

**OPERATING AGREEMENT  
OF  
\_\_\_\_\_ PLLC**

THIS OPERATING AGREEMENT (this “Agreement”) is made and entered into effective as of \_\_\_\_\_ (the “Effective Date”) by and among Dr \_\_\_\_\_, an individual, Dr. \_\_\_\_\_, an individual, and \_\_\_\_\_, an individual, as all of the members of \_\_\_\_\_ PLLC, a Utah professional limited liability company (the “Company”).

**RECITALS**

A. The Company was formed as a Utah professional limited liability company on January 24, 2007 under the name “\_\_\_\_\_.” The Company’s name was changed in connection with the filing of amended and restated articles of organization on \_\_\_\_\_.

B. The Company is a franchisee of Cascade Family Dental, LLC (“Franchisor”), and each of the Members has reviewed the franchise documents applicable to the Company and desires to participate in the Company subject to such franchise documents.

C. The undersigned constitute all of the members of the Company as of the Effective Date.

D. The parties intend by this Agreement to define their rights and obligations with respect to the Company’s governance and financial affairs and to adopt regulations and procedures for the conduct of the Company’s activities. Accordingly, they agree as follows:

**ARTICLE 1: DEFINITIONS**

1.1 **Scope.** For purposes of this Agreement, unless the language or context clearly indicates that a different meaning is intended, capitalized terms have the meanings specified in this Article 1.

1.2 **Defined Terms.**

(a) “Act” means the Utah Revised Limited Liability Company Act.

(b) “Affiliate,” with respect to a Person, means (1) a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the Person, (2) a Person who owns or controls at least ten percent of the outstanding voting interests of the Person, (3) a Person who is an officer, director, manager or general partner of the Person, or (4) a Person who is an officer, director, manager, general partner, trustee or owns at least ten percent of the outstanding voting interests of a Person described in clauses (1) through (3) of this sentence.

(c) “Agreement” means this agreement, including any amendments.

(d) “Articles” means the Company’s amended and restated articles of organization, as the same may be amended from time to time.

(e) “Available Funds,” for any period, means the Company’s gross cash receipts from any source (other than Contributions) received during the period in question, less the sum of: (1) payments during the period in question of principal, interest, charges and fees then due pertaining to the

Company's indebtedness (including without limitation repayment of debt being refinanced); (2) operating and capital expenditures during the period in question incurred incident to the usual conduct of the Company's business; (3) net additions to reserves to meet the reasonable current and anticipated needs of the Company's business as determined by the Members. Net reductions during a given period in amount of prior period reserves shall be deemed a cash receipt during the period in which the reduction is approved by the Members.

(f) "Bankruptcy," with respect to a Person, means (1) the Person's general assignment for the benefit of creditors, (2) the filing of a petition or answer seeking for the Person any reorganization, arrangement, composition, readjustment, liquidation, dissolution, protection or similar relief in any state or federal bankruptcy, insolvency, reorganization or receivership proceeding or (3) the filing of an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Person in any state or federal bankruptcy, insolvency, reorganization or receivership proceeding.

(g) "Capital Account" of a Member means the capital account maintained for the Member in accordance with Article 4.5.

(h) "Code" means the Internal Revenue Code of 1986, as amended.

(i) "Company" means \_\_\_\_\_ PLLC and any successor limited liability company.

(j) "Contribution" means anything of value that a Member contributes to the Company as a prerequisite for or in connection with membership, including any combination of cash, property, services rendered, a promissory note or any other obligation to contribute cash or property or render services.

(k) "Dissolution," with respect to an Entity, means (1) the filing of articles of dissolution on the Entity's behalf, (2) the Entity's administrative dissolution, unless the Entity is reinstated within the time period prescribed by applicable law or (3) any other event that initiates the Entity's winding up under applicable law.

(l) "Distribution" means the Company's direct or indirect transfer of money or other property with respect to a Membership Interest, other than (1) issuance of a Membership Interest, (2) issuance of evidence of indebtedness, (3) reasonable compensation for past or present services; or (4) reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(m) "Division" means the Division of Corporations and Commercial Code of the Utah Department of Commerce.

(n) "Effective Date," with respect to this Agreement, means the date first above written.

(o) "Entity" means an association, relationship or artificial person through or by means of which an enterprise or activity may be lawfully conducted, including, without limitation, a domestic or foreign corporation, nonprofit corporation, limited liability company, general partnership, limited partnership, business trust, association, trust, estate, joint venture, cooperative or governmental unit.

(p) “Incapacity,” with respect to a Member, means impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause to the extent the Member lacks sufficient understanding or capacity to make or communicate responsible decisions.

(q) “Member” means a Member named herein and any Person who subsequently is admitted as an additional or substitute Member after the Effective Date, in accordance with the provisions of Article 3.1(b).

(r) “Member Collection Percentage Interest” means a Member’s percentage interest in the Company, calculated for the period in question, consisting of the Member’s right to share in Profits and receive Distributions. Allocations to the Members shall be based on the amount of revenue actually collected by the Company that is attributable to work or services performed by the Member. An allocation to a Member shall be made according to the ratio that the revenue collected attributable to the work or services performed by the Member during a particular period bears to the total amount of revenue collected attributable to the work or services performed by all of the Members during such period. Changes in the allocation of the Member Collection Percentage for the Members after the Effective Date, including those necessitated by the Transfers and the admission of Members, will be reflected in the Company’s records. The allocation of Member Collection Percentage Interests reflected in the Company’s records from time to time is presumed to be correct for all purposes of this Agreement and the Act

(s) “Membership Interest” means a Member’s Member Collection Percentage Interest and the Member’s right to participate in the Company’s governance, approve the Company’s acts and receive information pertaining to the Company’s affairs.

(t) “Minimum Gain” means minimum gain as defined in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

(u) “Person” means a natural person or an Entity.

(v) “Principal Office” means the Company’s office in Utah where the Company’s records are required to be kept.

(w) “Profit,” as to a positive amount, or “Loss,” as to a negative amount, means, for a Taxable Year, the Company’s net taxable income or loss for the Taxable Year, as determined in accordance with Section 703(a) of the Code, with the following adjustments: (1) all items required to be separately stated pursuant to Section 703(a)(1) of the Code will be accounted for in the aggregate, (2) any income that is exempt for federal income tax purposes will be included; and (3) any item that is specially allocated pursuant to Article 4.2(b) will be disregarded.

(x) “Regulations” means proposed, temporary or final regulations promulgated under the Code by the Department of the Treasury, as amended.

(y) “Taxable Year” means the Company’s taxable year as determined in accordance with Article 5.2.

(z) “Transfer,” as a noun, means a transaction by which a Member voluntarily changes or encumbers the ownership of any portion or all of the Member’s Membership Interest, including, without limitation, a sale, exchange, assignment, gift, devise, distribution, abandonment, pledge, grant of a security interest or change in ownership through merger, consolidation, conversion or

other transformation in the Member's identity or form of business organization. "Transfer," as a verb, means to effectuate a Transfer.

(aa) "Transferee" means a Person who acquires a Membership Interest by Transfer from a Member or another Transferee and is not admitted as a Member in accordance with the provisions of this Agreement.

## ARTICLE 2: THE COMPANY

2.1 **Status.** The Company is a professional limited liability company organized under the Act.

2.2 **Name.** The Company's name \_\_\_\_\_ PLLC.

2.3 **Term.** The Company's existence as a professional limited liability company commenced on \_\_\_\_\_, and will continue until terminated under the Act or this Agreement.

2.4 **Purposes.** The Company's purpose is to engage in the practice of dentistry.

2.5 **Principal Office and Registered Agent.**

(a) Principal Office. The Company's registered office is its Principal Office.

(b) Registered Office and Agent.

(1) The Company's registered office is located at \_\_\_\_\_, and its registered agent at that location is Robert M. Baird.

(2) The Company at any time may change the location of its registered office or the identity of its registered agent by filing a statement of change with the Division within 30 days after the effective date of the change. However, the location of the registered agent's business office must remain the same as the location of the Company's registered office.

(3) If the location of the registered agent's business office changes, the registered agent may change the location of the Company's registered office by giving written notice of the change to the Company and filing a statement of change with the Division within 30 days after the effective date of the change.

## ARTICLE 3: MEMBERS

3.1 **Identification; Qualification; Management.**

(a) Members. The names and addresses of the Members are as set forth on the signature page hereto. Members must be licensed to practice dentistry in the state in which the Company operates its dental practice. The Company will be member-managed.

(b) Additional and Substitute Members. The Company may admit additional or substitute Members only with the approval of all Members. A Member may withhold approval of the admission of any Person for any or no reason. In addition, the transfer or issuance of any interest in the

Company (whether by a Member, the Company or otherwise) shall be subject to the restrictions and other provisions of a buy sell agreement among the Members and the franchise agreement pursuant to which the Company operates as a “Cascade Family Dental Practice.”

(c) Rights of Additional or Substitute Members. A Person admitted as an additional or substitute Member has all the rights and powers and is subject to all the restrictions and obligations of a Member under this Agreement and the Act.

**3.2 Verification of Membership Interests.** Within 10 days after receipt of a Member’s written request, the Company will provide the Member with a statement of the Membership Interest of a Member. The statement will serve the sole purpose of verifying the Member’s Membership Interest, as reflected in the Company’s records, and will not constitute for any purpose a certificated security, negotiable instrument or other vehicle by which a Transfer of a Membership Interest may be affected.

**3.3 Manner of Acting.**

(a) Member Meetings.

(1) Right to Call. Any Member may call a meeting of Members by giving written notice to all Members not less than 10 nor more than 60 days prior to the date of the meeting. The notice must specify the date of the meeting and the nature of any business to be transacted.

(2) Proxy Voting. A Member may act at a meeting of Members through a Person authorized by a written proxy signed by the Member and filed with the secretary of the meeting before or at the time of the meeting.

(3) Quorum. A majority of Members will constitute a quorum at a meeting of Members. No action may be taken in the absence of a quorum.

(4) Required Vote; Extraordinary Matters. Except with respect to matters for which a greater minimum vote is required by this Agreement, the vote of a majority of the Members present will constitute the act of the Members at a meeting of Members. Notwithstanding the foregoing, the following actions shall require the unanimous approval of the Members:

(i) The sale, pledge, assignment, securitization or any other disposition of all or substantially all of the assets of the Company;

(ii) The Merger of the Company with any other Entity;

(iii) Filing Bankruptcy on behalf of the Company; and

(iv) Incurring any indebtedness on behalf of the Company in excess of \$1,000 in each instance.

(b) Written Consent. The Members may act without a meeting by written consent describing the action and signed by at least the number of Members equal to the minimum that would be necessary to take the action at a meeting at which all Members were present. For avoidance of doubt, the same group and class voting provisions of this Agreement shall apply to actions by written consent as apply to voting at Member meetings. The Company will give written notice of any action approved by written consent to each Member who does not join in the written consent. The notice must contain or be

accompanied by a description of the action approved by the written consent and be delivered to the Member at least five days before consummation of the action approved by the written consent.

**3.4 Delegation of Authority.** A Member at any time may delegate to any other Member, in whole or in part, the delegating Member's authority and powers to manage the Company's business, affairs and properties. Any such delegation must be effected by a written instrument that (a) specifies the scope and duration of the delegation, (b) reserves to the delegating Member the power to revoke the delegation at any time and for any or no reason, (c) prohibits substitution without the delegating Member's written consent and (d) is signed by the delegating Member and delivered to the delegate. While a delegation is in effect, the delegate may exercise the delegated authority and powers with the same force and effect as if the delegating Member had personally joined in the exercise of the delegated authority and powers. However, the delegating Member will not be liable for any action so taken. Delegation of a Member's authority and powers pursuant to this Article 3.4 is not an event of Dissociation.

### **3.5 Fiduciary Duties.**

(a) Exculpation. A Member is liable to and will indemnify the Company only for costs, expenses and damages that are attributable to an act or omission that constitutes a breach of this Agreement, a knowing violation of law, negligence or willful misconduct to the extent any such costs or expenses are not covered under an insurance policy in favor of the Company.

(b) Justifiable Reliance. A Member may rely on the Company's records maintained in good faith and on information, opinions, reports or statements received from any Person pertaining to matters the Member reasonably believes to be within the Person's expertise or competence.

(c) Outside Activities. Subject to the applicable provisions of the Cascade Family Dental Practice franchise documents and the other provisions of this Agreement, a Member may participate in any business or activity (other than the practice of dentistry) without accounting to the Company or the other Members.

(d) Self-Dealing. A Member may enter into a business transaction with the Company if the terms of the transaction are no less favorable to the Company than those of a similar transaction with an independent third party. Approval or ratification by Members having no interest in the transaction will constitute conclusive evidence that the terms satisfy the foregoing condition.

### **3.6 Indemnification and Advancement of Costs.**

#### **(a) Indemnification.**

(1) Mandatory. The Company will indemnify a Member for all expenses, losses, liabilities and damages the Member actually and reasonably incurs in connection with the Member's successful defense of any claim, action or proceeding arising out of or relating to the Member's conduct of the Company's activities.

(2) Permissive. The Company may, but is not required to, indemnify a Member for all expenses, losses, liabilities and damages the Member actually and reasonably incurs in connection with the Member's unsuccessful defense of any claim, action or proceeding arising out of or relating to the Member's conduct of the Company's activities, but only if (i) the Member's conduct was in good faith, (ii) the Member reasonably believed that the Member's conduct was in, or not opposed to, the Company's best interests, (iii) in the case of a criminal proceeding, the Member had no reason to believe

the Member's conduct was unlawful, (iv) in the case of a proceeding by or in the right of the Company, the Member was not adjudged liable to the Company and (v) in the case of any other proceeding, the Member was not adjudged liable to any Person on the basis that the Member derived an improper personal benefit.

(b) Advancement of Costs. The Company may, but is not required to, pay for or reimburse the expenses a Member actually and reasonably incurs in connection with a proceeding arising out of or relating to the Member's conduct of the Company's activities in advance of final disposition of the proceeding, but only if (1) the Member furnishes to the Company a written affirmation of the Member's good faith belief that the Member has met the applicable standards of conduct described in Article 3.6(a)(2), (2) the Member furnishes to the Company a written, signed undertaking to repay the advance if it is ultimately determined that the Member did not meet such standards of conduct and (3) the Company determines that the facts then known by it would not preclude indemnification under this Article 3.6.

3.7 **Reimbursement.** The Company will reimburse each Member for reasonable expenses properly incurred on the Company's behalf.

3.8 **Withdrawal of a Member.** A Member not withdraw from the Company prior to the dissolution and completion of winding up of the Company, without the written consent of all the other Members.

3.9 **Expulsion of a Member.** The Company may not expel a Member except as provided in Section 48-2c-710 of the Act.

3.10 **Transfer of Membership Interest.** A Member may Transfer the Member's Membership Interest only in strict compliance with the Buy and Sell Agreement executed in connection with this Agreement.

### 3.11 **Operations of Dental Practice.**

(a) New Patients. Patients are not assigned to dentists. Each Member shall have access to perform patient exams at the Company's office in at least proportion to the following percentages of the Company's available working hours each work:

\_\_\_\_\_ 40%

\_\_\_\_\_ 40%

\_\_\_\_\_ 20%

(b) Work Hours; Weekends; Emergencies. Each Member shall be guaranteed exclusive use of the office for the available working hours per week in proportion to the percentages set forth in Section 3.11(a) above or as otherwise agreed among the Members. The Members shall work on weekends in accordance with a schedule to be agreed upon among the Members. Except as provided below, services related to emergency calls shall be performed by the Member to whom the emergency call is directed. Emergency calls referred by a referral agency employed by the Company shall be referred to the Member who is responsible for working the Saturday of the week in which such call is received.

(c) Support Staff. The Company shall make available adequate support staff for each of the Members so that each Member may perform services in a professional and competent manner.

(d) Practice Focus. The Company business telephone shall be answered with the Company or franchise name and not with individual Member's names. There shall be no attempt by the Members or employees of the Company to encourage a patient to request a particular Member. There shall be a concerted effort by the Members and by employees of the Company to place greater emphasis on the Company's identity than on the individual Members' identities.

(e) Collections. Any and all production and collection attributable to professional services rendered by a Member or the Company and related to a specific patient shall be allocated to one of the Members. Collections that cannot be allocated to a specific Member including but not limited to capitation fees, shall be allocated utilizing collection percentages that can be attributed to a specific Member.

(f) Payment for Dental Services. All Members agree that no services shall be performed for a patient unless the patient agrees to pay for such services by cash, check, or credit card at the time the service is performed, or agrees to pay on an installment basis as determined by the treating dentist. All Members agree that a Member shall not accept goods or services, i.e., bartering or in kind trades, from a patient in exchange for services rendered by the Member to the patient.

#### **ARTICLE 4: FINANCE**

##### **4.1 Contributions.**

(a) Members. The members have made the Contributions set forth in the books and records of the Company.

(b) Additional Members. A Person admitted as a Member in connection with the acquisition of a Membership Interest directly from the Company after the Effective Date will make the Contributions specified in the agreement pursuant to which the Person is admitted as a Member.

(c) Additional Contributions.

(1) Permitted. The Company may authorize additional Contributions at such times and on such terms and conditions as it determines to be in its best interest.

(2) Required. The Company shall have no right to require additional Contributions from any Member without the Member's explicit written consent.

(d) Contributions Not Interest Bearing. A Member is not entitled to interest or other compensation with respect to any cash or property the Member contributes to the Company.

(e) No Return of Contribution. A Member is not entitled to the return of any Contribution prior to the Company's dissolution and winding up.

(f) Membership Interest for Services. If a Member receives a Membership Interest that exceeds the ratio of the Member's Capital Account to the aggregate Capital Account of all Members, such excess will be deemed to be an interest in the Company's Profit received in exchange for services rendered or to be rendered to the Company (a "Profits Interest"). A Member who holds a Profits Interest has all of the rights of a Member under this Agreement and the Act, except that the Member is not be entitled to share in any Distribution from the aggregate Capital Account of all Members determined as of



the date the Member receives the Profits Interest. For all purposes of this Article 4.1(f), the Members' Capital Accounts will be as adjusted in accordance with the provisions of Article 4.5(b).

#### 4.2 Allocation of Profit and Loss

(a) General Allocations. After giving effect to the special allocations required by Section 4.2(b) (the "*special allocations*"), the Company's Profit for a Taxable Year or other applicable period, including the Taxable Year in which the Company is dissolved, will be allocated among the Members as follows:

(i) First, in proportion to cumulative Losses allocated to Members for all prior Taxable Years in excess of cumulative Profits for all prior Taxable Years in an amount equal to such excess; and

(ii) Second, to the Members in proportion to their respective interests in the distributions made pursuant to Section 4.4(a) below for the Taxable Year.

Loss for any period shall be allocated: (i) first among all Members, in proportion to the relative amounts of Profit previously allocated to them under Section 4.2(a)(i) and (ii) above, until each Member (and its predecessors in interest) has received aggregate allocations of Loss equal to the amount of Profit previously allocated to the Member (and its predecessors in interest); and (ii) thereafter in proportion to their relative Member Collections Percentage Interest.

#### (b) Special Allocations.

(1) If a Member unexpectedly receives an adjustment, allocation, or distribution described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations that creates or increases a deficit in the Member's Capital Account as of the end of a Taxable Year, a pro rata portion of each item of the Company's income, including gross income and gain for the Taxable Year and, if necessary, for subsequent years will be allocated to the Member in an amount and manner sufficient to eliminate the deficit in the Member's Capital Account as quickly as possible.

(2) If a Member would have a deficit in his or her Capital Account at the end of a Taxable Year that exceeds the sum of (i) the amount the Member is required to pay the Company pursuant to an obligation described in Section 1.704-1(b)(2)(ii)(c) of the Regulations and (ii) the Member's share of Minimum Gain, a pro rata portion of each item of the Company's income, including gross income and gain, for the Taxable Year will be allocated to the Member in an amount and manner sufficient to eliminate the deficit in the Member's Capital Account as quickly as possible.

(3) If there is a net decrease in the Company's Minimum Gain during a Taxable Year, the items of the Company's income, including gross income and gain, for the Taxable Year and, if necessary, for subsequent Taxable Years will be allocated to the Members in proportion to their shares of the net decrease in Minimum Gain. If the allocation made by this paragraph would cause a distortion in the economic arrangement among the Members and it is expected that the Company will not have sufficient income to correct that distortion, the Company may seek to have the Internal Revenue Service waive the requirement for the allocation in accordance with Section 1.704-2(f)(4) of the Regulations.

(4) Items of the Company's loss, deductions and expenditures described in Section 705(a)(2)(B) of the Code that are characterized as "partner nonrecourse deductions" under

Section 1.704-2(i) of the Regulations will be allocated to the Members according to the ratio in which the Members bear the economic risk of loss with respect to the nonrecourse liabilities to which such items are attributable.

(5) Items of income, gain, loss and deduction with respect to property contributed to the Company's capital will be allocated between the Members so as to take into account any variation between book value and basis, to the extent and in the manner prescribed by Section 704(c) of the Code and related Regulations using the remedial method or such other permitted methods as the Members determine.

(6) If the special allocations required by this Article 4.2(b) result in Capital Account balances that are different from the Capital Account balances the Members would have had if the special allocations were not required, the Company will allocate other items of income, gain, loss and deduction in any manner it considers appropriate to offset the effects of the special allocations on the Members' Capital Account balances. Any offsetting allocation required by this paragraph is subject to and must be consistent with the special allocations.

(c) Effect of Transfers During Year. The Company will prorate items attributable to a Membership Interest that is the subject of a Transfer during a Taxable Year between the transferor and the Transferee based on an interim closing of the Company's books or based on such other permitted method as the Members determine.

**4.3 Tax Allocations.** For federal income tax purposes, unless the Code or Regulations otherwise requires, each item of the Company's income, gain, loss or deduction for a Taxable Year will be allocated to the Members in proportion to their allocations of the Company's Profit or Loss for that Taxable Year.

**4.4 Distributions of Available Cash.**

(a) Available Funds. Subject to Article 6.2(d) below, not later than 10 days after the close of each calendar month, the Company shall distribute its Available Funds to the Persons who are Members on the date of distribution in proportion to their respective Member Collection Percentages for collections received during the prior calendar month. The Company may make additional distributions of Available Funds from time to time in the amounts and manner determined by the Members.

(b) Prohibited Distributions. The Company may not make a Distribution if, after giving effect to the Distribution, (1) the Company would not be able to pay its debts as they become due in the usual and regular course of its business or (2) the fair market value of the Company's total assets would be less than the sum of its total liabilities. The Company's determination of its capacity to make a Distribution under this Article 4.4(b) will be made as of the date and in accordance with a method authorized by Section 48-2c-1005(2) of the Act.

(c) Negation of Right to Distribution in Kind. Except as provided in Article 6.2, a Member has no right to receive a Distribution in a form other than cash.

(d) Obligation to Return Wrongful Distribution. Except to the extent required by Section 48-2c-603 of the Act, a Member has no liability to return to the Company a Distribution to which the Member is legally entitled, regardless of the Company's inability to discharge its obligations to its creditors. If for any reason a Member receives a Distribution to which the Member is not legally entitled under Section 48-2c-603 of the Act, the Member will return the Distribution to the Company within 30 days after receiving notice of the wrongful Distribution.

#### 4.5 **Capital Accounts.**

(a) General Maintenance. The Company will establish and maintain a Capital Account for each Member. A Member's Capital Account will be:

(1) increased by: (i) the amount of any money the Member contributes to the Company's capital; (ii) the fair market value of any property the Member contributes to the Company's capital, net of any liabilities the Company assumes or to which the property is subject; and (iii) the Member's share of Profits; and

(2) decreased by: (i) the amount of any money the Company distributes to the Member; (ii) the fair market value of any property the Company distributes to the Member, net of any liabilities the Member assumes or to which the property is subject; and (iii) the Member's share of Losses.

(b) Adjustments.

(1) Distributions in Kind. If at any time the Company distributes property in kind, it will adjust the Members' Capital Accounts to account for their shares of any Profit or Loss the Company would have realized had it sold the property at fair market value and distributed the sale proceeds.

(2) Acquisitions and Redemptions. If at any time a Person acquires a Membership Interest from the Company or the Company redeems a Membership Interest, the Company will adjust the Members' Capital Accounts to account for their shares of any Profit or Loss the Company would have realized had it sold all of its assets at fair market value on the date of the acquisition or redemption.

(c) Transfer of Capital Account. A Transferee of a Membership Interest succeeds to the portion of the transferor's Capital Account that corresponds to the portion of the Membership Interest that is the subject of the Transfer.

(d) Compliance with Code. The requirements of this Article 4.5 are intended and will be construed to ensure that the allocations of the Company's income, gain, losses, deductions and credits have substantial economic effect under the Regulations promulgated under Section 704(b) of the Code.

### **ARTICLE 5: RECORDS AND ACCOUNTING**

#### 5.1 **Maintenance of Records.**

(a) Required Records. The Company will maintain at its Principal Office such books, records and other materials as are reasonably necessary to document and account for its activities, including, without limitation:

(1) a current list, in alphabetical order, of the full name and last-known business, residence or mailing address of each Member;

(2) a copy of the Articles;

(3) copies of any signed powers of attorney pursuant to which the Articles were signed;

(4) a copy of the writing required of the Company's organizer pursuant to Section 48-2c-401(2) of the Act;

(5) copies of the Company's federal, state and local income tax returns and reports for the three most recent Taxable Years;

(6) copies of the Company's financial statements for the three most recent Taxable Years;

(7) a copy of this Agreement, including any amendments; and

(8) copies of any minutes of each meeting of the Members and of any written consents of the Members.

(b) Authorized Access.

(1) Each current or former Member is entitled to inspect and copy, during regular business hours at the Company's Principal Office, any of the records described in Article 5.1(a) after first giving the Company written notice at least five business days before the inspection and copying is to occur. However, a former Member is entitled to inspect and copy only those records that pertain to the period of the former Member's tenure as a Member or are reasonably necessary to enable the former Member to establish a claim or defense in a controversy with the Company, any Member or any other Person.

(2) An authorized agent or attorney of a current or former Member has the same rights of inspection and copying as such current or former Member.

(3) Any costs associated with the production or reproduction of the Company's records will be borne and paid in advance by the requesting current or former Member.

(c) Confidentiality. No current or former Member will disclose any information relating to the Company or its activities to any unauthorized person or use any such information for his or her or any other Person's personal gain or for any other improper purpose.

## **5.2 Financial Accounting.**

(a) Accounting Method. The Company will account for its financial transactions using a method of accounting determined by the Members in compliance with Sections 446 and 448 of the Code.

(b) Taxable Year. The Company's Taxable Year is the Company's annual accounting period, as determined by the Members in compliance with Sections 441, 444 and 706 of the Code. The Taxable Year shall be the calendar year.

## **5.3 Reports.**

(a) Members. As soon as practicable after the close of each Taxable Year, the Company will prepare and send to the Members such reports and information as are reasonably necessary

to (1) inform the Members of the results of the Company's operations for the Taxable Year and (2) enable the Members to completely and accurately reflect their distributive shares of the Company's income, gains, deductions, losses and credits in their federal, state and local income tax returns for the appropriate year.

(b) Periodic Reports. The Company will complete and file any periodic reports required by the Act or the law of any other jurisdiction in which the Company is qualified to do business.

#### **5.4 Tax Compliance.**

(a) Withholding. If the Company is required by law or regulation to withhold and pay over to a governmental agency any part or all of a Distribution or allocation of Profit to a Member:

(1) the amount withheld will be considered a Distribution to the Member;  
and

(2) if the withholding requirement pertains to a Distribution in kind or an allocation of Profit, the Company will pay the amount required to be withheld to the governmental agency and promptly take such action as it considers necessary or appropriate to recover a like amount from the Member, including offset against any Distributions to which the Member would otherwise be entitled.

(b) Tax Matters Partner. The Members will designate a Member to act as the "Tax Matters Partner" pursuant to Section 6231(a)(7) of the Code. The Members may remove any Tax Matters Partner, with or without cause, and designate a successor to any Tax Matters Partner who for any reason ceases to act. The Tax Matters Partner will inform the Members of all administrative and judicial proceedings pertaining to the determination of the Company's tax items and will provide the Members with copies of all notices received from the Internal Revenue Service regarding the commencement of a Company-level audit or a proposed adjustment of any of the Company's tax items. The Tax Matters Partner may extend the statute of limitations for assessment of tax deficiencies against the Members attributable to any adjustment of any tax item. The Company will reimburse the Tax Matters Partner for reasonable expenses properly incurred while acting within the scope of the Tax Matters Partner's authority.

### **ARTICLE 6: DISSOLUTION**

#### **6.1 Events of Dissolution.**

(a) Enumeration. The Company will dissolve upon the first to occur of:

(1) the vote of all of the Members to dissolve the Company, unless the dissolution is revoked in accordance with the provisions of Section 48-2c-1205 of the Act;

(2) any event that makes the Company ineligible to conduct its activities as a limited liability company under the Act;

(3) the Company's administrative dissolution under Section 48-2c-1207 of the Act, unless the Company is reinstated within the time prescribed by Section 48-2c-1208 of the Act;

(4) entry of a decree of judicial dissolution pursuant to Section 48-2c-1213 of the Act; or

(5) any event or circumstance that makes it unlawful or impossible for the Company to carry on its business, unless the Company's incapacity to carry on its business is cured within 90 days after such event or circumstance.

(b) Exclusivity of Events. Unless specifically referred to in this Article 6.1, no event will result in the Company's dissolution.

## **6.2 Effect of Dissolution.**

(a) Appointment of Liquidator. Upon the Company's dissolution, the Members will appoint a liquidator, who may, but need not, be a Member. The liquidator will wind up and liquidate the Company in an orderly, prudent and expeditious manner in accordance with the following provisions of this Article 6.2.

(b) Final Accounting. The liquidator will make proper accountings (1) to the end of the month in which the event of dissolution occurred and (2) to the date on which the Company is finally and completely liquidated.

(c) Duties and Authority of Liquidator. The liquidator will pay or make reasonable provisions to pay all of the Company's debts, obligations and liabilities in accordance with the provisions of the Act. The liquidator may sell, encumber or retain for distribution in kind any of the Company's assets. Any gain or loss recognized on the sale of assets will be allocated to the Members' Capital Accounts in accordance with the provisions of Article 4.2. With respect to any asset the liquidator determines to retain for distribution in kind, the liquidator will allocate to the Members' Capital Accounts the amount of gain or loss that would have been recognized had the asset been sold at its fair market value.

(d) Final Distribution. The liquidator will distribute any assets remaining after the discharge or accommodation of the Company's debts, obligations and liabilities in proportion to the relative Capital Accounts of all Members.

The liquidator may distribute any assets distributable in kind to the Members in undivided interests as tenants in common. A Member whose Capital Account is negative will have no liability to the Company, the Company's creditors or any other Member with respect to the negative balance.

(e) Required Filings. The liquidator will file articles of dissolution with the Division and take such other actions as are reasonably necessary or appropriate to effectuate and confirm the cessation of the Company's existence.

## **ARTICLE 7: GENERAL PROVISIONS**

### **7.1 Amendments.**

(a) Required Amendments. The Company and the Members will execute and file with the Division a certificate of amendment of the Articles when (1) there is a change in the Company's name, (2) there is a change in the character of the Company's business, as specified in the Articles, (3) there is a false or erroneous statement in the Articles, (4) there is a change in the Company's period of duration, (5) there is a change in the Company's management structure or (6) there is a change in the identity of any Member. If any such amendment results in inconsistencies between the Articles and this

Agreement, this Agreement will be considered to have been amended in the specifics necessary to eliminate the inconsistencies.

(b) **Other Amendments.** Any Member or group of Members whose aggregate Membership Percentage exceeds 10% may propose for consideration and action an amendment to this Agreement or to the Articles. A proposed amendment will become effective at such time as it is approved by all the Members.

**7.2 Power of Attorney.** Each Member appoints the other Members, with full power of substitution, as the Member's attorney-in-fact, to act in the Member's name to execute and file (a) all certificates, applications, reports and other instruments necessary to qualify or maintain the Company as a limited liability company in the states and foreign countries where the Company conducts its activities, (b) all instruments that effect or confirm changes or modifications of the Company or its status, including, without limitation, certificates of amendment to the Articles and (c) all instruments of transfer necessary to effect the Company's dissolution and termination. The power of attorney granted by this Article 7.2 is irrevocable and coupled with an interest.

**7.3 Nominee.** Title to the Company's assets may be held in the name of the Company or any nominee (including any Member so acting), as the Company determines. The Company's agreement with any nominee may contain provisions indemnifying the nominee for costs or damages incurred as a result of the nominee's service to the Company.

**7.4 Investment Representation.** Each Member represents to the Company and the other Members that (a) the Member is acquiring a Membership Interest in the Company for investment and for the Member's own account and not with a view to its sale or distribution and (b) neither the Company nor any Member has made any guaranty or representation upon which the Member has relied concerning the possibility or probability of profit or loss resulting from the Member's investment in the Company.

**7.5 Notices.** Any notice contemplated by this Agreement may be sent by any commercially reasonable means, including hand delivery, first class mail, facsimile, e-mail or private courier. The notice must be prepaid and addressed as set forth in the Company's records. The notice will be effective on the date of receipt or, in the case of notice sent by first class mail, the fifth day after mailing. If notice is required to be given to a Member, a written waiver signed by the Member and delivered to the Company, whether before or after the time the notice is required to be given, is the equivalent of timely notice.

**7.6 Resolution of Inconsistencies.** If there are inconsistencies between this Agreement and the Articles, the Articles will control. If there are inconsistencies between this Agreement and the Act, this Agreement will control, except to the extent the inconsistencies relate to provisions of the Act that the Members cannot alter by agreement. Without limiting the generality of the foregoing, unless the language or context clearly indicates a different intent, the provisions of this Agreement pertaining to the Company's governance and financial affairs and the rights of the Members upon dissolution will supersede the provisions of the Act relating to the same matters.

**7.7 Provisions Applicable to Transferees.** As the context requires, the provisions of this Agreement pertaining to the rights and obligations of a Member also govern the rights and obligations of the Member's Transferee.

**7.8 Additional Instruments.** Each Member will execute and deliver any document or statement necessary to give effect to the terms of this Agreement or to comply with any law, rule or regulation governing the Company's formation and activities.

7.9 **Computation of Time.** In computing any period of time under this Agreement, the day of the act or event from which the specified period begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday or legal holiday, in which case the period will run until the end of the next day that is not a Saturday, Sunday or legal holiday.

7.10 **Entire Agreement.** This Agreement and the Articles comprise the entire agreement among the parties with respect to the Company. This Agreement and the Articles supersede any prior agreements or understandings with respect to the Company. No representation, statement or condition not contained in this Agreement or the Articles has any force or effect.

7.11 **Waiver.** No right under this Agreement may be waived, except by an instrument in writing signed by the party sought to be charged with the waiver.

7.12 **General Construction Principles.** Words in any gender are deemed to include the other genders. The singular is deemed to include the plural and vice versa. The headings and underlined paragraph titles are for guidance only and have no significance in the interpretation of this Agreement.

7.13 **Binding Effect.** Subject to the provisions of this Agreement relating to the transferability of Membership Interests and the rights of Transferees, this Agreement is binding on and will inure to the benefit of the Company, the Members and their respective distributees, successors and assigns.

7.14 **Governing Law; Dispute Resolution; Waiver of Jury Trial.** Utah law governs the construction and application of the terms of this Agreement. With respect to any lawsuit, claim, cause of action or dispute arising under or with respect to this Agreement, each party expressly submits itself to the exclusive personal and subject matter jurisdiction of the federal and state courts situated in Salt Lake City, Utah (the “Utah Courts”), waives any objection that he may now or hereafter have to the personal or subject matter jurisdiction of such Utah Courts or to venue of any such lawsuit or action in such Utah Courts or claim that any such lawsuit or action was brought in an inconvenient forum, and agrees not to plead or claim the same. **To the fullest extent permitted by Utah law, each Member hereby waives any right to trial by jury with respect to any law suit, dispute, claim, counterclaim or cause of action arising under or with respect to this Agreement.**

7.15 **Counterparts.** This Agreement may be executed in counterparts and by facsimile, each of which will be considered an original.

*[remainder of page intentionally left blank – signature page follows]*



Signed on the respective dates set forth below, to be effective as of the Effective Date.

MEMBERS:

\_\_\_\_\_  
Dr. \_\_\_\_\_

Date: \_\_\_\_\_

Address:

\_\_\_\_\_  
Dr. \_\_\_\_\_

Date: \_\_\_\_\_

Address:

\_\_\_\_\_  
Dr. \_\_\_\_\_

Date: \_\_\_\_\_

Address:

**Signature Page to Operating Agreement**