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Dear Reader,

Thank you for downloading the New York Limited Liability Company Operating Agreement Sample Form from our firm's website, www.jameshsuilaw.com.

While this form has been prepared by us, gratis, for your convenience, it is **provided to you for general informational purposes only**. It is **not legal advice, and should not be used as a substitute for legal or other advice**.

Please be aware that **your use of this form does not create an attorney-client relationship between you and us**. We ask all our clients to sign letters of engagement with us, in accordance with New York's rules governing attorneys. These letters confirm the relationship between us and our clients, and describe the specific parameters of our unique relationship with each distinct client. **Unless you have signed such a letter, we are not your lawyer**. If you have signed such a letter with our firm, please let us take this opportunity to thank you for choosing us!

This sample form contemplates a **very basic approach** for the operations and internal affairs of an LLC. Please be aware that the **approach provided in the form may not be suitable or desirable for the specific needs of your business or its stakeholders**. This is **especially true if your LLC will be a multi-member LLC**. Similar forms are available at legal stationary stores and in legal publications; and online LLC formation companies provide similar documents. **You do not have to use this form, and if you decide to do so, you do so at your own risk. We make no guarantees and will not be responsible for any result that is not to your liking**.

Highlighted portions of the form indicate specific information that needs to be added, such as names and dates, and options which can be varied depending on whether an LLC is member managed or manager managed. A New York LLC is member managed unless its Articles of Organization state that it is manager managed. The information in the **form is based on New York LLC law current as of 29 February 2016**.

Lastly, while this form can be used as the Operating Agreement for your New York LLC, .an Operating Agreement is a **legally binding contract that can affect your rights and obligations**, and you **should not sign one that you do not understand**. Thus, **we recommend that your Operating Agreement be prepared under the guidance of a lawyer** who will be able to explain its terms and carefully tailor its provisions to meet the needs of your business.

We hope this information has been helpful to you. Thank you again for visiting our website.

Yours most faithfully,

James J. Hsui
Principal
on behalf of
James Hsui, PLLC

OPERATING AGREEMENT OF

A NEW YORK LIMITED LIABILITY COMPANY

INDEX

ARTICLE I: INTERPRETATION	1
1.1 Definitions.....	1
1.2 Construction.....	2
1.3 Headings	3
ARTICLE II: THE COMPANY	3
2.1 Formation.....	3
2.2 Name.....	3
2.3 Term.....	3
2.4 Offices.....	3
2.5 Purposes and Powers.....	4
ARTICLE III: ACCOUNTING MATTERS	4
3.1 Capital Accounts.....	4
3.2 Fiscal Year	4
3.3 Tax Matters Partner.....	4
3.4 Tax Election.....	4
3.5 Valuation.....	5
ARTICLE IV: CAPITAL	5
4.1 Percentage Interest.....	5
4.2 Initial Capital Contribution	5
4.3 Additional Contributions	5
4.4 Form of Contributions.....	6
4.5 No Interest on Capital Contributions	6
4.6 No Right to Withdraw Capital Contributions	6
ARTICLE V: PROFITS, LOSSES AND DISTRIBUTIONS	6
5.1 Allocation of Profits and Losses	6
5.2 Distributions.....	6
5.3 Limitations on Distributions	7
ARTICLE VI: MEMBERS.....	7
6.1 Admission	7
6.2 Resignation of Members	7
6.3 Votes	7
6.4 Meetings.....	8

6.5	Action without Meeting	8
6.6	Proxy Representation	8
6.7	Actions Requiring Special Authorization of the Members.....	9
6.8	Management by Members.....	9
6.9	List of Members.....	9
ARTICLE VII: MANAGERS.....		10
7.1	Management by Managers.....	10
7.2	Number	10
7.3	Election	10
7.4	Tenure	10
7.5	Resignation and Removal	10
7.6	Votes	10
7.7	Meetings and Actions without Meeting.....	11
7.8	List of Managers	11
ARTICLE VIII: OFFICERS		11
8.1	Authority of Officers.....	11
8.2	Appointment	11
8.3	Resignation and Removal	11
8.4	List of Officers.....	12
ARTICLE IX: TRANSFERS.....		12
9.1	Transfer Restrictions.....	12
9.2	Transfers in Violation of Restrictions.....	12
9.3	Effects of Transfer	13
9.4	Rights of Assignee	13
9.5	List of Transferees	14
ARTICLE X: LIABILITY AND INDEMNIFICATION		14
10.1	Limitation of Liability.....	14
10.2	Right to Indemnification.....	14
10.3	Non-Exclusivity	14
10.4	Survival.....	15
ARTICLE XI: DISSOLUTION AND WINDING UP		15
11.1	Dissolution Events	15
11.2	No Automatic Dissolution	15
11.3	Winding Up.....	15
11.4	Distributions Upon Winding Up.....	16
ARTICLE XII: MISCELLANEOUS PROVISIONS		16
12.1	Notices	16
12.2	Amendments	16
12.3	Choice of Law.....	16
12.4	Choice of Venue	16

12.5 Waiver of Jury Trial..... 17
12.6 Costs..... 17
12.7 Further Acts and Documents 17
12.8 Entire Agreement..... 17
12.9 Binding Effect..... 18
12.10 Third Parties 18
12.11 Severability..... 18

ANNEX A: LIST OF MEMBERS, MANAGERS, OFFICERS & ASSIGNEES

ANNEX B: SUBSCRIPTION AGREEMENT

ANNEX C: INTEREST TRANSFER AGREEMENT

OPERATING AGREEMENT OF

A NEW YORK LIMITED LIABILITY COMPANY

This Operating Agreement, is made by and amongst the Company, the signatories to this Agreement, any Person who is subsequently admitted as a Member according to the terms and conditions of this Agreement, any Person who is elected as a Manager or appointed as an Officer according to the terms and conditions of this Agreement, any Person who is an assignee under this Agreement, any Person who subsequently subscribes to or agrees to be bound by this Agreement, and any other Person who is bound by this Agreement under the Act or applicable law (the terms “Agreement,” “Company,” “Person,” “Member,” “Manager” and “Officer,” used in this have the meanings set forth in Section 1.1, below).

NOW, THEREFORE, in consideration of the covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending legally and equitably to be bound, hereby adopt this Agreement for the Company under the laws of the State of New York, upon the terms and subject to the conditions set forth herein.

ARTICLE I: INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

“**Act**” means the New York Limited Liability Company Law, as amended from time to time.

“**Agreement**” means this Operating Agreement of _____, as amended from time to time.

“**Capital Account**” means, in respect of any Member, the capital account that the Company establishes and maintains for such Member in accordance with Section 3.1.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**Company**” means _____, formed pursuant to the Act, and governed pursuant to this Agreement.

“**Economic Interest**” means an economic interest the represented by a Percentage Interest, which includes right to a share of the profits and losses of the Company and receive

distributions from the Company, but not any interests or rights represented by a Management Interest.

“Entity” means a Person other than an individual.

“Individual” means a human being.

“Member” means each of the initial members of the Company and any Person admitted to membership pursuant to Section 6.1, who has not resigned or withdrawn from the Company, or has not ceased to be a member of the Company for any other reason.

“Management Interest” means all non-economic interests represented by a Percentage Interest, including the right to participate in the management of the business and affairs of the Company, and the right to vote on, consent to, or otherwise participate in any decision or action of the Members under the Act or this Agreement.

“Manager” means an Individual who has been elected to serve as a member of the board of Managers, to which management of the Company has been vested pursuant to Article VII.

“Officer” means an Individual to whom executive powers and duties have been delegated pursuant to Article VIII.

“Party” means the Company, a Member, or a Person who has subsequently agreed to abide by and be subject to this Agreement, and in the plural, every Person who is a Party.

“Person” means an Individual, partnership, limited partnership, limited liability partnership, limited liability company, association, firm, company corporation, trust, association, state or public agency or instrumentality, or any other entity.

“Percentage Interest” means a Member’s aggregate rights in the Company as provided in Section Article IV.

“Treasury Regulations” means the regulations of the United States Department of the Treasury as promulgated under the Code, as the same may be amended from time to time.

1.2 Construction

Unless the context clearly indicates otherwise

- (a) singular nouns and pronouns shall be deemed to include plural nouns and pronouns, and vice versa;
- (b) nouns and pronouns of the masculine, feminine or neuter genders shall be deemed to include the masculine, feminine and neuter genders;
- (c) the conjunction “or” shall be deemed to be used both disjunctively and conjunctively;

(d) the terms “includes” and “including,” and any variations thereof, shall not be given a restrictive meaning, but rather, deemed to be followed by the words “without limitation”; and

(e) any references to articles, paragraphs, subparagraphs, sections, subsections or annexes are to those of this Agreement.

1.3 Headings

The headings are inserted for convenience only, and shall not affect the construction of this Agreement.

ARTICLE II: **THE COMPANY**

2.1 Formation

The Members have organized a limited liability company under the laws of the State of New York by causing its Articles of Organization to be filed with the New York Department of State, Division of Corporations, and by entering into this Agreement. The rights and obligations of the Members, any Person admitted to membership in the Company in accordance with this Agreement, and any Person who subscribes to or agrees to be bound by this Agreement, shall be determined pursuant to the Act, the Articles of Organization and this Agreement.

2.2 Name

The name of the Company is “_____.”
The Company may do business under that name and, as permitted by and in compliance with applicable law, any other name that the Managers deem appropriate or advisable.

2.3 Term

The Company was formed as of the _____,
and its existence shall be perpetual, unless sooner terminated as provided in Section 11.1. This Agreement shall enter into force on the date it is signed by the Initial Member and remains in force for the existence of the Company.

2.4 Offices

The principal office of the Company shall be located in the State of _____,
or such other place determined from time to time by the Manager. The Company may establish

offices within or without the State of _____ as determined from time to time by the Managers.

2.5 Purposes and Powers

The purpose of the Company is to engage in any lawful act or activity for which limited liability companies may be organized under the applicable law, and as determined from time to time by the Managers. The Company may exercise all powers, and may do all such acts or things, useful, incidental or conducive to the attainment of the purpose of the Company.

ARTICLE III: ACCOUNTING MATTERS

3.1 Capital Accounts

The Company shall establish a capital account for each Member. Each Capital Account shall be maintained and adjusted in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations and the provisions of this Agreement. Upon each distribution of property by the Company to a Member, the Capital Accounts of the Members shall be adjusted to the extent necessary by, and in a manner consistent with, Treasury Regulation Section 1.704(b)(2)(iv)(e).

3.2 Fiscal Year

The Company's fiscal year shall be the calendar year, beginning on the first day of January and ending on the last day of December.

3.3 Tax Matters Partner

The Members shall elect a "tax matters partner" by a plurality of votes, in accordance with Section 6231(a)(7) of the Code.

3.4 Tax Election

The Company elects to be taxed as a partnership so long as there is more than one Member; in the event that there is only one (1) Member, the Company elects to be taxed as a disregarded entity.

3.5 Valuation

Any determination of fair market value shall be determined by a certified public accountant, or an MAI certified member of the American Appraisal Institute, retained in the absolute discretion of the Managers, whose determination shall be binding and conclusive.

ARTICLE IV: **CAPITAL**

4.1 Percentage Interest

A Member's aggregate rights in the Company shall be represented by a Percentage Interest, which shall be expressed as a percentage determined by dividing the amount of the balance of the Member's positive Capital Account by the aggregate balances of the positive Capital Accounts of all Members. This Percentage Interest is comprised of an Economic Interest and a Management Interest.

4.2 Initial Capital Contribution

As of the date this Agreement entered into force, the Members heretofore have made initial capital contributions reflected in Annex A hereto. A list in the form of Annex A shall be updated from time to time to reflect the initial capital contributions of Members subsequently admitted to the Company and additional capital contributions made by Members pursuant to Section 4.3 of this Agreement.

4.3 Additional Contributions

Members shall not be required to contribute additional capital or make any loan to the Company. If, in the sole discretion of the Managers, it is determined that additional capital is required for the business of the Company and a specific amount of such capital should be raised from the Members, such additional capital contributions from the Members shall be made in accordance with the following procedure:

(a) first, each Member may contribute a portion of such specific amount in proportion to such Member's Percentage Interest;

(b) second, if any part of such specific amount remains uncontributed, a second round of voluntary contributions shall be called, with each Member who has made voluntary contributions pursuant to Section 4.3(a), entitled to contribute a portion of such part equal to a percentage determined by dividing such Member's contribution in the previous round by the aggregate contributions in the previous round; and

(c) if any part of such specific amount still remains uncontributed, the process set forth in Section 4.3(b) shall be repeated until no part remains uncontributed or no Member is entitled to contribute.

4.4 Form of Contributions

Capital contributions may be in the form of cash, property or services rendered, or promissory notes or other obligations to contribute cash or property, or to perform services. However, unless otherwise approved by the Managers, in their absolute discretion, on a case by case basis, capital contributions shall be in the form of cash only.

4.5 No Interest on Capital Contributions

No Member shall be entitled to receive any interest on such Member's capital contributions.

4.6 No Right to Withdraw Capital Contributions

Except as otherwise provided in this Agreement, no Member shall be entitled to withdraw or receive contributions of or against its capital contributions without the prior consent of, and upon the terms and conditions agreed upon by, the Managers.

ARTICLE V: PROFITS, LOSSES AND DISTRIBUTIONS

5.1 Allocation of Profits and Losses

The Company's income, gain, losses, deductions and credits for each fiscal year of the Company, shall be allocated amongst the Members in proportion to their respective Percentage Interests. Such allocation shall be for both book and tax purposes.

5.2 Distributions

Taking into account all debts, liabilities and obligations of the Company then due, working capital, and other amounts necessary or prudent for the conduct of the business of the Company or to place into reserves, cash available for distribution may be distributed at such time and in such manner as the Managers shall determine, in their absolute discretion, in proportion to the respective Percentage Interests of the Members.

All distributions by the Company shall be made only to the Persons who, according to the lists maintained in the form of Annex A, are the holders of record of Economic Interests in respect of which such distributions are made on the actual date of distribution.

5.3 Limitations on Distributions

Notwithstanding anything to the contrary in this Agreement, no distribution shall be declared and paid unless, both before and after the distribution is made, the Company will have sufficiently liquid assets to pay off its liabilities as they become due in the ordinary course of business.

ARTICLE VI: **MEMBERS**

6.1 Admission

Notwithstanding anything contrary to this Agreement, no Person shall be admitted as a Member unless and until

(a) the Members, upon recommendation by the Managers, have approved of such person's Membership;

(b) such person has executed this Agreement or a subscription agreement in the form of Annex B, indicating that such person desires to be a Member of the Company, has read this Agreement, knows and understands the terms of this Agreement, subscribes to this Agreement, and agrees to abide by the terms and conditions of this Agreement; and

(c) the admission of such person as a Member will not terminate the Company within the meaning of Section 708(b) of the Code.

Any Person holding any Economic Interest or Management Interest, who has not otherwise been admitted as a Member in accordance with this Section 6.1, shall be deemed an assignee whose rights shall be limited to those set forth in Section 9.4.

6.2 Resignation of Members

A Member may resign from the Company with the approval of the Members, upon recommendation by the Managers. Upon resignation, such former Member shall be entitled to receive the fair market value of such former Member's interest, taking into account that such former Member should not realize the full going concern value or value to be derived from the Company's future prospects.

6.3 Votes

Each Member shall have voting power equivalent to such Member's Percentage Interest.

6.4 Meetings

The Company shall not be required to hold annual, special or other meetings of Members. However, the Managers, or Members representing at least twenty-five-percent (25%) of the aggregate voting power of all Members, may call a meeting of Members.

Meetings of the Members may be held in any place, within or without the State of _____, as determined by the Managers. Members may participate by means of conference telephone or technology by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at the meeting.

Written notice of the meeting stating the place, date and hour of the meeting, the person or persons calling the meeting, the purpose of the meeting, shall be given to Members not less than twenty-one (21) days or more than sixty (60) days before the date of the meeting. The attendance of any Member at a meeting without protesting the lack of notice, prior to the conclusion of the meeting, shall constitute a waiver of notice. A Member may waive notice at any time by submitting a signed waiver of notice.

No business shall be transacted at any meeting unless a quorum is present when the meeting proceeds to business. The presence of Members representing more than fifty-percent (50%) of the aggregate voting power of all Members shall constitute a quorum, and the vote Members representing more than fifty-percent (50%) of the aggregate voting power of all Members present at the meeting shall be sufficient to decide any matter brought in such meeting, unless the Act or this Agreement requires a different vote, in which case, such provision of the Act or this Agreement shall govern.

6.5 Action without Meeting

Except as otherwise required by the Act or this Agreement, any act or action whereby the consent, vote, authorization or approval of the Members is required, the consent, vote, authorization or approval of Members representing more than fifty-percent (50%) of the aggregate voting power of all Members shall be sufficient to authorize such action.

6.6 Proxy Representation

Every Member may authorize one or more Members or Managers to act for such Member by proxy in all matters in which such Member is entitled to participate. Each proxy must be signed by the Member or such Member's attorney-in-fact, and delivered to the Company prior to the Member's participation by proxy. No proxy shall be valid after eleven (11) months from its date of execution, unless such proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable, and if, and only as long as, it is coupled with an interest regardless of whether such interest is an interest in the Percentage Interest or in the Company generally.

Notwithstanding anything to the contrary, any proxy or other arrangement by which a Person who is neither a Member nor a Manager has, or is granted, the right to exercise any rights represented by a Management Interest, shall be null and void.

6.7 Actions Requiring Special Authorization of the Members

Notwithstanding anything to the contrary, the following actions shall require the vote, consent or approval of Members representing more than fifty-percent (50%) of the aggregate voting power of all Members:

- (a) dissolution of the Company in accordance with Section 11.1(b);
- (b) merger, consolidation, or conversion of the Company with or into another Entity;
- (c) additional Capital Contributions under Section 4.3;
- (d) admission of a Member in accordance with Section 6.1
- (e) transfers of interests represented by Percentage Interests pursuant to Section 9.1;
- (f) resignation of a Member pursuant to Section 6.2;
- (g) removal of, or permitting a shorter permitting a shorter resignation notice period for, a Manager, pursuant to Section 7.5;
- (h) the compensation of any Manager for their service in such capacity;
- (i) sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all the assets of the Company.

6.8 Management by Members

Subject to this Agreement, the management of the Company shall be vested in the Members.

6.9 List of Members

A list in the form of Annex A shall be maintained and updated from time to time, and within ten (10) business days of the admission, resignation, termination or death of a Member, to reflect the name, capital contributions, Percentage Interest, business or residence address, and electronic mail address of each Member. Each Member shall be responsible for ensuring that such Member's addresses reflected in such list is recent and accurate. The list shall be the only evidence of a Member's membership and Percentage Interest.

ARTICLE VII:
MANAGERS

7.1 Management by Managers

The management of the Company shall be vested in a board of Managers, each of whom may, but need not, be a Member of the Company, but whom shall be an Individual. Except as required by the Act or provided in this Agreement, Members, in their capacity as Members, shall not be entitled to participate in the management of the business and affairs of the Company. Consistent with the foregoing, a Member is neither an agent of any Member nor an agent of the Company, and is not authorized to bind the Company.

7.2 Number

The board of Managers shall consist of one (1) or more Managers of the Company, the number thereof to be determined from time to time by the Members.

7.3 Election

A Manager shall be elected by Members representing a plurality of the aggregate voting power of all Members.

7.4 Tenure

Except as otherwise provided by the Act or this Agreement, a Manager shall hold office until such Manager's successor is elected and qualified, or until such Manager's earlier death, resignation or removal.

7.5 Resignation and Removal

Subject to, and without prejudice to any rights to which the Company may be entitled in connection with, any agreement between a Manager and the Company, such Manager may resign at any time by giving sixty (60) days prior written notice to the Company, unless the Members consent to a shorter notice period.

A Manager may be removed with or without cause by the Members.

7.6 Votes

Each Manager shall have one (1) vote.

7.7 Meetings and Actions without Meeting

The provisions for meetings of Members and Actions of Members without a meeting, as set forth in Sections 6.4 and 6.5, shall govern, mutatis mutandis, to meetings of Managers and actions of Managers without meeting, except that notice may be given not less than three (3) days or more than sixty (60) days before a meeting.

7.8 List of Managers

A list in the form of Annex A shall be maintained and updated from time to time, and within ten (10) business days of the election, resignation, removal or death of a Manager, to reflect the name, business or residence address, and electronic mail address of each Manager. Each Manager shall be responsible for ensuring that such Manager's addresses reflected in such list is recent and accurate.

ARTICLE VIII: **OFFICERS**

8.1 Authority of Officers

The Managers may appoint one or more Individuals, who shall serve as officers of the Company, and serve at the pleasure of the Managers. The Officers shall have such titles, exercise such powers, and perform such duties as may be from time to time prescribed by the Managers, subject to the direction, guidance, discretion and authority of the Managers.

8.2 Appointment

An Officer may be appointed by the Managers at any meeting of the board of Managers.

8.3 Resignation and Removal

Subject to, and without prejudice to any rights to which the Company may be entitled in connection with, any agreement between an Officer and the Company, such Officer may resign any time by giving thirty (30) days written notice to the Company, unless Managers consent to a shorter notice period.

Subject to any agreement of employment or other agreement between an Officer and the Company, such Officer may be removed with or without cause by the Managers.

8.4 List of Officers

A list in the form of Annex A shall be maintained and updated from time to time, and within ten (10) business days of the appointment, resignation, removal or death of a Manager, to reflect the name, business or residence address, and electronic mail address of each Officer. Each Officer shall be responsible for ensuring that such Officer's addresses reflected in such list is recent and accurate.

ARTICLE IX: **TRANSFERS**

9.1 Transfer Restrictions

No holder of Economic Interest shall transfer all or part of such interest to another Person, unless the Members, in their absolute discretion, upon recommendation by the Managers, have consented to the transfer, and transferee, if not a Member, executes or has executed an agreement in the form of Annex C, indicating that the transferee has read the Agreement, knows and understands the terms of this Agreement, and agrees to abide by the terms and conditions of this Agreement.

Subject to, and in accordance with, Section 9.3, no transfer of Management Interests may be made without a proportional, and prior or contemporaneous, transfer of Economic Interests.

For the purpose this Article IX, a transfer shall include a sale, assignment, conveyance, donation, bequest, attachment or other disposition, whether made voluntarily or involuntarily; the term "value" shall include reductions or payments of debts; cash, property or services; the entitlement to claim tax-deductions for charitable contributions or business expenses; or the promise of any of the foregoing.

9.2 Transfers in Violation of Restrictions

Any transfer in violation of this Article IX, including transfers in connection with divorce or dissolution of marriage or as a consequence of bankruptcy, shall be null and void, ab initio, and shall have not be given effect. However, if a court of competent jurisdiction determines that a transfer in violation of this Article IX must be recognized, the Company shall have the right, but not the obligation, to purchase all or part of the transferred interest, exercisable in the absolute discretion of the Managers by notifying the transferee of the Company's intent to repurchase the interest within sixty (60) days of actual receipt by the Company or written notice by such transferee of the transfer and its terms, or at any or at any time after the transfer but before the Company's receipt of such notice.

The purchase price shall be the lesser of the fair market value of the value provided to the transferor for the transferred interest; or the fair market value of the interest, taking into account that the full going concern value or value to be derived from the Company's future prospects

should not be realized, and applying the appropriate discounts including discounts for lack of marketability and management rights.

Closing shall occur at the principal office of the Company within sixty (60) days after the purchase price has been determined in accordance with Section 3.5, but no later than one-hundred-and-eighty (180) days from the date the Company received transferee's written notice of the transfer.

Payment at closing shall be payable by cash, promissory note bearing interest at the "prime rate" as announced by the Wall Street Journal on the date of closing, or a combination of both. Cash shall be payable by wire transfer or by bank check; and the principal on the note shall be payable, without premium or penalty, in not more than five (5) equal annual installments beginning on the first anniversary of closing, in each case together with interest on the unpaid principal amount thereof on such date.

9.3 Effects of Transfer

A transferee of Economic Interest, shall be deemed an assignee of such interests and not a Member, unless such transferee is a Member on the date of transfer or has fulfilled the conditions for admission as a Member in accordance with Section 6.1.

A transferee of Economic Interest represented by a Member's Percentage Interest, shall be deemed to be a transferee of a proportional portion of such Member's Management Interest represented by such Member's Percentage Interest, and such Member shall be deemed to have transferred such Management Interest, if the transferee is a Member or is admitted as a Member in accordance with Section 6.1. Such transfer of Management Interest shall be deemed to be made on the date of transfer or the date the transferee is admitted, whichever is later, and the Percentage Interests of the Members shall be adjusted accordingly.

The Management Interest of a Member whose Economic Interest has been directly or indirectly purchased by the Company shall be reduced in proportion by such Economic Interest purchased. A Member who has transferred such Member's entire Economic Interest shall cease to be a Member on the date of the transfer; however, the termination of such former Member's Membership shall not prejudice the right of a transferee to be deemed a transferee of Management Interest in accordance with the preceding paragraph.

9.4 Rights of Assignee

An assignee's rights, if any, shall be limited to an Economic Interest. Consistent with the foregoing, an assignee shall have no Management Interest, and shall not be entitled to exercise any other rights Members may be entitled to under this Agreement. An assignee may, but has no right to, become a Member.

9.5 List of Transferees

A list in the form of Annex A shall be maintained and updated from time to time to reflect the name, business or residence address, and electronic mail address of each transferee, and the date of transfer, the interest transferred, the name of the transferor, and the name of the Member whose Percentage Interest represents the transferred interest. Each transferee shall be responsible for ensuring that such transferee's addresses reflected in such list is recent and accurate.

ARTICLE X: **LIABILITY AND INDEMNIFICATION**

10.1 Limitation of Liability

Except as required by the Act or provided in this Agreement, neither a Member, Manager, Officer, nor agent of the Company shall be personally liable for, the debts, obligations, liabilities or expenses of the Company or each other, whether arising in contract, tort or otherwise.

10.2 Right to Indemnification

To the fullest extent permitted by the laws of New York, as the same exists or may hereafter be amended, but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said law permitted the Company to provide prior to such amendment

(a) the Company shall indemnify and hold harmless each Member, Manager, Officer, agent or employee of the Company, against all costs, liabilities, claims, expenses, including reasonable attorneys' fees, and damages paid or incurred by such person in connection with the conduct of the Company's business; and each such person; and

(b) each person who at any time is, or has been, a Member, Manager, Officer, agent or employee of the Company, and is threatened to be, or is, made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is, or was, a Member, Manager, Officer, agent or employee of the Company, or is serving, or has served, at the request of the Company as a manager, director officer, member, employee of an Entity, shall be indemnified against all costs, liabilities, claims, expenses, including reasonable attorneys' fees, and damages actually and reasonably incurred in connection with any such pending, threatened, or completed action, suit or proceeding.

10.3 Non-Exclusivity

The rights of any person entitled to be indemnified under this Article X, set forth in this Article X, shall not be exclusive of any other rights to which such person may have or hereafter

acquire from time to time under any statute, agreement, or by approval of Members or disinterested Managers, or otherwise, nor shall such rights limit or affect any other such rights

10.4 Survival

All rights of any person entitled to be indemnified under this Article X, set forth in this this Article X, shall survive the dissolution of the Company.

ARTICLE XI: **DISSOLUTION AND WINDING UP**

11.1 Dissolution Events

The Company shall be dissolved, its assets shall be disposed of, and its affairs wound up on the first to occur of the following:

- (a) the entry of a decree of judicial dissolution;
- (b) the vote or approval of the Members;
- (c) the sale of all or substantially all of assets of the Company.

11.2 No Automatic Dissolution

Neither shall the death, retirement, resignation, bankruptcy, withdrawal or dissolution of a Member, nor shall the occurrence of any other event that results in a Member ceasing to be a Member of the Company, cause the Company to be dissolved or its affairs to be wound up; and, upon the occurrence of any such event, the Company shall continue without dissolution.

11.3 Winding Up

Upon the occurrence of any event specified in Section 11.1, the Company shall cease carrying on the business of the Company, except as necessary for winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors. The Company shall not terminate, but rather shall continue until the winding up of the affairs of the Company is complete and the appropriate Certificate of Dissolution has been issued by the Secretary of State of the State of New York. The Managers, or, if none, the Members, shall be responsible for overseeing the winding up and liquidation of the Company.

11.4 Distributions Upon Winding Up

Upon the winding up of the affairs of the Company, the Company's assets shall be distributed as follows:

- (a) first, to creditors, including Members and Managers who are creditors to the extent permitted by law, in satisfaction of the debts and liabilities of the Company; and
- (b) second, to Members, in proportion to their respective Percentage Interests.

Distributions to Members under this Section 11.4 may be in the form of cash or non-cash assets or both.

ARTICLE XII: **MISCELLANEOUS PROVISIONS**

12.1 Notices

Except as otherwise provided in this Agreement, any notice, request, approval, consent, demand or other communication required or permitted under the Act or this Agreement shall be given in writing by personal delivery; expedited delivery service with proof of delivery; first class, postage prepaid, registered or certified mail; to a party to the address of such party as indicated in the list of Members, Managers, Officers, and assignees maintained in the form of Annex A, or in the case of the Company, to the address of its principal office. A notice shall be deemed given and received either at the time of personal delivery, or in the case of delivery by mail, delivery service, or email, as of the date of first attempted delivery at the mailing or email address as provided in this Section 12.1.

12.2 Amendments

Except as required by the Act, this Agreement may be amended by a written instrument approved by Members representing at least two-thirds (66.6%) of the aggregate voting power of all Members.

12.3 Choice of Law

This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

12.4 Choice of Venue

Each Party hereby consents to the exclusive jurisdiction of the state and federal courts sitting in _____ County, in the State of _____, in any action or

claim arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement. Each Party hereby waives any objection which such Party now or hereafter may have to the laying of venue in any court of _____ County, in the State of _____, or any objection based on such court being an inconvenient forum.

12.5 Waiver of Jury Trial

Each Party, to the fullest extent such Party may lawfully do so, hereby waives the right to trial by jury in any action or proceeding, including any tort action, brought by any party hereto with respect to this Agreement or any of the terms, conditions or obligations arising under this Agreement.

12.6 Costs

In the event that any dispute between or amongst the Parties to this Agreement should result in litigation or arbitration, the prevailing Party in such dispute shall be entitled to recover from the other Party all reasonable fees, costs and expenses of the prevailing party for enforcing such Party's rights, including reasonable attorneys' fees and expenses. Such fees, costs and expenses shall be deemed to have been accrued upon the commencement of such action, and shall be paid whether or not such action is prosecuted to judgment. Any order or judgment entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment.

12.7 Further Acts and Documents

The Parties agree to execute and deliver such additional documents and instruments, and to perform such additional acts, as may be necessary or appropriate to effectuate, carry out and perform all the terms, provisions and conditions of this Agreement and the transactions contemplated hereby.

12.8 Entire Agreement

This Agreement, including its Annexes and the Company's Articles of Organization, constitute the complete and exclusive statement of agreement amongst the Parties in respect of the subject matter herein, and replaces and supersedes all prior agreements, negotiations, understandings and representations, written or oral, by and amongst the Parties or any of them. To the extent that the Act addresses a matter not otherwise addressed by this Agreement, it is the intention of the Parties that the provisions of the Act shall apply, but no such application shall otherwise affect any provision of this Agreement.

12.9 Binding Effect

Except as otherwise specifically provided in this Agreement, this Agreement shall be binding upon, and inure to the benefit of, the Parties and their heirs, legal representatives, successors and assigns.

12.10 Third Parties

Except as expressly required by applicable law, nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement to any Person, other than a Party, and their respective heirs, legal representatives, successors and assigns; nor shall anything in this Agreement relieve or discharge the obligation or liability of such third person to any Party; nor shall any provision give such third person any right of subrogation or action over or against a Party.

12.11 Severability

If any provision, or portion thereof, of this Agreement, or its application to any Person or circumstance, shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement, such provision and their application shall not be affected thereby, but shall be interpreted without such unenforceable provision or portion thereof, and shall remain in full force and effect; and insofar as is possible, such provision, portion and their application shall be deemed replaced by a provision, portion or application that is valid and enforceable and that comes closest to expressing the original intent of the Parties.

IN WITNESS WHEREOF, the undersigned have executed this Agreement, on their on behalf, and on behalf of the Company, effective as of the date latest date below:

By: _____
Name: _____
Date: _____

By: _____
Name: _____
Date: _____

By: _____
Name: _____
Date: _____

By: _____
Name: _____
Date: _____

By: _____
Name: _____
Date: _____

By: _____
Name: _____
Date: _____

ANNEX A

**LIST OF MEMBERS, MANAGERS,
OFFICERS & ASSIGNEES
OF**

Current as of _____

<u>Name & Address of Member</u>	<u>Date of Capital Contribution</u>	<u>Amount of Capital Contribution</u>	<u>Percentage Interest</u>

<u>Name & Address of Manager</u>

<u>Name, Address & Title of Officer</u>

<u>Name & Address of Assignee</u>	<u>Date of Assignment</u>	<u>Interest Assigned</u>	<u>Assignor of Interest</u>	<u>Member Account</u>

ANNEX B

**SUBSCRIPTION AGREEMENT
OF**

A NEW YORK LIMITED LIABILITY COMPANY
Formed on _____

I desire to become a member of _____
(the "Company"), a New York limited liability company. I have read the Company's Operating Agreement (the "Agreement"), and I know and understand its terms. I hereby subscribe to the Agreement, and agree to abide by and be subject to all of its terms, conditions and provisions. I further agree and understand that my membership is subject to the provisions of the Agreement.

I understand that investing in the Company involves a high degree of risk, including the risk of losing all or a substantial portion of my investment. I represent and warrant that I have such knowledge and experience in financial and business matters that I am capable of evaluating the risks and merits of this investment. I also understand that no federal or state agency has made any determination as to the fairness of the investment or has recommended it.

I represent and warrant that prior to investing in the Company, I have had the opportunity to ask any questions and obtain any additional information desired concerning the Company; and that I have been advised of the desirability of seeking, and given a reasonable opportunity to seek, independent legal counsel regarding my rights and obligations under the Agreement.

AGREED AND ACCEPTED:

By: _____
Name: _____
Date: _____

AGREED TO AND ACCEPTED ON BEHALF OF THE COMPANY:

By: _____
Name: _____
Title: _____
Date: _____

ANNEX C

**INTEREST TRANSFER AGREEMENT
OF**

A NEW YORK LIMITED LIABILITY COMPANY

Formed on _____

I desire to become a holder of certain interests in _____ (the "Company"), a New York limited liability company. I have read the Company's Operating Agreement (the "Agreement"), and I know and understand its terms. I hereby agree to abide by and be subject to all of its terms, conditions and provisions. I further agree and understand that my holding of any such interests is subject to the provisions of the Agreement.

I understand that my holding of economic or other interest in the Company does not entitle me to be admitted as a member of the Company. I understand that unless and until I am admitted as a member in accordance with Section 6.1 of the Agreement, in accordance with Section 9.4 of the Agreement, I shall be deemed an assignee. I understand that as an assignee, my rights, if any, shall be limited to an Economic Interest, and I shall have no Management Interest, and shall not be entitled to exercise any other rights members may be entitled to under the Agreement.

I represent and warrant that _____ will be duly transferred to me pursuant to Article IX of the Agreement. I further understand that the transfer of the interests I will hold are restricted, and that any transfer in violation of the Agreement will make such interest, and the underlying Percentage Interest, subject to redemption by the Company.

AGREED AND ACCEPTED:

By: _____

Name: _____

Date: _____

AGREED TO AND ACCEPTED ON BEHALF OF THE COMPANY:

By: _____

Name: _____

Title: _____

Date: _____