

161. Short-Form Operating Agreement for Member-Managed LLC

OPERATING AGREEMENT OF (insert full name of LLC)

THIS OPERATING AGREEMENT (the “Agreement”) is hereby entered into by the undersigned, who are owners and shall be referred to as Member or Members.

RECITALS

The Members desire to form (insert full name of LLC), a limited liability company (the “Company”), for the purposes set forth herein, and, accordingly, desire to enter into this Agreement in order to set forth the terms and conditions of the business and affairs of the Company and to determine the rights and obligations of its Members.

NOW, THEREFORE, the Members, intending to be legally bound by this Agreement, hereby agree that the limited liability company operating agreement of the Company shall be as follows:

ARTICLE I. DEFINITIONS

When used in this Agreement, the following terms shall have the meanings set forth below.

1.1 “Act” means the Limited Liability Company Law of the State in which the Company is organized or chartered, including any amendments or the corresponding provision(s) of any succeeding law.

1.2 “Capital Contribution(s)” means the amount of cash and the agreed value of property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services contributed by the Members for such Members’ Interest in the Company, equal to the sum of the Members’ initial Capital Contributions plus the Members’ additional Capital Contributions, if any, made pursuant to Sections 4.1 and 4.2, respectively, less payments or distributions made pursuant to Section 5.1.

1.3 “Code” means the Internal Revenue Code of 1986 and the regulations promulgated thereunder, as amended from time to time (or any corresponding provision or provisions of succeeding law).

1.4 “Interest” or “Interests” means the ownership Interest, expressed as a number, percentage, or fraction, set forth in Table A, of a Member in the Company.

1.5 “Person” means any natural individual, partnership, firm, corporation, limited liability company, joint-stock company, trust, or other entity.

1.6 “Secretary of State” means the Office of the Secretary of State or the office charged with accepting articles of organization in the Company’s state of organization.

ARTICLE II. FORMATION

2.1 Organization. The Members hereby organize the Company as a limited liability company pursuant to the provisions of the Act.

2.2 Effective Date. The Company shall come into being on, and this Agreement shall take effect from, the date the Articles of Organization of the Company are filed with the Secretary of State in the state of organization or charter.

2.3 Agreement: Invalid Provisions and Saving Clause. The Members, by executing this Agreement, hereby agree to the terms and conditions of this Agreement. To the extent any

provision of this Agreement is prohibited or ineffective under the Act, this Agreement shall be deemed to be amended to the least extent necessary in order to make this Agreement effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to validate any provision of this Agreement that was formerly invalid, such provision shall be considered to be valid from the effective date of such amendment or interpretation.

ARTICLE III. PURPOSE; NATURE OF BUSINESS

3.1 Purpose; Nature of Business. The purpose of the Company shall be to engage in any lawful business that may be engaged in by a limited liability company organized under the Act, as such business activities may be determined by the Member or Members from time to time.

3.2 Powers. The Company shall have all powers of a limited liability company under the Act and the power to do all things necessary or convenient to accomplish its purpose and operate its business as described in Section 3.1 here.

ARTICLE IV. MEMBERS AND CAPITAL CONTRIBUTIONS

4.1 Members and Initial Capital Contribution. The name, address, Interest, and value of the initial Capital Contribution of the Members shall be set forth on Table A attached hereto.

4.2 Additional Capital Contributions. The Members shall have no obligation to make any additional Capital Contributions to the Company. The Members may make additional Capital Contributions to the Company as the Members unanimously determine are necessary, appropriate, or desirable.

ARTICLE V. DISTRIBUTIONS AND ALLOCATIONS

5.1 Distributions and Allocations. All distributions of cash or other assets of the Company shall be made and paid to the Members at such time and in such amounts as the majority of the Members may determine. All items of income, gain, loss, deduction, and credit shall be allocated to the Members in proportion to their Interests.

ARTICLE VI. TAXATION

6.1 Income Tax Reporting. Each Member is aware of the income tax consequences of the allocations made by Article V here and agrees to be bound by the provisions of Article V here in reporting each Member's share of Company income and loss for federal and state income tax purposes.

6.2 Tax Treatment. Notwithstanding anything contained herein to the contrary and only for purposes of federal and, if applicable, state income tax purposes, the Company shall be classified as a partnership for such federal and state income tax purposes unless and until the Members unanimously determine to cause the Company to file an election under the Code to be classified as an association taxable as a corporation.

ARTICLE VII. MANAGEMENT BY MEMBERS

7.1 Management by Members. The Company shall be managed by its Members, who shall have full and exclusive right, power, and authority to manage the affairs of the Company and to bind the Company to contracts and obligations, to make all decisions with respect thereto, and to do or cause to be done any and all acts or things deemed by the Members to be necessary, appropriate, or desirable to carry out or further the business of the Company.

7.2 Voting Power in Proportion to Interest. The Members shall enjoy voting power and authority in proportion to their Interests. Unless expressly provided otherwise in this Agreement or the Articles of Organization, Company decisions shall be made by majority vote.

7.3 Duties of Members. The Members shall manage and administer the day-to-day operations and business of the Company and shall execute any and all reports, forms, instruments, documents, papers, writings, agreements, and contracts, including but not limited to deeds, bills of sale, assignments, leases, promissory notes, mortgages, and security agreements and any other type or form of document by which property or property rights of the Company are transferred or encumbered, or by which debts and obligations of the Company are created, incurred, or evidenced.

ARTICLE VIII. BOOKS AND RECORDS

8.1 Books and Records. The Members shall keep, or cause to be kept, at the principal place of business of the Company true and correct books of account, in which shall be entered fully and accurately each and every transaction of the Company. The Company's taxable and fiscal years shall end on December 31. All Members shall have the right to inspect the Company's books and records at any time, for any reason.

ARTICLE IX. LIMITATION OF LIABILITY; INDEMNIFICATION

9.1 Limited Liability. Except as otherwise required by law, the debts, obligations, and liabilities of the Company, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the Company, and the Members shall not be obligated personally for any such debt, obligation, or liability of the Company solely by reason of being Members. 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 by law shall not be grounds for imposing personal liability on the Members for any debts, liabilities, or obligations of the Company. Except as otherwise expressly required by law, the Members, in such Members' capacity as such, shall have no liability in excess of (a) the amount of such Members' Capital Contributions, (b) such Members' share of any assets and undistributed profits of the Company, and (c) the amount of any distributions required to be returned according to law.

9.2 Indemnification. The Company shall, to the fullest extent provided or allowed by law, indemnify, save harmless, and pay all judgments and claims against the Members, and each of the Company's or Members' agents, affiliates, heirs, legal representatives, successors, and assigns (each, an "Indemnified Party") from, against, and in respect of any and all liability, loss, damage, and expense incurred or sustained by the Indemnified Party in connection with the business of the Company or by reason of any act performed or omitted to be performed in connection with the activities of the Company or in dealing with third parties on behalf of the Company, including costs and attorneys' fees before and at trial and at all appellate levels, whether or not suit is instituted (which attorneys' fees may be paid as incurred), and any amounts expended in the settlement of any claims of liability, loss, or damage, to the fullest extent allowed by law.

9.3 Insurance. The Company shall not pay for any insurance covering liability of the Members or the Company's or Members' agents, affiliates, heirs, legal representatives, successors, and assigns for actions or omissions for which indemnification is not permitted hereunder; provided,

however, that nothing contained here shall preclude the Company from purchasing and paying for such types of insurance, including extended coverage liability and casualty and worker's compensation, as would be customary for any Person owning, managing, and/or operating comparable property and engaged in a similar business, or from naming the Members and any of the Company's or Members, agents, affiliates, heirs, legal representatives, successors, or assigns or any Indemnified Party as additional insured parties thereunder.

9.4 Non-Exclusive Right. The provisions of this Article IX shall be in addition to and not in limitation of any other rights of indemnification and reimbursement or limitations of liability to which an Indemnified Party may be entitled under the Act, common law, or otherwise.

ARTICLE X. AMENDMENT

10.1 Amendment. This Agreement may not be altered or modified except by the unanimous written consent or agreement of the Members as evidenced by an amendment hereto whereby this Agreement is amended or amended and restated.

ARTICLE XI. WITHDRAWAL

11.1 Withdrawal of a Member. No Member may withdraw from the Company except by written request of the Member given to each of the other Members and with the unanimous written consent of the other Members (the effective date of withdrawal being the date on which the unanimous written consent of all of the other Members is given) or upon the effective date of any of the following events:

- (a) the Member makes an assignment of his or her property for the benefit of creditors;
- (b) the Member files a voluntary petition of bankruptcy;
- (c) the Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;
- (d) the Member seeks, consents to, or acquiesces in the appointment of a trustee or receiver for, or liquidation of the Member or of all or any substantial part of the Member's property;
- (e) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in Subsections 11.1 (a) through (d);
- (f) if the Member is a corporation, the dissolution of the corporation or the revocation of its articles of incorporation or charter;
- (g) if the Member is an estate, the distribution by the fiduciary of the estate's Interest in the Company;
- (h) if the Member is an employee of the Company and he or she resigns, retires, or for any reason ceases to be employed by the Company in any capacity; or
- (i) if the other Members owning more than fifty percent (50%) of the Interests vote or request in writing that a Member withdraw and such request is given to the Member (the effective date of withdrawal being the date on which the vote or written request of the other Members is given to the Member).

11.2 Valuation of Interest. The value of the withdrawing Member's Interest in all events shall be equal to the greater of the following: (a) the amount of the Member's Capital Contribution or (b)

the amount of the Member's share of the Members' equity in the Company, plus the amount of any unpaid and outstanding loans or advances made by the Member to the Company (plus any due and unpaid interest thereon, if interest on the loan or advance has been agreed to between the Company and the Member), calculated as of the end of the fiscal quarter immediately preceding the effective date of the Member's withdrawal.

11.3 Payment of Value. The value shall be payable as follows: (a) If the value is equal to or less than \$500, at closing, and (b) If the value is greater than \$500, at the option of the Company, \$500 at closing with the balance of the purchase price paid by delivering a promissory note of the Company dated as of the closing date and bearing interest at the prime rate published in The Wall Street Journal as of the effective date of withdrawal, with the principal amount being payable in five (5) equal annual installments beginning one (1) year from closing and with the interest on the accrued and unpaid balance being payable at the time of payment of each principal installment.

11.4 Closing. Payment of the value of the departing Member's Interest shall be made at a mutually agreeable time and date on or before thirty (30) days from the effective date of withdrawal. Upon payment of the value of the Interest as calculated in Section 11.3 above: (a) the Member's right to receive any and all further payments or distributions on account of the Member's ownership of the Interest in the Company shall cease; (b) the Member's loans or advances to the Company shall be paid and satisfied in full; and (c) the Member shall no longer be a Member or creditor of the Company on account of the Capital Contribution or the loans or advances.

11.5 Limitation on Payment of Value. If payment of the value of the Interest would be prohibited by any statute or law prohibiting distributions that would

(a) render the Company insolvent; or

(b) be made at a time that the total Company liabilities (other than liabilities to Members on account of their Interests) exceed the value of the Company's total assets;

then the value of the withdrawing Member's Interest in all events shall be \$1.00.

ARTICLE XII. MISCELLANEOUS PROVISIONS

12.1 Assignment of Interest and New Members. No Member may assign such person's Interest in the Company in whole or in part except by the vote or written consent of the other Members owning more than fifty percent (50%) of the Interests. No additional Person may be admitted as a Member except by the vote or written consent of the Members owning more than fifty percent (50%) of the Interests.

12.2 Determinations by Members: Except as required by the express provisions of this Agreement or of the Act:

(a) Any transaction, action, or decision which requires or permits the Members to consent to, approve, elect, appoint, adopt, or authorize or to make a determination or decision with respect thereto under this Agreement, the Act, the Code, or otherwise shall be made by the Members owning more than fifty percent (50%) of the Interests.

(b) The Members shall act at a meeting of Members or by consent in writing of the Members. Members may vote or give their consent in person or by proxy.

(c) Meetings of the Members may be held at any time, upon call of any Member or Members owning, in the aggregate, at least ten percent (10%) of the Interests.

(d) Unless waived in writing by the Members owning more than fifty percent (50%) of the Interests (before or after a meeting), at least two (2) business days, prior notice of any meeting shall be given to each Member. Such notice shall state the purpose for which such meeting has been called. No business may be conducted or action taken at such meeting that is not provided for in such notice.

(e) Members may participate in a meeting of Members by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

(f) The Members shall cause to be kept a book of minutes of all meetings of the Members in which there shall be recorded the time and place of such meeting, by whom such meeting was called, the notice thereof given, the names of those present, and the proceedings thereof. Copies of any consents in writing shall also be filed in such minute book.

12.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the undersigned Members, their legal representatives, heirs, successors, and assigns. This Agreement and the rights and duties of the Members hereunder shall be governed by, and interpreted and construed in accordance with, the laws of the Company's state of organization or charter, without regard to principles of choice of law.

12.5 Headings. The article and section headings in this Agreement are inserted as a matter of convenience and are for reference only and shall not be construed to define, limit, extend, or describe the scope of this Agreement or the intent of any provision.

12.6 Number and Gender. Whenever required by the context here, the singular shall include the plural, and vice versa, and the masculine gender shall include the feminine and neuter genders, and vice versa.

12.7 Entire Agreement and Binding Effect. This Agreement constitutes the sole operating agreement among the Members and supersedes and cancels any prior agreements, representations, warranties, or communications, whether oral or written, between the Members relating to the affairs of the Company and the conduct of the Company's business. No amendment or modification of this Agreement shall be effective unless approved in writing as provided in Section 10.1. The Articles of Organization and this Agreement are binding upon and shall inure to the benefit of the Members and Agent(s) and shall be binding upon their successors, assigns, affiliates, subsidiaries, heirs, beneficiaries, personal representatives, executors, administrators, and guardians, as applicable and appropriate.

IN WITNESS WHEREOF, this Agreement has been made and executed by the Members effective as of the date first written above.

_____ [Member]

_____ [Member]

_____ [Member]

Table A: Name, Address and Initial Capital Contribution of the Members

Name and Address of Member	Value of Initial Capital Contribution	Nature of Member's Initial Capital Contribution, i.e., cash, services, property	Percentage Interest of Member