

# SOLE MEMBER OPERATING AGREEMENT OF

\_\_\_\_\_, LLC

An \_\_\_\_\_ Limited Liability Company

## 1. Company Details

This Limited Liability Company Operating Agreement (“Agreement”), entered into on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is organized as a **Single-Member LLC**, organized and entered into by \_\_\_\_\_, which is the only and sole owner having a current mailing address of \_\_\_\_\_.

WHEREAS the aforementioned Member wish to make a limited liability company under the laws and jurisdiction of the state of \_\_\_\_\_ (“State of Formation”) and therefore set out the terms of operation of the company herein.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Member and the Company agree as follows:

## 2. Name and Principal Place of Business

The Company shall be named \_\_\_\_\_, LLC and maintain a principal place of business with the address \_\_\_\_\_ or the Company shall maintain any other place of business as determined by the Member.

## 3. Formation

The Company was created and formed on \_\_\_\_\_, at which point the member filed the original Articles of Organization with the \_\_\_\_\_ office of the Secretary of State in accordance with the regulations and statutes which control limited liability companies in \_\_\_\_\_ (referred to as “Statutes”).

## 4. Purposes and Powers.

a) The purposes of the Company will be:

- (i) \_\_\_\_\_; and
- (ii) To carry out, engage in, or otherwise perform in any actions, endeavors, or businesses that a limited liability company may legally participate in under the Statutes.

- b) The Company so formed will have all the authority and power needed and useful to carry out the purposes it has been formed for, included the authority and power given by the Statutes.

5. **Duration.**

The Company shall continue in existence until dissolved, liquidated or terminated in accordance with the provisions of this Agreement and, to the extent not otherwise superseded by this Agreement, the Statutes.

6. **Capital Contributions**

The Member is able to make a contribution of capital in the amount and at the time the Member determines. The Member is not required or in any way obligated to make contributions to the Company (each instance being a “Capital Contribution”). The Member has the authority to take distributions of capital from the Company in line with any limitations set forth by the Statutes and this Agreement.

7. **Distributions**

As concerns this Agreement, “net profit” and “net loss” refer to the profit and loss of the Company during the normal course of business operations after expenses (depreciation allowance included) that were incurred as a result of those operations have been accounted for.

As concerns this Agreement, “cash receipts” refers to any cash receipts of the Company, irrespective of source, which is also inclusive of capital contributions without limit that were made by the Member, sales, exchanges, disposal of assets of the company, proceeds of loans to the Company, proceeds from refinancing a mortgage on any asset of the Company, and damages paid to the Company.

As concerns this agreement, “capital transactions” refers to the selling any portion of the Company’s assets, mortgage refinancing, refinancing other liabilities, receipt of proceeds from insurance, and any other receipts/proceeds which can be attributed to capital.

The Company shall maintain a “capital account” for the Member. The Member’s capital account reflects the capital contributions and the resultant increases for any net gain of the Company. The Member’s capital account also reflects the capital contributions and resultant reductions for any net loss and deduction of the Company.

8. **Management of the Company**

Business of the Company and related affairs will be managed by the Member of the Company in line with this Agreement and the laws of \_\_\_\_\_. The Member of the Company has complete authority to act for the Company, to perform

actions that are binding on the Company and also take out or otherwise incur expenditures on behalf of the Company. The Member will not be personally liable for the obligations, debt, or any liability of the company as a result of these actions. This includes any obligations, debt, or liability that may be incurred as a result of a decree, judgment, or court order. The Company is organized to be a member-managed limited liability company. As such the Member shall be the initial managing member of the Company.

#### **A. Other activities**

Unless otherwise limited by the Statutes, Members are allowed to participate in any other type of legal business ventures. This includes business ventures similar to the type of business ventures owned and operated by the Company. Furthermore, the Company will not have any right to the assets or interests of the Member's other independent ventures or the income and profit derived from it.

### **9. Books, Record Keeping, and Taxes**

The Company will create and properly maintain records and books that are complete and accurate. These records and books shall detail the Company's affairs and business as outlined by Statutes, and these books and records will be kept in the registered office of the Company and be separate from the records and books of the Member.

For the purpose of record keeping and books, the Company's fiscal year will be the twelve-month period ending in December.

The intention of the Member is for the Company, which is a Single-Member LLC, to be taxed as a sole proprietorship in line with the Internal Revenue Code's provisions. If any provision contained within this Agreement prevents the Company from being taxed as a sole proprietorship then it is considered invalid.

### **10. Registered Office and Resident Agent**

The Registered Office and Resident Agent of the Company will be the same as appointed in the original Articles of Organization/Certificate of Organization or any change to made therein. The Registered Office and Resident Agent of the Company may, on occasion, be changed. Changes of such nature will be made in line with the Statutes. If the changes made are different from the Statutes, they shall be made in line with the provisions contained within this Agreement. If the Resident Agent retires, the Company will appoint a successor to fill the role of Resident Agent.

### **11. Bank Accounts**

Any and all cash funds owned by the Company will be deposited in a bank account under the Company's name. The bank accounts operated by the Company shall be

chosen by the Member. Any withdrawals from the bank accounts of the Company will be made as a result of the regular course of business the Company is engaged in and will be made upon the signature or signatures that the Member might designate.

## **12. Limitation of Liability; Indemnification.**

### c) Limitation of Liability and Indemnification of Member.

- i. The Member (including, for purposes of this Section, any estate, heir, personal representative, receiver, trustee, successor, assignee and/or transferee of the Member) shall not be liable, responsible or accountable, in damages or otherwise, to the Company or any other person for: (i) any act performed, or the omission to perform any act, within the scope of the power and authority conferred on the Member by this agreement and/or by the Statutes except by reason of acts or omissions found by a court of competent jurisdiction upon entry of a final judgment rendered and un-appealable or not timely appealed (“Judicially Determined”) to constitute fraud, gross negligence, recklessness or intentional misconduct; (ii) the termination of the Company and this Agreement pursuant to the terms hereof; (iii) the performance by the Member of, or the omission by the Member to perform, any act which the Member reasonably believed to be consistent with the advice of attorneys, accountants or other professional advisers to the Company with respect to matters relating to the Company, including actions or omissions determined to constitute violations of law but which were not undertaken in bad faith; or (iv) the conduct of any person selected or engaged by the Member.
- ii. The Company, its receivers, trustees, successors, assignees and/or transferees shall indemnify, defend and hold the Member harmless from and against any and all liabilities, damages, losses, costs and expenses of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by the Member (including amounts paid in satisfaction of judgments, in settlement of any action, suit, demand, investigation, claim or proceeding (“Claim”), as fines or penalties) and from and against all legal or other such costs as well as the expenses of investigating or defending against any Claim or threatened or anticipated Claim arising out of, connected with or relating to this Agreement, the Company or its business affairs in any way; provided, that the conduct of the Member which gave rise to the action against the Member is indemnifiable under the standards set forth in Section 10(i).

- iii. Upon application, the Member shall be entitled to receive advances to cover the costs of defending or settling any Claim or any threatened or anticipated Claim against the Member that may be subject to indemnification hereunder upon receipt by the Company of any undertaking by or on behalf of the Member to repay such advances to the Company, without interest, if the Member is Judicially Determined not to be entitled to indemnification under Section 10(a)(b).
- iv. All rights of the Member to indemnification under this Section 10(a) shall (i) be cumulative of, and in addition to, any right to which the Member may be entitled to by contract or as a matter of law or equity, and (ii) survive the dissolution, liquidation or termination of the Company as well as the death, removal, incompetency or insolvency of the Member.
- v. The termination of any Claim or threatened Claim against the Member by judgment, order, settlement or upon a plea of *nolo contendere* or its equivalent shall not, of itself, cause the Member not to be entitled to indemnification as provided herein unless and until Judicially Determined to not be so entitled.

### **13. Dissolution and Liquidation**

The Company will dissolve and its affairs settled when the first of the following occurs:

- i. When the appointed time or when an event stipulated in the Articles or Organization or this Agreement occurs.
- ii. The Member determines that the Company will be dissolved

If the Member dies, the Company will be dissolved. The Member create written documentation that appoints an individual to wind down the business of the Company and transfer the Member's interests or the Members capital account in accordance with the Member's wishes or as required by law.

If the Member becomes disabled, the Member can act as manager or designate another individual to serve in their stead indefinitely or until the interests and capital accounts of the Member have been properly distributed or transferred.

### **14. Severability**

This Agreement as well as the liabilities and rights of the involved parties herein will be governed by as well as determined in line with the laws of \_\_\_\_\_, the State of Formation. If it is found that any provision in this Agreement is invalid or unenforceable, it will not impact the other provisions contained within this Agreement which will remain in full force and effective.

There are captions in this Agreement and are used for convenience to help readers understand the Agreement and are not meant to be used to interpret or in any way construe the Agreement. Pronouns will be considered masculine, feminine, neuter, singular, or plural as the situation demands.

### **15. Entire Agreement**

It is understood by the parties of this Agreement that this Agreement and any amendments made hereunto can be executed in counterparts, all of which, when taken together, will form a single agreement.

This Agreement sets forth the entire agreement of the parties hereto with respect to the subject matter hereof. The intention of the Member is that this Agreement is the only agreement with respect to its subject, except when it contravenes income tax rules or is prohibited under the relevant Statutes, this Agreement shall hold sway even with it is not consistent with or it is different from the applicable laws. For any provision of this Agreement that is prohibited or considered ineffective under the prevalent Statutes, the provision in question will be considered ineffective to the smallest degree possible so as to make this Agreement effective under the Statutes.

Subject to the limitations on transferability set forth above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, executors, administrators, successors, and assigns.

No provision of this Agreement is intended to be for the benefit of or enforceable by any third party.

### **16. Amendment**

This Agreement may be amended or revoked at any time by a written document executed by the Member.

**IN WITNESS WHEREOF**, the Member has hereunto set such Member's hand as of the day and year first above written.

\_\_\_\_\_, LLC

Managing Member's Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

**ACKNOWLEDGMENT OF NOTARY PUBLIC**

STATE OF \_\_\_\_\_

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, as Managing Member of this LLC Operating Agreement and who proved to me through government issued photo identification to be the above-named person, in my presence executed foregoing instrument and acknowledged that they executed the same as their free act and deed.

\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_