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**OPERATING AGREEMENT**

**OF**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, L.L.C.**

THIS OPERATING AGREEMENT (this “Agreement”) of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, L.L.C.** (the “Company”), a Colorado limited liability company, is adopted, executed and agreed to by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [*Insert* *Names*] (each a “Member” and collectively, the “Members”), to be effective as of the last signature date below.

1. Organization. The Company is organized, effective as of the filing of the Company’s Articles of Organization with the Colorado Secretary of State.
2. Name. The name of the Company is **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**.
3. Purpose. The Company was formed for the purpose of engaging in any lawful act or activity for which limited liability companies may be formed under the Colorado Limited Liability Company Act, C.R.S. 7-30-101 *et seq.*, as amended (the “Act”).
4. Powers. The Company has all of the powers of a limited liability company as set forth in the Act.
5. Principal Office. The principal office address for the Company is \_\_\_\_\_\_\_\_\_\_\_

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**.

1. Registered Agent and Registered Office. The Company will continuously maintain in the State of Colorado a registered office and a registered agent. The registered office and the registered agent are specified in the Articles of Organization. The Company may change its registered office, its registered agent, or both, upon filing a statement as specified by the Act.
2. Members. The persons named in the preamble to this Agreement are the Members of the Company.
3. Capital Contributions. Concurrently with the execution of this Operating Agreement, the Company is issuing 1,000 Units to be maintained in “book format” on the records of the Company without issuing tangible certificates. If tangible certificates are issued, such certificates shall be conspicuously endorsed with the following restrictive legend:

“The interest represented by the certificate is held subject to the terms and conditions of the Company's Operating Agreement. Any encumbrance, assignment or transfer of the interest is subject to all restrictions imposed by the Operating Agreement.”

Members shall each contribute capital to the Company in the following amounts:

* 1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[*Insert* *Name*]:

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[*Insert* *Capital* *Contribution(s)*]

* 1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [*Insert* *Name*]:

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[*Insert* *Capital* *Contribution(s)*]

1. No Interest on Capital Contributions: The Company will not pay any interest on capital contributions or any other funds contributed to the Company or distributed or distributable by the Company under this Agreement.
2. Profits and Losses. All profits, losses and all other tax attributes of the Company shall be allocated among the Members as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
3. Management.

11.01 Authority of Manager. Except as provided below, the business and affairs of the Company shall be managed by its designated Manager \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[Insert Name(s)]*. The Manager shall direct, manage and control the business of the Company to the best of his/her ability and shall have full and complete authority, power and discretion to make decisions and to conduct business as the Manager shall deem to be reasonably required in light of the Company’s business and objectives. Notwithstanding the foregoing, certain major decisions as set forth below shall require the Members’ *unanimous* vote:

 (a) The determination to require additional capital of the Members;

 (b) Amendment of this Operating Agreement or Articles of Organization;

 (c) The determination to sell all or substantially all of the Company’s assets pursuant to any single transaction or series of transactions or plan;

 (d) Cause the Company to admit any additional Members;

(e) Cause the Company to incur any debt or other liabilities in any single transaction in excess of $\_\_\_\_\_\_\_\_, and/or in the aggregate in excess of $\_\_\_\_\_\_\_\_\_;

(f) Cause the Company to make any capital expenditure in any single transaction in excess of $\_\_\_\_\_\_\_\_\_\_; or

 (g) Any action which would have the effect of causing an event of default, accelerating, maturity or otherwise violating the terms of any loan agreement, note, deed of trust or other instrument given to evidence any loan transaction secured by property owned by the Company;

 (h) The making of any loans or advances by the Company to any Manager or any of the Members;

 (i) Granting a mortgage or security interest in any of the Company’s assets; and

 (j) Confess a judgment against the Company; and

 (k) Initiate litigation or arbitration;

11.02Number, Tenure and Qualifications. The number of Managers shall initially be one (1) and may be changed from time to time by amendment of this Operating Agreement. In no instance shall there be less than one Manager. Each Manager shall hold office until the next annual meeting of Members or until his successor shall have been elected and qualified. Managers need not be residents of the State of Colorado nor Members of the Company.

11.03Liability for Certain Acts. The Manager shall exercise his/her business judgment in managing the business, operations and affairs of the Company. Unless gross negligence or willful or wanton misconduct is proved by a nonappealable court order, judgment, decree or decision, a Manager shall not be liable or obligated to the Members for any mistake of fact or judgment or for the doing of any act or the failure to do any act which may cause or result in any loss or damage to the Company or its Members. A Manager does not, in any way, guarantee the return of the Members’ Capital Contributions or a profit for the Members from the operations of the Company. A Manager shall incur no liability to the Company or to any of the Members as a result of engaging in any other business or venture.

11.04Managers Have No Exclusive Duty to Company. A Manager shall not be required to manage the Company as his/her sole and exclusive function and may have other business interests and may engage in other activities in addition to those relating to the Company.

11.05Indemnity of the Managers. The Manager shall be indemnified by the Company to the fullest extent permitted by law.

11.06Tax Matters.The Manager is hereby designated as a Tax Matters Manager for all purposes. Each Member by executing this Agreement consents to the designation of such Manager and agrees to execute, certify, deliver, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent.

1. Voting by Members. Members shall be entitled to vote on all matters which provide for a vote of the Members in accordance with each Member’s percentage interest.
2. Accounting Rules. The books shall be maintained on a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[*Insert Basis; e.g. cash, accrual, etc.]***. The fiscal year of the Company shall be the calendar year. Distributions to income accounts shall be made as determined by the Members. The books shall be closed and balanced at the end of each calendar year and, if an audit is determined to be necessary, it shall be made as of the closing date. The Manager may authorize the preparation of year-end profit-and-loss statements, balance sheet, and tax returns by a public accountant..
3. Limited Liability. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, will be solely the debts, obligations and liabilities of the Company, and the Members and Managing Member will not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member or Managing Member of the Company.

1. Exculpation. The Members and Managing Member will not be liable to the Company or to any other person or entity who has an interest in the Company for any loss, damage or claim incurred by reason of any act or omission performed or omitted by the Members or Managing Member in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on the Members and Managing Member by this Agreement, except that the Members and Managing Member will be liable for any such loss, damage or claim incurred by reason of the Members’ or Managing Member’s fraud, willful misconduct, or gross negligence.
2. Members Have No Exclusive Duty to the Company. The Members shall not be required to participate in the Company as their sole and exclusive business. Members may have other business interests and may participate in other investments or activities in addition to those relating to the Company. No Member shall incur liability to the Company or to any other Member by reason of participating in any such other business, investment or activity.
3. Transferability. A Member may not, during his lifetime, sell, transfer, assign, pledge or hypothecate (collectively, "Transfer") his/her interest in the Company. Any attempted Transfer or disposition of a Member's ownership interest shall be void and of no effect unless accompanied by the prior written, unanimous approval of all Members other than the proposed transferor. Any Transfer contemplated by operation of law (e.g. arising due to death, disability, divorce, bankruptcy, etc.) shall automatically result in the “right of first refusal/purchase” in the non-transferring Member at the fair market value of the Member’s interest.
4. Dissolution Events. The Company will dissolve, and its affairs shall be wound up, upon the earliest to occur of the following: (i) The unanimous, written consent of the Members; or (ii) as required under the Act.
5. Winding Up. Upon the dissolution of the Company, the Members or their designee(s) will wind up the Company. The proceeds of liquidation of the assets of the Company distributable upon a dissolution and winding up of the Company will be applied in the following order of priority: (i) first to the creditors of the Company, including the Members, in the order of priority provided by law, in satisfaction of all liabilities and obligations of the Company (of any nature whatsoever, including, without limitation, fixed or contingent, matured or unmatured, legal or equitable, secured or unsecured), whether by payment or the making of reasonable provision for payment of those liabilities and obligations; and (ii) thereafter, to the Members.

20. Miscellaneous. Each provision of this Agreement will be considered separable and if for any reason any provision(s) are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal. This Agreement may not be modified, altered, supplemented or amended except pursuant to a written agreement executed and delivered by the Members. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders and vice versa. The headings in this Agreement are inserted for convenience only and are in no way intended to interpret, define, or limit the scope or intent of this Agreement or any provision thereof.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the last signature date below.

**MEMBERS:**

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

*INSERT NAME* Date *INSERT NAME* Date

**MANAGER:**

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

*INSERT NAME* Date