

LIMITED LIABILITY COMPANY AGREEMENT

of

The Newport Venture Group, LLC

a Delaware Limited Liability Company

As of _____, ____

**LIMITED LIABILITY COMPANY AGREEMENT
OF**

_____, LLC

This LIMITED LIABILITY COMPANY AGREEMENT (the “**Agreement**”) for _____, LLC (the “**Company**”), by and between _____ (the “**Managing Member**”) and _____ (collectively, the “**Members**”, with each being referred to, individually, as a “**Member**”), is made effective as of _____, _____. The Members have entered into the Agreement for the purpose of forming the Company, a limited liability company organized under the Delaware Limited Liability Company Act (the “**Act**”).

**ARTICLE 1
ORGANIZATIONAL MATTERS**

1.1 Formation.

The Members formed the Company as a limited liability company under the Act for the purposes and upon the terms and conditions hereinafter set forth. The rights, powers, duties, and liabilities of the Members shall be as provided in the Act, except as otherwise expressly provided herein. In the event of any inconsistency between any terms and conditions contained in the Agreement and any non-mandatory provisions of the Act, the Agreement shall govern.

1.2 Name.

The name of the Company shall be _____, LLC. The Company may conduct business under one or more fictitious names as the Managing Member determines. The Managing Member may also change the legal name of the Company.

1.3 Principal Place of Business; Other Places of Business.

The principal place of business of the Company is _____, or such other place as the Managing Member determines. The Company may maintain offices and places of business at such other place or places within or outside the State of Delaware as the Managing Member determines.

1.4 Business Purpose.

The Company is authorized to engage in any lawful business, purpose, or activity in which a limited liability company may engage under applicable law (including,

without limitation, the Act), as the Managing Member determines.

1.5 Certificate of Formation; Filings.

The Members have caused to be executed and filed a Certificate of Formation in the Office of the Delaware Secretary of State. The Managing Member may execute and file any duly authorized amendments to the Certificate of Formation from time to time in a form prescribed by the Act. The Managing Member shall also cause to be made, on behalf of the Company, such additional filings and recordings as he shall deem necessary or advisable.

1.6 Registered Office and Designated Agent for Service of Process.

The Company shall continuously maintain a registered office and a designated and duly qualified agent for service of process on the Company in the State of Delaware. The address of the registered office in Delaware and of the registered agent for service of process as of the effective date of this Agreement is c/o _____, Delaware 1_____.

1.7 Term.

The Company commenced existence on the date that the Certificate was first properly filed with the Office of the Delaware Secretary of State, and shall continue perpetually until duly terminated.

ARTICLE 2 DEFINITIONS

Capitalized words and phrases used and not otherwise defined elsewhere in this Agreement shall have the following meanings:

2.1 “Act”

is defined in the Preamble.

2.2 “Additional Members”

means those Persons admitted as Members pursuant to Paragraph 3.4 below.

2.3 “Affiliate”

means, with reference to a specified Person: (a) a Person that, directly or indirectly, controls, is controlled by, or is under common control with, the specified Person, (b) any Person that is an officer, *[director]*, *[general]* partner, *[managing]* member, manager, or trustee of, or serves in a similar capacity with respect to, the specified Person, or for which the specified Person is an officer, *[director,]* *[general]* partner, *[managing]* member, manager, or trustee, or serves in a similar capacity, or (c) any member of the Immediate Family of the specified Person.

2.4 “Agreement”

is defined in the Preamble.

2.5 “Assignee”

means any Person (a) to whom a Member (or Assignee thereof) Transfers all or any part of its Interest, and (b) which has not been admitted as a Substitute Member pursuant to Paragraph 7.6 below.

2.6 “Capital Account”

means the Capital Account maintained for a Member on the Company’s books and records in accordance with the accounting practices reflected in Regulations Sections 1.704-1(b) and 1.704-2, and for purposes of determining the amount of any liabilities, Code section 752.

2.7 “Capital Contributions”

means, with respect to any Member, the total amount of money and the fair market value of property (other than money) contributed to the capital of the Company by such Member, less the amount of liabilities to which any contributed property is subject, whether contributed as an initial Capital Contribution or as an additional Capital Contribution.

2.8 “Cash Available for Distribution”

means, with respect to any fiscal year, all Company cash receipts (excluding the proceeds from any Terminating Capital Transaction), after deducting payments for Operating Cash Expenses, payments required to be made in connection with any loan to the Company or any other loan secured by a lien on any Company Assets, capital expenditures, and any other amounts set aside for the restoration, increase, or creation of reasonable Reserves.

2.9 “Code”

means the Internal Revenue Code of 1986, as amended from time to time (or corresponding provisions of succeeding law).

2.10 “Company”

is defined in the Preamble.

2.11 “Company Assets”

means all direct and indirect interests in real and personal property owned by the Company, including both tangible and intangible property (including cash).

2.12 “Company Minimum Gain”

has the meaning set forth in Regulations Sections 1.704-2(b)(2) and 1.704-2(d)(1) for the phrase “partnership minimum gain.”

2.13 “Covered Person”

means the Managing Member, any other Member, an Officer, a Person to whom the Managing Member duly delegates management responsibilities, an Affiliate of a Member, or an employee or agent of the Company or of a Covered Person.

2.14 “Economic Interest”

means a Person’s right to share in the Net Profits, Net Losses, or similar items of, and to receive distributions from, the Company, but does not include any other rights of a Member including, without limitation, the right to vote or to participate in the management of the Company, or, except as specifically provided in this Agreement or required under the Act, any right to information concerning the business and affairs of the Company.

2.15 “Immediate Family”

means, and is limited to, an individual Member’s current spouse, parents, parents-in-law, grandparents, children, siblings, and grandchildren, or a trust, estate, or other estate-planning vehicle, all of the beneficiaries of which consist of such Member or members of such Member’s Immediate Family.

2.16 “Incapacity”

means the entry of an order of incompetence or of insanity, or the death, dissolution, bankruptcy (as defined in the Act), or termination (other than by merger or consolidation) of any Person.

2.17 “Majority in Interest”

means Members (or any specified subset thereof) holding, in the aggregate, a majority of the Percentage Interests held by all Members (or by such specified subset).

2.18 “Managing Member”

means _____, or any duly designated successor as Managing Member.

2.19 “Members”

means the Persons owning Membership Interests, including the Managing Member, any Additional Members, and any Substitute Members, with each Member being referred to, individually, as a “Member.”

2.20 “Membership Interest” or “Interest”

means the entire ownership interest of a Member in the Company at any particular time, including without limitation, the Member’s Economic Interest, any and all rights to vote and otherwise participate in the Company’s affairs, and the rights to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations

of such Member to comply with all of the terms and provisions of this Agreement.

2.21 “Net Profits” or “Net Losses”

means, for each fiscal year or other period, an amount equal to the Company’s taxable income or loss for such year or period determined in accordance with Code Section 703(a).

2.22 “Operating Cash Expenses”

means, with respect to any fiscal period, the amount of cash disbursed in the ordinary course of business during the period, including without limitation, all cash expenditures for advertising, promotion, property management, insurance premiums, taxes, utilities, repair, maintenance, legal, accounting, bookkeeping, computing, equipment use, travel on Company business, telephone expenses, and salaries, and direct expenses of Company employees (if any) and agents while engaged in Company business. Operating Cash Expenses shall include fees paid by the Company to any Affiliate permitted by this Agreement, and the actual cost of goods, materials and administrative services used for or by the Company, whether incurred by the Affiliate or any non-Affiliate in performing functions set forth in this Agreement reasonably requiring the use of such goods, materials, or administrative services. Operating Cash Expenses shall not include expenditures paid from Reserves.

2.23 “Percentage Interest”

means, with respect to each Member, the percentage set forth opposite such Member’s name on Exhibit “A”, attached hereto as it may be modified or supplemented from time to time.

2.24 “Person”

means and includes an individual, a corporation, a partnership, a limited liability company, a trust, an unincorporated organization, a government, or any department or agency thereof, or any other juridical entity.

2.25 “Regulations”

means Treasury Regulations promulgated under the Code and in effect, as such Regulations may be amended and succeeded from time to time.

2.26 “Reserves”

means funds set aside or amounts allocated to reserves that shall be maintained in amounts deemed sufficient by the Managing Member for working capital, to pay taxes, insurance, debt service, and other costs or expenses incident to the conduct of business by the Company.

2.27 “Responsible Party”

is defined in Paragraph 6.7.1.

2.28 “Substitute Member”

means any Person (a) to whom a Member (or Assignee thereof) Transfers all or any part of its Interest, and (b) which has been admitted to the Company as a Substitute Member pursuant to Paragraph 7.6 of this Agreement.

2.29 “Terminating Capital Transaction”

means any sale or other disposition of all or substantially all of the assets of the Company or a related series of transactions that, taken together, result in the sale or other disposition of all or substantially all of the assets of the Company.

2.30 “Termination Payment”

is defined in Paragraph 7.6.

2.31 “Transfer”

means, with respect to any Interest, a sale, conveyance, exchange, assignment, pledge, encumbrance, gift, bequest, hypothecation, or other transfer or disposition by any other means, whether for value or not and whether voluntary or involuntary (including, without limitation, by operation of law), or an agreement to do any of the foregoing. Used as a verb, the term shall mean effecting any of the foregoing.

**ARTICLE 3
CAPITALIZATION**

3.1 Initial Capitalization of Members.

The names, addresses, *[aggregate capital commitments,]* initial Capital Contributions, and Percentage Interests of the Members are set forth on Exhibit “A” attached hereto and incorporated herein. All Members acknowledge and agree that the initial Capital Contributions set forth in Exhibit “A” represent the amount of cash and the fair market value of property other than cash initially contributed by the Members.

3.2 Additional Capital Contributions by Members.

3.2.1 Except as provided in Paragraph 3.2.2 and Paragraph 3.4, no Member shall be permitted or required to make any additional Capital Contributions to the Company.

3.2.2 If from time to time the Company requires additional capital, as determined by the Managing Member, then the Managing Member may provide written notice thereof to each Member (the “Required Notice”). Each Member (including the Managing Member) shall thereafter be required to make additional Capital Contributions on a pro rata basis in accordance with their respective Percentage Interests pursuant to such terms and conditions as are contained in the Required Notice *[Need to address: (I) circumstances where Members are required to make commitments of capital in advance, (ii) circumstances in which capital contribution obligations may be*

more limited, (iii) the consequences of failing to make any capital contributions required or permitted to be made], and (iv) the consequences, if any, of any other non pro-rata contributions made to the Company].

3.3 Capital Accounts.

A Capital Account shall be established and maintained for each Member.

3.4 Additional Members.

Following formation of the Company, the Managing Member may issue Interests directly from the Company, and admit one or more recipients of such Interests as additional Members from time to time, on such terms and conditions and for such Capital Contributions, if any, as the Managing Member may determine. No action or consent by any other Member(s) shall be required in connection with the admission of an Additional Member. As a condition to being admitted to the Company, each Additional Member shall execute an agreement to be bound by the terms and conditions of this Agreement.

3.5 Member Capital.

Except as otherwise provided in this Agreement or with the prior written consent of the Managing Member: (a) no Member shall demand or be entitled to receive a return of or interest on its Capital Contributions or Capital Account, and (b) no Member shall withdraw any portion of its Capital Contributions or receive any distributions from the Company as a return of capital on account of such Capital Contributions], *and (c) the Company shall not redeem or repurchase the Interest of any Member].*

3.6 Member Loans.

No Member shall be required or permitted to make any loans or otherwise lend any funds to the Company, except with the consent of the Managing Member and the lending Member. Notwithstanding the foregoing, the Managing Member shall be permitted (but not required) to make loans to the Company to the extent the Managing Member reasonably determines that such loans are necessary or advisable for the business of the Company, provided that the terms of such loans are no less favorable to the Company than may be available from independent third parties. No loans made by any Member to the Company shall have any effect on such Member's Percentage Interest, such loans representing a debt of the Company payable or collectible solely from the assets of the Company in accordance with the terms and conditions upon which such loans were made.

3.7 Liability of Members.

Except as otherwise required by any non-waivable provision of the Act or other applicable law: (a) no Member shall be personally liable for any debt, liability, or other obligation of the Company; and (b) no Member shall have any liability to any Person in excess of (i) the amount of its Capital Contributions, and (ii) without duplication, its share of any assets and undistributed profits of the Company.

ARTICLE 4 DISTRIBUTIONS

4.1 Distributions of Cash Available for Distribution.

4.1.1 Except as otherwise provided in Article 9, Cash Available for Distribution shall be distributed to the Members only at such times as may be determined in the sole discretion of the Managing Member.

4.1.2 Subject to Article 9 hereof, all distributions of Cash Available for Distribution shall be distributed to the Members pro rata in accordance with their respective Percentage Interests.

4.2 Distributions Upon Liquidation.

Distributions made in conjunction with the final liquidation of the Company, including, without limitation, the net proceeds of a Terminating Capital Transaction, shall be applied or distributed as provided in Article 9 hereof.

4.3 Distributions in Kind.

No Member shall have a right to receive property other than cash as provided in this Agreement. The Members may determine, in their sole and absolute discretion, to make a distribution in kind of Company Assets to the Members, and such Company Assets shall be distributed in such a fashion as to ensure that the fair market value thereof is distributed and allocated in accordance with this Article 4 and Articles 5 and 9 hereof.

4.4 Withholding.

The Company may withhold distributions or portions thereof if it is required to do so by any applicable rule, regulation, or law, and each Member hereby authorizes the Company to withhold from or pay on behalf of or with respect to such Member any amount of federal, state, local or foreign taxes that the Managing Member determines that the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement. Any amounts so paid or withheld with respect to a Member pursuant to this Paragraph 4.4 shall be treated as having been distributed to such Member.

ARTICLE 5 ALLOCATIONS OF NET PROFITS AND NET LOSSES

5.1 General Allocation of Net Profits and Losses.

The Members intend that the Company be treated as a partnership, or equivalent pass-through entity, for federal, state, and local income tax purposes. Unless otherwise provided herein or permitted or required under the Code or the Regulations, Net Profits and Net Losses shall be determined and allocated with respect to each fiscal year of the Company as of the end of such fiscal year. Subject to the other provisions of this Article 5, Net Profits, Net Losses, and any other tax items for any fiscal year shall be allocated, for all purposes including the

calculation of the Capital Accounts of the Members, in proportion to the Members' respective Percentage Interests.

5.2 Tax-Related Provisions.

5.2.1 For any fiscal year during which any part of a Membership Interest or Economic Interest is transferred between the Members or to another Person, the portion of the Net Profits, Net Losses, and other tax items that are allocable with respect to such part of a Membership Interest or Economic Interest shall be apportioned between the transferor and the transferee under any method allowed pursuant to Code Section 706 as determined by the Members.

5.2.2 In the event that the Code requires allocations of tax items different from those set forth in this Article 5, the Managing Member is hereby authorized to make new allocations in reliance on the Code. Specifically, the Managing Member is authorized to take such steps as he, in his sole and absolute discretion, deems necessary or advisable in order to comply with the rules under Regulations §§1.704-1 and -2 dealing with "substantial economic effect" as it effects the allocation of income and loss. No such new allocation shall be grounds for any claim or cause of action by any Member. The Members shall be bound by the provisions of this Article 5 in reporting their shares of Net Profits, Net Losses, and other tax items for federal, state, and local income tax purposes.

5.2.3 Notwithstanding any other provisions of the Agreement, if a Member unexpectedly receives an adjustment, allocation, or distribution described in Regulations §1.704-1 (b)(2)(ii)(d)(4), (5), or (6), that Member will be allocated items of income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year) in an amount and manner sufficient to eliminate any resulting deficit balance in that Member's Capital Account. This provision is intended to be a "qualified income offset" provision within the meaning of Regulations §1.704-1(b)(2)(ii)(d), and shall be construed and applied as such by the Members.

5.2.4 To the extent possible, allocations made under this Paragraph 5.2 shall be offset by special allocations of Net Profits and Net Losses, as the case may be, in such amounts and at such times as the Managing Member deems appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the foregoing provisions of this Paragraph 5.2 were not part of this Agreement.

5.2.5 If there is a net decrease in Company Minimum Gain during a Company taxable year, then each Member shall be allocated items of Company income and gain for such taxable year (and, if necessary, for subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g)(2). This Paragraph 5.2.5 is intended to comply with the minimum gain chargeback requirement of Regulations Section 1.704-2(f) and shall be interpreted consistently therewith. The allocation otherwise required pursuant to this Paragraph 5.2.5 shall, however, not apply to a Member to the extent that the minimum gain chargeback

rules are inapplicable in a particular circumstance.

ARTICLE 6 GOVERNANCE AND OPERATIONS

6.1 Management.

6.1.1 The Managing Member shall have full, exclusive and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company and to do or cause to be done any and all acts, at the expense of the Company, as it deems necessary or appropriate to accomplish the purposes and direct the affairs of the Company. The Managing Member shall have the exclusive power and authority to bind the Company, except and to the extent that such power is expressly delegated in writing to any other Person by the Managing Member, and such delegation shall not cause the Managing Member to cease to be a Member or the Managing Member of the Company. Subject to any such delegation, the Managing Member shall be the sole agent of the Company's business, and the actions of the Managing Member taken in such capacity and in accordance with this Agreement shall bind the Company. The Managing Member shall at all times be a Member of the Company.

6.1.2 Except as otherwise expressly provided in this Agreement or required by any non-waivable provision of the Act or other applicable law, no Member other than the Managing Member shall (a) have any right to vote on or consent to any other matter, act, decision or document involving the Company or its business, or (b) take part in the day-to-day management, or the operation or control, of the business and affairs of the Company. Except to the extent expressly delegated by the Managing Member, no other Member or Person other than the Managing Member shall be an agent for the Company or have any right, power or authority to transact any business in the name of the Company or to act for or on behalf of or to bind the Company.

6.1.3 Only the Managing Member may commence a voluntary case on behalf of, or an involuntary case against, the Company under a chapter of Title 11 U.S.C. by the filing of a "petition" (as defined in 11 U.S.C. 101(42)) with the United States Bankruptcy Court. Any such petition filed by any other Member shall be deemed an unauthorized and bad faith filing and all parties to this Agreement shall use their best efforts to cause such petition to be dismissed.

6.2 Compensation and Reimbursement of Managing Member.

6.2.1 The Managing Member shall not receive any fees or other compensation for its services in administering the Company.

6.2.2 The Managing Member shall be entitled to reimbursement on a monthly basis from the Company for all out-of-pocket costs and expenses incurred

by it, in its reasonable discretion, for or on behalf of the Company.

6.3 Officers

. The Managing Member may, from time to time, designate officers of the Company and delegate to such officers such authority and duties as the Managing Member may deem advisable and may assign titles (including, without limitation, chief executive officer, president, vice-president, secretary and/or treasurer) to any such officer. Unless the Managing Member otherwise determines, if the title assigned to an officer of the Company is one commonly used for officers of a business corporation formed under the Delaware General Corporation Law, then the assignment of such title shall constitute the delegation to such officer of the authority and duties that are customarily associated with such office pursuant to the Delaware General Corporation Law. Any number of titles may be held by the same officer. Any officer to whom a delegation is made pursuant to the foregoing shall serve in the capacity delegated unless and until such delegation is revoked by the Managing Member for any reason or no reason whatsoever, with or without cause, or such officer resigns.

6.4 Records and Reports.

(a) The Managing Member shall cause to be kept, at the principal place of business of the Company, or at such other location as the Managing Member shall reasonably deem appropriate, full and proper ledgers, other books of account, and records of all receipts and disbursements, other financial activities, and the internal affairs of the Company for at least the current and past four fiscal years.

6.4.2 The Managing Member shall also cause to be sent to each Member of the Company, the following:

(a) within ninety (90) days following the end of each fiscal year of the Company, a report that shall include all necessary information required by the Members for preparation of its federal, state, and local income or franchise tax or information returns, including each Member's *pro rata* share of Net Profits, Net Losses, and any other items of income, gain, loss, and deduction for such fiscal year; and

(b) a copy of the Company's federal, state, and local income tax or information returns for each fiscal year, concurrent with the filing of such returns.

6.4.3 Members (personally or through an authorized representative) may, for purposes reasonably related to their Interests, examine and copy (at their own cost and expense) the books and records of the Company at all reasonable business hours.

6.5 Meetings of Members

. At any time, and from time to time, the Managing Member may call a meeting of the Members. No meeting is required to be called or held. Written notice of a meeting, stating the place, date and hour of the meeting and the purpose(s) for which the meeting is called,

shall be given by the Managing Member to each Member entitled to vote at such meeting not less than 3 nor more than 30 days in advance. The holders of a Majority in Interest entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the Members. Unless otherwise provided in this Agreement, any action required or permitted to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action to be so taken, shall be signed by the holders of Percentage Interests having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted. Prompt notice of the taking of any such action without a meeting by less than unanimous consent shall be given to those Members that have not consented in writing.

6.6 Removal and Withdrawal of Managing Member.

6.6.1 The Managing Member may not be removed as the Managing Member at any time *[except for actions which constitute gross negligence or willful misconduct, upon the unanimous vote of the other Members]*.

6.6.2 The Managing Member may withdraw as Managing Member at any time without the prior consent of any other Member by providing the Members written notice thereof. Concurrent with such withdrawal, the Managing Member may designate any other Member as a successor Managing Member.

6.6.3 Upon (a) *[the removal of the Managing Member pursuant to this Paragraph 6.6.1, (b)]* the withdrawal of the Managing Member as Managing Member without the designation of a successor Managing Member pursuant to Paragraph 6.6.2, or *[(b)] [(c)]* the occurrence of any event which would terminate the continued existence of the Managing Member as a Member (including, without limitation, the Incapacity of the Managing Member) *[(if the business of the Company is continued pursuant to Paragraph 9.2(b))]*, the Company shall be managed by the Members, with all actions requiring the affirmative vote of a Majority in Interest (except to the extent a greater percentage is required under this Agreement or any non-waivable provision of the Act), unless and until a Majority in Interest of the Members elect a new Managing Member. Upon *[removal (pursuant to Paragraph 6.6.1) or]* withdrawal (pursuant to Paragraph 6.6.2), the Managing Member shall remain a Member with all the rights of a Member (including, without limitation, its Economic Interest) to which it previously was entitled (other than rights to which it was entitled solely in its capacity as Managing Member).

6.7 Standards of Conduct.

6.7.1 To the extent that the Managing Member, or any Affiliate or subsidiary, or any officer, director, employee or agent of any of the foregoing (each, a “Responsible Party”) has, at law or in equity, duties (including, without limitation, fiduciary duties) to the Company, any Member or other Person bound by the terms of this Agreement, such Responsible Parties acting in accordance with this Agreement shall not

be liable to the Company, any Member, or any such other Person for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties of a Responsible Party otherwise existing at law or in equity, are agreed by all parties hereto to replace such other duties to the greatest extent permitted under applicable law.

6.7.2 Whenever a Responsible Party is required or permitted to make a decision, take or approve an action, or omit to do any of the foregoing: (a) in its discretion, under a similar grant of authority or latitude, or without an express standard of behavior (including, without limitation, standards such as “reasonable” or “good faith”), then such Responsible Party shall be entitled to consider only such interests and factors, including its own, as it desires, and shall have no duty or obligation to consider any other interests or factors whatsoever, or (b) with an express standard of behavior (including, without limitation, standards such as “reasonable” or “good faith”), then such Responsible Party shall comply with such express standard but shall not be subject to any other, different or additional standard imposed by this Agreement or otherwise applicable law.

6.8 Other Activities

The Members (including the Managing Member) may engage or invest in, and devote their time to, any other business venture or activity of any nature and description (independently or with others), whether or not such other activity may be deemed or construed to be in competition with the Company. Neither the Company nor any other Member shall have any right by virtue of this Agreement or the relationship created hereby in or to such other venture or activity of any Member (or to the income or proceeds derived therefrom), and the pursuit thereof, even if competitive with the business of the Company, shall not be deemed wrongful or improper. Notwithstanding the foregoing, the Managing Member shall devote such time to the Company as it deems reasonably necessary for the proper performance of its obligations and duties hereunder.

ARTICLE 7 INTERESTS AND TRANSFERS OF INTERESTS

7.1 Transfers.

[Except as otherwise expressly provided in this Agreement,] no Member or Assignee may Transfer all or any portion of its Membership or Economic Interest without the prior written consent of the Managing Member, which consent may be given or withheld in his sole and absolute discretion. Any purported Transfer that is not in accordance with this Agreement shall be null and void.

7.2 Further Restrictions.

Notwithstanding any contrary provision in this Agreement, unless this provision is expressly waived by the Managing Member, any otherwise permitted Transfer shall be null and void if:

- (a) such Transfer would cause a termination of the Company for federal, state, or local, if applicable, income tax purposes;
- (b) such Transfer would, in the opinion of counsel to the Company, cause the Company to cease to be classified as a partnership for federal or state income tax purposes;
- (c) such Transfer requires the registration of such Transferred Interest pursuant to any applicable federal or state securities laws;
- (d) such Transfer causes the Company to become a “Publicly Traded Partnership,” as such term is defined in section 7704 of the Code;
- (e) such Transfer subjects the Company to regulation under the Investment Company Act of 1940, the Investment Advisers Act of 1940 or the Employee Retirement Income Security Act of 1974, each as amended;
- (f) such Transfer results in a violation of applicable laws;
- (g) such Transfer is made to any Person who lacks the legal right, power, or capacity to own such Interest; or
- (h) the Company does not receive written instruments (including, without limitation, copies of any instruments of Transfer and such Assignee’s consent to be bound by this Agreement as an Assignee) that are in a form satisfactory to the Managing Member (as determined in the Managing Member’s sole and absolute discretion).

7.3 Rights of Assignees.

Until such time, if any, as a transferee of any permitted Transfer pursuant to this Article 7 is admitted to the Company as a Substitute Member pursuant to Paragraph 7.6: (i) such transferee shall be an Assignee only, and only shall receive, to the extent Transferred, the distributions and allocations of income, gain, loss, deduction, credit, or similar item to which the Member which Transferred its Interest would be entitled, and (ii) such Assignee shall not be entitled or enabled to exercise any other rights or powers of a Member, such other rights remaining with the transferring Member. In such a case, the transferring Member shall remain a Member even if he has transferred his entire Economic Interest in the Company to one or more Assignees. In the event any Assignee desires to make a further assignment of any Economic Interest in the Company, such Assignee shall be subject to all of the provisions of this Agreement to the same extent and in the same manner as any Member desiring to make such an assignment.

7.4 Admissions, Withdrawals, and Removals.

No Person shall be admitted to the Company as a Member except in accordance with Paragraph 3.4 (in the case of Persons obtaining an interest in the Company directly from the

Company) or Paragraph 7.6 (in the case of transferees of a permitted Transfer of an interest in the Company from another Person). Except as otherwise specifically set forth in Paragraph 7.7, no Member shall be entitled to retire or withdraw from being a Member of the Company without the written consent of the Managing Member, which consent may be given or withheld in the Managing Member's sole and absolute discretion. No Member shall be subject to removal except for good cause as determined by the unanimous vote of the other Members. No admission, withdrawal, or removal of a Member shall cause the dissolution of the Company. Any purported admission, withdrawal, or removal that is not in accordance with this Agreement shall be null and void.

7.5 Payment Upon Withdrawal or Removal of Member.

If any Member withdraws from the Company with the consent of the Managing Member (other than pursuant to Paragraph 7.7), or if any Member is removed pursuant to Paragraph 7.4, then such Member shall be entitled to receive from the Company a payment equal to the Member's Capital Account balance as adjusted as of the effective date of the written election of withdrawal, or such other amount as may be agreed upon by such Member and the Managing Member (in either event, the "**Termination Payment**"). The Termination Payment shall be paid on the effective date of the removal or written election of withdrawal, or on such other date as may be determined by the Managing Member. Notwithstanding the foregoing, the Company shall have the right to withhold from, and set off against, the Termination Payment of any removed Member such damages as the Managing Member may reasonably determine was suffered by the Company and/or its Members in connection with the matter(s) or event(s) resulting in such removal. If any Member attempts to withdraw from the Company (other than pursuant to Paragraph 7.7) without the consent of the Managing Member, then, notwithstanding the last sentence of Paragraph 7.4, the Managing Member may, in its sole and absolute discretion, permit such withdrawal (without waiving, in any manner, any other rights available to it or the Company at law or in equity and in addition to, and not in lieu of, any other remedies to which it or the Company may be entitled), *provided that* such withdrawing Member shall not be entitled to any Termination Payment or any other compensation whatsoever in consideration for its terminated Membership Interest.

7.6 Admission of Assignees as Substitute Members.

7.6.1 An Assignee shall become a Substitute Member only if and when each of the following conditions are satisfied:

- (a) the assignor of the Interest transferred sends written notice to the Members requesting the admission of the Assignee as a Substitute Member and setting forth the name and address of the Assignee, the Percentage Interest transferred, and the effective date of the Transfer.
 - (b) the Managing Member consents in writing to such admission, which consent may be given or withheld in the Managing Member's sole and absolute discretion; and
 - (c) the Managing Member receives from the Assignee
- (i) such information concerning the Assignee's financial capacities and investment

experience as may reasonably be requested by the Managing Member, and (ii) written instruments (including, without limitation, copies of any instruments of Transfer and such Assignee's consent to be bound by this Agreement as a Substitute Member) that are in a form satisfactory to the Managing Member (as determined in the Managing Members' sole and absolute discretion).

7.6.2 Upon the admission of any Substitute Member, Exhibit A shall be amended to reflect the name, address, and Percentage Interest of such Substitute Member and to eliminate or adjust, if necessary, the name, address, and Percentage Interest of the predecessor of such Substitute Member.

7.7 Withdrawal of Members.

If a Member has transferred all of its Membership Interest to one or more Assignees, then such Member shall withdraw from the Company if and when all such Assignees have been admitted as Substitute Members in accordance with this Agreement.

7.8 Conversion of Membership Interest.

Upon the Incapacity of a Member (*and the subsequent continuation of the business of the Company pursuant to Paragraph 9.2(b) if such Incapacity relates to the Managing Member*), such Incapacitated Member's Membership Interest shall automatically be converted to an Economic Interest only, and such Incapacitated Member (or its executor, administrator, trustee, or receiver, as applicable) shall thereafter be deemed an Assignee for all purposes hereunder, with the same Economic Interest as was held by such Incapacitated Member prior to its Incapacity, but without any other rights of a Member unless the holder of such Economic Interest is admitted as a Substitute Member pursuant to Paragraph 7.6.

ARTICLE 8

LIABILITY, EXCULPATION, AND INDEMNIFICATION

8.1 Liability.

Except as otherwise provided by the Act, the 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 neither the Managing Member, any other Member, or any proper delegate shall be obligated personally for any such debt, obligation, or liability of the Company solely by reason of being the Managing Member, a Member, or a delegate.

8.2 Exculpation.

(i) No Covered Person shall be liable to the Company or any other Covered Person for any loss, damage, or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage, or claim incurred by reason of such Covered

Person's gross negligence or willful misconduct.

(ii) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports, or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, Profits, Losses, or Net Cash Flow or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

8.3 Indemnification.

To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage, or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person (including alleged breaches of fiduciary duty) in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage, or claim incurred by such Covered Person by reason of gross negligence or willful misconduct with respect to such acts or omissions; *provided that* any indemnity under this Paragraph 8.3 shall be provided out of and to the extent of Company assets only, and no Covered Person shall have any personal liability with respect to such indemnity.

8.4 Expenses.

To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person in defending any claim, demand, action, suit, or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit, or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in Paragraph 8.3 hereof.

8.5 Insurance.

The Company may purchase and maintain insurance, to the extent and in such amounts as the Managing Member, shall, in his sole discretion, deem reasonable, on behalf of Covered Persons and such other Persons as the Managing Member shall determine, against any liability that may be asserted against or expenses that may be incurred by any such Person in connection with the activities of the Company or such indemnities, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement. The Company may enter into indemnity contracts with Covered Persons and such other Persons as the Managing Member shall determine and adopt written procedures pursuant to which arrangements are made for the advancement of expenses and the funding of obligations under Paragraph 8.4 hereof and containing such other procedures regarding indemnification as are appropriate.

ARTICLE 9

DISSOLUTION, LIQUIDATION, AND TERMINATION OF THE COMPANY

9.1 Limitations.

The Company may be dissolved, liquidated, and terminated only pursuant to the provisions of this Article 9, and the parties hereto do hereby irrevocably waive any and all other rights they may have to cause a dissolution of the Company or a sale or partition of any or all of the Company Assets.

9.2 Exclusive Causes.

Notwithstanding the Act, the following and only the following events shall cause the Company to be dissolved, liquidated, and terminated:

- (a) The occurrence of a Terminating Capital Transaction;
- (b) *[The Incapacity of the Managing Member, unless [a Majority in Interest of] the Members votes to continue the Company within ninety (90) days following the occurrence of any such Incapacity];* or
- (c) The election of the Managing Member and the written consent of a Majority in Interest of the Members.

Any dissolution of the Company other than as provided in this Paragraph 9.2 shall be a dissolution in contravention of this Agreement.

9.3 Effect of Dissolution.

The dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until it has been wound up and its assets have been distributed as provided in Paragraph 9.5 of this Agreement. Notwithstanding the dissolution of the Company, prior to the termination of the Company, the business of the Company and the affairs of the Members, as such, shall continue to be governed by this Agreement.

9.4 No Capital Contribution Upon Dissolution.

Each Member shall look solely to the assets of the Company for all distributions with respect to the Company, its Capital Contribution thereto, its Capital Account, and its share of Net Profits or Net Losses, and shall have no recourse therefor (upon dissolution or otherwise) against any other Member. Accordingly, if any Member has a deficit balance in its Capital Account (after giving effect to all contributions, distributions, and allocations for all taxable years, including the year during which the liquidation occurs), then such Member shall have no obligation to make any Capital Contribution with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other person for any purpose whatsoever.

9.5 Liquidation.

9.5.1 Upon dissolution of the Company, the Managing Member shall act as the “Liquidator” of the Company, provided, however, that, in the event of a dissolution of the Company pursuant to Paragraph 8.2(c), a Person designated by a Majority in Interest of the remaining Members shall act as Liquidator. The Liquidator shall liquidate the assets of the Company, and after allocating (pursuant to Article 5 of this Agreement) all income, gain, loss and deductions resulting therefrom, shall apply and distribute the proceeds thereof as follows:

(a) First, to the payment of the obligations of the Company, to the expenses of liquidation, and to the setting up of any Reserves for contingencies which the Liquidator may consider necessary.

(b) Thereafter, to the Members in proportion to the positive balances in the Members’ respective Capital Accounts, determined after taking into account all Capital Account adjustments for the Company taxable year during which such liquidation occurs (other than those made as a result of the distributions set forth in this Paragraph 9.5.1(b) of this Agreement), by the end of the taxable year in which such liquidation occurs or, if later, within 90 days after the date of the liquidation.

9.5.2 Notwithstanding Paragraph 9.5.1 of this Agreement, in the event that the Liquidator determines that an immediate sale of all or any portion of the Company Assets would cause undue loss to the Members, the Liquidator, in order to avoid such loss to the extent not then prohibited by the Act, may either defer liquidation of and withhold from distribution for a reasonable time any Company Assets except those necessary to satisfy the Company’s debts and obligations, or distribute the Company Assets to the Members in kind.

ARTICLE 10 MISCELLANEOUS

10.1 Managing Member as Attorney-in-Fact.

10.1.1 Each Member, including each Additional Member and Substitute Member, by its execution of this Agreement, irrevocably constitutes and appoints the Managing Member as its true and lawful attorney-in-fact with full power and authority in its name, place and stead to execute, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to carry out the provisions of this Agreement, including but not limited to:

(a) All certificates and other instruments (including counterparts of this Agreement), and all amendments thereto, which the Managing Member deems appropriate to form, qualify, continue or otherwise operate the Company as a limited liability company (or other entity in which the Members will have limited liability comparable to that provided in the Act), in the jurisdictions in which the Company may conduct business or in which such formation, qualification or continuation is, in the opinion of the Managing Member, necessary or desirable to protect the limited

liability of the Members.

(b) All amendments to this Agreement adopted in accordance with the terms hereof, and all instruments which the Managing Member deems appropriate to reflect a change or modification of the Company in accordance with the terms of this Agreement.

(c) All conveyances of Company Assets, and other instruments which the Managing Member reasonably deems necessary in order to complete a dissolution and termination of the Company pursuant to this Agreement.

10.1.2 The appointment by all Members of the Managing Member as attorney-in-fact shall be deemed to be a power coupled with an interest, in recognition of the fact that each of the Members under this Agreement will be relying upon the power of the Managing Member to act as contemplated by this Agreement in any filing and other action by it on behalf of the Company, shall survive the Incapacity of any Person hereby giving such power, and the transfer or assignment of all or any portion of the Interest of such Person in the Company, and shall not be affected by the subsequent Incapacity of the principal; provided, however, that in the event of the assignment by a Member of all of its Interest in the Company, the foregoing power of attorney of an assignor Member shall survive such assignment only until such time as the Assignee shall have been admitted to the Company as a Substitute Member and all required documents and instruments shall have been duly executed, filed and recorded to effect such substitution.

10.2 Amendments.

10.2.1 Each Additional Member and Substitute Member shall become a signatory hereto by signing such number of counterpart signature pages to this Agreement and such other instruments, in such manner, as the Managing Member shall determine. By so signing, each Additional Member and Substitute Member, as the case may be, shall be deemed to have adopted and to have agreed to be bound by all of the provisions of this Agreement.

10.2.2 The Members may amend this Agreement at any time by a Majority in Interest.

10.2.3 In making any amendments, the Managing Member shall prepare and file such documents and certificates as may be required under the Act and under the laws of any other jurisdiction applicable to the Company.

10.3 Accounting and Fiscal Year.

Subject to Code Section 448, the books of the Company shall be kept on such method of accounting for tax and financial reporting purposes as may be determined by the Managing Member. The fiscal year of the Company shall end on December 31 of each year, or on such other date permitted under the Code as the Managing Member shall determine.

10.4 Entire Agreement.

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and fully supersedes any and all prior or contemporaneous agreements or understandings between the parties hereto pertaining to the subject matter hereof.

10.5 Further Assurances.

Each of the parties hereto does hereby covenant and agree on behalf of itself, its successors, and its assigns, without further consideration, to prepare, execute, acknowledge, file, record, publish, and deliver such other instruments, documents and statements, and to take such other action as may be required by law or reasonably necessary to effectively carry out the purposes of this Agreement.

10.6 Notices.

Any notice, consent, payment, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be (a) delivered personally to the Person or to an officer of the Person to whom the same is directed, or (b) sent by facsimile or registered or certified mail, return receipt requested, postage prepaid, addressed as follows: if to the Company, to the Company at the address set forth in Paragraph 1.3 hereof, or to such other address as the Company may from time to time specify by notice to the Members; if to a Member, to such Member at the address set forth in Exhibit "A", or to such other address as such Member may from time to time specify by notice to the Company. Any such notice shall be deemed to be delivered, given and received for all purposes as of: (i) the date so delivered, if delivered personally, (ii) upon receipt, if sent by facsimile, or (iii) on the date of receipt or refusal indicated on the return receipt, if sent by registered or certified mail, return receipt requested, postage and charges prepaid and properly addressed.

10.7 Tax Matters.

10.7.1 The Managing Member shall be designated and shall operate as "Tax Matters Partner" (as defined in Code Section 6231), to oversee or handle matters relating to the taxation of the Company.

10.7.2 The Tax Matters Partner may make all elections for federal income and all other tax purposes (including, without limitation, pursuant to Section 754 of the Code).

10.7.3 Income tax returns of the Company shall be prepared by such certified public accountant(s) as the Members shall retain at the expense of the Company.

10.8 Governing Law; Certain Waivers.

This Agreement, including its existence, validity, construction, and operating effect, and the rights of each of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Delaware without regard to otherwise governing

principles of conflicts of law. The Members waive any and all rights they may have to a jury trial, and any and all rights they may have to punitive, special, exemplary, or consequential damages, in respect of any dispute based on this Agreement.

10.9 Construction.

This Agreement shall be construed as if all parties prepared this Agreement.

10.10 Captions - Pronouns.

Any titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the text of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as appropriate.

10.11 Binding Effect.

Except as otherwise expressly provided herein, this Agreement shall be binding on and inure to the benefit of the Members, their heirs, executors, administrators, successors, and all other Persons hereafter holding, having, or receiving an interest in the Company, whether as Assignees, Substitute Members, or otherwise.

10.12 Severability.

In the event that any provision of this Agreement as applied to any party or to any circumstance, shall be adjudged by a court to be void, unenforceable or inoperative as a matter of law, then the same shall in no way affect any other provision in this Agreement, the application of such provision in any other circumstance or with respect to any other party, or the validity or enforceability of the Agreement as a whole.

10.13 Confidentiality.

Each Party hereto agrees that the provisions of this Agreement, all understandings, agreements, and other arrangements between and among the parties, and all other non-public information received from or otherwise relating to, the Company shall be confidential, and shall not be disclosed or otherwise released to any other Person (other than another party hereto), without the written consent of the Members. The obligations of the parties hereunder shall not apply to the extent that the disclosure of information otherwise determined to be confidential is required by applicable law, *provided that*, prior to disclosing such confidential information, a party shall notify the Company thereof, which notice shall include the basis upon which such party believes the information is required to be disclosed.

10.14 Counterparts.

This Agreement may be executed in any number of multiple counterparts, each of which shall be deemed to be an original copy and all of which shall constitute one agreement, binding on all parties hereto.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

_____, Managing Member

_____, Member

EXHIBIT "A"
MEMBERS, CAPITAL CONTRIBUTIONS,
AND PERCENTAGE INTERESTS

Name and Address of Members	Cash Contribution	Fair Market Value of Contributed Property	Less Debt Assumed or Taken Subject to by Company	Net Agreed Value of Contributed Property	Percentage Interest
_____ _____	\$ _____	\$ _____	\$ _____	\$ _____	____%
_____ _____	\$ _____	\$ _____	\$ _____	\$ _____	____%

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