

**OPERATING AGREEMENT OF**  
\_\_\_\_\_, **LLC**

This Operating Agreement (this “**Agreement**”) is executed as of \_\_\_\_\_, 20\_\_ for the purpose of forming a limited liability company (the “**Company**”) pursuant to the Massachusetts Limited Liability Company Act, M.G.L. c. 156C (the “**Act**”), by \_\_\_\_\_, a \_\_\_\_\_ (the “**Member**”).

1. Formation. The Company has been formed by the filing of the Certificate of Organization of the Company with the Secretary of State of The Commonwealth of Massachusetts, a copy of which is attached as Schedule A. The terms of the Certificate of Organization are incorporated into this Agreement.

2. Offices.

The initial principal office of the Company is located at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The principal office of the Member is currently located at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Capital; Percentage Interest. The Member owns one hundred percent of the interest in the Company and may contribute capital to the Company in amounts and at times as the Member may deem appropriate.

4. Management by Member. The Company is managed by the Member, who has the authority to exercise all of the powers and privileges granted by the Act or any other law.<sup>1</sup>

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<sup>1</sup> Includes specific management rights if you feel it is necessary to delineate them (e.g.: the authority of the Member includes, without limitation, the right to acquire, own, mortgage, sell and lease the property of the Company, to open bank accounts in the name of the Company and to cause the Company to guaranty the obligations of others.

5. Distributions. Distributions of cash or other assets of the Company will be made at times and in amounts as the Member may determine.

6. Dissolution. The Company will be dissolved and its affairs wound up and terminated upon the first to occur of the following:

6.1 the election to terminate the Company made in writing by the Member;

6.2 the entry of a decree of judicial dissolution; or

6.3 Within 90 days after the occurrence of the event that terminated the continued membership of the Member, unless the personal representative of the Member agrees in writing to continue the Company and to the admission of the personal representative of the Member or its nominee or designee to the Company as a member, effective as of the occurrence of the event that terminated the continued membership of the Member.

7. No Separate Entity for Tax Purposes. The Company shall not be treated as a separate entity for federal income tax purposes and, to the extent permitted by law, for state and local tax purposes. The Company shall prepare and file all tax returns and other tax statements in a manner consistent therewith.<sup>2</sup>

8. Limitation on Liability. Except as specifically required by the Act, no Member of the Company shall be obligated personally for any debt, obligation or liability of the Company, whether arising in contract, tort or otherwise, solely by reason of being a Member of the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or the management of its business or affairs under this Agreement or the Act shall not be grounds for making the Member responsible for the liabilities of the Company.

9. Exculpation and Indemnification.

9.1 The Member shall not have any personal liability whatsoever to the Company on account of the Member's status as a Member or by reason of such Member's acts or omissions in connection with the conduct of the business of the Company.

9.2 The Company shall indemnify and hold harmless the Member against any and all losses, claims, damages, expenses and liabilities (including, but not limited to, any investigation, legal and other reasonable expenses incurred in connection with, and any amounts paid in settlement of, any action, suit, proceeding or claim) of any kind or nature whatsoever that Member may at any time become subject to or liable for by reason of (a) the formation, operation

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<sup>2</sup> If you desire to have the Company treated as a corporation for tax purposes, replace this provision with: "The Company intends to elect to be taxed as a corporation." File the check-the-box election with the Internal Revenue Service ([Form 8832](#)).

or termination of the Company, or (b) the Member's acting as a member or manager under this Agreement. This indemnification includes, without limitation, losses, claims, damages, expenses and liabilities arising out of the Members negligence, gross negligence or breach of duty.

9.3 The contract rights to indemnification and to the advancement of expenses conferred in this Section 9 shall not be exclusive of any other right that any person may have or hereafter acquire under any statute, agreement, vote of the Member or otherwise.

10. ERISA Matters. The Company shall conduct its affairs so as to constitute an "operating company" as defined in the regulations promulgated under the Employee Retirement Income Security Act of 1974, as amended from time to time, at 29 C.F.R. 2510.3-101. For purposes of determining that the Company so qualifies, the annual valuation period of the Company for purposes of such regulation shall be the ninety day period commencing each December 1.<sup>3</sup>

11. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of The Commonwealth of Massachusetts. In the event of any conflict between any provision of this Agreement and any non-mandatory provision of the Act, the provision of this Agreement shall control.

[SIGNATURE ON NEXT PAGE]

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<sup>3</sup> Consider using if the Member is an ERISA plan owner. Consult with the ERISA Department as well.

IN WITNESS WHEREOF, the Member has caused this Agreement to be duly executed as of the day and year first above written.

Member:

\_\_\_\_\_

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

Name:

Title:

or for an individual

Member:

\_\_\_\_\_

[Name]

**Schedule A**  
**Certificate of Organization**

See attached.

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Federal ID# \_\_\_\_\_ 4

[NAME]

## CERTIFICATE OF ORGANIZATION

Pursuant to the Massachusetts Limited Liability Company Act (the AAct<sup>≡</sup>), the undersigned hereby certifies that a limited liability company has been organized under the Act as follows:

1. Name. The name of the limited liability company is \_\_\_\_\_.<sup>5</sup>
2. Office. The street address of the office of the LLC in the Commonwealth where the records required by Section 9 of the Act are kept is \_\_\_\_\_.<sup>6</sup>
3. Resident Agent. The name and address of the resident agent of the LLC for service of process is \_\_\_\_\_ [name] of \_\_\_\_\_, \_\_\_\_\_, Massachusetts.<sup>7</sup>
4. Date of Dissolution. The LLC has no specific date of dissolution.
5. Managers. The LLC will be managed by \_\_\_\_\_, its member, and will have no managers for purposes of the Act.
6. Execution of Documents. Person(s) authorized to execute documents to be filed with the Secretary of State in addition to the Member are: None.
7. Business of the LLC. The general character of the business of the LLC shall initially be to \_\_\_\_\_. But, the LLC may engage in any lawful business, trade, profession, purpose or activity permitted by the Act.

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<sup>4</sup> Secretary of State requires a Federal Identification number. Use the Member's FEIN.

<sup>5</sup> Section 3 of the Act requires the name to include the words "limited liability company," "limited company" or the abbreviation "L.L.C.," "L.C.," "LLC" or LC." The name may not be the same as or deceptively similar to the name of another corporation, limited partnership or LLC, domestic or foreign, without the consent of the other entity.

<sup>6</sup> Section 5(1) of the Act requires a domestic LLC to maintain an office in Massachusetts at which the records required by Section 9 of the Act are kept. The office need not be a place of business of the LLC, but may be the office of its registered agent, attorney or an officer. The latter may be advisable in order to avoid having to amend the Certificate if the principal place of business and registered office of the LLC is changed.

<sup>7</sup> Section 5(2) of the Act requires a resident agent for service of process in Massachusetts who is an individual resident of Massachusetts, a Massachusetts corporation or a foreign corporation authorized to do business in Massachusetts.

8. [Recordable Instruments Affecting Real Property. \_\_\_\_\_] is authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property of the LLC under Section 66 of the Act [[: names of additional persons if any].]<sup>8</sup>

9. Other information: <sup>9</sup>

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Organization as of \_\_\_\_\_, 20\_\_.<sup>10</sup>

\_\_\_\_\_  
Name:  
Authorized Person

<sup>8</sup> Section 66 of the Act says that the Managers and any additional persons identified in the Certificate as authorized to convey title to real property of the LLC shall have authority to sign and record title documents on which third parties can rely. If the LLC will not own, lease, or otherwise deal with real estate, the provision can be omitted. It can also be omitted if only the Managers identified in the Certificate will be authorized to convey title. If no Managers are named in the Certificate of Organization, at least one authorized signatory, for recordable real estate instruments should be identified here.

<sup>9</sup> The Certificate may include any other provisions desired by the parties, but recognize that an amendment of the Certificate may be necessary to reflect changes in such provisions.

<sup>10</sup> Section 15(c) states that execution of the Certificate constitutes an affirmation under penalties of perjury that the facts stated therein are true. The Certificate may be signed by any person authorized to do so, who need not be a Manager or a Member. Section 12(c) requires LLCs to file an annual report with the Secretary of State updating and correcting all information included in the Certificate.