SAMPLE OPERATING AGREEMENT FOR PLLC

Sample

Sample

OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") is made this _____ day of ________________, 20__ by and among the Members listed on Exhibit A attached hereto.

WITNESSETH:

WHEREAS, the parties desire to form a professional services limited liability company known as ___________________________, PLLC (the "Company") pursuant to the New York Limited Liability Company Law; and

WHEREAS, the parties desire to establish their respective rights and obligations pursuant to the New York Limited Liability Company Law in connection with forming the Company.

NOW, THEREFORE, in consideration of the covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

Definitions

1.1 Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

(a) "Articles of Organization" shall mean the Articles of Organization of the Company (as hereinafter defined) filed with the New York Secretary of State, as they may from time to time be amended or restated.

(b) "Board of Managers" shall mean the board of natural persons which manage the Company in accordance with the terms of this Agreement.

(c) "Capital Account" shall mean the capital account of a Member (as hereinafter defined) maintained pursuant to Section 8.4.

(d) "Capital Contribution" shall mean any contribution by a Member to the capital of the Company in cash, property or a promissory note or other binding obligation.

(e) "Code" shall mean the Internal Revenue Code of 1986, as amended, or any superseding federal revenue statute.

(f) "Company" shall mean ______________, PLLC.

(g) "Distribution" shall mean any cash and other property paid to a Member by the Company from Net Cash Available for Distributions (as hereinafter defined).

Sample
Sample

(h) "Fiscal Year" shall mean the fiscal year of the Company, which shall be the year ending December 31.

(i) "Majority in Interest" shall mean the Members whose aggregate share of Units (as hereinafter defined) constitutes more than one-half (1/2) of the aggregate of Units of all Members.

(j) "Manager" shall mean any natural person which serves on the Board of Managers of the Company in accordance with the terms of this Agreement.

(k) "Member" shall mean each Person who executes and delivers a counterpart of this Agreement as a member of the Company and each Person who may hereafter become a party to this Agreement.

(l) "Membership Interest" shall mean with respect to any Member such Member's aggregate rights in the Company (which may be expressed as a percentage, computed by dividing the number of Units held by such Member by the aggregate of Units of all Members), including, without limitation, such Member's right to receive Distributions, have Net Profits (as hereinafter defined) and Net Losses (as hereinafter defined) allocated to such Member, and the right to vote.

(m) "Net Cash Available for Distributions" shall mean: (i) that amount of cash which is available for Distribution from operations of the Company; less (ii) reserves as established by the Board of Managers in accordance with the terms of this Agreement.

(n) "Net Losses" shall mean the net losses of the Company, if any, determined in accordance with generally accepted accounting principles.

(o) "Net Profits" shall mean the net income of the Company, if any, determined in accordance with generally accepted accounting principles.

(p) "New York Act" shall mean the New York Limited Liability Company Law.

(q) "Person" shall mean any natural person, corporation, governmental authority, limited liability company, partnership, trust, estate, joint venture, unincorporated association or other individual or entity.

(r) "Three-Quarters in Interest" shall mean the Members whose aggregate share of Units constitutes three-quarters (3/4) of the aggregate of Units of all Members.

(s) "Treasury Regulations" shall mean all proposed, temporary and final regulations promulgated under the Code as from time to time in effect.

(t) "Unit" shall mean each unit of a Membership Interest held by a Member.

Sample
Sample

ARTICLE II

Organization

2.1 Formation. One (1) or more Persons has acted as an organizer or organizers to form the Company by preparing, executing and filing with the New York Secretary of State the Articles of Organization pursuant to the New York Act.

2.2 Name. The name of the Company is ________________________, PLLC.

2.3 Principal Place of Business. The principal place of business and principal office of the Company within the State of New York shall be __________________________________. The Company may establish any other places of business as the Board of Managers may from time to time deem advisable.

2.4 Duration. The duration of the Company shall be perpetual; provided, however, that the Company may be dissolved sooner pursuant to this Agreement or the New York Act.

2.5 Purposes. The purpose for which the Company is formed is to provide professional _______________ services.

ARTICLE III

Members

3.1 Names; Addresses; Units. The name and address of each Member, as well as the number of Units issued to such Member, are as set forth on Exhibit A to this Agreement, as may be amended from time to time in connection with the transfers of Membership Interests and the admission of new Members in accordance with the provisions of this Agreement.

3.2 Additional Members. Subject to the requirements set forth in Article XI, a Person may be admitted as a Member of the Company after the date of this Agreement upon the vote or written consent of Members holding at least Three-Quarters in Interest; provided, however, that such Person shall meet the eligibility requirements of the New York Act.

3.3 Disqualification of Members, Managers and Employees. If any Member, Manager or employee of the Company who has been rendering professional service to the public becomes legally disqualified to practice his, her or its profession within New York State, he, she or it shall sever all employment with and financial interests (other than interests as a creditor or vested rights under a bona fide retirement program) in the Company forthwith or as otherwise provided in Section 3.4. Such legal disqualification to practice such profession within New York State shall be deemed to constitute an irrevocable offer by the disqualified Member to sell his, her or its Membership Interest to the Company, pursuant to the provisions of Section 3.4.

3.4 Death, Disqualification or Dissolution of Members.

Sample
Sample

(a) The Company shall purchase or redeem the Membership Interest of a Member in case of such Member's death or disqualification pursuant to Section 3.3 within six (6) months after (1) the appointment of the executor or administrator or other legal representative of the estate of the deceased Member or (2) such disqualification or dissolution, as the case may be, at a price equal to ____________ and in accordance with the other terms and conditions set forth in Section 11.3. Nothing herein contained shall prevent the Company from paying pension benefits or other deferred compensation to or on behalf of a former or deceased Member, Manager or employee. The provisions of this Section 3.4 shall not be deemed to require the purchase of the Membership Interest of a disqualified Member when the period of disqualification is for less than six (6) months and the Member again becomes eligible to practice his or her profession within six (6) months from the date of disqualification.

(b) Notwithstanding the provisions of Section 3.4(a), the Company shall not be required to purchase or redeem the Membership Interest of a deceased or disqualified or dissolved Member if such Membership Interest, within the time limit prescribed in Section 3.4(a) is sold or transferred to another professional pursuant to the provisions of the New York Act.

3.5 Information. Each Member may inspect during ordinary business hours and at the principal place of business of the Company the Articles of Organization, this Agreement, any amendments to this Agreement, the minutes of any meeting of the Members and/or Board of Managers and any tax returns of the Company for the immediately preceding three (3) Fiscal Years.

3.6 Limitation of Liability. Each Member's liability shall be limited as set forth in this Agreement, the New York Act and other applicable law. Except as otherwise provided herein, a Member shall not be personally liable for any indebtedness, liability or obligation of the Company.

3.7 Sale of All Assets. The Members shall have the right, by the vote or written consent of Members holding at least Three-Quarters in Interest, to approve the sale, lease, exchange, mortgage, pledge or other transfer of all or substantially all of the assets of the Company.

3.8 Merger or Consolidation. The Members shall have the right, by the vote or written consent of Members holding at least Three-Quarters in Interest, to approve a merger or consolidation involving the Company.

3.9 Liability of a Member to the Company. A Member who or which rightfully receives the return of any portion of a Capital Contribution is liable to the Company only to the extent now or hereafter provided by the New York Act.

3.10 Financial Adjustments. Except as otherwise provided in this Agreement, no Member admitted after the date of this Agreement shall be entitled to any retroactive allocation of Net Losses or Net Profits of the Company. The Board of Managers may, at the discretion of the Board of Managers, at the time an additional Member is admitted, close the books and records of the Company (as though the Fiscal Year had ended) or make pro-rata allocations of Net Losses and Net Profits to such additional Member for that portion of the Fiscal Year in which such Member was admitted, in accordance with the Code.

Sample
Sample

3.11 Liability of Members. To the fullest extent now or hereafter permitted under the New York Act or other applicable law, no Member shall be liable to the Company or any other Member for damages for any breach of duty by such Member in his/her/its capacity as such. To the fullest extent now or hereafter permitted under the New York Act or other applicable law, no Member shall be liable for any of the debts, obligations or liabilities of the Company.

3.12 Indemnification. The Company shall indemnify and hold harmless, and advance expenses to, each Member (in his/her/its capacity as a Member) from and against, and in connection with, all claims and demands whatsoever to the maximum extent now or hereafter permitted under the New York Act or other applicable law.

3.13 Representations and Warranties. Each Member represents and warrants to the Company and the Board of Managers as follows:

(a) Such Member has requested and received, or has had an opportunity to request and receive and has waived such opportunity, any information concerning the Company, the offerings and the operations and proposed operations of the Company which such Member deems necessary to evaluate the merits and risks of an investment in the Company. Except for information furnished pursuant to this Agreement, such Member has not relied upon any information relating to this offering.

(b) The Company and the Board of Managers have given such Member a reasonable time prior to the execution of this Agreement, the opportunity to ask questions of and receive answers from the Board of Managers concerning the terms and conditions of the offering and to obtain any additional information which the Company or the Board of Managers possesses or can obtain without unreasonable effort or expense that is necessary to verify the accuracy of the information provided.

(c) Such Member is aware of the risks associated with an investment in the Company, including, but not limited to, the following:

(i) An investment in the Company involves a high degree of risk, including, but not limited to, the risk of economic losses from Company operations;

(ii) The investment offering has not been passed upon or reviewed by any federal or state regulatory agency and no federal or state regulatory agency has made any recommendations or endorsements of this investment;

(iii) The Membership Interests have not been registered under the Securities Act of 1933, as amended (the "1933 Act"), or under state securities acts and are offered in reliance on exemptions provided by such acts. The Membership Interests are being acquired for investment only and may not be sold or transferred in the absence of an effective registration statement under such acts or an opinion of counsel to the Company (the cost of which shall be borne by the Member) that such registration is not required. Neither the Company nor the Board of Managers are under any obligation to register the Membership Interests on behalf of an investor or to assist in complying with any exemption from registration;

(iv) There is no market for the Membership Interests and none is expected to develop; therefore, the risks of an illiquid investment must be assumed by the investor.

Sample
Sample

(v) If a certificate or other document evidencing the Membership Interests is distributed to the Members, it will be imprinted with a restrictive legend as follows: "THE MEMBERSHIP INTERESTS EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE TRANSFERRED OR SOLD UNLESS; (A) A REGISTRATION STATEMENT UNDER SUCH ACT AND STATE SECURITIES LAWS IS THEN IN EFFECT WITH RESPECT THERETO; OR (B) A WRITTEN OPINION OF COUNSEL TO THE COMPANY (THE COST OF WHICH SHALL BE BORNE BY THE MEMBER) HAS BEEN OBTAINED TO THE EFFECT THAT NO SUCH REGISTRATION IS REQUIRED."

(d) The Membership Interests in the Company are being purchased for the account of such Member, for investment, and not for distribution, transfer or resale to others.

(e) Such Member's tax and legal counsel have been consulted in evaluating the merits, risks and suitability of an investment in the Company, or such Member represents that the advice of such counsel for purposes of evaluating the risks, merits and suitability of an investment in the Company is unnecessary. Neither the Company nor any Manager are making any representations concerning the possible tax consequences of an investment in the Company. NEITHER AN OPINION OF TAX COUNSEL NOR A RULING FROM THE INTERNAL REVENUE SERVICE IS BEING REQUESTED OR PROVIDED TO THE COMPANY OR MEMBERS.

(f) Such Member has adequate means of providing for current needs and contingencies, has no need for liquidity in this investment and has no reason to anticipate any change in circumstances, financial or otherwise, which might cause or require a sale of the interests in the Company.

(g) Such Member is able to bear the economic risks of this investment and can afford a complete loss of this investment.

(h) It is understood and agreed that all the representations and warranties contained in this Agreement will be relied upon by the Company, the Board of Managers, and their attorneys to determine if an exemption from registration provided by the 1933 Act and state securities laws will be available for the offering of Membership Interests. All information provided and furnished in this Agreement is correct and complete as of the date hereof.

(i) The address listed for such Member on Exhibit A of this Agreement is correct and is his or her principal residence address

(j) Such Member hereby agrees to indemnify and hold the Company, the Board of Managers and their officers, directors, agents, employees, promoters and attorneys harmless from and against any and all loss, damage and liability, including reasonable attorneys' fees and expenses, due to or arising out of any misrepresentation or any breach of any of the representations and warranties made in this Agreement. The representations and warranties contained herein are intended to and shall survive the delivery of this Agreement.

3.14 <u>Termination of Membership Interest</u>. Any Member's Membership Interest may be terminated at any time whatsoever (with or without cause) upon the vote or written consent of

Sample
Sample

Members holding aggregate share of Units constitutes at least four-fifths (4/5) of the aggregate of Units of all Members. Any such termination shall be considered a withdrawal of such Member pursuant to Article XI.

3.15 Obligations to the Company. Except as otherwise permitted by the Company, each Member shall devote his/her/its best efforts and substantially all of his/her/its professional time to serving the Company and its [patients/clients/customers].

ARTICLE IV

Management

4.1 Management. Management of the Company shall be vested in the Board of Managers. Subject to the terms and conditions of this Agreement, the Board of Managers shall direct, manage and control the business of the Company. Subject to the terms and conditions of this Agreement, the Board of Managers shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding such matters and to perform any and all other acts or activities customary or incident to the management of the Company's business.

4.2 Number, Tenure and Qualification of Managers. The Board of Managers shall be comprised of three (3) Managers. The number of Managers may be increased or decreased from time to time by the vote or written consent of Members holding a Majority in Interest; provided, however, that no decrease shall have the effect of shortening the term of any incumbent Manager. Each Manager shall be a natural person and shall hold office until the next annual meeting of Members or until a successor shall have been elected and qualified. Managers shall be elected at the annual meeting of Members by the vote or written consent of Members holding at least a Majority in Interest. The names of the initial Board of Managers as well as their respective initial terms are set forth on Exhibit B attached hereto.

4.3 Powers of Board of Managers. Without limiting the generality of Section 4.1 and subject to the provisions of Sections 3.7, 3.8 and 4.4, the Board of Managers shall have full right, power and authority, on behalf of the Company to: (a) open bank accounts and otherwise invest the funds and assets of the Company; (b) purchase insurance on the business and assets of the Company; (c) commence lawsuits and other proceedings; (d) execute and deliver any agreement, contract, document, instrument or other writing; (e) retain accountants, attorneys or other agents and advisors; (f) to advertise or otherwise promote the business activities of the Company; and (g) take any other lawful action that the Board of Managers considers necessary, convenient or advisable in connection with any business of the Company.

4.4 Limitation on Actions.

(a) Notwithstanding any other provision of this Agreement, the Board of Managers may not, without the vote or written consent of Members holding at least Three-Quarters in Interest:

Sample
Sample

(i) make any Distributions or enter into, adopt or implement any agreement, understanding or otherwise with respect to the making of Distributions other than in accordance with this Agreement;

(ii) establish, adopt or implement any compensation schedule;

(iii) exchange any assets of the Company for the securities of another entity;

(iv) refinance or sell any of the real property of the Company;

(v) add a Member;

(vi) issue any Units;

(vii) purchase, lease or otherwise acquire from, or sell, lease or otherwise dispose to, any entity any property for a price in excess of $_________;

(viii) borrow funds in excess of $________ and pledge or otherwise grant a security interest in any or all assets of the Company;

(ix) require the Members to make any Capital Contribution in addition to the initial Capital Contributions as set forth on Exhibit C attached hereto; or

(x) require any Member to provide any personal guaranty in addition to the personal guaranty referenced in Section 8.9(a).

4.5 Other Investments. Except as provided in the following sentence, nothing in this Agreement shall be construed to prohibit or limit any Member from owning, operating, controlling or investing in any other trade or business whether or not such trade or business competes, directly or indirectly, with the existing business of the Company. Notwithstanding the foregoing, except as otherwise permitted by the vote or written consent of Members holding at least a Majority in Interest, no Member may directly or indirectly invest in or have an ownership interest in any entity providing emergency medicine services anywhere with the eight (8) counties of Western New York.

4.6 Binding Authority. Unless otherwise expressly authorized to do so by this Agreement or in writing by the Board of Managers, no Member (except any Manager which is a Member) shall participate in the management or control of the Company's business and no Person shall have any power or authority to bind the Company.

4.7 Liability of Managers. To the fullest extent now or hereafter permitted by applicable law, no Manager shall be liable to the Company or any of its Members for damages for any breach of duty by such Manager in his/her capacity as such. No Manager shall be personally liable for any indebtedness, liability or obligation of the Company.

4.8 Indemnification. The Company shall indemnify and hold harmless, and advance expenses to, each Manager (in his/her capacity as a Manager) from and against, and in connection with, all claims and demands whatsoever to the maximum extent now or hereafter permitted under the New York Act or other applicable law.

Sample
Sample

4.9 Management Fee; Reimbursement of Expenses. No Manager shall receive any management fee or salary in connection with his/her duties as a Manager of the Company hereunder. Each Manager shall be reimbursed for his/her reasonable expenses incurred on behalf of the Company.

4.10 Resignation. Any Manager may resign at any time by giving written notice to the Company. The resignation of any Manager shall take effect upon receipt of such notice or at any later time specified in such notice. Unless otherwise specified in such notice, the acceptance of the resignation shall not be necessary to make it effective. The resignation of any Manager who is also a Member shall not affect such Manager's rights as a Member and shall not constitute a withdrawal as a Member.

4.11 Removal. Any Manager may be removed or replaced, with or without cause, by the vote or written consent of Members holding a Majority in Interest. The removal of a Manager who is also a Member shall not affect such Manager's rights as a Member and shall not constitute a withdrawal as a Member.

4.12 Vacancies. Any vacancy on the Board of Managers occurring for any reason shall be filled by the vote or written consent of Members holding at least a Majority in Interest. A Manager elected to fill a vacancy shall serve for the remainder of the unexpired term of the Manager's predecessor in office and until a successor has been elected and qualified. A Manager chosen to fill a position resulting from an increase in the number of Managers shall hold office until the next annual meeting of Members and until a successor has been elected and qualified.

4.13 Officers. The Board of Managers may designate one or more Members as officers of the Company, who shall have such titles and exercise and perform such powers and duties as shall be assigned to them from time to time by the Board of Managers. Any officer may be removed, with or without cause, by the Board of Managers at any time. Each officer shall hold office until his or her successor has been elected and qualified. Any number of offices may be held by the same individual. The salaries and other compensation of the officers, if any, shall be established by the Board of Managers; provided, however, that any and all such salaries and other compensation must be approved by the vote or written consent of Members holding at least Three-Quarters in Interest.

ARTICLE V

Meetings of Members

5.1 Annual Meeting. The annual meeting of the Members shall be held at such time as shall be determined by the vote or written consent of the Members for the purpose of the transaction of any business as may come before such meeting.

5.2 Special Meetings. Special meetings of the Members, for any purpose or purposes, may be called by any Member or any Manager.

5.3 Place of Meetings. Meetings of the Members may be held at any place, within or outside the State of New York, for any meeting of the Members designated in any notice of such

Sample
Sample

meeting. If no such designation is made, the place of any such meeting shall be the principal place of business of the Company.

5.4 Notice of Meetings. Written notice of the meeting setting forth the place, day and hour of the meeting, indicating that it is being issued by or at the direction of the Person or Persons calling the meeting, and setting forth the purpose or purposes for which the meeting is called shall be delivered no fewer than ten (10) nor more than sixty (60) days before the date of the meeting. Any such notice shall be given personally, by facsimile transmission or by first class mail. If sent by facsimile transmission, such notice shall be deemed given upon receipt by the transmitter of the proper confirmation of transmission. If mailed, such notice shall be deemed given when deposited in the United States mail, with postage thereon prepaid, directed to the Member at his or her address as it appears in the records of the Company. An affidavit of the Person giving the notice that the notice required by this Section has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated.

5.5 Record Date. For the purpose of determining: (a) the Members entitled to notice of or to vote at any meeting of Members or any adjournment of such meeting; (b) Members entitled to receive payment of any Distribution; or (c) to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date of the Distribution, as the case may be, shall be the record date for making such a determination. When a determination of Members entitled to vote at any meeting of Members has been made pursuant to this Section, the determination shall apply to any adjournment of the meeting.

5.6 Quorum. Members holding not less than a Majority in Interest, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any meeting of Members, a majority of the votes so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at such meeting. At an adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. The Members present at a meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of votes whose absence results in less than a quorum being present.

5.7 Manner of Acting. If a quorum is present at any meeting, the vote or written consent of Members holding not less than a Majority in Interest shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the New York Act, the Articles of Organization or this Agreement. At any meeting, each Member shall be entitled to one (1) vote per Unit held by such Member.

5.8 Proxies.

(a) A Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact.

(b) Every proxy must be signed by the Member or his/her/its attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless

Sample
Sample

otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it.

5.9 Action by Members Without a Meeting.

(a) Whenever the Members of the Company are required or permitted to take any action by vote, such action may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, is signed by the Members who hold the voting 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 of the Members entitled to vote therein were present and voted, and such consent is delivered to the principal office of the Company. Any such delivery shall be made by hand, facsimile transmission or certified mail, return receipt requested.

(b) Every written consent shall bear the date of signature of each Member who signs the consent, and no written consent shall be effective to take the action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this Section to the Company, written consents signed by a sufficient number of Members to take the action are delivered to the principal office of the Company.

(c) Prompt notice of the taking of the action without a meeting by less than unanimous written consent shall be given to each Member who has not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.

5.10 Participation in Meetings by Telephone Conference. Any one or more Members may participate in a meeting of such Members by means of conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such meeting.

5.11 Waiver of Notice. Notice of a meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him or her.

5.12 Voting Agreements. An agreement between two (2) or more Members, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the votes held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them. Notwithstanding the foregoing, no Member may enter into any voting trust agreement, proxy agreement or other voting agreement in contravention of the New York Act.

Sample
Sample

ARTICLE VI

Meetings of Board of Managers

6.1 Annual Meeting. The annual meeting of the Board of Managers shall be held immediately after the annual meeting of the Members.

6.2 Special Meetings. Special meetings of the Board of Managers, for any purpose or purposes, may be called by any Manager.

6.3 Place of Meetings. Meetings of the Board of Managers may be held at any place, within or outside the State of New York, for any meeting of the Board of Managers designated in any notice of such meeting. If no such designation is made, the place of any such meeting shall be the principal place of business of the Company.

6.4 Notice of Meetings. Written notice of the meeting setting forth the place, day and hour of the meeting, indicating that it is being issued by or at the direction of the Manager calling the meeting, and setting forth the purpose or purposes for which the meeting is called shall be delivered no fewer than three (3) nor more than thirty (30) days before the date of the meeting. Any such notice shall be given personally, by facsimile transmission, electronic mail (*i.e.* e-mail) transmission or by first class mail. If sent by facsimile transmission, such notice shall be deemed given upon receipt by the transmitter of the proper confirmation of transmission. If mailed, such notice shall be deemed given when deposited in the United States mail, with postage thereon prepaid, directed to the Manager at his or her address as it appears in the records of the Company. An affidavit of the Manager giving the notice that the notice required by this Section has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated.

6.5 Quorum. A majority of the Managers shall constitute a quorum at any meeting of Board of Managers. In the absence of a quorum at any meeting of Board of Managers, a majority of the votes so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Manager of record entitled to vote at such meeting. At an adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. The Board of Managers present at a meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of votes whose absence results in less than a quorum being present.

6.6 Manner of Acting. If a quorum is present at any meeting, the vote or written consent of a majority of the Managers shall be the act of the Board of Managers, unless the vote of a greater or lesser proportion or number is otherwise required by the New York Act, the Articles of Organization or this Agreement. At any meeting, each Manager shall be entitled to one (1) vote.

6.7 Action by Board of Managers Without a Meeting. Whenever the Board of Managers of the Company are required or permitted to take any action by vote, such action may

Sample
Sample

be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, is signed by all of the Managers.

6.8 Participation in Meetings by Telephone Conference. Any one or more Managers may participate in a meeting of the Board of Managers by means of conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such meeting.

6.9 Waiver of Notice. Notice of a meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him or her.

ARTICLE VII

Books and Records

7.1 Books of Account. The Company shall keep accurate books and records of accounts and minutes of all meetings of the Members. The Company shall maintain its books and records and shall determine all items of Net Profits, Net Losses and Distributions on a ___________ basis of accounting in accordance with principles applicable in determining taxable income or loss for federal income tax purposes for partnerships under the Code and consistent with accounting methods used by the Company in determining taxable income or loss for federal income tax purposes. The Company shall also keep all other records sufficient to record the Company's business and affairs and sufficient to record the determination and allocation of all items of Net Profits, Net Losses, and Distributions and other amounts as may be provided for herein and to meet the requirements of any lender to the Company or to meet any reporting requirements imposed on any Member, including keeping (if required) an additional set of records on a full accrual basis of accounting in accordance with generally accepted accounting principles using tax depreciation methods.

7.2 Reports. Within ninety (90) days after the end of each Fiscal Year, there shall be made available to each Member for such Fiscal Year (i) a balance sheet, (ii) an income statement, and (iii) a computation of Net Profits or Net Losses. In addition, within ninety (90) days after the end of each Fiscal Year, the Company shall prepare and mail to each Member a report setting forth in sufficient detail all such information and data with respect to the business transactions effected by or involving the Company during such Fiscal Year as shall enable each Member to prepare all its tax returns in accordance with the laws, rules and regulations then prevailing. The Company shall also prepare all tax or information returns required of the Company.

7.3 Access to Books. The books and records of the Company shall be available to each Member or its representatives for inspection and audit (at such Member's expense) during normal business hours at the principal office of the Company.

Sample
Sample

7.4 Bank Accounts. The operating bank accounts of the Company shall be maintained in such bank or banks as may be designated by the Board of Managers and withdrawals from said accounts shall be made as the Board of Managers may determine. There shall be no commingling of the moneys or funds of the Company with moneys or funds of any Member or any other entity.

ARTICLE VIII

Capital Contributions

8.1 Capital Contributions. Each Member shall initially contribute the amount set forth in Exhibit C to this Agreement as the initial Capital Contribution to be made by him/her/it.

8.2 Additional Contributions.

(a) No Member shall be obligated to make any additional Capital Contribution; provided, however, in the event the Board of Managers shall determine that such additional Capital Contributions are necessary or appropriate under the circumstances, they shall furnish written notice to the Members requesting that such additional Capital Contributions be made on a pro rata basis, which notice shall specify (i) the total amount of such additional Capital Contributions being required and the reason therefor; (ii) each Member's pro rata share of the total additional Capital Contribution being sought; and (iii) the date such additional Capital Contributions by the Members are due and payable.

(b) If any Member fails to make any such additional pro rata Capital Contribution (the aggregate amount not so contributed by the Members is herein referred to as the "Unpaid Member Contribution"), all other Members shall be entitled (but not required) to make further additional Capital Contributions on a pro rata basis, up to an aggregate amount not to exceed the total Unpaid Member Contribution.

8.3 Limitation on Amount of Additional Capital Contributions. Notwithstanding any provision in this Agreement to the contrary, no capital call noticed by the Board of Managers under Section 8.2 shall be enforceable unless such capital call has been approved by the vote or written consent of Members holding at least Three-Quarters in Interest.

8.4 Capital Accounts. A Capital Account shall be maintained for each Member. Each Member's Capital Account shall be increased by the value of each Capital Contribution made by the Member, allocations to such Member of the Net Profits and any other allocations to such Member of income pursuant to the Code. Each Member's Capital Account shall be decreased by the value of each Distribution made to the Member by the Company, allocations to such Member of Net Losses and other allocations to such Member of losses pursuant to the Code. The manner in which Capital Accounts are to be maintained pursuant to this Agreement shall comply with the requirements of Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. If in the opinion of the Board of Managers the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified to comply with Section 704(b) of the Code, then the method in which Capital Accounts are maintained shall be so modified;

Sample
Sample

provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

8.5 Withdrawal or Reduction of Capital Contributions. A Member shall not receive from the Company any portion of a Capital Contribution until all indebtedness, liabilities and obligations of the Company, except any indebtedness, liabilities and obligations to Members on account of their Capital Contributions, have been paid or there remains property of the Company, in the sole discretion of the Board of Managers, sufficient to pay them. A Member, irrespective of the nature of the Capital Contribution of such Member, has only the right to demand and receive cash in return for such Capital Contribution.

8.6 Transfers. Upon a permitted sale or other transfer of a Membership Interest in the Company, the Capital Account of the Member transferring his/her/its Membership Interest shall become the Capital Account of the Person to which or whom such Membership Interest is sold or transferred in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

8.7 Deficit Capital Account. Except as otherwise required in the New York Act or this Agreement, no Member shall have any liability to restore all or any portion of a deficit balance in a Capital Account.

8.8 Loans by Members. If any Member shall loan or cause to be loaned to the Company any funds, such loans shall be evidenced by promissory notes of the Company which are not secured by any lien or other charges or the property of the Company. Such promissory notes shall bear interest at the prime rate designated from time to time by ___________ prime plus one percent (prime plus 1%). Any such loan or loans shall not increase the Capital Contribution of the Member which made such loan or entitle such Member to any increase in his/her/its share of Company Distributions, or subject such Member to any greater portion of the Net Losses which are allocable to the Members pursuant to this Agreement. Notwithstanding anything contained in this Agreement, such loans (and interest on such loans) shall be repaid by the Company prior to any Distribution to the Members.

8.9 Personal Guaranty for Bank Indebtedness.

(a) Except as hereinafter provided, no Member shall be obligated to furnish a personal guaranty of Company indebtedness under a line of credit or other financing arrangement in favor of a bank or other lending institution; provided, however, if the Board of Managers notifies the Members that such a personal guaranty by the Members is being required in connection with any line of credit, loan or other financing arrangement being sought by the Company (a "Company Financing"), the Board of Managers shall so notify the Members, which notice shall specify (i) the material terms and conditions of the Company Financing in question; (ii) the aggregate amount proposed to be guaranteed by each Member, including a breakdown of the aggregate amount to be guaranteed by the Members, and (iii) the date by which such personal guarantees by the Members are required to be delivered by the lender. Notwithstanding the foregoing, no personal guaranty noticed by the Board of Managers under this Section 8.9 shall be enforceable unless such personal guaranty requirement has been approved by the vote or written consent of Members holding at least Three-Quarters in Interest.

(b) If any Member fails to deliver such a personal guaranty of Company indebtedness in connection with a Company Financing (the aggregate principal amount of the indebtedness

Sample
Sample

not so guaranteed by the Original Members is hereafter referred to as an "Member Guaranty Deficit"), all other Members shall be entitled, on a pro rata basis, to furnish additional guarantees of such Company indebtedness in an aggregate amount not to exceed the total Guaranty Deficit.

(c) In no event shall any Member be required to furnish a personal guaranty that provides for a maximum personal liability of more than the Member's Membership Interest (expressed as a percentage) multiplied by the aggregate amount of the Company Financing.

(d) If and to the extent that any Member(s) is/are obligated to pay to the lender, pursuant to the Member's personal guaranty, more than the Member's pro-rata share (determined by reference to such Member's Membership Interest percentage) of the aggregate amount necessary to satisfy the Company's indebtedness to such lender, the Member(s) who paid less than his/her/ pro-rata share under his/her personal guaranty shall immediately reimburse those Members for the amount paid in excess of their pro-rata share, plus interest at the prime rate designated from time to time by ____________ plus one percent (prime plus 1%). A Member's obligation to make reimbursement under this Section shall apply while his/her personal guaranty remains in effect, notwithstanding his/ her withdrawal from the Company or the termination or dissolution of the Company.

8.10 Failure to Make Contribution/Provide Guaranty. In the event that a Member shall default in duly making such Member's initial Capital Contribution as provided in Section 8.1 above, in duly making such Member's additional Capital Contribution as provided in Section 8.2 above, in duly furnishing such Member's personal guaranty as provided in Section 8.9 above, the following provisions shall apply:

(a) The defaulting Member shall be deemed to be in default if such Member's contribution/guaranty (the "Defaulted Contribution") is not made on or before the date specified for payment/provision in the notice from the Board of Managers or is not made to any other Member(s) (a "Paying Guarantor") as required by Section 8.9(e)) (together in each case with interest thereon at the rate designated from time to time by ____________ plus one percent (prime plus 1%);

(b) During the period when a Member shall be deemed to be in default as provided above, such defaulting Member shall not be entitled:

(i) to receive any allocation of Net Profits or Net Losses;

(ii) to be paid or distributed any cash or other property (but the defaulting Member's share shall instead be applied to the payment of the amount due from the defaulting Member on the Defaulted Contribution as if such defaulting Member had made such payment by the contribution of funds from sources outside the Company); or

(ii) to exercise such defaulting Member's right to vote upon any matter as a Member.

(c) So long as the default shall continue, the Company shall have the right (but not the obligation) to purchase the defaulting Member's Membership Interest at its book value (if such book value be a negative, *i.e.* a deficit balance, the purchase price shall be deemed to be

Sample
Sample

zero dollars) as of the day on which such right is exercised by the Company (after giving effect to all Company transactions to such date) upon the following terms and conditions:

(d) In the event the Company shall not elect to purchase the defaulting Member's Membership Interest, the Company or the Paying Guarantor(s), as the case may be, may, nonetheless, avail itself/themselves of all appropriate legal and equitable remedies.

8.11 Interest. The Members shall not be entitled to receive any interest on their Capital Contributions.

ARTICLE IX

Compensation, Allocations and Distributions

9.1 Allocations of Net Profits and Net Losses. Subject to Sections 9.4, 9.5 and 9.6 below, the Net Profits and Net Losses for each Fiscal Year shall be allocated to the Members in accordance with a schedule prepared (on an annual basis) by the Board of Managers and approved by the vote or written consent of Members holding at least Three-Quarters in Interest (the "Compensation Schedule").

9.2 [INTENTIONALLY OMITTED]

9.3 Credit. For all income tax purposes, credits of the Company claimed for a Fiscal Year shall be allocated among the Members in the same manner as Net Losses are allocated among the Members.

9.4 Qualified Income Offset. Notwithstanding Section 9.1 above, if one or more Members receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, which create or increase a deficit Capital Account of such Member, Net Profits of the Company shall be allocated pro rata to such Member(s) until any deficit balance in the Capital Accounts caused by such unexpected allocation or distribution and in excess of the dollar amount any such Member(s) is/are obligated to contribute to the Company is eliminated. It is the intent that this Section 9.4 be interpreted to comply with the alternate test for "economic effect" set forth in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

9.5 Minimum Gain Chargeback. Notwithstanding any other provision of this Agreement, if there is a net decrease in the Company's "minimum gain" as that term is defined in Treasury Regulation 1.704-1T(b)(4)(iv)(c) during any taxable year, all Members with a deficit Capital Account balance at the end of such year shall be allocated, before any allocation is made pursuant to Section 9.1, items of Net Profit in the amount and in the proportions to eliminate the excess of the deficit over the remaining minimum gain allocable to such Member. It is the intent that this Section 9.5 be interpreted to be a "minimum gain chargeback" as set forth in Section 1.704-1T(b)(4)(iv)(e) of the Treasury Regulations.

9.6 Company Adjustments. Any increase or decrease in amount of any item of income, gain, loss, deduction or credit attributable to an adjustment to the basis of Company assets made pursuant to a valid election under Sections 734, 743 and 754 of the Code, and

Sample
Sample

pursuant to corresponding provisions of applicable state and local income tax laws, shall be charged or credited, as the case may be, and any increase or decrease in the amount of any item of credit or tax preference attributable to any such adjustment shall be allocated, to the Capital Accounts of those Members entitled thereto under such laws. Any such election, however, shall be made in the sole discretion of the Board of Managers.

9.7 Allocations and Distributions with Respect to Transferred Interest. Profits, gains, losses, deductions and credits allocated to a Membership Interest assigned during a Fiscal Year of the Company and distributions with respect thereto shall be allocated or distributed, as the case may be, to the person who was the holder of such Membership Interest during such Fiscal Year on the basis of an interim closing or closings of the Company's books or in any other proportion determined by the Board of Managers to be required by the Code or advisable in light of positions (published or unpublished) taken or likely to be taken by the Internal Revenue Service.

9.8 Time of Allocations. Except as otherwise provided in this Agreement, or as required by Section 755 of the Code, allocations pursuant to this Article IX shall be made as of the last day of each Fiscal Year.

9.9 Distributions. To the extent Net Cash Available for Distributions is available for distribution, the Board of Managers shall cause the Company to make Distributions of all Net Cash Available for Distributions to the Members. Such Distributions shall be made to the Members in accordance with the Compensation Schedule (as prepared by the Board of Managers and approved by the vote or written consent of Members holding at least Three-Quarters in Interest). The timing of such Distributions shall be within the sole discretion of the Board of Managers.

9.10 Reserves. The Board of Managers shall have the right to set aside from Net Cash Available for Distributions such reserves as it in its reasonable discretion determines to be prudent for the operation of the Company's business.

9.11 Restriction on Distributions. Notwithstanding any other provision of this Agreement, no Distribution may be made by the Company to any Member in violation of the New York Act or the Company's covenants with its lender(s), if any. In addition, the Company shall not make a Distribution to a Member to the extent that, at the time of the Distribution, after giving effect to the Distribution, all liabilities of the Company, other than liabilities to Members on account of their Membership Interests and liabilities for which recourse of creditors is limited to specified property of the Company, exceed the fair market value of the assets of the Company, except that the fair market value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the Company only to the extent that the fair value of such property exceeds such liability.

9.12 Year-End Adjustments. The amount of all Distributions paid by the Company to any Member shall be based upon good faith estimates for the year made by the Board of Managers with due regard to all information available as an interim advance against final determination. Within one hundred twenty (120) days after the end of each Fiscal Year, the Board of Managers shall determine the amount of funds available for Distributions (taking into account, among other things, the Company's working capital requirements and all Company obligations then due), the restrictions on Distributions set forth in Section 9.11 hereof and the

Distributions due to each Member with respect to such Fiscal Year. Subject to the provisions of this Agreement, any excess of the amount so determined for a Member over the amount of interim advances received by such Member shall be distributed to such Member as soon as reasonably practicable after the amount of its Distributions with respect to such Fiscal Year has been determined, but in no event more than one hundred fifty (150) days after the end of such Fiscal Year and in no event later than the time any other Member receives its year-end amount under this Section 9.12. Any excess of interim advances paid to a Member over the amount of the Distributions determined to be due such Member for any Fiscal Year shall be repaid to the Company by the Member within ten (10) days after receipt of the notice that excess advances were made and demand for payment.

9.13 Limitation of Liability. Nothing contained herein shall be construed to render any Member liable for any actual cash losses of the Company.

9.14 Offset. The Company may offset all amounts owing to the Company by a Member against any Distribution to be made to such Member.

9.15 Accounting Period. The accounting period of the Company shall be the Fiscal Year.

ARTICLE X

Taxes

10.1 Tax Returns. The Board of Managers shall cause to be prepared and filed all necessary federal and state income tax returns for the Company. Each Member shall furnish to the Board of Managers all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

10.2 Tax Elections. The Company shall make the following elections on the appropriate tax returns:

(a) To adopt the calendar year as the Fiscal Year;

(b) To elect to amortize the organizational expenses of the Company and the start-up expenditures of the Company ratably over a period of sixty (60) months as permitted by Section 709(b) of the Code and Section 195 of the Code, respectively; and

(c) Any other election that the Board of Managers may deem appropriate and in the best interests of the Members.

Neither the Company nor any Member may make an election for the Company to be excluded from the application of Subchapter K of Chapter 1 of Subtitle A of the Code or any similar provisions of applicable state law, and no provisions of this Agreement shall be interpreted to authorize any such election.

10.3 Tax Matters Partners. __________ shall be the "tax matters partner" of the Company pursuant to Section 6231(a) (7) of the Code.

Sample
Sample

ARTICLE XI

Transferability/Dissociation

11.1 General. No Member shall gift, sell, assign, pledge, hypothecate, exchange, encumber, or otherwise transfer to another Person all or any portion of a Membership Interest, and no Member may withdraw from the Company at any time prior to the dissolution and winding up of the Company, except in accordance with the provisions of this Article XI. No Member may sell or assign all or any portion of his, her or its Membership Interest except to another professional eligible to become a member of the Company or except in trust to another professional who would be eligible to become a member of the Company if such professional were employed by the Company.

11.2 Dissociation. A Member's Membership Interest shall terminate, and the Member shall be dissociated from the Company, upon the first to occur of the following:

(a) The Member's death or disqualification pursuant to Section 3.3, or dissolution;

(b) The effective date of the Member's retirement in accordance with Section 11.4; or

(c) The effective date of the Member's withdrawal in accordance with Section 11.5.

11.3 Purchase/Redemption. Upon the dissociation of a Member pursuant to Section 11.2, the Company shall purchase or redeem from the Member (or the estate of such Member, as the case may be), and the Member (or the estate of such Member, as the case may be) shall sell and transfer to the Company, all of the Membership Interest of such dissociated Member for a purchase price equal to ______________ (the "Purchase Price"). In the case of the death of a Member at a time when the Company owns a policy of insurance on the life of such deceased Member, the net proceeds of any such policy of insurance shall first be applied towards the Purchase Price. In any other case, or if the Purchase Price exceeds the proceeds of any such life insurance, the Purchase Price or the balance of the Purchase Price, as the case may be, shall be paid by the Company as follows: At the closing, the Company shall pay twenty percent (20%) of the balance of the Purchase Price in cash (to the extent permitted under applicable law) and the remaining portion thereof (if any) shall be paid pursuant to the Company's promissory note (the "Promissory Note") in the principal amount of such unpaid portion of the Purchase Price, which Promissory Note shall be upon the following terms: twenty-four (24) equal monthly installments of principal plus interest on the then outstanding balance; interest to accrue at the rate announced from time to time by ____________ as its prime rate plus one percent (prime plus 1%). The closing of such purchase/sale shall take place at the principal office of the Company within six (6) months of the applicable date of dissociation.

11.4 Retirement. A Member shall be deemed to be retired when such Member ceases the practice of __________.

11.5 Withdrawal. A Member shall be deemed to have withdrawn from the Company upon the vote or written consent of Members holding aggregate share of Units constitutes at least four-fifths (4/5) of the aggregate of Units of all Members (whether such action is with or without cause).

Sample
Sample

11.6 Violative Transfers. Any transfer of all or any part of a Membership Interest contrary to the provisions of this Article XI shall be null and void.

11.7 Release from Guaranty. Upon the dissociation of a Member pursuant to Section 11.2, the Company shall use good faith efforts to obtain the release of any personal guaranty executed by such dissociated Member in connection with any Company financing.

ARTICLE XII

Dissolution

12.1 Dissolution. Subject to the terms and conditions of this Agreement, the Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following:

(a) The latest date, if any, on which the Company is to dissolve as set forth in the Articles of Organization;

(b) The vote or written consent of Members holding at least Three-Quarters in Interest; or

(c) The sale of all or substantially all of the assets of the Company.

12.2 No Dissolution. The death, bankruptcy, dissolution or legal incapacity of any Member shall not cause a dissolution of the Company and in all such events the Company shall continue. The rights of the Member to share in the Net Profits and Net Losses of the Company, to receive Distributions and to assign a Membership Interest shall, on the happening of such an event, devolve on its successors and assigns, subject to the terms and conditions of this Agreement; provided, however, in no event shall any of such successors or assigns become a substituted Member, except with the vote or consent of the remaining Members holding a Majority in Interest.

12.3 Winding Up. Upon the dissolution of the Company, the Board of Managers shall, in the name of and for and on behalf of the Company, prosecute and defend suits, whether civil, criminal or administrative, sell and close the Company's business, dispose of and convey the Company's property, discharge the Company's liabilities and distribute to the Members any remaining assets of the Company, all without affecting the liability of Members. Upon winding up of the Company, the assets shall, subject to Section 12.4, be distributed in the following order and priority:

(a) First to creditors, including any Member who is a creditor, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Members under Section 507 or Section 509 of the New York Act;

(b) Second to Members and former Members in satisfaction of liabilities for Distributions under Section 507 or Section 509 of the New York Act;

Sample

Sample

(c) Third to Members for the return of their initial Capital Contributions, to the extent not previously returned;

(d) Fourth to Members for the return of their additional Capital Contributions, if any, to the extent not previously returned; and

(e) The balance to Members in proportion to their remaining positive Capital Account balances.

12.4 Articles of Dissolution. Within ninety (90) days following the dissolution and the commencement of winding up of the Company, or at any other time there are no Members, articles of dissolution shall be filed by the Board of Managers with the New York Secretary of State pursuant to the New York Act.

12.5 Nonrecourse to Other Members. Except as provided by applicable law or as expressly provided in this Agreement, upon dissolution, each Member shall receive a return of his or her Capital Contribution solely from the assets of the Company. If the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return any Capital Contribution of any Member, such Member shall have no recourse against any other Member.

12.6 Termination. Upon completion of the dissolution, winding up, liquidation and distribution of the assets of the Company, the Company shall be deemed terminated. Within a reasonable time following such termination, the Board of Managers shall supply to each of the Members a statement reviewed (or audited if requested by a Majority in Interest of the Members) by the Company's accountants which shall set forth the assets and liabilities of the Company as of the date of termination and the Distributions made or to be made to each Member as of such date.

ARTICLE XIII

General Provisions

13.1 Amendment. This Agreement shall not be amended except by the vote or written consent of all of the parties hereto.

13.2 Headings. The headings in this Agreement are for convenience only and shall not be used to interpret or construe any provision of this Agreement.

13.3 Waiver. The waiver by a party of a breach of any provision of this Agreement shall not operate as nor be construed as a waiver of any subsequent breach thereof.

13.4 Severability. If any provision of this Agreement is determined by any court of competent jurisdiction or an arbitrator to be illegal or unenforceable, such provision shall be automatically reformed and construed so as to be valid, operative and enforceable to the maximum extent permitted by law or equity while preserving its original intent. The invalidity of any part of this Agreement shall not render invalid the remainder of this Agreement.

Sample
Sample

13.5 Parties Bound. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.

13.6 Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to principles of conflicts of law.

13.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the subject matter contained herein and supersedes all prior and contemporaneous undertakings and agreements of the parties, whether written or oral, with respect to the subject matter herein.

13.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of such counterparts together shall constitute one and the same instrument.

13.9 No Third Party Beneficiaries. Nothing contained herein shall create, or be construed to create, any right in any person or entity not a party hereto.

13.10 Assignment. No party may assign any of its rights or obligations hereunder without the prior written consent of all of the other parties. Any proposed assignment in contravention of this Section shall be null and void.

Sample

Sample

EXHIBIT A

NAMES, ADDRESSES AND UNITS

Name and Address	Units

Sample

Sample

EXHIBIT B

INITIAL BOARD OF MANAGERS

Sample

Sample

EXHIBIT C

INITIAL CAPITAL CONTRIBUTIONS

Sample

Sample