Operating Agreement Of

[INSERT NAME OF COMPANY] LLC

A NEW YORK LIMITED LIABILITY Company

This Operating Agreement, dated as of **[INSERT DATE]** by and between the persons who have executed the signature page(s) hereof as Members and the persons who from time to time hereafter execute this Agreement as Members.

WITNESSETH:

WHEREAS, the parties seek to be members of a limited liability company known as **[INSERT NAME OF COMPANY]** (the “Company” or the “LLC”) under New York Limited Liability Company Law (the “Act”) and upon the terms and conditions of this Agreement; and

WHEREAS, the Members wish to set forth their agreement as to how the business and affairs of the Company shall be managed and their rights and obligations with respect to the Company;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties hereby agree as follows:

**ARTICLE I.**

**Formation and Business of the Company**

* 1. **Formation and Name.** The Company was organized in accordance with and pursuant to the New York Limited Liability Company Act. The Company may do business under the name set forth previously and, as permitted by applicable law, under any other name determined from time to time by the Members.
  2. **Company Purpose**. The Company may exercise all powers necessary to or reasonably connected with the Company’s business from time to time, and may engage in all activities necessary, customary, related or incidental to any of the foregoing.
  3. **Members**. The names, addresses, facsimile numbers, taxpayer identification numbers and “Percentage Interest” or “Membership Interest” of each of the Members are set forth in the attached **Schedule “A”** and may be amended from time to time in accordance with this Agreement.
  4. **Principal Office.** The Company’s principal place of business shall be located at the below address or such other place determined from time to time by the Members: **[INSERT COMPANY’S BUSINESS ADDRESS] .** The Company may have such other business offices within or without the State of New York as determined from time to time by the Members.
  5. **Registered Agent**. The name and address of the Company’s registered agent in the State of New York is: **[INSERT NAME OF DESIGNATED REGISTERED AGENT AND COMPANY’S BUSINESS ADDRESS]**. The registered agent may be changed from time to time by the Managers upon the filing of the name and address of the new registered agent with the New York Secretary of State pursuant to the Act.
  6. **Term**. The term of the Company shall commence on the date hereof and shall be of unlimited duration, unless the Company is earlier dissolved in accordance herewith and with the Act.

**ARTICLE II.**

General Terms and Definitions

The following terms, as used in this Agreement, shall have the following meanings (unless otherwise expressly provided herein):

“Agreement” shall mean this Operating Agreement, as originally executed and as amended from time to time in accordance herewith and with the Act.

“Articles of Organization” shall mean the Articles of Organization of the Company, as filed with the New York Secretary of State, as amended from time to time in accordance herewith and with the Act.

“Assignee” shall mean the holder of an Economic Interest who is not a Member.

“Code” shall mean the Internal Revenue Code of 1986, as amended, in effect as of the date hereof and as amended from time to time hereafter.

“Economic Interest” shall mean the right to Membership Interest in the allocation of one or more of the Company’s allocable items, including, without limitation, Net Profits and Net Losses, and/or in distributions of the Company’s assets, in each case pursuant to this Agreement or the Act, but shall not include any Management Interest.

“Initial Capital Contribution” of a Member shall mean its initial contribution to the capital of the Company pursuant to this Agreement.

“Management Interest” of a Member shall mean his or its right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in, any decision or action of or by the Members hereunder or under the Act.

“Membership Interest” or “Interest” shall mean a Member’s entire interest in the Company, including his or its Economic Interest (to the extent not Transferred) and Management Interest.

“Treasury Regulations” or “Treas. Reg.” shall mean regulations promulgated under the Code in effect as of the date hereof or hereafter amended or adopted.

"Member" or "Interest Holder" shall mean those names as set forth on Schedule “A” of the Company’s Operating Agreement.

**ARTICLE III**

Capital Contributions and Capital Accounts

* 1. **Capital Contributions.** “Capital Contribution” of, or attributed to, a Member shall mean the total contributions to the capital of the Company, whether in cash, property (net of liabilities) or services, made, performed or to be performed by, or attributed to, such Member, to the extent actually performed, valued on the date of contribution or commitment to contribute as set forth herein in the Company’s books and records. Any property described herein shall have the agreed fair market value as set forth herein on the date hereof. Each Member contributing property as a Capital Contribution represents and warrants, as of the date of such Capital Contribution, that it has good and marketable title to such property, free and clear of all liens, claims, encumbrances, restrictions and other interests whatsoever. Each such Member shall bear all costs and expenses in connection with the transfer of any personal or real property to the Company.
  2. **Maintenance of Capital Accounts**. The Company shall establish and maintain a Capital Account for each Member. The initial Capital Accounts shall be in amounts equal to the Members’ Initial Capital Contributions. A Member’s Capital Account shall be increased by the amount of any additional Capital Contributions made by, and the income and gain allocated to, such Member, and shall be decreased by any losses and deductions allocated, or distributions made, to such Member pursuant to the terms of this Agreement. It is the intention of the Members that Capital Accounts be maintained strictly in accordance with Treas. Reg. SECTION 1.704-1(b)(2)(iv). No interest shall be paid upon any Member's capital account. If an Interest is transferred as permitted by this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account relates to such transferred interest in accordance with Treas. Reg. SECTION 1.704-1(b)(2)(iv)(l).
  3. **Return of Capital Contributions.** Except as otherwise provided in this Agreement, no Member shall have any right to withdraw, demand or receive (a) any cash or property of the Company in return of its Capital Contribution or in respect of its Membership Interest until the dissolution of the Company or (b) any distribution from the Company in any form other than cash.
  4. **Additional Capital Contributions.** No Member shall be required to make any capital contribution beyond any initial capital contribution.

**ARTICLE IV**

Distributions and Allocations

* 1. **Allocation of Net Profits and Net Losses**. The income, gains, losses, deductions and credits of the Company, whether resulting from the Company’s operations or in connection with its dissolution, for federal, state and local income tax purposes, shall be allocated among the Members in proportion to their respective Membership Interests.
  2. **Tax Returns and Other Elections.** The Members shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all applicable laws of each jurisdiction in which the Company does business. Copies of all such returns, or summaries thereof, shall be furnished to the Members within a reasonable time after the end of each Fiscal Year.
  3. **Distributions**. At the end of each Company accounting year (or more frequently if the Members so determines), the Members shall determine the amount of Cash Available for Distribution, if any, and shall distribute Cash Available for Distribution in the following order of priority: (1) In payment of loans of the Company owing to the Members. If more than one Member has loaned funds to the Company, the repayment of such loans by the Company out of Cash Available for Distribution shall be made on a pari passu basis (i.e. proportionally) to the Members in the proportion that the then principal and interest balance of a Member’s loan bears to the then principal and interest balance of all Member loans; (2) In payment to all Members in accordance with and pro rata in proportion to their respective Percentage Interests in the Company.
  4. “**Cash Available for Distribution**,” as of any date, shall mean, except as otherwise determined by the Members the excess of (a) all revenues received by the Company from its operations and investments over (b) total current operating expenses and reasonable reserves for future operating expenses, including payments in respect of indebtedness of the Company, capital improvements and contingencies, as determined from time to time by the Members.
  5. **Limitation on Distributions**. No distribution may be made by the Company if after giving effect to the distribution: (i) the Company would not be able to pay its debts as they became due in the usual course of business, or (ii) the Company’s total assets would be less than the sum of its total liabilities.
  6. **Liability for Wrongful Distributions**. A Member who receives a distribution from the Company which the Member knows to be in violation of this Agreement or the Act shall be liable to the Company for the amount of such distribution for a period of three (3) years after it was made.

ARTICLE V

**Membership Certificates**

Membership Interests may, but are not required to, be evidenced by certificates issued by the Company, provided that any such certificate shall carry a conspicuous legend noting the existence of the restrictions on transfers as set forth herein. Nothing contained herein, nor the issuance of any such certificate, shall be deemed evidence of, or an admission that, any Membership Interest constitutes a security for any purpose.

ARTICLE VI

Management

* 1. **Management by Members**. Except as otherwise provided in this Agreement, the property, business and affairs of the Company will be managed by the Members, who will have full authority, power and discretion to make all decisions with respect to the Company’s business, perform any and all other acts customary or incident to such management, and perform such other services and activities set forth in this Agreement in accordance herewith and with the Act.
  2. **Agency**. Except as otherwise set forth in this Agreement or determined by the Members, each Member shall have authority to bind the Company with respect to any such act, provided that the Members have approved it in accordance herewith or with the Act.
  3. **Voting.** Members shall be entitled to vote based on their Membership Interest in the Company as set forth herein. Except as otherwise expressly required by the Act, the Articles of Organization or this Agreement, the majority in interest vote of the Members present and entitled to vote on, or take action with respect to, any matter shall be the act of the Members.
  4. **Meetings; Minutes; Written Consent.** Action of the Members may be accomplishedwith or without a meeting. If a meeting is held however, evidence of any action taken at said meeting shall be by meeting minutes or resolutions signed by all the Members present at said meeting. Action without a meeting may be evidenced by a written consent signed by all of the Members. Meetings of the Members may be called by any Member for any legitimate business purpose.
  5. **Reliance on Information.** In performing his/its duties, a Member shall be entitled to rely on information, opinions, reports or statements, including financial statements, in each case prepared or presented by: (a) one or more agents or employees of the Company; or (b) counsel, public accountants or other persons, as to matters that the Member reasonably believes to be within their respective professional or expert competence, as long as the Member relies thereon in good faith and has no knowledge that would cause such reliance to be unwarranted.
  6. **Execution of Documents**. Except as otherwise determined by the Members, any document or instrument may be executed and delivered on behalf of the Company by any Member including, without limitation, any deed, mortgage, note or other evidence of indebtedness, lease, security agreement, financing statement, contract of sale or other instrument purporting to convey or encumber, in whole or in part, any or all of the assets of the Company at any time held in its name, or any compromise or settlement with respect to accounts receivable or claims of the Company; and, subject to the authorization requirements set forth herein or in the Act, no other signature shall be required for any such instrument to bind the Company. Any third person dealing with the Company, may rely upon a certificate signed by a Member as to (i) the identity of the Members, (ii) acts by the Members, (iii) any act or failure to act by the Company, or (iv) any other matter involving the Company or any Member.

ARTICLE VII

Investment Representations of Members

Each Member hereby represents and warrants to the Company and each other Member as follows: The Interest owned by it has not been registered under the Securities Act of 1933, the New York State securities act or any other state securities laws (collectively, the “Securities Acts”) because the Company is issuing such Interest in reliance upon exemptions from the registration requirements contained in the Securities Acts for issuances not involving a public offering; The Company has relied upon the fact that the Interest is to be held by such Member for investment purposes only, and not with a view to any resale or distribution thereof; The Company is under no obligation to register or qualify the Interest or to assist any Member in complying with any exemption from registration under the Securities Acts if such Member wishes to dispose of the Interest; and Each Member is acquiring the Interest for his or its own account, for investment purposes only, and not with a view to the resale or distribution thereof; Before acquiring the Interest, each Member investigated the Company and its business, and the Company made available to it all information necessary to make an informed decision to acquire the Interest; and Nothing contained herein is intended to be construed as an admission that any Interest is a “security” for purposes of any of the Securities Acts or other applicable law.

**ARTICLE VIII**

Transferability

* 1. **General**. Except as otherwise specifically provided in this Agreement, no Member shall have the right to transfer any Interest to a non-Member without unanimous vote of the non-transferring Members, which may be withheld for any reason or no reason, in its or their sole discretion. Upon the Transfer of all of a Member’s Economic Interest, the Transferor shall cease to be a Member. No Member may pledge or encumber an Interest, in any manner, whether voluntarily or involuntarily, by operation of law or otherwise, without the affirmative consent of the Members. Any transfer or attempted transfer of an Interest in violation of the terms of this Agreement shall be null and void and have no effect.

ARTICLE IX

Dissolution and Termination

* 1. **Events Causing Dissolution and Winding-up.** The Company shall be dissolved and wound up upon the first to occur of the following events: (1) the written unanimous vote of the Members; (2) a Member’s voluntary retirement or withdrawal from the Company if the remaining Members elect to dissolve the Company as set forth in paragraph 9.2; (3) the sale or other disposition of all or substantially all of the business or assets of the Company; (4) the entry of a decree of judicial dissolution under Section 702 of the Act.
  2. **Election to Dissolve the Company.** A Member’s voluntary withdrawal from the Company will not result in the dissolution, winding up and termination of the Company unless, within 180 days after the occurrence of such event, the remaining Members, determined as of the date of such event, elect, in their sole discretion, to dissolve the Company. If the Members do not elect to dissolve the Company under this Paragraph 9.2, the Company shall continue as a Company pursuant to the Act under this Agreement until the first to occur of the end of the Company’s term or a subsequent event causing dissolution hereunder or under the Act.
  3. **Winding up of the Company.** If the Company is to be dissolved in accordance with Paragraphs 9.2 or 9.3 of this Article IX, then the Members or other Persons selected by the Members (the “Liquidator”) shall wind up the affairs of the Company, including by selling or otherwise liquidating the Company assets in a bona fide sale or sales to third Persons at such prices and upon such terms as they may determine. If the Liquidator determines that an immediate sale would be financially inadvisable, it may defer sale of the Company assets for a reasonable time, or distribute the assets in kind. During the winding up period, the Liquidator may exercise all powers granted to the Members under this Agreement, and may adopt such plan, method or procedure as may be reasonable to effect an orderly winding up. The proceeds of any liquidation of the Company shall be distributed in the following order of priority (to the extent that such order of priority is consistent with the laws of the State of New York): first, to the payment of the debts and liabilities of the Company and the expenses of dissolution and liquidation; then, to the establishment of any reserves which the Liquidator shall deem reasonably necessary for payment of such other debts and liabilities of the Company (contingent or otherwise), as are specified by the Liquidator, such reserves to be held in escrow by a bank or trust company selected by the Liquidator and to be disbursed as directed by the Liquidator in payment of any of the specified debts and liabilities or, at the expiration of such period as the Liquidator may deem advisable, to be distributed in the manner hereinafter provided; and then, to the Members according to their respective percentage interests. If any assets are distributed in kind, they shall be distributed on the basis of the fair market value thereof as determined by appraisal, and shall be deemed to have been sold at fair market value for purposes of the allocations set forth herein. The Company shall terminate when all assets of the Company have been sold and/ or distributed and all affairs of the Company have been wound up.
  4. **Articles of Dissolution.** Within ninety (90) days following the dissolution and the commencement of winding up of the Company, Articles of Dissolution shall be prepared, executed and filed in accordance with the Act.

ARTICLE X

Miscellaneous Provisions

* 1. **Notices**. Except as otherwise set forth herein, any notice, demand or communication required or permitted to be given under this Agreement shall be (a) in writing, (b) delivered by hand, nationally recognized overnight courier service, confirmed email or facsimile, addressed to a party at its mailing address or facsimile number set forth in the books and records of the Company, and (c) deemed to have been given on the date delivered by hand or sent by facsimile or one business day after deposit with such courier service.
  2. **Application of New York Law**. This Agreement, and the application or interpretation hereof, shall be governed by, and in accordance with, the laws of the State of New York applicable to agreements made and fully to be performed therein, and specifically the Act.
  3. **Execution of Additional Instruments.** Each Member hereby agrees to execute such other and further documents and instruments, including, without limitation, statements of their Interests and powers of attorney, as necessary to comply with applicable law or otherwise as reasonably requested by the Managers or other Members.
  4. **Construction**. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the neuter gender shall include the feminine and masculine genders and vice versa.
  5. **Headings**. The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.
  6. **Waivers; Rights and Remedies Cumulative.** The failure of any party to pursue any remedy for breach, or to insist upon the strict performance, of any covenant or condition contained in this Agreement shall not constitute a waiver of any such right with respect to any subsequent breach. Except as otherwise expressly set forth herein, rights and remedies under this Agreement are cumulative, and the pursuit of any one right or remedy by any party shall not preclude, or constitute a waiver of, the right to pursue any or all other remedies. All rights and remedies provided under this Agreement are in addition to any other rights the parties may have by law, in equity or otherwise.
  7. **Severability**. If any provision, or portion thereof, of this Agreement, or its application to any Person or circumstance, shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement, such provision and their application shall not be affected thereby, but shall be interpreted without such unenforceable provision or portion thereof so as to give effect, insofar as is possible, to the original intent of the parties, and shall otherwise be enforceable to the fullest extent permitted by law.
  8. **Successors and Assigns.** All of the covenants, terms, provisions and agreements contained in this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and permitted assigns.
  9. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
  10. **Entire Agreement.** This Agreement, and the Articles of Organization, embody the entire understanding and agreement between the Members concerning the subject matter hereof and supersede any and all prior negotiations, understandings or agreements with respect thereto. To the extent the Act addresses a matter not otherwise addressed by this Agreement, it is the intention of the Members that the provisions of the Act shall apply, but no such application shall otherwise affect any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates specified herein.

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

**Name:**

**DATE:**

**SCHEDULE “A”**

**LIST OF MEMBERS**

NAME AND ADDRESS PERCENTAGE INTEREST CAPITAL CONT.

[name of member 100% $100