liability or loss under the Act.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Amendment to the Agreement. Except as set forth in the next sentence, this Agreement may be amended by, and only by, a written instrument executed by all of the Class A Members.

Section 12.2 Successors; Counterparts. Subject to Article IX, this Agreement (a) shall be binding as to the executors, administrators, estates, heirs and legal successors, or nominees or representatives, of the Members and (b) may be executed in several counterparts with the same effect as if the parties executing the several counterparts had all executed one counterpart.

Section 12.3 Governing Law; Severability; Arbitration. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of law. In particular, this Agreement shall be construed to the maximum extent possible to comply with all the terms and conditions of the Act.

Section 12.4 Headings. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope or intent of this Agreement or any provision hereof.

Section 12.5 Additional Documents. Each Member agrees to perform all further acts and execute, acknowledge and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement.

Section 12.6 Notices. All notices, requests and other communications to any Member shall be in writing (including telecopier or similar writing) and shall be given to such Member (and any other Person designated by such Member) at its address or telecopier number set forth in Schedule A hereto or such other address or telecopier number as such Member may hereafter specify for the purpose by notice. Each such notice, request or other communication shall be effective (a) if given by telecopier, when transmitted to the number specified pursuant to this Section 12.6 and the appropriate confirmation is received, (b) if given by mail, 72 hours after such communication is received by the other party, or (c) if given by any other means, when delivered at the address specified pursuant to this Section 12.6.

Section 12.7 Waiver of Partition. Each of the Members hereby irrevocably waives any and all rights that such Member may have to maintain any action for partition of any of the Company's property.

Section 12.8 Interpretation. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine, the feminine, or the neuter gender shall include the masculine, feminine and neuter.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first above written.

INITIAL CLASS A MEMBER

By: _____

Name:

Title:

Schedule A
CAPITAL CONTRIBUTIONS
SERIES ONE

<u>Name and Address of Class A Members</u>	<u>Capital Contribution</u>	<u>Number of Units</u>	<u>Unit Percentage</u>

<u>Name and Address of Class B Members</u>	<u>Capital Contribution</u>	<u>Number of Units</u>	<u>Unit Percentage</u>

<u>Name and Address of Class C Members</u>	<u>Capital Contribution</u>	<u>Number of Units</u>	<u>Unit Percentage</u>

CAPITAL CONTRIBUTIONS
SERIES TWO

<u>Name and Address of Class A Members</u>	<u>Capital Contribution</u>	<u>Number of Units</u>	<u>Unit Percentage</u>

<u>Name and Address of Class B Members</u>	<u>Capital Contribution</u>	<u>Number of Units</u>	<u>Unit Percentage</u>

<u>Name and Address of Class C Members</u>	<u>Capital Contribution</u>	<u>Number of Units</u>	<u>Unit Percentage</u>

CAPITAL CONTRIBUTIONS

SERIES THREE

<u>Name and Address of Class A Members</u>	<u>Capital Contribution</u>	<u>Number of Units</u>	<u>Unit Percentage</u>

<u>Name and Address of Class B Members</u>	<u>Capital Contribution</u>	<u>Number of Units</u>	<u>Unit Percentage</u>

<u>Name and Address of Class C Members</u>	<u>Capital Contribution</u>	<u>Number of Units</u>	<u>Unit Percentage</u>

**AMENDMENT TO ARTICLES OF ORGANIZATION/
OPERATING AGREEMENT**

There was presented to the members an amendment to the _____ for the company. After consideration by the members of the company, it was

RESOLVED, that the following amendment be made:

The Secretary shall amend the document, file the document with the proper state agencies, if necessary, and distribute the amended document to the members of the company.

Members:

APPROVAL OF TRANSACTION BENEFITING MEMBERS

There was presented to the members the following transaction:

The transaction has a potential benefit to one or more members of the company.
After consideration by the members of the company, it is hereby

RESOLVED, that the above-described transaction has been approved.

Members:

APPROVAL OF LOAN TO COMPANY

The company wishes to make application to receive a loan in the amount of _____, to be repaid at _____ percent interest, for a term of _____.

The company will not accept a loan that materially differs from the terms described above. After consideration by the members of the company, it is hereby

RESOLVED, that the above-described transaction has been approved.

Members:

