

**OPERATING AGREEMENT
(Two or more Members)**

OF

_____, LC

a Utah Limited Liability Company

_____, 200__

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**OPERATING AGREEMENT
OF
_____ , LC**

THIS OPERATING AGREEMENT OF _____, LC, a limited liability company organized under the laws of the State of Utah (the "Company"), is made and entered into as of the ____ day of _____, 200__, for purposes of forming a limited liability company by _____, _____ and _____.

**ARTICLE 1
Definitions**

Certain terms used in this limited liability company Operating Agreement shall have special meanings as designated in this Article:

1.1 Act. The term the "Act" means the Utah Limited Liability Company Act, as set forth in Sections 48-2b-101 et seq., Utah Code Annotated, 1953, as amended from time to time.

1.2 Agreement or Operating Agreement. The terms "Agreement" or "Operating Agreement" mean this Operating Agreement as the same may be modified or amended from time to time in accordance with Section 8.2 hereof.

1.3 Articles of Organization. The term "Articles of Organization" mean the Articles of Organization of the Company which shall be filed with the Division.

1.4 Book Value. The term "Book Value" means, with respect to any assets to be contributed to the Company, the value on the books of the owner of the assets prior to contribution to the Company, and with respect to any Company assets, the Company's adjusted basis for federal income tax purposes adjusted from time to time to reflect the adjustments required or permitted by Treasury Regulation § 1.704-1(b)(2)(iv).

1.5 Capital Account. The term "Capital Account" shall refer to a Member's equity in the Company as described and adjusted in Section 3.2 of this Agreement.

1.6 Code. The term "Code" means the Internal Revenue Code of 1986, as amended, including any applicable Treasury Regulations promulgated thereunder.

1.7 Company. The term "Company" means the Utah limited liability company to be formed hereunder, and as the same shall exist hereafter, pursuant to this Agreement and the Articles of Organization, and in accordance with the Act.

1.8 Division. The term "Division" means the Division of Corporations and Commercial Code of the Utah Department of Commerce, or any other department or division of the State of Utah which hereafter may be given responsibility for administering the Act and/or accepting filings on behalf of the Company.

1.9 Effective Date. The term "Effective Date" means the date of filing of the Articles of Organization with the Division.

1.10 Interest. The terms "Interest" or "Interests" means the ownership interest of a Member in the Company together with rights, privileges and powers appurtenant thereto as provided in the Act or this Agreement, including without limitation, rights to distributions (liquidating or otherwise), allocations, information and to vote, consent, approve or take other action as provided in this Agreement.

1.11 Majority in Interest.¹ The term "Majority in Interest" with respect to the vote, approval or consent of the Members shall mean the vote, approval or consent of those Members whose Proportionate Shares exceed 50%.

1.12 Member or Members. The terms "Member" or "Members" shall mean the person or persons named in this Agreement as forming the Company, or any person who is permitted to be, and becomes, a successor to all or any portion of the interests of any of them in the Company, or any persons who may become additional members of the Company in accordance with the provisions of Article 6 hereof, and Section 48-2b-122 of the Act.

1.13 Property. The term "Property" means the property and assets of every kind developed and/or acquired by the Company.

1.14 Proportionate Share. The term "Proportionate Share" shall refer to the percentage interest of each Member in capital, income, gain, loss, deductions, or credits of the Company, as provided in Article 3 of this Agreement.

1.15 Reserves. The term "Reserves" means funds to be retained in the Company beyond the end of any accounting period for (i) anticipated working capital requirements, (ii) amounts to be utilized by the Company in the future for the payment of principal balance of any loans of the Company, (iii) amounts of any expenditures or costs to be made or incurred by the Company of a capital nature, and (iv) amounts which a Majority in Interest of the Members deems necessary to retain in the Company in order to finance additional Company activities or otherwise to meet Company obligations.

1.16 Treasury Regulations. The term "Treasury Regulations" shall refer to the income tax regulations promulgated under the Internal Revenue Code of 1986, as amended (the "Code"), effective as of the date hereof, as modified and supplemented or superseded after the date hereof. Where a specific Treasury Regulation is referred to, the reference shall be deemed to extend to any successor regulation of similar scope, whether or not denominated by the same section number or heading.

¹Seek advise of your attorney regarding various kinds of voting arrangements.

ARTICLE 2
Formation of Limited Liability Company

2.1 Creation. The Members agree to, and hereby do, form the Company pursuant to the Act, such formation to be completed on the Effective Date. The terms and provisions of this Agreement will be construed and interpreted in accordance with the terms and provisions of the Act. Upon return to the Company by the Division of a duly stamped copy of the Articles of Organization, or amended or restated Articles of Organization, the Company shall promptly deliver or mail a copy of the same to each Member.

2.2 Company Name. The name of the limited liability company created hereunder shall be " _____, LC".

2.2.1 OMISSION OF THE ABBREVIATION "L.C." IN THE COMMERCIAL USE OF THE NAME OF THE COMPANY SHALL RENDER ANY PERSON WHO PARTICIPATES IN SUCH OMISSION, OR KNOWINGLY ACQUIESCES IN IT, LIABLE FOR ALL INDEBTEDNESS, DAMAGE, OR LIABILITY OCCASIONED BY SUCH OMISSION.

2.3 Company Offices and Agent. The designated and registered office of the Company, where the Company records as specified in the Act shall be kept, shall be _____, _____, Utah _____. The agent for service of process,² and the address at which legal process may be served upon such registered agent, shall be _____, _____, Utah 84____. The Members may from time to time designate another agent for acceptance of service of process. The Members may from time to time change the designated and registered office of the Company, and may establish a new designated office of the Company.

2.4 Names and Addresses of Members. The full names and addresses of the Members of the Company are as follows:

_____	_____
_____	_____
_____	_____

2.5 Number of Members. The Members identified herein shall constitute the sole Members in the Company, and, except as expressly provided for in Section 2.9 below, no additional Members shall be admitted to the Company. The Members shall not sell, assign or transfer their Interests in the Company except as provided in Article 6 of this Agreement.

²If the Company is sued, this person will be served with legal process (a complaint) that starts litigation. You must seek advice of your attorney when sued.

2.6 Character of Business. The character and purposes of the Company and its business are (i) _____;³ (ii) to trade, buy, lease, improve, manage, develop and sell real property, personal property and all kinds of interests therein; (iii) to protect the Members' personal assets against the risks arising from the Company's business operations and affairs; (iv) to transact any other business permitted by the laws of Utah; and (v) to do everything necessary, proper, advisable, or convenient for the accomplishment of any of the purposes, or the attainment of any of the objectives, or the furtherance of any of the powers herein set forth, either alone or in association with others, and incidental or pertaining to, or growing out of, or connected with, its business or powers, provided the same be not inconsistent with the laws of the State of Utah.

2.7 Period of Duration. The period of the Company's duration shall be ninety-nine (99) years commencing at the date and time indicated on the stamped or sealed copy of the Articles of Organization returned by the Division at the time of filing the Articles of Organization; provided, however, the Company may be dissolved prior to the end of such term in accordance with the provisions of Article 7 below.

2.8 Members' Votes. Each Member shall have the right to cast his or her Proportionate Share percentage for or against any matter requiring, as provided for under the provisions of this Agreement, a vote, approval or consent of the Members. Except as otherwise expressly provided herein to the contrary, each vote, approval or consent of the Members shall be rendered by a Majority in Interest.⁴

2.9 Admission of New Members. Additional Members may be admitted to the Company only with the prior, written consent of the Member(s) holding all of the Proportionate Shares in the Company. In the event that a new Member makes a contribution to the Company in return for admission into the Company, the Interests of such new Member and all other Members in the Company shall be in such equitable proportions as may be determined by the Members.

ARTICLE 3
Members, Capitalization, and Additional Financing

3.1 Members' Contributions. The Members' initial contributions and Proportionate Shares are as follows:

<u>Member</u>	<u>Property or Cash Contribution</u>	<u>Proportionate Shares</u>
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %

³Insert general description of business.

⁴Unanimous vote is required for the following: See Sections 2.9 Admission of New Members; 3.1.1 pertaining to additional capital contributions; 5.3 pertaining to prohibited acts, 7.1 (3) pertaining to dissolution and terminating the Company; and 8.2 pertaining to amendments to the Operating Agreement. These Sections can be changed if the Members choose to do so, to a vote less than unanimous.

3.1.1 Additional Contributions, Interest, Withdrawal. Additional contributions by the Members will not be required except upon the unanimous vote of all the Members. The Members shall have the right to pursue on behalf of the Company any remedy existing at law or in equity for the collection of the unpaid amount of any capital contribution required to be made under this Agreement, including without limitation, the prosecution of a suit against a defaulting Member. No interest shall be paid to the Members on their initial Capital Accounts in the Company or on any subsequent capital contributions made by the Members. No withdrawals of the Company capital will be permitted except with the consent of all Members.

3.2 Capital Accounts.⁵ Each Member shall have a Capital Account equal to:

- (1) the amount of his or her respective contribution to the Company as stated in Section 3.1 of this Agreement; plus
- (2) the amount of Company net income and gain from the sale of any Company property allocated to such Member pursuant to this Agreement from and after the Effective Date; and
- (3) the amount of any additional capital contributions made by such Member, as may be agreed upon by the unanimous consent of all Members; less
- (4) the amount of Company net operating losses and losses from the sale of any Company Property allocated to each Member pursuant to this Agreement from and after the Effective Date; and less
- (5) the amount of cash or net Book Value of other Property distributed to such Member (net of any liabilities assumed by such Member in connection with a transfer).

Although the Company is a limited liability company, it is contemplated that for federal income tax purposes it will be treated as a partnership and its Members will be treated as partners. Accordingly, the Capital Accounts shall be established, maintained, and adjusted in accordance with the requirements of Treasury Regulations § 1.704-1(b)(2)(iv) and any successor regulations. All particular accounting requirements of those regulations necessary to have the allocations of this Agreement recognized shall be deemed incorporated by this reference. If any Member should have a negative capital account, the Member shall be obligated to make up such deficit by the later of the end of the taxable year in which the liquidation of the Company occurs (pursuant to the Treasury Regulations promulgated under Code Section 704(b)) or ninety (90) days following such liquidation.

3.3 Return of Capital. Each Member shall look solely to the Company Property for the return of contributions to the Company's capital, and if the Company's Property is insufficient to return such contributions, Members shall have no recourse against any other Member for that purpose. There is no right given the Members to receive upon liquidation of the Company any Property other than cash in return for contributions. The provisions of Article 7 shall govern the procedure and computation of amounts available for distribution upon dissolution of the Company.

⁵Seek advice of an accountant for capital account accounting and profit/loss issues.

3.4 Loans. Members may lend to the Company on such terms and conditions as may be approved by a Majority in Interest of the Members and shall bear interest at an agreed market rate. Such loans shall be documented and treated as loans and not as additional contributions to the Company.

ARTICLE 4

Allocations, Profits and Losses, Distributions and Expenses

4.1 Allocations between Members.⁶ Subject to the provisions of this Section 4.1, the profits and losses of the Company, gains and losses from the sale of Company Property and any items of income, deduction, gain, loss or credit required by the Code to be separately reported shall be allocated, and any distributions shall be made, to each Member in accordance with each Member's respective Proportionate Share, except as otherwise stated in Section 4.5. Allocation of gain and loss arising from contributed property shall, however, be in accordance with the Code.

4.2 Liability of Members. As provided in the Act, no Member shall be personally liable for any of the losses or liabilities of the Company beyond the amount of capital contributions agreed to be paid by such Member to the Company.

4.3 Distributions. The Company shall first pay as and when due its expenses and liabilities to its creditors, including amounts owed to Members as compensation or expense reimbursement as provided in this Agreement, and then shall pay loans to the Company from a Member or Members. After this, subject to the reinvestment of the Company's funds in furtherance of its purposes or unless the Members holding a Majority in Interest consent to a different use and distribution of the Company's funds, available cash, if any, shall be used by the Company in accordance with the following standards:

4.3.1 Reserves. First, Reserves shall be built and maintained by the Company from the proceeds of sale of the Company's Property or other income of the Company (it is not contemplated that capital contributions will be used to establish such Reserves) in an amount to provide for the reasonable needs of the business both presently and in the future as determined by the Members.

4.3.2 Distributions. Second, after Reserves are established, distributions may be made by the vote of a Majority in Interest, to all Members in accordance with their Proportionate Shares.

4.3.3 General. To the extent that there is no available cash, no distributions shall be made. Distributions are not required to be made so that the capital accounts of the Members are proportionate to each Member's Proportionate Share following the distribution. Cash shall be deemed available except to the extent used for reinvestment or needed to establish Reserves or pay creditors of the Company.

4.3.4 Subordination. The Members agree to subordinate distributions in connection to their Interests to a lender to the extent required to obtain loans from a Member, a bank, or other lending source, if the Members determines such loans to be necessary or desirable to the carrying on of the Company's business and if a Majority in Interest of the Members consent to the loan.

⁶Seek advice of an accountant for capital account accounting and profit/loss issues.

4.4 Distribution in Kind. The Company, may make distributions in kind but only if a Majority in Interest of the Members consent thereto. In accordance with Treasury Regulations § 1.704-1(b)(2)(iv)(e), prior to the actual or deemed distribution of any Company Property (other than cash), the Capital Accounts of all Members and the Book Values of the Properties to be distributed shall be adjusted immediately prior to such distribution (consistent with the provisions hereof) upward or downward to reflect any unrealized book gain or unrealized book loss attributable to each Property (as if such unrealized book gain or unrealized book loss (that has not been reflected in Capital Accounts previously) had been recognized upon an actual sale of each Property at that time and had been allocated among the Members pursuant to Section 4.1). Such unrealized Book Value of the property to be distributed as of any date of determination shall be determined by the Members using such reasonable methods of valuation as it deems appropriate taking into account the provisions of Treasury Regulations § 1.704-1(b)(2)(iv)(e).

ARTICLE 5

Management of Company

5.1 Management by Members. All business of the Company shall be conducted by the Members. Notwithstanding anything contained in this Article 5 to the contrary, the power to adopt, alter, amend, or repeal this Agreement shall be vested solely in the Members as provided in Section 8.2.

5.2 Appointment of Officer(s) and Administrative Member(s). The Members may, without obligation to do so, by vote of a Majority in Interest, appoint from among their number one or more Officer(s) or Administrative Member(s). The appointment of such Officer(s) or Administrative Member(s) shall not, however, be deemed to reduce the general management authority of the Members under this Agreement, but rather is intended for administrative convenience only. The duties and authorities of the Officer(s) or Administrative Member(s) shall be as delegated to the Officer(s) or Administrative Member(s) by the Members.

5.3 Restrictions on Members. No Member shall without the unanimous⁷ consent or approval of the specific act by all of the Members:

- (1) Do any act in contravention of law, the Articles of Organization, or this Agreement;
- (2) Do any act to make it impossible to carry on the ordinary business of the Company;
- (3) Confess a judgment against the Company;
- (4) Possess Company Property in his or her own name or assign his or her rights in specific Company Property for other than a Company purpose;
- (5) Admit a person as a Member except as otherwise provided in this Agreement; or
- (6) Continue the business with Company Property after its bankruptcy, dissolution, cancellation, or other cessation to exist.

⁷Note requirement of unanimous vote. Seek advice of your attorney if a vote less than unanimous is desired.

5.4 Fiduciary Responsibilities. Each Member shall, in all events, account to the Company and to the Members for any benefit, and hold, as trustee for the Company and the Members, any profits derived by a Member from any transaction connected with the formation, conduct, or liquidation and winding up of the Company or from any use by a Member of Company Property, and such duty extends to the successors and representatives of any Member involved in the liquidation and winding up of the Company. All management decisions, investments, accountings, and distributions shall be conducted by the Members, subject to good faith and fiduciary responsibility. However, no Member shall be liable for any loss or depreciation in the value of the Company or any of its Property or business occurring by reason of error of judgment in making any sale, any investment, or any management, investment or business decision whatsoever, provided such loss or depreciation in value has not occurred through the actual fraud, gross negligence, or willful misconduct of a Member. Each Member shall devote such time to the Company as he or she, in his or her sole discretion, determines to be reasonably required of the efficient conduct of the business of the Company. Nothing herein contained shall preclude the Members from engaging in or possessing interests in other business ventures of every nature and description; provided, however, if any such business venture is of a similar nature to the business of the Company, such Member shall have given notice to the Company of such business venture and an opportunity to appropriate within a reasonable time such business venture to the business of the Company upon the same terms and conditions offered or available to such Member. Unless it shall have such an interest(s) in any such business venture pursuant to other documents or agreements, the Company shall have no interest(s) in any such other business venture, or the income or profits derived therefrom.

5.5 Accounting Records. The Company shall keep adequate accounting records of the Company's business. Such records shall be open to inspection by any of the Members at all reasonable times. At the end of each accounting year, a complete accounting of the affairs of the Company shall be furnished to each Member.

5.6 Fiscal Year and Tax Elections. The Members shall, to the extent allowable under the Code, make the following elections on behalf of the Company:⁸

- (1) To elect the calendar year as the Company's fiscal year;
- (2) To elect the cash method of accounting;
- (3) To elect to treat all organizational costs of the Company as deferred expenses amortizable over 60 months;
- (4) To elect, if requested by a Member, in accordance with Sections 734, 743, and 754 of the Code and applicable regulations and comparable state law provisions, to adjust basis in the event any interest in the Company is transferred in accordance with this Agreement or any property is distributed to any Member; and
- (5) To elect with respect to such other federal, state, and local tax matters as the Member shall deem advisable from time to time.

⁸Seek advice of an accountant for capital account accounting and profit/loss issues.

5.7 Tax Returns.⁹ The Members shall prepare or cause the Company's accountants to prepare and timely file all federal, state, and local income and other tax returns and reports as may be required as a result of the business of the Company. The Members shall designate a "tax matters partner" under Section 6231 of the Code and shall promptly notify the Members if any tax return or report of the Company is audited or if any adjustments are proposed by any governmental body. In addition, the Member acting as such tax matters partner shall promptly furnish to the Members all notices concerning administrative or judicial proceedings relating to federal income tax matters as required under the Code. During the pendency of any such administrative or judicial proceeding, the Member acting as the tax matters partner shall furnish to the Members periodic reports, not less often than monthly, concerning the status of any such proceeding. Although the final decision with respect to such matters shall be made by the Members, the Member acting as the tax matters partner shall in good faith consult with the Members prior to extending the statute of limitations with respect to a federal income tax return, filing a request for administrative adjustment with respect to a federal refund or deficiency relating to any federal income tax administrative adjustment or entering into any settlement agreement relating to any federal income tax item of income, gain, loss, deduction, or credit for any fiscal year of the Company.

5.8 Bank Accounts. The funds of the Company shall be deposited in general accounts and operating accounts in banks as determined by the Members or may be invested in such interest-bearing or non-interest-bearing investments, as shall be designated from time to time by the Members.

5.9 Compensation of Members. The Members as such may be entitled to receive compensation from the Company for services rendered to the Company, and shall be entitled to be reimbursed for their out-of-pocket expenses in connection with business conducted on behalf of the Company if such expenses have been authorized by the Members.

5.10 Interest. Any compensation payable to the Members that is not paid when due, and any expenses not reimbursed to the Members entitled to such reimbursement within thirty (30) days after a written request for such reimbursement to the Company with a copy to all Members, shall bear interest at the legal rate from time to time in effect in Utah, until paid.

5.11 Meetings of Members. Meetings of Members may be called at any time at the request of any Member. All meetings may be held by conference telephone. Meetings shall be held at such locations as specified by the Member calling the meeting. Written notice of meetings shall be given at least five (5) business days prior to the meeting. Such notice can be waived, and participation in a meeting is a waiver of any notice or of any defect in the calling of such meeting except if the participation is limited to protesting the conduct of any business at the meeting.

5.12 Liability Insurance. The Company may acquire liability and casualty insurance at competitive rates with coverages and through financially sound insurers approved by the Members. The premiums for all such insurance shall be paid as an operating expense of the Company.

⁹The Company must file federal and state information income tax returns. Seek advice of an accountant regarding tax return preparation and filing.

ARTICLE 6

Transfer of Member Interest

6.1 Transfer by a Member.¹⁰ A Member shall not sell, assign, transfer or otherwise dispose (which shall include any involuntary transfer or disposition as defined below), all or any part of his or her Interest in the Company, except with the written consent of a Majority in Interest and pursuant to Section 6.4 below. An "involuntary" transfer, assignment or disposition shall be deemed to have occurred in the event that a Member or an Interest of a Member, in whole or part, as may be the case, (i) is subject to garnishment, attachment or taken in execution or subjected to judicial order or process; (ii) is made subject to an order, judgment or decree in any divorce action or as a result of a property settlement between a Member and his or her spouse; (iii) is made the subject of a voluntary or involuntary debtor relief proceeding filed by or against a Member; (iv) is subject to an assignment for the benefit of creditors or other non-judicial debtor relief process; (v) is made subject by any person or entity to any lien, pledge, security interest, restriction or encumbrance of any kind; (vi) is made subject to a charging or other similar order; (vii) is subject to a transfer as a result of a Member's death or bankruptcy; (viii) voluntarily withdraws from the Company for purposes of retirement or otherwise; and/or (ix) a Member's employment with the Company is terminated by the Company or the Member with or without cause. The occurrence of any such event, a "Triggering Event", herein so-called, shall be deemed to have occurred.

6.2 Requirements of Transferee. Subject to the other provisions of this Article 6, a Member who desires to transfer all or any part of his or her Interest and who obtains the consent of all the Members to such transfer shall comply with the requirements of Section 6.3 and shall arrange for his or her transferee to be bound by this Agreement, as it may then be amended, by having such transferee execute two counterparts of an instrument of assignment satisfactory in form to the Company and by delivering the same to the Company together with any such other information that may be required by counsel to the Company. The transferee may be required to pay any and all reasonable filing and recording fees, legal fees, accounting fees, and other charges and fees incurred by the Company and its counsel as a result of such transfer. Each assignment or transfer shall be effective on the Company records as of the first day of the calendar month following the month during which the Company actually receives the aforesaid instrument of assignment executed by both the transferor and transferee; however, no attempted sale, assignment or transfer, voluntary or involuntary, shall be effective or recognized by the Company or the Members until all requirements of this Article 6 have been satisfied.

6.3 Compliance with Securities Laws. Notwithstanding any provision in this Article 6 to the contrary, no Interest may be sold, pledged, hypothecated, or otherwise transferred except (i) in compliance with the registration requirements of the Securities Act of 1933, as amended, and applicable State securities laws, or (ii) pursuant to applicable exemptions from the registration or other requirements of those laws. The Company may further require an opinion of counsel from counsel acceptable to the Company that the proposed transfer would constitute a transaction that is exempt from the registration requirements of all applicable federal and state securities laws. All costs of complying with the requirements of this Section, including the costs of a review of the matter by counsel for the Company, shall be borne by the transferor and transferee, jointly and severally, if more than one.

¹⁰Members must seek advice of an attorney regarding the placement of restrictions on the transfer of an Interest in the Company.

6.4 Options to Purchase Interests.¹¹ Each Member (“Selling Member”) hereby grants to the Company and to each other Member, in that order, the option to purchase the Selling Member's Interest in the Company (the “Offered Interest”) in the event of the sale, assignment or other transfer (including an involuntary transfer) of his or her Interest as defined in Section 6.1, whether to another Member or to a person or entity not then a Member, on the following terms and conditions set forth in the balance of this Section 6.4.

6.4.1 In the event that a Selling Member desires to sell, assign or otherwise transfer his or her Interest in the Company, or in the event of an involuntary transfer defined in Section 6.1, the Selling Member (or his or her legal representative) shall give written notice (the "First Notice") to the Company and to all other Members of the occurrence of the event giving rise to the option to purchase as soon as practicable but no later than fifteen (15) business days after the date on which the Selling Member (or his or her legal representative) first has actual knowledge of the event in question. The Company shall have thirty (30) business days from the date the Company has actual knowledge of the occurrence of such event or from the date of the First Notice whichever occurs earlier, to exercise the option of the Company to purchase the Offered Interest by giving a written notice of its intention to exercise the option (a "Notice of Intention") to the Selling Member (or his legal representative) and to all other Members. In the event the Company does not elect, timely, to purchase the entire Offered Interest, all other Members (excluding the Selling Member) acting together in accordance with their respective Proportionate Shares, or each other Member (excluding the Selling Member) acting separately or together with one or more but less than all other Members, shall have the option to purchase the Offered Interest during the thirty (30) business day period following the expiration of the Company's thirty (30) business day option exercise period, which option must be exercised by giving a written Notice of Intention to all Members.

6.4.2 The purchase price for the Offered Interest being purchased under this Section 6.4 shall be, except in the case of a sale pursuant to a bona fide offer, the _____¹² value, as defined below, of the Offered Interest, determined as of the end of the calendar month preceding the date of the First Notice. The _____ value shall be determined in accordance with the provisions of subsection 6.4.3. _____ value is hereby defined to mean

_____. In the case of a sale pursuant to a bona fide offer, the purchase price and other terms of purchase shall be the lowest price and other terms of purchase upon which the Selling Member is willing to sell his or her Interest pursuant to a bona fide offer. The purchaser(s) may require affidavits from the Selling Member and the person(s) who is the prospective purchaser pursuant to the bona fide offer as to the price paid and other terms regarding the bona fide offer.

6.4.3 The _____ value of the Offered Interest being purchased shall be determined in accordance with the following provisions. In the event that the purchaser(s) of the Offered Interest and the Selling Member (or his or her legal representative) cannot agree within thirty (30) business days of the exercise of an option, on the _____ value of the Offered Interest, then within twenty (20) business days after such purchaser(s) and the Selling Member fail to agree on the _____ value, the Company shall appoint an appraiser who holds membership in a nationally _____

¹¹Members must seek advice of an attorney regarding these purchase rights.

¹²Members must seek advice of an attorney or accountant regarding multiple ways of determining the value of a Member's Interest in the Company.

recognized professional appraisal organization, who has at least ten (10) years significant experience in appraising assets similar to the Company's Interests, and who is independent of the purchaser(s) and the Selling Member (or his or her legal representative). The appraiser so appointed (within forty-five (45) business days of his or her appointment) shall determine the _____ value of the Offered Interest, which determination shall be binding upon all interested parties. The fees and other costs of the appraiser and the obligation to pay them shall be allocated in two (2) equal parts between the purchaser(s) as a group and the Selling Member (or his or her legal representative).

6.4.4 Except for a sale pursuant to a bona fide offer, the purchase price of an Offered Interest determined under this Article 6 shall be paid at the purchaser(s) election either¹³ (i) one lump sum cash payment due and payable sixty (60) calendar days following the determination of the purchase price, or (ii) twenty-five percent (25%) cash down payment due and payable within sixty (60) calendar days following the determination of the purchase price with the balance of the purchase price payable in equal consecutive, quarter-annual installments of principal, together with accrued interest, over a period of two (2) years, which interest shall accrue at the mid-term federal interest rate (for federal tax law purposes) in effect from time to time. The first such installment shall be due and payable on the last day of the third calendar month following the month in which the down payment is required to be made. The purchaser(s) shall have the right to prepay, from time to time, any or all installments of principal without penalty or premium. In the case of a sale resulting from a bona fide offer, notwithstanding anything herein to the contrary, the purchaser(s) shall pay for the Offered Interest in accordance with payment terms set forth in a bona fide offer.

6.4.5 If the Offered Interest or part thereof is not sold to a prospective purchaser(s) pursuant to the terms and conditions of this Article 6 within a period of ninety (90) business days after the First Notice, the Selling Member's interest in the Company may not be sold, assigned, transferred or otherwise disposed of, as such terms are defined in Section 6.1, until it has been re-offered to the Company and other Members in accordance with the provisions of Section 6.4.

6.4.6 Because a breach of the provisions of this Article 6 will result in immediate and irreparable injury to the Company and/or the other Members for which neither the Company nor the other Members will have an adequate remedy at law, the Company and/or the other Members shall be entitled, if any such breach shall occur or be threatened or attempted, to a decree of specific performance and to seek any and all other remedies to which the Company and/or the other Members may be entitled without posting bond or furnishing other security and without proving special damages or irreparable injury.

6.5 Transfer Provisions Binding. Any sale, assignment or transfer or purported sale, assignment or transfer of any Interest in the Company shall be null and void unless made strictly in accordance with the provisions of this Article 6. The transferee of any Member's Interest in the Company shall be subject to all the terms, conditions, restrictions, and obligations of this Agreement. A transferee who has properly acquired the Interest of a Member in the Company may become a Member of the Company only if the transferee is admitted as a Member in accordance with the provisions of Section 2.9. If such transferee is not so admitted, then such transferee shall have no right to participate in the management of the business and affairs of the Company or to become a Member; the only rights to which such transferee shall be entitled are the share of profits or other distributions to which the transferor would be entitled.

¹³There are many ways to pay for an Interest being sold by a Member. Seek advice of your attorney regarding payment terms.

6.6 Encumbrances. No Member shall in any way encumber, pledge, hypothecate, or otherwise use his or her Interest in the Company as collateral or security for an obligation. No transferee as a result of realizing on collateral that is subject to a security interest to which the Company has consented shall become a Member (except pursuant to Section 2.9), but shall only be entitled to become an assignee of the Interest of such Member.

ARTICLE 7

Dissolution, Winding Up and Cancellation

7.1 Events Causing Dissolution. The Company shall be dissolved and its affairs shall be wound up when any one or more of the following occurs:

- (1) The term of the Company expires (see Section 2.7).
- (2) If there is no Member.
- (3) All Members vote to dissolve the Company.

7.2 Method of Winding Up. Upon the occurrence of any event causing dissolution as provided above, the Company shall immediately commence to liquidate and wind up its affairs. The Company shall continue to operate its business in liquidation and the Members shall continue to share profits and losses during the period of liquidation and winding up in the same proportions as before commencement of winding up and dissolution. Any gain or loss in disposition of the Company properties in the process of liquidation and winding up shall be credited or charged to the Members in the ratio of their Proportionate Share as provided in Article 3. The proceeds from the liquidation and winding up shall be applied first to:

7.2.1 Creditors of the Company, including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company other than those liabilities to Members on account of their contributions to the Company. After making payment or provision for all debts and liabilities of the Company, the Members' Capital Accounts shall then be adjusted by (i) assuming the sale of all remaining Property of the Company for cash at its respective fair market values (as determined by an appraiser selected by the Members) as of the date of dissolution of the Company, and (ii) debiting or crediting each Member's Capital Account with its respective share of the hypothetical gains or losses resulting from such assumed sales in the same manner as such Capital Accounts would be debited or credited for gains or losses from actual sales or dispositions of such Properties under Section 4.1. The Members shall then by payment of cash or Property distribute to the Members such amounts as are required to pay the positive balances of their respective Capital Accounts as determined under Section 3.2. Any distributions made in liquidation of the Company shall be made within the time periods prescribed under the Treasury Regulations promulgated under Section 704(b) of the Code.

7.2.2 When all debts, liabilities, and obligations of the Company have been paid or discharged, or adequate provisions has been made to do so, and all of the remaining Property of the Company has been distributed to the Members, Articles of Dissolution shall be executed and filed with the Division as required by Section 48-2b-139 of the Utah Code.

ARTICLE 8
Miscellaneous

8.1 Notices; Required Writings. Any notices to or between the Members shall be in writing and shall be considered properly given or made if given by (i) personal delivery, (ii) United States mail, certified or registered, return receipt requested, postage prepaid, (iii) prepaid telegram, telex, telefax or similar means (with signed confirmed copy to follow by mail) or (iv) expedited delivery service with proof of delivery, addressed to the respective addressees specified in the books and records of the Company. Notice shall be deemed to be received on the earlier of the date actually received or the third day after being deposited in the United States mail as above described. Any Member may change its address by giving notice in writing to the other Members of his or her new address. Any consent or other matter required to be in writing under this Agreement may be delivered by means of telefax facsimile transmission or similar device if an original is simultaneously mailed or sent for delivery.

8.2 Entire Agreement; Amendments. This Agreement shall constitute the entire contract among the Members with respect to its subject matter, and there are no other or further agreements outstanding with respect to such subject matter not specifically mentioned herein, provided, however, that this Agreement may be amended, altered, supplemented, or modified only by the written agreement of all the Members.¹⁴

8.3 Construction. It is the intent of the Members that the Company be treated as a partnership for federal and state income tax purposes, that each Member be recognized as a partner for federal and state income tax purposes, and that the distributive share of each Member in the profits and losses of the Company shall be included in his or her gross income. Without limiting the generality of the foregoing, it is intended that the Company shall lack the corporation characteristics of free transferability of interest and of continuity of existence so as to qualify for partnership tax treatment. It is the intention of the Members that the provisions of Subchapter K of the Code be applicable to the taxation of the Company and its Members. It is also the intention of this Agreement that the Members all obtain limited liability pursuant to the Act and not be generally liable as partners. All provisions of this Operating Agreement shall be construed in accordance with these expressed intentions.

8.4 Gender. The masculine includes the feminine and the neuter, the singular includes the plural, and vice versa, as the context may require.

8.5 Execution of Further Instruments. The Members shall cooperate with each other in good faith to accomplish the objectives and purposes hereof and to that end, from time to time, they shall make, execute and deliver such other and further instruments as may be necessary or convenient in the fulfillment of this Agreement.

8.6 Headings. The headings in this Agreement are included solely for convenience of reference and shall not be construed as limiting or in any other way modifying the text of this Agreement. However, a reference to an Article, Section, or sub-part of a Section includes all sub-parts of the Article, Section, or sub-part referred to.

¹⁴ Amendments require unanimous vote of all Members. If some other vote less than unanimous is desired, seek advice of your counsel.

8.7 Agreement to be Binding. This Agreement shall inure to the benefit of and shall be binding upon each of the Members and their respective personal representatives, executors, heirs, successors and permitted assigns (including successors and assigns by operation of law and involuntary event, as well as by voluntary act). There are no third party beneficiaries of this Agreement.

8.8 Attorneys' Fees. If any action is brought because of any breach of or to enforce or interpret any of the provisions of this Agreement, the party prevailing in such action shall be entitled to recover from the other party reasonable attorneys' fees and court costs incurred in connection with such action, the amount of which shall be fixed by the court and made a part of any judgment rendered.

8.9 Interpretation. This Agreement shall be governed and construed in accordance with the laws of the State of Utah.

8.10 Severability. To the extent any provision of this Agreement varies or contradicts the general provisions of the Act, each Member hereby consents to such variation or contradiction. If any provision of this Agreement or the application of such provision to any person or circumstances shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

8.11 Counterparts. This Agreement may be executed in any number of counterparts, which may be executed separately by the parties, each of which when executed and delivered shall be deemed to be an original, and all of which shall together constitute one and the same instrument.

8.12 Arbitration. Any dispute concerning this Agreement shall be submitted for binding arbitration in Salt Lake City, Utah under the commercial arbitration rules of the American Arbitration Association.

IN WITNESS WHEREOF, the Members of the Company have executed this Agreement as of the date first above written.

MEMBERS

