

**[COMPANY NAME] LLC**

**LIMITED LIABILITY COMPANY AGREEMENT**

This Limited Liability Company Agreement (this “**Agreement**”) of \_\_\_\_\_ LLC, a Delaware limited liability company (the “**Company**”), is adopted as of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ (the “**Member**”).

**1. Formation Matters.**

**1.1. Formation.** The Company has been formed by the Member as a Delaware limited liability company under the Delaware Limited Liability Company Act (the “**Act**”) by filing a Certificate of Formation with the Delaware Secretary of State on \_\_\_\_\_. The rights and liabilities of the Member are governed as provided under the Act, except as modified by this Agreement.

**1.2. Name.** The Company will conduct business under the name of \_\_\_\_\_ LLC or such other name as may be determined by the Member.

**1.3. Purpose.** The purpose of the Company is to transact any or all lawful business for which limited liability companies may be organized under the Act. The Company has all powers necessary or desirable to accomplish the aforesaid purpose.

**1.4. Principal Place of Business.** The principal place of business of the Company will be at such place or places as from time to time may be determined by the Board (as defined below).

**1.5. Registered Agent.** The registered office and registered agent in the State of Delaware will be as stated in the Company’s Certificate of Formation as filed with the Delaware Secretary of State.

**1.6. Qualification and Registration.** The Company and the Board will, as soon as practicable, take all action necessary to qualify the Company to do business, and to execute all certificates or other documents, and perform all filings and recordings, as are required by the laws of the State of Delaware and the other jurisdictions in which the Company elects to conduct business.

**1.7. Tax Classification.** It is the intent of the Member that the Company will be classified as a disregarded entity for United States federal income tax purposes and, to the extent possible, applicable state and local tax purposes. None of the Member, the Company or the Board may take any action that would terminate the Company’s eligibility to be a disregarded entity absent a written consent of the Member to act in contravention of such intention after assessing any potential adverse tax consequences of such action.

## **2. Capital Contributions; Accounts; Loans.**

**2.1. Initial Capital Contribution.** The Member's initial capital contribution to the Company is \$1.00 and the Member's initial percentage interest in the Company is 100% ("Percentage Interest").

**2.2. Additional Capital Contributions.** The Member has the right, but not the obligation, to contribute additional capital to the Company beyond the contribution set forth in Section 2.1. As the holder of the membership interest in the Company, the Member is the only person that has the right to contribute additional capital to the Company and has the right to recover any such additional capital. Any additional capital contribution made by the Member will not be in exchange for additional membership interest in the Company or any other consideration issued by the Company.

**2.3. Not Obligation to Return Contributions.** No time is agreed upon as to when the capital contribution of the Member is to be returned. Except as otherwise provided in this Agreement, the Member may not demand the return of its capital contribution or receive property other than cash in return for its capital contribution.

**2.4. Capital Account.** The Company will maintain a capital account for the Member. The Member's capital account will consist of the Member's initial capital contribution, increased by any additional capital contribution and by the Member's share of the Company's profits, and decreased by distributions to the Member and by the Member's share of the Company's losses. Each item of Company income, gain, loss, deduction, and credit will be treated as if realized directly by, and will be allocated 100% to, the Member. Money advanced to the Company by the Member may not be credited to the capital account of the Member, unless the advance is made expressly for the purpose of contributing additional capital.

**2.5. Restrictions Relating to Capital.** The Member (A) is not entitled to receive interest on its capital contribution, (B) may not partition or make a claim against the Company's properties, (C) will not be liable to the Company to restore any deficit balance in its capital account (except as may be required by the Act) or to reimburse any third-party for any portion of such third-party's contribution to the Company, and (D) does not have priority over any other member, if any, either as to the return of its capital contribution or as to income, losses, interest, returns, or distributions.

**2.6. Member Loans; Competitive Transactions.** The Member may lend money to and transact other business with the Company and the Member will have the same rights and obligations with respect thereto as a person who is not a member. Loans by the Member to the Company or guarantees by the Member of the Company's indebtedness are not, and may not be considered, capital contributions to the Company. Any such advance will be treated as a debt owing from the Company, payable at such times and with such rate of interest as is agreed upon by the Company and the Member making such advance or loan. Undistributed earnings and profits of the Company are not, and may not be considered, an advance of money to the Company.

**3. Distributions.** The Company may distribute cash and other assets of the Company to the Member at such other times and in such amounts as the Board may determine, after the Company has established reserves for anticipated Company needs (taking into account existing and potential liabilities and obligations of the Company) as the Board and Company deem reasonable, provided, that such distributions may be made only if, after the distribution, the assets of the Company will not be less than all liabilities of the Company, excluding liabilities to the Member on account of its capital contributions.

**4. Rights and Obligations of the Member.**

**4.1. Limitation of Liability.** The Member's liability with respect to the Company is and will be limited to the fullest extent permitted by the Act, this Agreement and any applicable law.

**4.2. Company Debt Liability.** The Member is not and will not be held personally liable for any debts, obligations or losses of the Company, whether arising in tort, contract, or otherwise, except as expressly provided under this Agreement or the Act.

**4.3. Conducting Business with Company.** The Member may lend money to (in accordance with Section 2.6), borrow money from, act as a surety, guarantor or endorser for, guarantee or assume specific obligations of, provide collateral for or transact other business with the Company, including entering into any contract with the Company. In the absence of fraud, no such contract or other transaction approved in accordance with the terms of this Agreement may be thereby affected or invalidated.

**4.4. Member Meeting.** The Member must hold at least one annual meeting during each calendar year to appoint Managers (as defined below) to the Board as provided in Section 5. The Member may convene a special meeting of the Member as it deems appropriate. The Member may execute a written consent in lieu of any meeting, setting forth the action so taken. Failure to hold an annual meeting will not affect the validity of any corporate action or work a forfeiture or dissolution of the Company.

**4.5. No Management Authority.** Except for the election of the Board pursuant to Section 4.4 or as otherwise required by this Agreement or by the Act, the Member will not participate in the management or control of the business or affairs of the Company.

**4.6. Other Activities.** The Member may engage in or possess an interest in other business ventures of any nature, whether or not similar to or competitive with the activities of the Company. Neither the Company nor any of the Managers will have any rights in or to such business ventures or any profits derived therefrom.

**5. Board of Managers.**

**5.1. Management.** The Board of Managers (the "Board") will manage or direct the management of the business, operations and properties of the Company and will exercise or perform, or direct the exercise or performance of, all powers and acts of the Company. The Board may choose to delegate duties to officers of the Company.

**5.2. Powers of the Board.** Without limiting the generality of Section 5.1, the Member hereby delegates to the Board all necessary powers to manage and carry out the purposes, business, property, and affairs of the Company, including, without limitation, the power to exercise on behalf and in the name of the Company all of the powers described in Section 18-402 of the Act, including, without limitation, the power to: (A) sell, develop, lease, distribute or otherwise dispose of the Company's assets; (B) purchase or acquire other assets of all kinds; (C) establish operating reserves for the Company to provide for contingency expenses, repairs and other matters; (D) borrow money and grant security interests in the Company's assets; (E) prepay, refinance or extend any loan affecting the Company's assets; (F) compromise or release any of the Company's claims or debts; and (G) employ persons, firms or corporations for the operation and the management of the Company's business. In the exercise of its management powers, the Board is authorized to cause the Company's officers to execute and deliver: (1) all contracts, conveyances, assignments, leases, subleases, franchise agreements, licensing agreements, management contracts and maintenance contracts covering or affecting the Company's assets; (2) all promissory notes, loans, security agreements and other similar documents; and (3) all other instruments of any other kind relating to the Company's affairs, whether like or unlike the foregoing.

**5.3. Number, Appointment, Removal and Resignation.** The Board must be comprised of at least three managers appointed by the Member as provided under Section 4.4 (each a "Manager"). Each Manager will be appointed to hold office for a period of one year unless specified otherwise by the Member or, if earlier, until such Manager resigns, dies, is removed (with or without cause) or is disqualified. If a Manager's term expires, he or she will continue to serve until his or her successor has been appointed. Any resignation will take effect at the time of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in such notice, the acceptance of the resignation is not necessary to make it effective.

**5.4. Board Expenses.** The Company will reimburse the Managers for all out-of-pocket expenses incurred in connection with their services as Managers, including, but not limited to, travel and other expenses associated with attendance of Board meetings.

**5.5. Board Meetings.** The Board must hold at least two regular meetings during each calendar year. Special meetings of the Board may be called by or at the request of the President, Secretary or by any Manager.

**5.6. Place of Meetings.** The Board may hold regular or special meetings in or out of the State of Delaware. The Board may permit any or all Managers to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Managers participating may communicate with and hear each other during the meeting.

**5.7. Notice of Meetings.** The Company must give notice to all Managers of the date, time, and place of each meeting of the Board at least two business days before each meeting. The business to be transacted and the purpose of any meeting must be specified in the notice of the meeting, although the matters covered at any meeting are not restricted by what is in the notice. All notices must be in writing, unless oral notice is deemed reasonable under the circumstances. Written notice must be given or made by electronic mail, by U.S. mail or expedited delivery currier or by facsimile transmission. Oral notice is effective if communicated in a comprehensible manner. Any Manager may waive notice of any meeting before, on or after the date of the meeting. Attendance by

a Manager of any meeting, in person or by telephone, will be deemed a waiver of notice by such Manager.

**5.8. Quorum and Manner of Acting.** At all meetings of the Board, attendance of a majority of the Managers then in office in person or by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other will constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the Board, the Managers present may adjourn the meeting, without notice other than announcement at the meeting, until a quorum is present. The affirmative vote of a majority of the Managers present at a meeting at which a quorum is present when the vote is taken will be the act of the Board. The Secretary or his or her delegate must keep complete and accurate minutes of each meeting of the Board, which minutes must be submitted for approval of the Board promptly following the end of the meeting. Any action required or permitted to be taken by the Board at a meeting may be taken without a meeting if one or more consents in writing, setting forth the action so taken, is signed by all the Managers.

## **6. Officers.**

**6.1. General.** The Board may, from time to time, appoint officers of the Company to serve the Company at the pleasure of the Board. The officers of the Company may include a President, one or more Vice Presidents, a Secretary, and a Treasurer. At the discretion of the Board, the Company may also have other officers appointed in accordance with this Section 6. Any number of offices may be held by the same person. The initial officers of the Company will be established by resolution of the Board adopted following the execution of this Agreement. None of the officers may be deemed managers as that term is used in the Act, but each officer is deemed an agent of the Company. The prior approval of the Board may be required pursuant to standing limitations adopted by the Member or the Board from time to time for certain actions of the officers of the Company that are beyond the scope of ordinary business activity of the Company.

**6.2. Term; Removal; Resignation; Vacancy.** Each officer will hold office for a period of one year or, if sooner, until removed, with or without cause, by the Board or by such other officer, if any, upon whom such power of removal may be conferred by the Board. If an officer's term expires, he or she will continue to serve until his or her successor has been appointed. Any officer may resign at any time by giving written notice to the Company. Any resignation will take effect at the time of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in such notice, the acceptance of the resignation is not necessary to make it effective. Any vacancy in any office because of death, resignation, removal, disqualification, or other cause may be filled by the Board.

**6.3. President.** The President is the principal executive officer and, subject to the control and direction of the Board, will in general supervise the day-to-day business and affairs of the Company. The President will also perform such duties and have such authority as from time to time may be delegated or assigned to him or her by the Board. Unless the Board determines otherwise or unless provided otherwise under the Company's standing limitations, the President will have authority to sign, execute, and acknowledge, on behalf of the Company, all deeds, mortgages, bonds, contracts, leases, and all other agreements, documents, and instruments necessary or proper to be executed in the course of the Company's regular business, or which are authorized by the Board.

**6.4. Vice Presidents.** In the absence of a President, or in the event of a President's death, inability, or refusal to act, or in the event for any reason it is impracticable for a President to act personally, a Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board, or in the absence of any designation, then in the order of their appointment) will perform the duties of a President, and when so acting, will have all the powers of and be subject to all the restrictions on a President. Any Vice President will also perform such duties and have such authority as from time to time may be delegated or assigned to him or her by the President or the Board. The execution of any agreement, document, or instrument of the Company by any Vice President will be conclusive evidence, as to third parties, of the Vice President's authority to act in the stead of the President.

**6.5. Secretary.** The Secretary will: (A) keep (or cause to be kept) all resolutions adopted by action of the Member and the Board in one or more books provided for that purpose; (B) use his or her best efforts to ensure that all notices are duly given in accordance with the provisions of this Agreement or as required by law; (C) be custodian of the records of the Company; and (D) in general perform all duties incident to the office of Secretary and have such other duties and exercise such authority as from time to time may be delegated or assigned to him or her by the President or by the Board.

**6.6. Treasurer.** The Treasurer will: (A) have charge and custody of and be responsible for all funds and securities of the Company; (B) receive and give receipts for moneys due and payable to the Company from any source whatsoever, and deposit all such moneys in the name of the Company in banks, trust companies, or other depositaries selected by the Company; and (C) in general perform all of the duties incident to the office of Treasurer and have such other duties and exercise such other authority as from time to time may be delegated or assigned to him or her by the President or by the Board.

**6.7. Additional Officers.** The Board may appoint such additional officers as, in its discretion, it may consider appropriate, each of whom will hold office for such period and have such authority and perform such duties as are provided for in this Agreement or as the Board may determine.

## 7. Accounting and Reports.

**7.1. Books of Account.** The Company will maintain or cause to be maintained at all times true and proper books, records, reports and accounts in accordance with generally accepted accounting principles consistently applied, which must fully and accurately reflect all transactions of the Company. The Company will allow the Member access to such records at all reasonable times. The Company must keep vouchers, statements, received bills and invoices and all other records in connection with the Company's business.

**7.2. Accounting and Reports.** The Company must close the books of account of the Company promptly after the end of each fiscal year. Promptly thereafter, the Company must make available to the Member the written reports the Member reasonably requires for federal and state income tax reporting purposes, including without limitation a balance sheet of the Company as of the end of such year, a statement of income and expenses for such year, a statement of the Member's capital account as of the end of such year, and other statements with respect to the status

of the Company and distribution of the profits and losses therefrom as are considered necessary by the Member.

**7.3. Fiscal Year.** The fiscal year of the Company will end on the last day of December in each year.

**7.4. Banking.** An account or accounts in the name of the Company will be maintained in such bank or banks as the Board may from time to time select. All monies and funds of the Company, and all instruments for the payment of money to the Company, when received, will be deposited in such bank account or accounts, or prudently invested in marketable securities or other negotiable instruments. All checks, drafts and orders on such account or accounts must be signed in the Company name by such persons in such manner as the Board may determine.

## **8. Changes in Membership or Interests.**

**8.1. Transfer of Interests.** Except as otherwise expressly provided in this Agreement, the Member may not sell, transfer, assign, give, pledge, or otherwise dispose of or encumber any part or all of its membership interest in the Company now owned or hereafter acquired, whether voluntarily, by operation of law, or otherwise, without the prior written consent of the Board. Any attempted transfer in violation of this Agreement will be null and void and the Member attempting to transfer such interest will continue to be treated as a Member for purposes of this Agreement and will continue to be bound by all of the provisions of the Agreement.

**8.2. New Members.** New members may not be admitted to the Company without the prior written consent of and upon terms approved by the Board. Upon admission, new members must sign an amended version of this Agreement approved by the Member and containing provisions appropriate for a Delaware limited liability company with more than one member.

**8.3. Resignation of Member.** The Member may resign from the Company at any time by giving written notice of such resignation to the Company. The withdrawing Member is entitled to receive within a reasonable time after withdrawal the fair value of its interest in the Company as of the date of withdrawal.

## **9. Dissolution of the Company.**

**9.1. Events Resulting in Dissolution.** The Company may be dissolved only upon the first to occur of the following:

- (A) The written determination of the Member; or
- (B) The entry of a decree of judicial dissolution under the Act.

**9.2. Liquidation and Distribution of Proceeds.** In the event of the dissolution of the Company for any reason, the Board must commence to wind up the affairs of the Company and to liquidate its assets. The Board may select a liquidating trustee who will have full power to sell, assign and encumber the Company's assets. The Member will continue to share in the profits and losses during the period of liquidation in the same proportion as before the dissolution. Any property distributed in kind in liquidation will be valued and treated as though the property was sold

and the cash proceeds were distributed. Upon liquidation, the assets of the Company will be used and distributed in the following order: (A) to pay or provide for the payment of all debts and liabilities of the Company to creditors, including to the Member if it's a creditor, to the extent permitted by law, in satisfaction of liabilities of the Company other than liabilities for distributions to the Member; (B) to the Member and any former members of the Company in satisfaction of the Company's obligations for distributions; (C) to the Member for the return of its capital contributions; and (D) to the Member in proportion to its Percentage Interest.

**9.3. Accounting.** Within a reasonable time after the date the assets have been distributed in liquidation, the Board must cause to be prepared and provided to the Member a statement setting forth the assets and the liabilities of the Company as of the date of complete liquidation and the Member's pro rata portion of distributions made pursuant to Section 9.2.

**9.4. Termination.** Upon the completion of liquidation of the Company and the distribution of all Company assets, the Company will terminate.

**10. Amendments to Agreement.** This Agreement may be altered, amended or repealed at any time and from time to time only in writing and with the approval of the Member whose aggregate Percentage Interest exceeds 50%.

**11. Indemnification.** The Company will indemnify, defend and hold harmless any person who was or is a member, manager, employee, or agent of the Company, or who is or was serving at the request of the Company as a member, director, manager, employee, or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (an "**Indemnitee**") from and against any loss, liability, damage, cost or expense (including reasonable attorneys' fees and litigation costs) (a "**Loss**") sustained or incurred by such Indemnitee as a result of any act, decision or omission concerning the business or activities of, or that otherwise is related to, the Company, except that such Indemnitee will not be indemnified to the extent of any such Loss sustained or incurred solely by reason of such person's willful misfeasance or bad faith. The Company must advance indemnification payments, including reasonable attorneys' fees and litigation costs, that reasonably appear to be due under this Agreement upon the request of any Indemnitee and the execution by such Indemnitee of a written agreement to return such payments in the event that the indemnification is ultimately determined not to be due such person under this Agreement. The Company may purchase and maintain insurance for those persons as, and to the extent not prohibited by, the Act.

**12. Miscellaneous.**

**12.1. No Third Party Beneficiaries.** The right or obligation of the Member to call for any capital contribution or to make a capital contribution or otherwise to do, perform, satisfy or discharge any liability or obligation of the Member hereunder, or to pursue any other right or remedy hereunder or at law or in equity, will not confer any right or claim upon or otherwise inure to the benefit of any creditor or other third party having dealings with the Company; it being understood and agreed that the provisions of this Agreement are solely for the benefit of, and may be enforced solely by, the Member and its successors, assigns, heirs and personal representatives except as may be otherwise agreed to by the Company in writing with the prior written approval of the Member.

**12.2. Notices.** All notices, offers or other communications required or permitted to be given pursuant to this Agreement must be in writing and will be considered as properly given or made, if mailed, five business days after mailing from within the United States by first class United States mail, postage prepaid, return receipt requested, or by personal delivery to the address of the principal place of business. The Member may change its address by giving notice to the other member, if any, and to the Secretary of the Company. Commencing on the tenth day after the giving of such notice, such newly designated address will be the Member's address for purposes of all notices or other communications required or permitted to be given pursuant to this Agreement.

**12.3. Company Property.** All property, whether real, personal or mixed, tangible or intangible, and wherever located, contributed by the Member to the Company or acquired by the Company will be the property of the Company. All files, documents, and records of the Company are the property of the Company and will remain in the possession of the Company.

**12.4. Successors.** This Agreement and its terms and provisions are binding upon and will inure to the benefit of the Member and its legal representatives, heirs, successors and assigns, except as expressly herein otherwise provided.

**12.5. Governing Law.** This Agreement is and will be governed, construed and enforced in conformity with the laws of the State of Delaware.

**12.6. Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

**12.7. Entire Agreement.** This Agreement contains the entire understanding of the Member and supersedes any prior understandings and/or written or oral agreements with respect to the subject matter of this Agreement. There are no representations, agreements, arrangements or understandings, oral or written relating to the subject matter of this Agreement which are not fully expressed herein.

\* \* \*

IN WITNESS WHEREOF, the Member has adopted this Agreement as of the day and year first above written.

MEMBER

By: \_\_\_\_\_