OPERATING AGREEMENT

OF





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Exhibit A

OPERATING AGREEMENT

OF

				, LLC		
DECLARATION	OF	AGREEMENT, having an address	made at		, 20,	by
("Member"). Said Membin accordance with the pr		d such other persons	or enti			
in accordance with the pi	.0 (1510	ins of time rigitation		Tomarco Toron	ica to us Wiemocis	•

WITNESSETH:

WHEREAS, the Member desires to form a limited liability company pursuant to the laws of the State of New York for the purposes hereinafter set forth, and to establish the rights and obligations of Members in connection with the limited liability company;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other valuable consideration, the agreement of the Members shall be as follows:

ARTICLE I

DEFINITIONS

- 1.01 The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):
- (A) "Act" shall mean the New York Limited Liability Company Law, McKinney's Consolidated Laws of New York § 201, et seq., as amended and in force from time to time.
- (B) "<u>Articles</u>" shall mean the articles of organization of the Company, as amended and in force from time to time.
- (C) "<u>Capital Account</u>" shall mean as of any given date the amount calculated and maintained by the Company for each Member as provided in Section 6.04 hereof.
- (D) "<u>Capital Contribution</u>" shall mean any contribution to the capital of the Company by a Member in cash, property or services, or a binding obligation to contribute cash, property or services, whenever made. "<u>Initial Capital Contribution</u>" shall mean the initial contribution to the capital of the Company by a Member, as determined pursuant to Section 6.01 hereof.
- (E) "Code" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

(F)	"Company" shall refer to	
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- (G) "<u>Entity</u>" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or other association.
- (H) "<u>Manager</u>" shall mean a manager of the Company, whose rights, powers and duties are specified in Article V hereof.
- (I) "Member" shall mean each Person that is identified as an initial Member in Article III hereof or is admitted as a Member (either as a transferee of a Membership Interest or as an additional Member) as provided in Article VIII hereof. A Person shall cease to be a Member at such time as he no longer owns any Membership Interest. A Class A Member shall be entitled to serve as a Manager and shall have all voting rights on all matters. Class B Members shall not be entitled to serve as a Manager nor participate in the election of a Manager. Class B Members shall not take part or have any voice in the conduct or management of the business or affairs of the Company. The Class B Members shall not have any power to transact business for the Company or to sign for or bind the Company.
- (J) "Membership Interest" shall mean the ownership interest of a Member in the Company, which may be expressed as a percentage equal to such Member's Capital Account divided by the aggregate Capital Accounts of all Members. The Membership Interests may be recorded from time to time on a schedule attached to this Operating Agreement.
- (K) "Operating Agreement" shall mean this Operating Agreement, as originally executed and as amended from time to time.
- (L) "Person" shall mean any natural person or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so admits

ARTICLE II

PURPOSES AND POWERS OF COMPANY

- 2.01 Purposes. The purposes of the Company shall be to:
- (a) Own, acquire, manage, lease, develop, operate, buy, sell, exchange, finance, refinance, and otherwise deal with real estate, personal property, and any type of business, as the Managers may from time to time deem to be in the best interests of the Company; and
- (b) Acquire, own, buy, sell, invest in, trade, manage, finance, refinance, exchange, or otherwise dispose of stocks, securities, partnership interests, CDs, mutual funds, commodities, and any and all investments whatsoever, that the Managers may from time to time deem to be in the best interests of the Company;
- (c) Engage in such other activities as are related or incidental to the foregoing purposes.

2.02 <u>Powers</u>. The Company shall have all powers and rights of a limited liability company organized under the Act, to the extent such powers and rights are not proscribed by the Articles.

ARTICLE III

NAMES AND ADDRESSES OF INITIAL MEMBERS; PRINCIPAL OFFICE

3.01 <u>Names and Addresses and Percentage Interest of Initial Members</u>. The names and addresses and Percentage Interest of the initial Members are as follows:

Class A Memi	bers	Percentage In	
Class B Memb	pers	Percentage In	terest
		%	
3.02 <u>Prin</u>	cipal Office. The principa	l office of the Company The principal office i	•
time to time by the	Managers.		

ARTICLE IV

VOTING POWERS, MEETINGS, ETC. OF MEMBERS

- 4.01 <u>In General</u>. The Members shall not be entitled to participate in the day-to-day affairs and management of the Company, but instead, the Class A Members' right to vote or otherwise participate with respect to matters relating to the Company and the Class B Members right to participate with respect to matters relating to the Company shall be limited to those matters as to which the express terms of the Act, the Articles or this Operating Agreement vest in the Class A or Class B Members the right to so vote or otherwise participate.
 - 4.02 <u>Actions Requiring Approval of Class A Members.</u>
- (a) Notwithstanding any other provision of this Operating Agreement, the approval of the Class A Members shall be required in order for any of the following actions to be taken on behalf of the Company:
 - (i) Amending the Articles in any manner that materially alters the preferences, privileges or relative rights of the Class A Members.
 - (ii) Electing the Managers as provided in Article V hereof.

- (iii) Taking any action that would make it impossible to carry on the ordinary business of the Company.
- (iv) Confessing a judgment against the Company in excess of \$5,000.
- (v) Filing or consenting to filing a petition for or against the Company under any federal or state bankruptcy, insolvency or reorganization act.
- (vi) Loaning Company funds in excess of \$25,000 or for a term in excess of one year to any Member.
- (b) Unless the express terms of this Operating Agreement specifically provide otherwise, the affirmative vote of the Class A Members holding a majority of the Class A Membership Interests shall be necessary and sufficient in order to approve or consent to any of the matters set forth in Section 4.02(a) above or any other matters that require the approval or consent of the Class A Members.
- 4.03 Action by Class A Members. In exercising their rights as provided above, the Class A Members shall act collectively through meetings and/or written consents as provided in this Article.
- 4.04 <u>Annual Meeting of Class A Members</u>. The annual meeting of the Class A Members shall be held on the first Wednesday in January of each year at 10:00 a.m. or at such other time as shall be determined by the Managers for the purpose of the transaction of such business as may come properly before the meeting.
- 4.05 <u>Special Meetings of Class A Members</u>. Special meetings of the Class A Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Managers, and shall be called by the Managers at the request of any two Class A Members, or such lesser number of Class A Members as are Class A Members of the Company.
- 4.06 <u>Place of Meeting of Class A Members</u>. The place of any meeting of the Class A Members shall be the principal office of the Company, unless another place, either within or outside the State of New York, is designated by the Managers.
- 4.07 <u>Notice of Meetings of Class A Members</u>. Written notice stating the place, day and hour of any meeting of the Class A Members and, if a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 60 days before the date of the meeting, either personally or by mail, by or at the direction of the Managers, to each Member, unless the Act or the Articles require different notice.
- 4.08 <u>Conduct of Meetings of Class A Members</u>. All meetings of the Class A Members shall be presided over by a chairperson of the meeting, who shall be a Manager, or a Class A Member designated by the Managers. The chairperson of any meeting of the Class A Members shall determine the order of business and the procedure at the meeting, including regulation of the manner of voting and the conduct of discussion, and shall appoint a secretary of such meeting to take minutes thereof.

- 4.09 <u>Participation of Class A Members by Telephone or Similar Communications.</u> Class A Members may participate and hold a meeting by means of conference telephone or similar communications equipment by means of which all Class A Members participating can hear and be heard, and such participation shall constitute attendance and presence in person at such meeting.
- 4.10 <u>Waiver of Notice of Class A Members</u>. When any notice of a meeting of the Class A Members is required to be given, a waiver thereof in writing signed by a Class A Member entitled to such notice, whether given before, at, or after the time of the meeting as stated in such notice, shall be equivalent to the proper giving of such notice.
- 4.11 Action of Class A Members by Written Consent. Any action required or permitted to be taken at a meeting of Class A Members may be taken without a meeting if one or more written consents to such action are signed by the Class A Members who are entitled to vote on the matter set forth in the consents and who constitute the requisite number or percentage of such Class A Members necessary for adoption or approval of such matter on behalf of the Company. By way of example and not limitation, the Class A Members holding a majority of the Class A Membership Interests may take action as to any matter specified in Section 4.02 hereof by signing one or more written consents approving such action, without obtaining signed written consents from any other Members. Such consent or consents shall be filed with the minutes of the meetings of the Class A Members have signed the consent or consents, unless the consent or consents specify a different effective date.
 - 4.12 <u>Actions Requiring Approval of Class B Members.</u>
- (a) Notwithstanding any other provision of this Operating Agreement, the approval of the Class B Members shall be required in order for any of the following actions to be taken on behalf of the Company:
 - (i) Amending the Articles in any manner that materially alters the preferences, privileges or relative rights of the Class B Members.
 - (ii) Electing the Managers but only as provided in Article V Section 5.02(c) hereof.
- (b) Unless the express terms of this Operating Agreement specifically provide otherwise, the affirmative vote of the Class B Members holding a majority of the Class B Membership Interests shall be necessary and sufficient in order to approve or consent to any of the matters set forth in Section 4.12(a) above or any other matters that require the approval or consent of the Class B Members.
- 4.13 Action by Class B Members. In exercising their rights as provided above, the Class B Members shall act collectively through meetings and/or written consents as provided in this Article.
- 4.14 <u>Annual Meeting of Class B Members</u>. The annual meeting of the Class B Members shall be held on the first Wednesday in January of each year at 10:30 a.m. or at such

other time as shall be determined by the Managers for the purpose of the transaction of such business as may come properly before the meeting.

- 4.15 <u>Special Meetings of Class B Member</u>. Special meetings of the Class B Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Managers, and shall be called by the Managers at the request of any two Class B Members, or such lesser number of Class B Members as are Class B Members of the Company; or if there are no Managers then upon the written request of any two Class B Members, or such lesser number of Class B Members as are Class B Members of the Company.
- 4.16 <u>Place of Meeting of Class B Members</u>. The place of any meeting of the Class B Members shall be the principal office of the Company, unless another place, either within or outside the State of New York, is designated by the Managers.
- 4.17 <u>Notice of Meetings of Class B Members</u>. Written notice stating the place, day and hour of any meeting of the Class B Members and, if a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 60 days before the date of the meeting, either personally or by mail, by or at the direction of the Managers, to each Member, unless the Act or the Articles require different notice.
- 4.18 <u>Conduct of Meetings of Class B Members</u>. All meetings of the Class B Members shall be presided over by a chairperson of the meeting, who shall be a Manager, or a Class B Member designated by the Managers, or a Class B Member designated by the Class B Members. The chairperson of any meeting of the Class B Members shall determine the order of business and the procedure at the meeting, including regulation of the manner of voting and the conduct of discussion, and shall appoint a secretary of such meeting to take minutes thereof.
- 4.19 <u>Participation of Class B Members by Telephone or Similar Communications</u>. Class B Members may participate and hold a meeting by means of conference telephone or similar communications equipment by means of which all Class B Members participating can hear and be heard, and such participation shall constitute attendance and presence in person at such meeting.
- 4.20 <u>Waiver of Notice of Class B Members</u>. When any notice of a meeting of the Class B Members is required to be given, a waiver thereof in writing signed by a Class B Member entitled to such notice, whether given before, at, or after the time of the meeting as stated in such notice, shall be equivalent to the proper giving of such notice.
- 4.21 Action of Class B Members by Written Consent. Any action required or permitted to be taken at a meeting of Class B Members may be taken without a meeting if one or more written consents to such action are signed by the Class B Members who are entitled to vote on the matter set forth in the consents and who constitute the requisite number or percentage of such Class B Members necessary for adoption or approval of such matter on behalf of the Company. By way of example and not limitation, the Class B Members holding a majority of the Class B Membership Interests may take action as to any matter specified in Section 4.12 hereof by signing one or more written consents approving such action, without obtaining signed written consents from any other Members. Such consent or consents shall be filed with the minutes of the meetings of the Class B Members. Action taken under this Section shall be effective when

the requisite Class B Members have signed the consent or consents, unless the consent or consents specify a different effective date.

ARTICLE V

MANAGERS

- 5.01 <u>Powers of Manager</u>. Except as expressly provided otherwise in the Act, the Articles or this Operating Agreement, the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed by, one or more Managers. The powers so exercised shall include but not be limited to the following:
- (a) Entering into, making and performing contracts, agreements and other undertakings binding the Company that may be necessary, appropriate or advisable in furtherance of the purposes of the Company.
- (b) Opening and maintaining bank accounts, investment accounts and other arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements. Company funds shall not be commingled with funds from other sources and shall be used solely for the business of the Company.
 - (c) Collecting funds due to the Company.
- (d) Acquiring, utilizing for the Company's purposes, maintaining and disposing of any assets of the Company.
- (e) To the extent that funds of the Company are available therefor, paying debts and obligations of the Company.
- (f) Borrowing money or otherwise committing the credit of the Company for Company activities, and voluntarily prepaying or extending any such borrowings.
- (g) Employing from time to time persons, firms or corporations for the operation and management of various aspects of the Company's business, including, without limitation, managing agents, contractors, subcontractors, architects, engineers, laborers, suppliers, accountants and attorneys on such terms and for such compensation as the Managers shall determine, notwithstanding the fact that the Managers or any Member may have a financial interest in such firms or corporations.
 - (h) Making elections available to the Company under the Code.
- (i) Registering the Company as a tax shelter with the Secretary of the Treasury and furnishing to such Secretary lists of investors in the Company, if required pursuant to applicable provisions of the Code.
- (j) Obtaining general liability, property and other insurance for the Company, as the Managers deem proper.

- (k) Taking such actions as may be directed by the Class A Members in furtherance of their approval of any matter set forth in Section 4.02 hereof.
- (l) Doing and performing all such things and executing, acknowledging and delivering any and all such instruments as may be in furtherance of the Company's purposes and necessary and appropriate to the conduct of its business.

5.02 <u>Election, Etc. of Managers</u>.

- (a) The Class A Members hereby unanimously elect _____ as the initial Manager of the Company, to serve until the first annual meeting of the Class A Members and until his respective successor shall be duly elected and qualified.
- (b) Subject to Section 5.03, the Class A Members shall elect one or more Persons as Managers at each annual meeting of the Company to serve until the next annual meeting of the Company and until their respective successors are duly elected and qualified. In addition, if any Person resigns or otherwise vacates the office of Manager, the Class A Members shall elect a replacement Manager to serve the remaining term of such office, unless one or more other Persons then serve as Managers and the Class A Members determine not to fill such vacancy. A Person may be removed as a Manager by the Class A Members with or without cause at any time. A Manager may, but shall not be required to, be elected from among the Class A Members. A Manager may be a natural person or an Entity. Notwithstanding any of the foregoing provisions, the rights of the Class A Members to elect and remove Managers shall be subject to the restrictions set forth in Section 5.03 hereof.
- (c) Notwithstanding any other provision of this operating agreement, if any person resigns or otherwise vacates the office of Manager and there shall be no existing Class A Members, the Class B Members shall elect a replacement Manager to serve the remaining term of such office, unless one or more other persons then serve as Managers and the Class B Members determine not to fill such vacancy. In such case, a person may be removed as a Manager by the Class B Members with cause at any time.
- 5.03 <u>Appointment of Initial Managers</u>. For so long as _____ (the "Founding Member") is a Class A Member and has not consented otherwise in writing, the Founding Member, or such Person(s) whom he designates by mutual agreement, shall be the only Manager of the Company. At such time the Founding Member has ceased to be Member, the Manager shall be elected according to the procedure set forth above.
- 5.04 Action by Two or More Managers. Unless otherwise expressly provided by the Act, the Articles, or the terms of this Operating Agreement, the vote, approval or consent of a majority of the Managers, determined on a per capita basis, shall be necessary and sufficient for the Managers to take any action on behalf of the Company that the Managers are authorized to take pursuant to the Act, the Articles or this Operating Agreement.
- 5.05 <u>Execution of Documents and Other Actions</u>. The Managers may delegate to one or more of their number the authority to execute any documents or take any other actions deemed necessary or desirable in furtherance of any action that they have authorized on behalf of the Company as provided in Section 5.04 hereof.

- 5.06 <u>Single Manager</u>. If at any time there is only one Person serving as a Manager, such Manager shall be entitled to exercise all powers of the Managers set forth in this Section, and all references in this Section and otherwise in this Operating Agreement to "Managers" shall be deemed to refer to such single Manager.
- 5.07 <u>Reliance by Other Persons</u>. Any Person dealing with the Company, other than a Member, may rely on the authority of a particular Manager or Managers in taking any action in the name of the Company, if such Manager or Managers provide to such Person a copy of the applicable provision of this Operating Agreement and/or the resolution or written consent of the Managers or Members granting such authority, certified in writing by such Manager or Managers to be genuine and correct and not to have been revoked, superseded or otherwise amended.
- 5.08 <u>Manager's Expenses and Fees</u>. A Manager shall be entitled, but not required, to receive a reasonable salary for services rendered on behalf of the Company or in his capacity as a Manager. The amount of such salary shall be determined by the Managers and consented to by the Class A Members, which consent shall not be unreasonably withheld. The Company shall reimburse any Manager for reasonable out-of-pocket expenses that were or are incurred by the Manager on behalf of the Company with respect to the start-up or operation of the Company, the on-going conduct of the Company's business, or the dissolution and winding up of the Company and its business.
- 5.09 <u>Competition</u>. During the existence of the Company, the Managers shall devote such time to the business of the Company as may reasonably be required to conduct its business in an efficient and profitable manner. The Managers, for their own account and for the account of others, may engage in business ventures, including the acquisition of real estate properties or interests therein and the development, operation, management and/or syndication of real estate properties or interests therein, which may compete with the business of the Company. Each Class A Member hereby expressly consents to the continued and future ownership and operation by the other Class A Members or the Managers of such properties and waives any claim for damages or otherwise, or rights to participate therein or with respect to the operation and profits or losses thereof.
- 5.10 <u>Indemnification</u>. The Company shall indemnify each Manager, whether serving the Company or, at its request, any other Entity, to the full extent permitted by the Act. The foregoing rights of indemnification shall not be exclusive of any other rights to which the Managers may be entitled. The Managers may, upon the approval of the Class A Members, take such action as is necessary to carry out these indemnification provisions and may adopt, approve and amend from time to time such resolutions or contracts implementing such provisions or such further indemnification arrangements as may be permitted by law.
- 5.11 <u>Liability of Managers.</u> So long as the Managers act in good faith with respect to the conduct of the business and affairs of the Company, no Manager shall be liable or accountable to the Company or to any of the Members, in damages or otherwise, for any error of judgment, for any mistake of fact or of law, or for any other act or thing that he may do or refrain from doing in connection with the business and affairs of the Company, **EXCEPT FOR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OR BREACH OF FIDUCIARY DUTY**, and further except for breaches of contractual obligations or agreements between the Managers and the Company.

ARTICLE VI

CONTRIBUTIONS TO THE COMPANY AND DISTRIBUTIONS

- 6.01 <u>Initial Capital Contributions.</u> Each Member, upon the execution of this Operating Agreement, shall make as an initial Capital Contribution the amount shown on Exhibit A, which is attached hereto. The initial Capital Contribution to be made by any Person who hereafter is admitted as a Member and acquires his Membership Interest from the Company shall be determined by the Class A Members.
- Additional Capital Contributions. No Member shall be required to make any Capital Contribution in addition to his or her Initial Capital Contribution. The Founding Members, as defined in Section 5.03, may make additional Capital Contributions to the Company with the consent of the Class A Members. Otherwise, the Members may make additional Capital Contributions to the Company only if such additional Capital Contributions are made pro rata by all the Members or all the Members consent in writing to any non-pro rata contribution. The fair market value of any property other than cash or widely traded securities to be contributed as an additional Capital Contribution shall be (a) agreed upon by the contributing Member and a majority in interest of the Members before contribution, or (b) determined by a disinterested appraiser selected by the Managers.
- 6.03 <u>Interests and Return of Capital Contribution</u>. No Member shall receive any interest on his Capital Contribution. Except as otherwise specifically provided for herein, the Members shall not be allowed to have refunded any Capital Contribution.
- 6.04 <u>Capital Accounts</u>. Separate Capital Accounts shall be maintained for each Member in accordance with the following provisions:
 - (a) To each Member's Capital Account there shall be credited the fair market value of such Member's Initial Capital Contribution and any additional Capital Contributions, such Member's distributive share of profits, and the amount of any Company liabilities that are assumed by such Member.
 - (b) To each Member's Capital Account there shall be debited the amount of cash and the fair market value of any Property distributed to such Member pursuant to any provision of this Operating Agreement, such Member's distributive share of losses, and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.
 - (c) The Capital Account shall also include a pro rata share of the fair market value of any property contributed by a person who is not a Member, such value to be the same value reported for federal gift tax purposes if a gift tax return is filed, and if not, the value in the case of real property shall be determined by an

- independent M.A.I. appraiser actively engaged in appraisal work in the area where such property is located and selected by the Managers, and otherwise by the certified public accountant or accountants then serving the Company.
- (d) If any Member makes a non-pro rata Capital Contribution to the Company or the Company makes a non-pro rata distribution to any Member, the Capital Account of each Member shall be adjusted to reflect the then fair market value of the assets held by the Company immediately before the Capital Contribution or distribution.
- 6.05 <u>Loans to the Company</u>. If the Company has insufficient funds to meet its obligations as they come due and to carry out its routine, day-to-day affairs, then, in lieu of obtaining required funds from third parties or selling its assets to provide required funds, the Company may, but shall not be required to, borrow necessary funds from one or more of the Members as designated by the Managers; provided that the terms of such borrowing shall be commercially reasonable and the Company shall not pledge its assets to secure such borrowing.
- 6.06 <u>Effect of Sale or Exchange</u>. In the event of a permitted sale or other transfer of a Membership Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee in proportion to the percentage of the transferor's interest transferred.
- 6.07 <u>Distributions</u>. All distributions of cash or other property (except upon the Company's dissolution, which shall be governed by the applicable provisions of the Act and Article IX hereof) shall be made to the Members in proportion to their respective Membership Interests. All distributions of cash or property shall be made at such time and in such amounts as determined by the Managers. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to this Section.
- 6.08 <u>Allocations</u>. Except as otherwise provided in Section 6.09 hereof, all items of income, gain, loss, deduction and credit, whether resulting from the Company's operations or in connection with its dissolution, shall be allocated to the Members for federal, state and local income tax purposes in proportion to their respective Membership Interests.
- Allocation with Respect to Property. If, at any time during the Company's existence, any Member contributes to the Company property with an adjusted basis to the contributing Member which is more or less than the agreed fair market value and such property is accepted by the Company at the time of its contribution, the taxable income, gain, loss, deductions and credits with respect to such contributed property for tax purposes only (but not for purposes of calculating the Members' respective Capital Accounts) shall be shared among the Members so as to take account of the variation between the basis of the property to the Company and its agreed fair market value at the time of contribution, pursuant to Section 704(c) of the Code.

ARTICLE VII

RECORDS, REPORTS, ETC

- 7.01 Records. The Company shall maintain and make available to the Members its records to the extent provided in the Act.
- 7.02 <u>Financial and Operating Statements and Tax Returns</u>. Within seventy-five (75) days from the close of each fiscal year of the Company, the Managers shall cause to be delivered to each Member a statement setting forth such Member's allocable share of all tax items of the Company for such year, and all such other information as may be required to enable each Member to prepare his federal, state and local income tax returns in accordance with all then applicable laws, rules and regulations. The Managers also shall cause to be prepared and filed all federal, state and local income tax returns required of the Company for each fiscal year.
- 7.03 <u>Banking</u>. The funds of the Company shall be kept in one or more separate bank accounts in the name of the Company in such banks or other federally insured depositories as may be designated by the Managers, or shall otherwise be invested in the name of the Company in such manner and upon such terms and conditions as may be designated by the Managers. All withdrawals from any such bank accounts or investments established by the Managers hereunder shall be made on such signature or signatures as may be authorized from time to time by the Managers. Any account opened by the Managers for the Company shall not be commingled with other funds of the Managers or interested persons.

7.04 <u>Power of Attorney</u>.

- (a) Each Member does hereby irrevocably constitute and appoint the Managers serving in office from time to time, and each of them, as such Member's true and lawful attorney, in his name, place and stead, to make, execute, consent to, swear to, acknowledge, record and file from time to time any and all of the following:
 - (i) Any certificate or other instrument that may be required to be filed by the Company or the Members under the laws of the State of New York or under the applicable laws of any other jurisdiction in order to conduct business in any such jurisdiction, to the extent the Managers deem any such filing to be necessary or desirable.
 - (ii) Any amendment to the Articles adopted as provided in this Operating Agreement.
 - (iii) Any certificates or other instruments that may be required to effectuate the dissolution and termination of the Company pursuant to the provisions of this Operating Agreement.
- (b) It is expressly understood, intended and agreed by each Member for himself, his successors and assigns that the grant of the power of attorney to the Managers pursuant to

subsection (a) is coupled with an interest, is irrevocable, and shall survive the death or legal incompetency of the Member or such assignment of his Membership Interest.

(c) One of the ways that the aforementioned power of attorney may be exercised is by listing the names of the Members and having the signature of the Manager or Managers, as attorney-in-fact, appear with the notation that the signatory is signing as attorney-in-fact of the listed Members.

ARTICLE VIII

ASSIGNMENT; RESIGNATION

- Assignment Generally. Except as provided in Sections 8.02, 8.03, and 8.04 of this 8.01 Operating Agreement, each Member hereby covenants and agrees that he will not sell, assign, transfer, mortgage, pledge, encumber, hypothecate or otherwise dispose of all or any part of his interest in the Company to any person, firm, corporation, trust or other entity without first offering in writing to sell such interest to the Company. The Company shall have the right to accept the offer at any time during the 30 days following the date on which the written offer is delivered to the Company. The consent of all the Managers shall be required to authorize the exercise of such option by the Company. If the Company shall fail to accept the offer within the 30 day period, such interest may during the following 60 days be disposed of free of the restrictions imposed by this Operating Agreement; provided, however, that the purchase price for such interest shall not be less and the terms of purchase for such interest shall not be more favorable than the purchase price and terms of purchase that would have been applicable to the Company had the Company purchased the interest. Any interest not so disposed of within the 60day period shall thereafter remain subject to the terms of this Operating Agreement. Notwithstanding the preceding sentences, no assignee of a Membership Interest shall become a Member of the Company except upon the consent of a majority of the non-assigning Managers; or, if there are no non-assigning Managers, upon the consent of a majority of the non-assigning Members.
- Gift to Family Member. Notwithstanding Section 8.01, a Member shall not be required to offer to sell his Membership Interest to the Company prior to transferring his Membership Interest to his spouse or any of his descendants or the spouses of any of his descendants, or to a trust the sole beneficiaries of which are himself and/or one or more of his spouse, his descendants and the spouses of any of his descendants provided that such transfer is by way of inter vivos gift or testamentary or intestate succession. Notwithstanding the preceding sentence, no assignee of a Membership Interest by way of inter vivos gift shall become either a Class A Member or a Class B Member of the Company respectively except upon the consent of a majority of the non-assigning Managers; or, if there are no non-assigning Managers, upon the consent of a majority of the non-assigning Members, but this sentence shall not apply to a transfer by a Member to a Revocable Living Trust for the benefit of such transferring Member and of which such Member is a Trustee.
- 8.03 <u>Transfers from Custodianships</u>. Notwithstanding Section 8.01, any Membership Interest that is held by a custodian for a minor under the laws of the State of New York or any other state shall be fully transferrable and assignable to the minor, without an offer being made

to the Company, when the minor reaches the age of termination of such custodianship under the applicable statute.

8.04 <u>Purchase of Certain Membership Interests.</u>

- (a) If an Option Event (as defined below) occurs with respect to any Member (an "Option Member"), the Company shall have the option to purchase the Option Member's Membership Interest upon the terms and conditions set forth in this Section 8.04. For purposes of the foregoing, an "Option Event" shall mean (i) the death of a Member, (ii) the inability of a Member to pay his debts generally as they become due, (iii) any assignment by a Member for the benefit of his creditors, (iv) the filing by a Member of a voluntary petition in bankruptcy or similar insolvency proceedings, or (v) the filing against a Member of an involuntary petition in bankruptcy or similar insolvency proceeding that is not dismissed within ninety (90) days thereafter. The term "Option Member" shall include an Option Member's personal representative or trustee in bankruptcy, to the extent applicable.
- (b) Upon any Option Event occurring to an Option Member, the Option Member shall deliver written notice of the occurrence of such Option Event to the Company. The Company shall have the option, but not the obligation, to purchase the Option Member's Membership Interest at any time during the sixty (60) day period immediately following the date on which it receives notice of the occurrence of the Option Event. Such option shall entitle the Company to purchase such Membership Interest for the fair market value of such Membership Interest. The fair market value of the interest shall be the amount that the Option Member would receive in exchange for his entire interest in the Company if the Company sold all of its assets, subject to their liabilities, at their fair market value as of the date on which the Option Event occurred and distributed the net proceeds from such sale in complete liquidation of the Company. The consent of all the Managers shall be required to authorize the exercise of such option by the Company. Such option must be exercised by delivery of a written notice from the Company to the Option Member during the aforementioned period. Upon delivery of such notice the exercise of such option shall be final and binding on the Company and the Option Member.
- (c) If the foregoing option is not exercised, the business of the Company shall continue, and the Option Member shall retain his Membership Interest.
- (d) The fair market value of the Option Member's Membership Interest shall be determined as expeditiously as possible by a disinterested appraiser mutually selected by the Option Member and the Company (the Company's selection being made by the Managers). If the Option Member and the Company are unable to agree on a disinterested appraiser, then the Option Member and the Company shall each select a disinterested appraiser and if the disinterested appraisers selected are not able to agree as to the fair market value of the interest, then the two disinterested appraisers shall select a third disinterested appraiser who shall determine the fair market value. The determination of the fair market value of the Option Member's Membership Interest by the appraiser or appraisers shall be conclusive and binding on all parties. All costs of an appraiser mutually selected by the Option Member and the Company or the two disinterested appraisers shall be shared equally by the Option Member and the Company. All costs of an individually selected appraiser shall be borne by the parties selecting such appraiser.

- If the option to purchase the Option Member's Membership Interest is exercised by the Company, then not later than thirty (30) days after the date on which the appraisal described above is complete (the "Appraisal Date"), the Company shall make a distribution of property (which may be cash or other assets of the Company) to the Option Member with a value equal in amount to the fair market value of the Option Member's Membership Interest; provided, however, that at the election of the Company such distribution to the Option Member may be made in five (5) equal annual installments, the first of which shall be made on the thirtieth (30th) day after the Appraisal Date and one of which shall be made on the same date in each of the four years thereafter, provided, further, however, that notwithstanding an election by the Company to make the distribution to the Option Member in five equal annual installments, the Company may accelerate without penalty all of such installments at any time or any part of such installment at any time. If the Company elects to make distributions to the Option Member in five equal annual installments as provided herein, the Company, in addition to such annual installments, shall pay the Option Member additional amounts computed as if the Option Member were entitled to interest on the undistributed amount of the total distribution to which the Option Member is entitled hereunder at an annual rate equal to the annual Federal Mid-Term Rate in effect under Section 1274(d) of the Code, as determined on the 30th day after the Appraisal Date, which additional amounts, computed like interest, shall be due and payable on the same dates as the annual installments of the distribution payable to the Option Member hereunder. Any unpaid capital contributions of the Option Member and any damages occurring to the Company as a result of the Option Event shall be taken into account in determining the net amount due the Option Member at the closing, and any excess of such unpaid capital contributions or damages over the amount due at closing shall be netted against subsequent installment payments as they become due.
- (f) If at a time when the Company has an option to purchase an Option Member's Membership Interest, it is prohibited from purchasing all or any portion of such Membership Interest pursuant to the Act or any loan agreement or similar restrictive agreement, the Option Member and the remaining Members shall, to the extent permitted by law, take appropriate action to adjust the value of the Company's assets from book value to a fair valuation based on accounting practices and principles that are reasonable under the circumstances in order to permit the Company to purchase such Membership Interest. If the Company becomes obligated to purchase an Option Member's Membership Interest under this Section and the above action cannot be taken or does not create sufficient value to permit the Company to do so, the Company shall be obligated to purchase the portion of the Membership Interest it is permitted to purchase.
- (g) In order to fund any obligations under this Operating Agreement, the Company or the Members may maintain such life insurance policies on the lives of one or more Members as the Members determine from time to time to be desirable.
- 8.05 <u>Absolute Prohibition.</u> Notwithstanding any other provision in this Article VIII, the Membership Interest of a Member, in whole or in part, or any rights to distributions therefrom, shall not be sold, exchanged, conveyed, assigned, pledged, hypothecated, subjected to a security interest or otherwise transferred or encumbered, if, as a result thereof, the Company would be terminated for federal income tax purposes in the opinion of counsel for the Company or such action would result in a violation of federal or state securities laws in the opinion of counsel for the Company.

- 8.06 <u>Members Acquiring Membership Interest from Company</u>. No Person, other than the initial Members, who acquires a Membership Interest from the Company shall be admitted as a Member of the Company, except upon the unanimous consent of the Members.
- 8.07 <u>Resignation</u>. Any Member may elect to resign from the Company and to sell his or her entire interest in the Company to the Company at any time by serving written notice of such election upon the Company. Such notice shall set forth the date upon which such resignation shall become effective, which shall be not less than sixty (60) days and not more than ninety (90) days from the date of such notice. The purchase price for a Resigning Member's interest in the Company shall be One Dollar (\$1.00).
- 8.08 <u>Effect of Prohibited Action.</u> Any transfer or other action in violation of this Article shall be void <u>ab initio</u> and <u>of no force</u> or effect whatsoever.
- 8.09 <u>Rights of an Assignee</u>. If an assignee of a Membership Interest is not admitted as a Member because of the failure to satisfy the requirements of Section 8.01, 8.02 or 8.05 hereof, such assignee shall nevertheless be entitled to receive such distributions from the Company as the assigning Member would have been entitled to receive under Sections 6.07 and 9.04(c) of this Operating Agreement with respect to such Membership Interest had the assigning Member retained such Membership Interest.

ARTICLE IX

DISSOLUTION AND TERMINATION

- 9.01 <u>Events of Dissolution</u>. The Company shall be dissolved upon the first to occur of the following:
- (a) Any event that under the Act or the Articles requires dissolution of the Company, provided that the death, resignation, retirement, expulsion, bankruptcy, or dissolution of a member or occurrence of any other event that terminates the continued membership of a member in the Company shall not cause the dissolution of the Company;
- (b) The unanimous written consent of the Members to the dissolution of the Company; and
- (c) The entry of a decree of judicial dissolution of the Company as provided in the Act.
- 9.02 <u>Liquidation</u>. Upon the dissolution of the Company, it shall wind up its affairs and distribute its assets in accordance with the Act by either or a combination of both of the following methods as the Members shall determine:
- (a) Selling the Company's assets and, after the payment of Company liabilities, distributing the net proceeds therefrom to the Members in proportion to their Membership Interests and in satisfaction thereof; and/or

- (b) Distributing the Company's assets to the Members in kind with each Member accepting an undivided interest in the Company's assets, subject to its liabilities, in satisfaction of his Membership Interest. The interest conveyed to each Member in such assets shall constitute a percentage of the entire interests in such assets equal to such Member's Membership Interest.
- 9.03 Orderly Liquidation. A reasonable time as determined by the Managers not to exceed eighteen (18) months shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to the creditors so as to minimize any losses attendant upon dissolution.
- 9.04 <u>Distributions</u>. Upon liquidation, the Company assets (including any cash on hand) shall be distributed in the following order and in accordance with the following priorities:
- (a) First, to the payment of the debts and liabilities of the Company and the expenses of liquidation, including a sales commission to the selling agent, if any; then
- (b) Second, to the setting up of any reserves that the Managers (or the person or persons carrying out the liquidation) deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company. At the expiration of such period as the Managers (or the person or persons carrying out the liquidation) shall deem advisable, but in no event to exceed 18 months, the Company shall distribute the balance thereof in the manner provided in the following subsection; then
 - (c) Third, to the Members in proportion to their respective Membership Interests.
- (d) In the event of a distribution in liquidation of the Company's property in kind, the fair market value of such property shall be determined by a qualified and disinterested appraiser, selected by the Managers (or the person or persons carrying out the liquidation), and each Member shall receive an undivided interest in such property equal to the portion of the proceeds to which he would be entitled under the immediately preceding subsection if such property were sold at such fair market value.
- 9.05 <u>Taxable Gain or Loss</u>. Taxable income, gain and loss from the sale or distribution of Company property incurred upon or during liquidation and termination of the Company shall be allocated to the Members as provided in Section 6.08 above.
- 9.06 No Recourse Against Members. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of his Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of each Member, such Member shall have no recourse against any other Member.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.01 <u>Attorneys' Fees</u>. In the event any Member brings an action to enforce any provisions of this Operating Agreement against the Company or any other Member, whether

such action is at law, in equity or otherwise, the prevailing party shall be entitled, in addition to any other rights or remedies available to it, to collect from the non-prevailing party or parties the reasonable costs and expenses incurred in the investigation preceding such action and the prosecution of such action, including but not limited to reasonable attorney's fees and court costs.

- Notices. Whenever, under the provisions of the Act or other law, the Articles or this Operating Agreement, notice is required to be given to any Person, it shall not be construed to mean exclusively personal notice unless otherwise specifically provided, but such notice may be given in writing, by mail, addressed to the Company at its principal office from time to time and to any other Person at his address as it appears on the records of the Company from time to time, with postage thereon prepaid. Any such notice shall be deemed to have been given at the time it is deposited in the United States mail. Notice to a Person may also be given personally or by telegram or telecopy sent to his address as it appears on the records of the Company. The addresses of the initial Members as shown on the records of the Company shall originally be those set forth in Article III hereof. Any Person may change his address as shown on the records of the Company by delivering written notice to the Company in accordance with this Section.
- 10.03 <u>Application of New York Law</u>. This Operating Agreement, and the interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of New York, without reference to its choice of law provisions, and specifically the Act.
- 10.04 <u>Amendments</u>. No amendment or modification of this Operating Agreement shall be effective except upon the unanimous written consent of the Members.
- 10.05 <u>Construction</u>. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa.
- 10.06 <u>Headings</u>. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.
- 10.07 <u>Waivers</u>. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.
- 10.08 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
- 10.09 <u>Severability</u>. If any provision of this Operating Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

- 10.10 <u>Heirs, Successors and Assigns</u>. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.
- 10.11 <u>Creditors</u>. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditor of the Company.
- 10.12 <u>Counterparts</u>. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- 10.13 <u>Entire Agreement</u>. This Operating Agreement sets forth all of the promises, agreements, conditions and understandings between the parties respecting the subject matter hereof and supersedes all prior negotiations, conversations, discussions, correspondence, memoranda and agreements between the parties concerning such subject matter.

The undersigned, being all the Members of the Company, hereby agree, acknowledge and certify that the foregoing Operating Agreement constitutes the sole and entire Operating Agreement of the Company, unanimously adopted by the Members of the Company as of the date first written above.

MEMBERS:
Class A Members
Class B Members

EXHIBIT A

PROPERTY

FAIR MARKET VALUE AT DATE OF CONTRIBUTION TO THE COMPANY

