**LIMITED LIABILITY COMPANY OPERATING AGREEMENT**

**FOR {{ filing\_entity }}**

This Company Agreement of this {% if has\_managers %}MANAGER{% else %}MEMBER{% endif %} MANAGED LIMITED LIABILITY COMPANY organized pursuant to Texas state law, is entered into and shall become effective as of {{ today(format=‘M/d/YYYY’) }} by and among the Company and the persons executing this Agreement as Members. It is the Members express intention to create a limited liability company in accordance with the Texas Business Organizations Code (“Act”), as currently written or subsequently amended or redrafted. Therefore, all provisions of this document shall be construed consistent with the afore described intent of the Members. Accordingly, in consideration of the conditions contained herein, he/she/they agree as follows:

**ARTICLE I** **Company Formation**

**1.1 FORMATION.** The Members hereby form {{ filing\_entity }}, a Texas Limited Liability Company (“Company”) subject to the provisions of Texas state law as currently in effect as of this date. Certificate of Formation shall be filed with the Secretary of State.

**1.2 REGISTERED OFFICE AND AGENT.** The location and name of the registered agent shall be {{ users[0] }} at {{ users[0].address }}. The consent of the registered agent shall be kept in the books and records of the Company. The Members may remove or replace the LLC registered agent at any time by filing the appropriate form or forms with the State of Texas and by giving notice to the outgoing agent. Unless otherwise provided by State law of Texas, the LLC shall always have an agent for process of service and other such functions as is legally performed by an agent in that State.

**1.3 TERM.** The Company shall continue for a perpetual period or until one of the following:

(a) Members whose capital interest as defined in Article 2.2 exceeds 50 percent vote for dissolution; or

(b) Any event which makes it unlawful for the business of the Company to be carried on by the Members; or

(c) Any other event causing dissolution of this Limited Liability Company under applicable state laws.

**1.4 CONTINUANCE OF COMPANY.** Notwithstanding the provisions of ARTICLE 1.3, in the event of an occurrence described in ARTICLE 1.3(c), if there are at least one remaining Member, said remaining Member shall have the right to continue the business of the Company.

**1.5 BUSINESS PURPOSE.** The Company shall conduct any and all lawful business deemed appropriate to execute the company’s objectives.

**1.6 PRINCIPAL PLACE OF BUSINESS.** The location of the principal place of business of the Company shall be {{ users[0].address }} or at a location as the Members selects.

**1.7 THE MEMBERS.** The name and place of residence of each member are listed below at Certification of Members. Members are the owners of this company.

**1.8 THE MEMBERS INTEREST.** The interest of a Member is personal property and contains both an economic interest in the Company and voting rights as proscribed in this Agreement. Membership interests are transferrable and severable, not withstanding the restrictions contained in this Agreement.

**1.9 ADMISSION OF ADDITIONAL MEMBERS.** Except as otherwise expressly provided in the Agreement, no additional members may be admitted to the Company through issuance by the company of a new interest in the Company without the prior unanimous written consent of the Members.

**1.10 Regulation of Internal Affairs by Operating Agreement.** Consistent with the Articles and the Act, the internal affairs of the Company shall be regulated by this Agreement as it shall be amended by the Members from time to time.

**ARTICLE II** **Capital Contributions**

**2.1 INITIAL CONTRIBUTIONS.** The Members initially shall contribute to the Company capital and the company shall keep record of the amount each contributed.

**2.2. Form of Capital Contribution.** The initial Capital Contribution shall be in the form of cash and property contributions (including promissory notes) and services rendered or to be rendered and any subsequent Capital Contributions may be in any type of property or cash (including promissory notes) and services rendered or to be rendered, as set forth on Exhibit A or as may otherwise be agreed upon by all of the Members. No Member shall be required to make any Capital Contributions to the Company other than the Capital Contributions set opposite to the name of the Member in Exhibit A as it may be amended from time to time with the consent of all the Members.

**2.3 ADDITIONAL CONTRIBUTIONS.** Except as provided in ARTICLE 6.2, no Member shall be obligated to make any additional contribution to the Company's capital.

**ARTICLE III** **Profits, Losses and Distributions**

**3.1 PROFITS/LOSSES.** For financial accounting and tax purposes the Company's net profits or net losses shall be determined on an annual basis and shall be allocated to the Members in proportion to each Member's relative capital interest in the Company, and as amended from time to time in accordance with Treasury Regulation 1.704-1.

**3.2 DISTRIBUTIONS.** The Members shall determine and distribute available funds annually or at more frequent intervals as they see fit. Available funds, as referred to herein, shall mean the net cash of the Company available after appropriate provision for expenses and liabilities, as determined by the Members. Distributions in liquidation of the Company or in liquidation of a Member's interest shall be made in accordance with the positive capital account balances pursuant to Treasury Regulation 1.704-l(b)(2)(ii)(b)(2). To the extent a Member shall have a negative capital account balance, there shall be a qualified income offset, as set forth in Treasury Regulation 1.704-l(b)(2)(ii)(d).

**ARTICLE IV** **Management**

**4.1 MANAGEMENT OF THE BUSINESS.** This company shall be {% if has\_managers %}Manager{% else %}Member{% endif %} Managed. Members holding a majority of the capital interests in the Company may elect Managers as the Members determine.

**4.2 MEMBERS.** Members shall {% if has\_managers %} not {% endif %}take part in the operation of the Company’s affairs.

**4.3 Meetings.** Meetings of Members may be held at any place, either within or without the State of Texas, or by using a conference telephone or similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, selected by the Person or Persons calling the meeting; however, there shall be no regularly scheduled meetings of the Company. A special meeting of the Members may be called by the Manager or any Member or Members representing more than 10 percent of the interests of the Members for the purpose of addressing any matters on which the Members may vote.

**4.4 Notice for Meetings.** Written notice of a meeting shall be given to each Member entitled to vote not less than 3 days nor more than 14 days before the date of the meeting. The notice shall state the place, date, and hour of the meeting and the general nature of the business to be transacted. No other business may be transacted at the meeting.

**4.5 Actions Requiring Unanimous Vote.** Subject to the provisions of this Agreement or the Act the following matters shall require the unanimous vote of the Members:

(a) Doing any act in contravention of this Agreement or which would make it impossible to carry on the business of the Company;

(b) Any matter as to which the Act requires a unanimous vote under the circumstances;

(c) Any other matter for which this Agreement requires the vote, consent or approval of every Member.

(e) A decision to continue the business of the Company after a dissolution event;

(f) Any amendment of the Certificate of Formation;

(g) Any amendment of this Agreement;

(h) A withdrawal of any part of a Member's Capital Contribution other than upon the dissolution of the Company or in accordance with the provisions of this Agreement for distributions;

(i) Consent to: (1) the entry of a decree or order for relief against the Company by a court of competent jurisdiction in any involuntary case brought against the Company under any Debtor Relief Laws generally affecting the rights of creditors and relief of debtors now or hereafter in effect; or (2) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar agent under applicable Debtor Relief Laws for the Member or for any substantial part of its assets or property;

(j) The Company's filing of a petition for relief under the Federal Bankruptcy Code (or any corresponding future United States Debtor Relief Law now or hereafter in effect);

(k) The making of any general assignment for the benefit of the Company's creditors;

(l) Any change in the amount or character of Capital Contributions or the character of the business of the Company; and

(m) Any other transaction described in this Agreement as requiring a vote, approval or consent of the Members and with respect to which the required percentage vote is not specified.

**4.6 DISPUTE RESOLUTION.** The parties intend to and do hereby establish the following out-of-court alternate dispute resolution procedure to be followed in the event any controversy or dispute should arise out of, or relating to this Agreement or relating to any change orders or other changes or addendums to this Agreement. If a dispute develops between the parties to this Agreement they will submit to mediation to address any controversy or claim arising out of, or relating to this Agreement or relating to any change orders or other changes or addendums to this Agreement. Prior to the beginning of the mediation process, the parties may agree that if there is one or more disputed items that remain unresolved at the end of the mediation, the parties will proceed with binding mediation where the mediator will render a final and binding decision on those unresolved items, or the parties may elect to submit the remaining unresolved items to a med-arb procedure where a new and separate binding arbitration session will be scheduled to settle any unresolved issues remaining after the mediation session has been concluded. The parties must mutually agree to utilize binding mediation or arbitration or the parties will be bound only to participate in the mediation process. The mediation and/or arbitration shall be conducted by and according to the Mediation and/or Arbitration Rules and Procedures of American Arbitration Association. Both parties shall share the cost of the dispute resolution process equally up to and including the mediation settlement agreement or arbitration award although personal attorneys and witnesses or specialists are the direct responsibility of each party and their fees and expenses shall be the responsibility of the individual parties. As part of the decision of the mediator in binding mediation or as part of the arbitration award, the mediator or arbitrator shall award the prevailing party reasonable attorney’s fees and reasonable expenses in any manner in which the mediator or arbitrator feels is fair and equitable to the parties. The Mediation Settlement Agreement and/or arbitration award shall be binding on the parties and shall be enforceable in any court of competent jurisdiction.

**4.7 NOMINEE.** Title to the Company's assets shall be held in the Company's name or in the name of any nominee that the Manager may designate. The Manager shall have power to enter into a nominee agreement with any such person, and such agreement may contain provisions indemnifying the nominee, except for his willful misconduct.

**4.8 COMPANY INFORMATION.** Upon request, the Members shall supply to any Member information regarding the Company or its activities. Each Member or his authorized representative shall have access to and may inspect and copy all books, records and materials in the Company’s possession regarding the Company or its activities. The exercise of the rights contained in this ARTICLE 4.8 shall be at the requesting Member's expense.

**4.9 EXCULPATION.** Any act or omission of the Members, the effect of which may cause or result in loss or damage to the Company or the Members if done in good faith to promote the best interests of the Company, shall not subject the Member to any liability to any of the other Members or Company.

**4.10 INDEMNIFICATION.** The Company shall indemnify any person who was or is a party defendant or is threatened to be made a party defendant, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Company) by reason of the fact that he is or was a Member of the Company, Manager, employee or agent of the Company, or is or was serving at the request of the Company, for instant expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if the Members determine that he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Company, and with respect to any criminal action proceeding, has no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of "no lo Contendere" or its equivalent, shall not in itself create a presumption that the person did or did not act in good faith and in a manner which he reasonably believed to be in the best interest of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was lawful.

**4.11 Limited Liability.** No Member or Manager of the Company shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a Member or Manager of the Company except as provided by law.

**4.12 RECORDS.** The Members shall cause the Company to keep at its principal place of business or at another location agreeable by the Members, the following:

(a) A current list in alphabetical order of the full name and the last known street address of each Member;

(b) A copy of the Certificate of Formation and the Company Operating Agreement and all amendments;

(c) Copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years;

(d) Copies of any financial statements of the limited liability company for the three (3) most recent years.

**ARTICLE V** **Compensation**

**5.1 MANAGEMENT FEE.** Any Manager rendering services to the Company shall be entitled to compensation commensurate with the value of such services as all Members agree upon.

**5.2 REIMBURSEMENT.** The Company shall reimburse the Managers or Members for all direct out-of-pocket expenses incurred by them in managing the Company.

**ARTICLE VI** **Bookkeeping**

**6.1 BOOKS.** The Members shall maintain complete and accurate books of account of the Company's affairs at the Company's principal place of business or at another location agreeable by the Members. Such books shall be kept on such method of accounting as the Members shall select. The company's accounting period shall be the calendar year.

**6.2 MEMBER'S ACCOUNTS.** The Members shall maintain separate capital and distribution accounts for each member. Each Member's capital account shall be determined and maintained in the manner set forth in Treasury Regulation 1.704-l(b)(2)(iv) and shall consist of his initial capital contribution increased by:

(a) Any additional capital contribution made by him/her;

(b) Credit balances transferred from his distribution account to his capital account;

and decreased by:

(a) Distributions to him/her in reduction of Company capital;

(b) The Member's share of Company losses if charged to his/her capital account.

**6.3 REPORTS.** The Members shall close the books of account after the close of each calendar year, and shall prepare and send to each member a statement of such Member's distributive share of income and expense for income tax reporting purposes.

**ARTICLE VII** **Transfers**

**7.1 ASSIGNMENT.** If at any time a Member proposes to sell, assign or otherwise dispose of all or any part of its interest in the Company, Member shall comply with the following procedures:

(a) First make a written offer to sell such interest to the other Member(s) at a price determined in writing. At this point exiting member may not make this intention publicly known. If such other Members decline or fail to elect such interest within sixty (60) days, the exiting member may advertise its membership interest for sale as it sees fit.

(b) If a member has a buyer of members interest, the other current member(s) have first right of refusal to purchase the exiting members interest for the agreed purchase price. If there are more than one current remaining members, remaining members may combine funds to purchase the exiting members interest. Exiting member must show that potential purchaser has full certified funds, or the ability to get full certified funds before the first right of refusal period starts. Current members have 60 days to buy exiting members interest if they so desire.

(c) Pursuant to the applicable law, current members may unanimously approve the sale of exiting members’ interests to grant full membership benefits and functionality to the new member. The current remaining members must unanimously approve the sale, or the purchaser or assignee will have no right to participate in the management of the business, affairs of the Company, or member voting rights. The purchaser or assignee shall only be entitled to receive the share of the profits or other compensation by way of income and the return of contributions to which that Member would otherwise be entitled. Exiting member must disclose to buyer or assignee if current members will not approve the sale.

**7.2 Death or incapacity of a Member.** The personal representative of a deceased member's estate, or his or her beneficiary, may exercise all of the decedent's rights and powers as a member, and the decedent’s membership interest in the company will continue and pass to those entitled to it on the member's death. The personal representative of an incapacitated member, acting under a durable power of attorney or letters of guardianship, may exercise all of a member's rights and powers and will be entitled to receive distributions of cash or other property from the company. Neither the company nor any officer or manager will have a duty to inquire as to the application or use of funds delivered to a personal representative. The personal representative or beneficiary is not entitled to be automatically substituted as a manager, although remaining members may vote to name the personal representative or beneficiary as a manager.

**7.3 Substituted Members.**

(a) An assignee or other Person shall not be admitted as a Member unless and until the vote of the Members required therefor under Article 4 is obtained, is thus a Substitute Member until admitted as a Member.

(b) Each Substituted Member, as a condition to that Person's admission as a Member, shall execute and acknowledge such instruments, in form and substance satisfactory to the Manager as the Manager shall deem necessary or desirable to effectuate such admission and to confirm the agreement of the Substituted Member to be bound by all the terms and provisions of this Agreement with respect to the interest acquired. All reasonable expenses, including attorneys' fees, incurred by the Company in this connection, shall be borne by such Substituted Member.

(c) The effective date of admission of a Substituted Member shall be the date designated by the Managers (or Members) in writing to the Substituted Member, which shall not be later than the first day of the fiscal quarter of the Company next following the date upon which the Managers (or Members) have given their written consent to such substitution.

(d) Unless and until an assignee of an Interest as a Member in the Company becomes a Member, such assignee shall not be entitled to vote with respect to such Interest.

**7.4 Purchase of a Member's Interest.** Upon the occurrence of any Dissolution Event and a Consent to Continue and, if applicable, the rightful demand for the return of its Capital Account by the Former Member or such Former Member's trustee, executor, representative or heirs, or upon the inheritance or transfer by operation of law to any Person, the remaining Members (the "Remaining Members") shall have an option to purchase such Membership Interest. Within ninety (90) days of the Consent to Continue or within (90) days of the receipt of the rightful demand for the return of the Former Member's Capital Account, or within ninety (90) days of the inheritance or transfer of the Interest by operation of law to any Person, the Remaining Members shall notify the Manager(s) in writing of their desires to purchase a portion of the Former Member's Interest.

**7.5 VALUATION OF EXITING MEMBERS INTEREST.** If a member wants to exit the LLC, and does not have a buyer of its membership interest, exiting member will assign its interest to current members according to the following set forth procedures:

(a) A value must be placed upon this membership interest before assigned.

(b) If exiting member and current members do not agree on the value of this membership interest, exiting member must pay for a certified appraiser to appraise the LLC company value, and the exiting members’ value will be assigned a value according to the exiting members’ interest percentage.

(c) The current members must approve the certified appraiser used by exiting member. Current members have 30 days to approve the exiting members certified appraiser. If current members disapprove the certified appraiser, they must show evidence to support their disapproval of the certified appraiser as a vendor qualified to make the LLC business appraisal. Current members may not stall the process by disapproving all certified appraisers.

(d) Upon completion of a certified appraiser placing a value on the LLC, a value will be placed on exiting members’ interest according to exiting members’ percentage of membership interest.

(e) If current members disagree with the value placed on exiting members’ interest, current members must pay for a certified appraiser to value the LLC and exiting members’ interest according to the same terms.

(f) Current members’ appraiser must be completed within 60 days or right of current members to dispute the value of exiting members interest expires.

(g) Upon completion of current members certified appraiser, the exiting member must approve the value placed on exiting members’ interest. Exiting member has 30 days to approve this value.

(h) If exiting member does not approve current members’ appraiser value, the value of the LLC will be determined by adding both parties’ values, then dividing that value in half, then creating the value of the exiting members’ interest according to the exiting members’ percentage of membership interest.

**7.6 DISTRIBUTION OF EXITING MEMBERS INTEREST.** Upon determination of exiting members’ interest value, the value will be a debt of the LLC. The exiting member will only be able to demand payment of this debt at dissolution of the LLC or the following method:

(a) LLC will make timely payments.

(b) LLC will only be required to make payments towards exiting members’ debt if LLC is profitable and passed income to current members.

(c) LLC must make a debt payment to exiting member if LLC passed income of 50% of the total determined value of the exiting members’ interest in one taxable year. (Example: If exiting members’ value was $100,000 and current member(s) received $50,000 taxable income in the taxable year, the LLC would owe a debt payment to exiting member. If current member(s) only received $90,000 in passed income, there would be no payment due.)

(d) Debt payment must be at least 10% of the value of the passed income to current LLC members.

(e) LLC must make payment to exiting member within 60 days of the end of the taxable year for the LLC.

(f) Payment schedule will continue until exiting members debt is paid by LLC.

(g) If LLC dissolves, exiting member will be a regular debtor and payment will follow normal LLC dissolution payment statutes.

(h) Exiting members’ value of membership interest it assigned current members may NOT accrue interest.

(i) LLC can pay off amount owed to exiting member at any time if it so desires.

**ARTICLE VIII MISCELLANEOUS PROVISIONS**

**8.1 Complete Agreement.** This Agreement and the Certificate of Formation constitute the complete and exclusive statement of agreement among the Members. This Agreement and the Certificate of Formation replace and supersede all prior agreements by and among the Members or any of them regarding the subject matter hereof.

**8.2 Binding Effect.** Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and inure to the benefit of the Members, and their respective distributees, successors and assigns.

**8.3 Amendment of Operating Agreement.** This Agreement may be amended by, and only by, a written resolution setting forth in detail the amendment and signed by all members.

**8.4 Governing Law.** This Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Texas.

**8.5 Exhibits and Schedules.** All exhibits and schedules attached to this Agreement are incorporated by this reference and shall be treated as if set forth herein.

**8.6 Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable; the Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of the Agreement; and the remaining provisions of the Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from the Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of the Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

**CERTIFICATION OF MEMBERS**

The undersigned hereby agree, acknowledge and certify to adopt this Operating Agreement. Signed this {{ today(format=‘M/d/YYYY’) }}.

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| --- |
| {%tr for member in members %} |
| {{ member.signature }} |
| {{ capitalize(member.name) }}  Member |
| {%tr endfor %} |

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