

MULTI-MEMBER MEMBER-MANAGED LLC OPERATING AGREEMENT

This document is an operating agreement contract template for LLCs that

- Have more than one owner (i.e. a “member”);
- Are a “member-managed LLC”;
- Are formed in the State of Tennessee; and
- Are taxed as a partnership (the default).

This resource does not create an attorney-client relationship. While this template and the corresponding information cover basic and common terms that apply to most businesses, it is impossible to address every situation that can arise -- some attorneys can do that. But, we can't guarantee this template is exactly what you need for your business.

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This OPERATING AGREEMENT is made on _____ (“Effective Date”), by the members of _____.

BACKGROUND

- The members wish to form a limited liability company for the purpose of _____.
- The members desire to define their rights and obligations as owners of Company and to allocate their interests as set forth in this Agreement.
- In consideration of their mutual promises and obligations, the members agree as follows:

ARTICLE I Organization of Company

- 1.1 **Name.** The name of the limited liability company is _____ (“the “Company”). Other names as may be registered as fictitious names under appropriate filings. The Company is a limited liability company organized under the Limited Liability Company Act of the State of Tennessee (the “Act”).
- 1.2 **Registered Agent and Office.** The Company’s registered agent in Tennessee is: _____, _____. The members may designate other registered agents or offices at any time in this state or, if necessary, in other states.
- 1.3 **Principal Place of Business.** The Company’s principal place of business is _____. The Company may establish additional offices at any time.
- 1.4 **Term.** The Company’s term of existence will begin with the filing date of its Articles of Organization and will continue until the dissolution and termination of the Company as provided in Article 10 of this Agreement.
- 1.5 **Purpose.** The purpose of the Company is _____, and the conduct of other activities as may be necessary or appropriate to promote the stated purposes, and to engage in any other lawful business or activity for which a limited liability company may be organized under the Act.

ARTICLE 2 Membership and Capital

- 2.1 **Members.** The names and addresses of the initial members of the Company are included in **Exhibit A**, attached to this Agreement.
- 2.2 **Rights and Duties of Members.** Subject to the provisions of Article 3, members will have all of the rights and powers of members as provided under the Act and as otherwise provided by law.
- 2.3 **New or Substituted Members.** New members will be admitted to the Company only upon a unanimous vote of the members and only upon executing a copy of this Agreement, agreeing to its terms. A member may sell or assign their interest only to another member or to the Company as provided in Article 7 below.



- 2.4 **Ownership Interests.** The ownership interest of each member of the Company will be expressed in terms of a percentage that is set out in **Exhibit A**, attached and made part of this Agreement. The total ownership interests of all members will always equal one-hundred percent (100%). The existing members will determine the ownership interest of any new members prior to admission to the Company.
- 2.5 **Resignation of Member.** A member may resign, retire or withdraw from the Company at any time by giving _____ days advance written notice to the remaining members. The right of a resigning, retiring or withdrawing member to compensation for the member's ownership interest in the Company will be governed by the provisions of Article 8 of this Agreement. The resignation, retirement or withdrawal of a member will terminate the member's membership and voting rights in the Company as of the date of the resignation, retirement or withdrawal. The remaining members must consent to continue the business and affairs of the Company by agreement or consent of all the remaining members within _____ days after the resignation, retirement or withdrawal.
- 2.6 **Capital Contributions.** A member's capital contributions to the Company may consist of cash, property (including intellectual property), services rendered, or a written promise to contribute cash, property or services in the future. The members will determine the value of all capital contributions. A member will not be entitled to withdraw a capital contribution without the consent of all other members. A member will not be entitled to interest on or with respect to any capital contribution. Additional capital contributions may be made by a member only with the consent of all other members. The capital contributions required of new members will be determined by the existing members. The initial capital contributions of the initial members of the Company are set forth on **Exhibit A**, attached and made part of this Agreement.
- 2.7 **Capital Accounts.** The Company will maintain a capital account for each member. A member's capital account will consist of the total amount of the member's capital contributions to the Company, plus any net income or gain allocated to the member by the Company, plus the amount of any Company liability assumed or secured by the member, less the value of any money or property distributed to the member by the Company, less any net losses allocated to the member by the Company, less the amount of any liabilities of the member assumed or secured by the Company.
- 2.8 **Additional Capital Contributions.** [**Option 1:** Members will not be required to make additional capital contributions.]

[**Option 2:** A vote of the members holding a majority ownership interest in the Company will determine whether additional capital contributions are required from the members. In the event additional capital contributions will be required from the members, and any member does not contribute his or her pro rata share of any Company funds so required, then the other members may contribute the amount required of such member and any member who did not make a contribution required of him or her will be liable to the other members for the amount advanced by the contributing members (together with interest at 10% or the maximum interest rate allowable by law). In the event that a member fails to make any required contribution to the Company, or in the event that a member otherwise fails to comply with any of the terms of this Agreement, and such default continues for a period of three (3) months or more, then upon written notice to such member in default, the member may be expelled from the Company by a vote of members holding a majority ownership interest in the Company and his or her interest in the Company will be disposed of in accordance with Article 7 below. In addition, the Company will be entitled to pursue any remedies in equity or at law, including actions for damages, which may be available to the Company respecting a defaulted member.

Upon such expulsion: (A) the members who advanced the funds required of a defaulting member will be reimbursed by the Company for the full amount advanced by them (together with interest at 10% or the maximum interest rate allowable by law), and (B) the interest of the Member who is terminated will be reallocated among the remaining members who are not in default in proportion to their percentage ownership interest in the Company.]



ARTICLE 3 Management

- 3.1 **Management by Members.** Subject to the provisions of Article 3.2 and the other rights expressly granted to members under this Agreement and by law, the overall management and control of the Company will be vested in the members, who have the right, duty, and authority to conduct and make the decisions relating to the day-to-day operations of the Company. The members agree that they will execute any further instruments and that they will perform any acts which are, or may become, necessary to effectuate this Agreement and to carry on the Company.
- 3.2 **Authority to Delegate.** The members have authority to: (1) designate one or more members to act alone in respect of any Company matter, and (2) delegate to third parties ministerial authority to conduct day-to-day operations of the Company.
- 3.3 **Term of members.** Members will perform their duties until they: (1) resign, (2) withdraw, (3) retire, (4) die, or (5) are expelled under Article 7.2. The rights of deceased or dissociated member will be determined pursuant to Article 8 or as otherwise provided in this Agreement. There will always be at least one member. If a member is the sole member at the time his or her membership ends, that member must elect a successor member or the Company will be dissolved in accordance with Article 10.
- 3.4 **Conflicts of Interest.** The members will not be required to devote full time to their duties to the Company, but will devote reasonable time and effort to ensuring the success of the business. Any member may engage independently or with others in other business ventures of any nature, unless the ventures are illegal, competitive with the Company, or directly detrimental to the Company's operations. Neither the Company nor any member will have any right by virtue of this Agreement to share or participate in the ownership, operations or proceeds of another member's business ventures. No member will be obligated to present any particular business or investment opportunity to the Company, and any member will have the right to take for his or her own account, or to recommend to others, any such particular opportunity.
- 3.5 **Acts Requiring Consent of All Members.** Notwithstanding any other provisions of this Agreement, the following Acts (if checked) require the unanimous consent of all members:
- Dissolution or termination of the Company
 - Sale or transfer of all or a significant part of the Company assets
 - Merger or consolidation of the Company with another entity
 - Amending the Articles of Organization
 - Incurring Company liability above \$_____
- 3.6 **Voting Requirements.** Except as otherwise provided in this Agreement or in the Act, all matters requiring the vote, consent or approval of the members will require the vote, consent or approval of the members collectively holding a majority interest in the Company.
- 3.7 **Membership Meetings.** The members may hold regular or special meetings either in the State of Tennessee or elsewhere. Regular meetings of the members may be held without notice at a time and place as may be determined by the members. Any member may call a special meeting of the members by giving thirty (30) days prior written notice of the time, place and purpose of the meeting to the other members. Notice will be as provided in Article 11 of this Agreement. Any member may waive notice of any meeting. Members may



participate in a meeting by means of telephone conference or other video or audio communications equipment where all persons participating in the meeting can simultaneously hear each other. Participation in such a meeting by a member will constitute the presence of the member at the meeting.

- 3.8 **Action Without Meeting.** The members may take action without meeting if all members sign a written consent to the action taken or in any other manner provided for in the “Action Without Meeting” provisions of the Act.

ARTICLE 4 **Allocations and Distributions**

- 4.1 **Allocation of Income and Loss.** The net income or losses of the Company will be allocated to the members at the end of each accounting period in proportion to their respective ownership interests in the Company. The gains, losses, deductions and other income tax items of the Company will be allocated to the members in the same manner, except as otherwise provided in this Article.
- 4.2 **Federal and State Tax Provision.** If there is a single member of the Company, the Company will be treated as disregarded entity for federal and state income tax purposes. If there are two or more members, the members expect and intend that the Company will be treated as a partnership for federal and state income tax purposes. The members agree individually that they will take all actions necessary to effect the stated tax status and will do nothing that is inconsistent with or that will otherwise jeopardize that tax status. Members can agree to change the tax status of the Company upon a unanimous vote.
- 4.3 **Distributions.** All distributions by the Company will be made to the members in proportion to their respective ownership interests as shown in the books and records of the Company. Distributions will be made in the amount and at times as are approved by the members. All distributions will be by cash or Company check unless the members approve a different form of distribution.
- 4.4 **Restriction on Distribution.** The Company will not make a distribution to the members unless immediately after giving effect to the distribution, all liabilities of the Company do not exceed the fair value of the Company assets. Liabilities do not include liabilities to the members on account of their interest in the Company and liabilities to which creditors’ recourse is limited to specified property of the Company. The fair value of any property that is subject to a liability to which creditors’ recourse is limited will be included in the Company assets only to the extent that the fair value of the property exceeds the liability.

ARTICLE 5 **Accounting, Books and Records**

- 5.1 **Accounting Practices and Tax Year.** The Company will keep its books and records and prepare its financial statements in accordance with generally accepted accounting principles and will prepare its income tax returns using such methods of accounting. The Company tax year will be the calendar year. The Company will be on a cash basis for both tax and accounting purposes. The members may delegate accounting and bookkeeping functions of the Company to the Company’s designated accountant or other third parties. _____ is designated as the “Tax Matters Partner” (as such term is defined in Article 6231(a)(7) of the Internal Revenue Code), or the equivalent representative for the Company.
- 5.2 **Location and Inspection.** Proper and complete books of account and records of the business of the Company will be kept at the Company’s principal office and at other places as may be designated by the members. Notice will be given to each member of any changes in the location of the Company books and records. The Company books and records will be open to inspection, audit and copying by any member, or the designated representative of a member, upon reasonable notice at any time during business hours for any



purpose reasonably related to the member's interest in the Company. Any information obtained or copied will be kept and maintained in strict confidence except as otherwise required by law.

- 5.3 **Bank accounts; Title to Business Property.** The funds of the Company will be deposited in bank accounts, or invested in interest-bearing or non-interest-bearing investments in the Company's name, as will be determined by the members. The funds of the Company will not be commingled with the funds of any other person. The members will not employ, or permit any other person to employ such funds in any manner except for the benefit of the Company. Title to business property will be held, and conveyances will be made, in the name of the Company.
- 5.4 **Reliance on Books and Records.** A member will be fully protected in relying in good faith upon the records and books of account of the Company and upon information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company, or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid if the records and information are presented to the member by the Company or any of its agents, or by any other person selected by the Company, as to matters which the member reasonably believes are within the person's field of expertise. No audit of Company books and records will be required unless a member requests the same and agrees to pay the cost of the audit.
- 5.5 **Reports and Tax Returns.** A copy of the Company annual financial statement and report will be transmitted to the members within fifteen (15) days after completion or by March 1st following the end of the tax year, whichever is earlier. The Company will, within time required by law, file a federal income tax return and transmit to each member a schedule showing the member's distributive share of the Company's income, losses, deductions and credits. The Company will further provide to each member information regarding all state and local income tax returns.

ARTICLE 6

Non-Disclosure, Non-Solicitation, and Assignment of Intellectual Property

- 6.1 **Non-Disclosure.** If there are two or more members of the Company, each member acknowledges that they may establish favorable relations with the Company's customers, clients and accounts, and will have access to correspondence, records, forms, manuals, leads, methods, financial data, and other confidential matters of the Company. Each member agrees that all confidential accounts, information, and business opportunities, even if originated by that member, remain the exclusive property and confidential information of the Company. Consequently, each member agrees that while they remain a member of the Company and at all times after termination as a member they will not: disclose, use for their own account, or in any manner reveal to any person, firm, company or corporation any customer, vendor or pricing lists, accounts, forms, manuals, documents, correspondence, records, methods, financial data, business secrets, or other confidential matter used or obtained by the member, or conveyed to or made available to them, in connection with their relationship to the Company.
- 6.2 **Non-Solicitation.** If there are two or more members, each member further agrees that while they remain a member of the Company and for a period of _____ years after termination as a member of the Company, they will not, either directly or indirectly, for the member's own purposes or purposes of another:
- solicit any employee of the Company for the purpose of hiring that employee;
 - solicit or accept any business which competes with Company's business, from persons or entities that were customers or potential customers of Company at any time during the member's membership in the Company. The term "customer" means any person or entity to whom Company has sold any good or service within the _____ years prior to the member's termination as a member of the Company. The term "potential customer" means any person or entity during the same _____ year period who has: (a) been involved in negotiations or discussions with Company for any good or service sold by



Company; (b) been the subject of personal contacts by the member and/or any other member or employee of the Company for purposes of soliciting business for the Company; or (3) been the subject of Company's efforts to gather, learn or evaluate information which may help Company obtain any future order from such person or entity.

- 6.3 **Relief.** Members recognize and agree that any violation of the non-disclosure and non-solicitation agreements set forth in paragraphs 6.1 or 6.2 above, either while the member remains a member of the Company or after termination as a member of the Company, will cause irreparable harm to the Company. In the event that a member, at any time during or after his term as a member of the Company, violates or threatens to violate any of the covenants contained in paragraphs 6.1 or 6.2 above, the Company and each of its members, will have the right to enforcement of this Agreement by means of an injunction, restraining order, money damages, and any other available legal remedy. The violating member further agrees to pay the Company for any and all attorneys' fees and costs incurred by the Company in pursuing judicial enforcement of this Agreement.
- 6.4 **Assignment of Intellectual Property.** As consideration for the member's interest in and participation in the Company, the member sells, transfers, assigns and conveys, to the Company, and its successors and assigns, the Purchaser's entire right, title and interest in Intellectual Property Rights as set forth in the Intellectual Property Contribution and Assignment Agreement in the form attached to this Agreement as **Exhibit B**.

ARTICLE 7 Transfer of Interests

- 7.1 **Sale or Assignment of Interest.** A member's interest in the Company may be sold or assigned first to the another members of the Company in proportion to their membership interests, and second to a third party with the written consent of all remaining members provided that the sale or assignment would not entitle any creditor of the Company to declare a default on the terms of any credit extended to the Company ("Default Restriction"). The offer to purchase must be made in writing, set forth the purchase price and other material terms of the proposed sale or assignment and delivered to each member of the Company ("Offer Notice").
- 7.2 **Expulsion of a Member.** Any member may be immediately expelled for cause upon a unanimous vote of the remaining members at a meeting called for that purpose. "For cause" as defined in this Article means an intentional breach of this Agreement, bad faith, or wanton or willful misconduct. In the event a member is expelled, the member will be deemed to have granted the remaining members an option to purchase the expelled member's interest for the value determined in Article 8.2 of this Agreement, as of the date of expulsion. Notice of the expulsion will be given to the expelled member as provided in Article 11 of this Agreement. In the event the other members do not elect to acquire the expelled member's interest, the expelled member will, as of the Expulsion date: (1) automatically cease to be a member (as that term is used in this Agreement and under the Act), and (2) have only the rights of an assignee in accordance with the Act.
- 7.3 **Transfer Without Notice.** Notwithstanding Section 7.1 but subject to the Default Restriction in Article 7.1, a member may transfer his/her interest in the Company or any part of such interest to: (1) a revocable inter vivos trust naming the member as trustee for the benefit of the member, his or her spouse and/or descendants; or (2) an immediate family member, defined as a surviving spouse, child, grandchild, sister, brother and/or parent, by operation of law or by testamentary or other disposition upon such member's death.
- Upon the death of a member whose interests have been transferred in such manner, the transferee will not become a member of the Company and will have only the rights of an assignee under the Act. The transferee will receive a buy-out in accordance with Article 8.2 of this Agreement. If such disposition is to other than an immediate family member or such trust, such disposition will be void and of no effect.
- 7.4 **Disability of a Member.**
- (1) In the event of a disability of a member (as defined below), the member ("Affected Member") will be deemed to have granted the Company and the other members an option to purchase the disabled member's interest for the value as determined in Article 8.2 of this Agreement, as of the date of disability.



Notice of the disability determination will be given to the disabled member as provided in Article 11 of this Agreement. In the event the other members or the Company do not elect to acquire the disabled member's interest, the Affected Member will, as of the date of disability, (1) automatically cease to be a member (as that term is used in this Agreement and under the Act), and (2) have only the rights of an assignee in accordance with the Act.

- (2) A member will have a "Disability" if the member has a physical and/or mental condition which prevents him or her from effectively and actively carrying out his or her duties and obligations under this Agreement. A member will be deemed to have a Disability if the Affected Member and other members collectively holding more than _____ percent (_____) ownership interests in the Company agree that he or she has a Disability.
- (3) In the absence of such an agreement, a member may notify another member that they believe the Affected Member to have a Disability. Within _____ days of the notice, a board of _____ qualified physicians (by a majority vote) will determine whether or not in their opinion the Affected Member has a disability. The determination will be made in writing and delivered to the Company and the Affected Member.

The _____ qualified physicians will be selected in the following manner: The Affected Member and the other members collectively holding more than _____ percent (_____) ownership interest in the Company will each select one physician within _____ days after the receipt of the notice, and the two physicians selected will select a third physician. If the Affected Member fails to select a physician within _____ business days after notice is given, the other members will select a physician. If the other members fail to select a physician within _____ business days after notice is given, the Affected Member will select a physician. If the two physicians selected fail to agree on a third physician within _____ days, then a Judge of the city or county court of the jurisdiction where the Company's primary office is located will select a third physician. The Affected Member agrees to submit to any examination by each of the board of qualified physicians, and all costs of the examination will be paid by the Company. The determination made pursuant to the foregoing procedure will be controlling on all parties for purposes of this Agreement.

- (4) The date on which an Affected Member is deemed to have a Disability will be the date on which (a) the parties agree that the Affected Member is disabled, or (b) a board of qualified physicians determines, in their opinion, that the Affected Member is disabled.

ARTICLE 8 Deceased or Dissociated Members

8.1 **Dissociation of a Member.** The withdrawal, resignation, retirement, disability, expulsion, or bankruptcy of a member will terminate the membership of the member in the Company. Such a member will be deemed a "dissociated member."

8.2 **Compensation of Deceased or Dissociated Members.**

- (1) If the death or dissociation of a member causes the dissolution and termination of the Company (as provided in Article 10 below or under the Act), a dissociated member, or the estate or legal representative of a deceased member, will be entitled to participate in the winding up and liquidation of the Company to the same extent as a member.
- (2) If the death or dissociation of a member does not cause the dissolution and termination of the Company, a dissociated member, or the estate or legal representative of a deceased member, will be entitled to buy-out compensation in an amount equal to the following:



- i. The capital account of the deceased or dissociated member, as of the date of death or dissociation,
- ii. Increased or decreased by the member's share of Company profits or losses for the portion of the Company's current fiscal year ending on the date of the member's death or dissociation,
- iii. Increased by the fair market value of all Company assets as set forth in Section 8.2(c),
- iv. Decreased by any debt the dissociated member owed the Company as of the date of the date of dissociation but without acceleration of the payment of any other debts owed to the dissociated member by the Company, and
- v. Decreased by any damages sustained by the Company as a result of any expulsion or wrongful dissociation by a dissociated member.

No allowance will be made for goodwill or other intangible assets except as those assets have been reflected in the Company books immediately prior to the death or dissociation of the member.

- (3) The fair market value of Company assets will be determined by: (a) agreement of the remaining members and the dissociated member or deceased member's estate or legal representative (the "Parties"); (b) or if they cannot reach agreement, then by an independent appraiser. The fair market value of any assets will be reduced by the amount of liabilities encumbering any said assets on the specified valuation date. If an independent appraiser is required, the appraiser will be agreed upon and retained by the Parties within _____ days of the date of death or dissociation. The appraiser will submit a copy of his or her written appraisal to the Parties within _____ days of from the date the appraiser is retained. The dissociated member or deceased member's estate or legal representative will pay the cost of the appraiser. In the event the Parties cannot reach agreement on the selection of an independent appraiser within _____ days from the date of dissociation or death, then the Parties will each select and retain an independent appraiser within _____ days from the date of dissociation or death, with each party to pay the cost of their own appraiser, notwithstanding any other provisions of this Agreement. The two (2) appraisers so named will then each submit a copy of their written appraisals to the Parties within _____ days from the date the appraisers are retained. The average of the two appraisals will be binding on Parties as the fair market value of the subject assets. Should the dissociated member or deceased member's legal representative or trustee fail to select and retain an appraiser as provided in this sub-section, the remaining members may select and retain an appraiser at the dissociated or deceased member's expense and the appraiser's valuation of the assets will be binding on the Parties.
- (4) The remaining members will have the right to purchase the dissociated or deceased member's interest in pro rata shares in the ratio each electing purchasing member's ownership percentage bears to the aggregate ownership percentages of all purchasing members. If the remaining members do not elect to purchase the interest, the Company will pay the compensation due for the dissociated or deceased member's interest. The amount payable under this Article will be paid to the dissociated member, or to the estate or legal representative of a deceased member, in not more than ten (10) semi-annual installments with annual interest at the prime rate as determined by the Wall Street Journal on the date each payment is due, beginning not more than (12) months after the date of the death or dissociation.
- (5) If there is more than one member, each member of the Company will obtain key-man life insurance in an amount sufficient to pay compensation due for a deceased member's interest under Article 8.2.

8.3 **Release from Liability.** In the event of a member's dissociation from the Company, the Company agrees to use its best efforts to release and discharge the dissociated member from any and all liabilities, duties, and responsibilities from the Company's debt and obligations, including, but not limited to, any notes, instruments payable, lines of credit, equipment leases and real property leases.

ARTICLE 9 Indemnification and Limitation of Liability



- 9.1 **Indemnification of Members.** No member will be liable, responsible, or accountable in damages or otherwise to the Company or to the members for any action taken or failure to act on behalf of the Company unless the action or omission was an intentional breach of this Agreement or constituted gross negligence, bad faith, or wanton or willful misconduct (collectively “Misconduct”). Except with respect to Misconduct, the Company will, to the fullest extent permitted under the Act, indemnify and hold harmless the members from any loss, damage, liability, or expense incurred or sustained by them by reason of any act performed or any omission for or on behalf of the Company, including any judgment, award, settlement, reasonable attorneys’ fees, and other costs and expenses (which may be advanced by the Company), incurred in connection with the defense of any actual or threatened action, proceeding, or claim.
- 9.2 **Indemnification of Company by Members.** Each member agrees to indemnify and hold the Company and every other member harmless from any liability, cost, or damage that any indemnified party may incur (including reasonable legal and other expenses incurred in defending against such liability, cost, or damage) as a result of the indemnifying member’s Misconduct. No amount paid under this provision will be treated as a capital contribution by the member making the payment.
- 9.3 **Liability for Company Debts and Obligations.** No member will be personally liable for any of the expenses, liabilities, or obligations of the Company except to the extent expressly provided in this Agreement, or in an agreement executed by such member evidencing his or her agreement to be personally liable for any expense, liability, or obligation.

ARTICLE 10

Dissolution

- 10.1 **Dissolution.** The Company will be dissolved upon the first to occur of the following events:
- (1) The expiration of the term or period of existence, if any, set forth in its Articles of Organization and any amendments.
 - (2) The unanimous written consent of the members to dissolve the Company.
 - (3) The death, retirement, resignation, withdrawal, expulsion, bankruptcy or dissolution of a sole remaining member of the Company.
 - (4) The entry of a decree of judicial dissolution as provided in the Act.
- 10.2 **Winding Up.** Upon dissolution, the members will marshal the Company assets, pay the Company creditors, distribute the Company assets, and otherwise wind up the business and affairs of the Company upon dissolution. The members will have the authority to continue to conduct the business and affairs of the Company after dissolution to the extent reasonably necessary to effect an orderly and profitable winding up of the Company’s business and affairs.

A member appointed by a vote of members collectively holding a majority interest in the Company (the “Winding Up Member”), will be responsible for overseeing the winding up and liquidation of the Company. The Winding Up Member will take full account of the Company’s liabilities and the business property, cause the Business Property to be liquidated as promptly as is consistent with obtaining the fair value of the property, and will cause the proceeds and any other assets and funds of the Company (collectively, the “Dissolution Proceeds”), to the extent they are sufficient, to be applied and distributed in the following order:

- (1) First, to the payment of all unpaid secured indebtedness of the Company to the extent of the lesser of the value of the secured property or the amount of the secured indebtedness;



- (2) Second, to the payment of the Company's then outstanding indebtedness with respect to which any member is subject to personal liability as a guarantor or under a master lease or similar agreement, but if the amount available will be insufficient, then on a pro rata basis;
- (3) Third, to the payment of the Company's remaining indebtedness (excluding liabilities for distributions to members), but if the amount available will be insufficient, then on a pro rata basis;
- (4) Fourth, return of any positive capital account balance to each member;
- (5) Fifth, the balance, if any, will be distributed to the members pro rata in accordance with their ownership percentages.

10.3 **Liquidation and Termination.** Upon dissolution of the Company, the Company will continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying claims of its creditors and members and no member will take any action that is inconsistent with, or not necessary to, winding up the Company's business and affairs. To the extent not inconsistent with this provision, all covenants and obligations in this Agreement will continue in full force and effect until the time the dissolution proceeds have been distributed pursuant to Article 10.1 and the Company has filed articles of termination.

ARTICLE 11 Miscellaneous

- 11.1 **Amendment.** This Agreement may be amended at any time by a majority vote of the members at a special meeting duly called for that purpose, except that any provision of this Agreement that provides for a membership vote, approval or consent of greater than a majority may be amended only by a membership vote that is equal to that specified in the provision sought to be amended.
- 11.2 **Governing Law.** This Agreement will be governed by the Act and other laws of the state of Tennessee, as such Act and laws may from time to time be amended, without regard to the state's conflicts of laws rules. Any actions to enforce the terms of this Agreement will be brought in the courts of the city or county where the principal office of the Company is located.
- 11.3 **Violations.** If any party to this Agreement violates any of the prohibitions or provisions of this Agreement, any non-violating party will be entitled to seek specific performance of this Agreement, in addition to any other remedies allowed at law or in equity. The violating party will pay all costs and reasonable attorneys' fees incurred by the non-violating party in enforcing their rights under this Agreement, including, but not limited to, seeking an injunction and/or damages for any breach of this Agreement, if the non-violating party prevails.
- 11.4 **Notices.** Any notice given by a member to another member or to the Company, or given by the Company to a member, will be in writing and given to the members to the address set forth in **Exhibit A**. Notice will be deemed effectively given upon
- personal delivery
 - 1 day after mailing by recognized overnight delivery service
 - 5 days after deposit in the U.S. Mail by registered or certified mail, return receipt requested
 - email
- 11.5 **Ratification.** The acts and deeds of the organizers and of the members performed prior to the effective date of this Agreement are approved and ratified by the members.
- 11.6 **Entire Agreement.** This Agreement constitutes the entire agreement among the members with respect to the Company and the operation of its business. Any amendments to this Agreement must be in writing and signed by each member.



- 11.7 **Severability.** If any term, provision, covenant or condition of this Agreement is held to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement will remain in full force and effect and will in no way be affected, impaired or invalidated. All terms are to be interpreted according to Tennessee law.
- 11.8 **Headings.** The headings in this Agreement are for convenience only and will not be used to interpret or construe any provision of this Agreement.
- 11.9 **Binding Effect.** This Agreement will be binding upon, and inure to the benefit of, the Company, the members and their respective transferees, successors, assigns and legal representatives.
- 11.10 **Agreement for the Benefit of Members.** None of the provisions of this Agreement will be for the benefit of, or enforceable by, creditors of the Company.

The members have subscribed their names to this Agreement as of the Effective Date above.

_____, Member

_____, Member



**EXHIBIT A
OWNERSHIP INTERESTS AND CAPITAL CONTRIBUTIONS**

EXHIBIT A – OWNERSHIP INTERESTS

Ownership Interests:

_____ %

_____ %

Capital Contributions

_____ \$ _____

_____ \$ _____



EXHIBIT B
INTELLECTUAL PROPERTY CONTRIBUTION AND ASSIGNMENT AGREEMENT

This Intellectual Property Contribution and Assignment Agreement (the “Agreement”) is made and entered into as of _____, by and between _____ (the “Company”) and _____ (the “Assignor”).

- A. **Intellectual Property Assignment.** The Assignor assigns to the Company, its successors and assigns, for good and sufficient consideration in connection with execution of the Operating Agreement dated _____, the entire right, title and interest in Intellectual Property and the associated rights and causes of action (as defined below) relating to the Company. Assignor’s continuing membership in the Company is also conditioned on the assignment to the Company of Assignor’s rights in respect of any Intellectual Property created by Assignor during his/her term of membership in the Company.
- B. **Intellectual Property Definition.** “Intellectual Property” means any and all intellectual property and tangible embodiments, including without limitation inventions, discoveries, designs, specifications, developments, methods, modifications, improvements, processes, know-how, show-how, techniques, algorithms, databases, computer software and code (including software and firmware listings, assemblers, applets, compilers, source code, object code, net lists, design tools, user interfaces, application programming interfaces, protocols, formats, documentation, annotations, comments, data, data structures, databases, data collections, system build software and instructions), mask works, formulae, techniques, supplier and customer lists, trade secrets, graphics or images, text, audio or visual works, materials that document design or design processes, or that document research or testing, schematics, diagrams, product specifications and other works of authorship.
- C. **Intellectual Property Rights Definition.** “Intellectual Property Rights” means, collectively, all rights in, to and under patents, trade secret rights, copyrights, trademarks, service marks, trade dress, moral rights, and similar rights of any type under the laws of any governmental authority, including without limitation, all applications and registrations relating to the foregoing. To the extent that Moral Rights cannot be assigned under applicable law, Assignor waives and agrees not to enforce any and all Moral Rights, including, without limitation, any limitation on subsequent modification.
- D. **Assistance with Intellectual Property Rights.** The Company will have the right to file and prosecute, at its expense, all patent applications, whether United States or foreign, on said inventions or discoveries, and Member will execute and deliver any and all documents and to provide any assistance which is necessary or helpful to obtain or maintain any patents, copyrights, trademarks or other proprietary rights.
- E. **Non-Assignable Intellectual Property.** To the extent that any Assigned Intellectual Property is not assignable or transferable to the Company (“Non-assignable IP”), the Assignor grants to the Company a non-exclusive, royalty-free, irrevocable, perpetual, world-wide license to make, have made, modify, manufacture, reproduce, sublicense, use and sell such Non-assignable IP, and any residual rights the Assignor holds in the Non-assignable IP will be held by her in trust for the sole benefit of the Company. The Assignor will convey, transfer, dispose of and otherwise deal with the Non-assignable IP (including the execution and delivery of all documents and other instruments relating to the Non-assignable IP) in a manner as the Company will from time to time direct.
- F. **Warranties.** Assignor understands that the Company respects third party proprietary rights and does not desire to acquire any trade secrets or confidential information of third parties for which disclosure has not been requested by Company and authorized by any third party. Assignor represents and warrants to the Company that (a) he/she is not under any pre-existing obligation inconsistent with the terms of this instrument; (b) to the best of his/her knowledge, the Intellectual Property is his/her original work, free and clear of any claims or encumbrances of any kind, and, to the best of his/her knowledge, will not infringe any patent, copyright or other proprietary right or violate a trade secret of any person or entity; (c) his/her delivery of this instrument has not and will not violate or conflict with or result in a breach of any terms, conditions, duties or obligations he/she has to any third party; and (d) he/she has not authorized any third party to use, or granted any option to acquire any rights to or licenses to



use any of the Intellectual Property, nor has he/she covenanted or agreed with any third party not to sue or otherwise enforce any legal rights with respect to any of the Intellectual Property.

IN WITNESS OF the parties have executed this Agreement as of the date first mentioned above.

By: _____

Name: _____

Title: _____



EXHIBIT C
SPOUSAL CONSENT TO OPERATING AGREEMENT

I, the undersigned, being the spouse of one of the members named in the Company Name Operating Agreement (the "Agreement"), acknowledge that:

1. I have read the Agreement in its entirety and understand that:
 - a. Upon the occurrence of certain events as specified in the Agreement, Company Name (the "Company") will have the right to and may be obligated to purchase membership interests owned by another member at a price and on terms and conditions set forth in the Agreement;
 - b. The purchase of any member's Interest will include his or her entire interest, including any community property interest and other marital property interests of such member's spouse; and
 - c. The Agreement imposes certain restrictions on any attempts by me to transfer any interest I may have in the Company or any Interest in the Company by virtue of my marriage.
2. I approve and agree to be bound by all terms of the Agreement and agree that any interest (community property or otherwise) that I may have in the Company are subject to the terms of this spousal consent and the Agreement.
3. I agree that my spouse may join in any future amendments or modifications to the Agreement without any notice to me and without any signature, acknowledgment, agreement or consent on my part.
4. I agree that I will transfer any interest I may have in the Company by my will or estate documents, outright and free of trust to my spouse.
5. I acknowledge that I have been advised and have been encouraged to seek independent counsel of my own choosing to represent me in matters regarding the Operating Agreement and my signing this spousal consent.
6. I consent to the Company and my spouse making and maintaining the Subchapter S Election (if applicable) under the Internal Revenue Code, as amended from time to time.

