



A Delaware Limited Liability Company

**LIABILITY COMPANY OPERATING AGREEMENT**

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**NEITHER THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE REGULATORY AUTHORITY HAS APPROVED OR DISAPPROVED THIS OPERATING AGREEMENT OR THE LIMITED LIABILITY COMPANY MEMBERSHIP INTERESTS (THE “LLC INTERESTS”) DESCRIBED HEREIN. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.**

**THE MEMBERSHIP INTERESTS HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, INCLUDING THE RULES AND REGULATIONS THEREUNDER (THE “SECURITIES ACT”), AND THE COMPANY IS UNDER NO OBLIGATION TO REGISTER THE INTERESTS UNDER THE SECURITIES ACT IN THE FUTURE. BASED UPON THE FOREGOING, EACH ACQUIROR OF AN INTEREST MUST BE PREPARED TO BEAR THE ECONOMIC RISK OF INVESTMENT THEREIN FOR AN INDEFINITE PERIOD OF TIME.**

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**LIMITED LIABILITY COMPANY OPERATING AGREEMENT  
OF  
VESTIUM EQUITY FUND, LLC**

**THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT (THE “AGREEMENT”)** is entered into as of the 19<sup>th</sup> day of May 2008, by and among Vestium Management Group, LLC, a New York Corporation (the “Manager”), and such other persons who hereafter may execute a counterpart of this Operating Agreement and become Members of the limited liability company.

**Article I**

**The Company**

**1.1 Formation.** The Company was formed as a Delaware Limited Liability Company on May 19, 2008, pursuant to, and in accordance with, the provisions of the Act.

**1.2 Name.** The name of the Company shall be Vestium Equity Fund, LLC (the “Company”) and all business of the Company shall be conducted in such name except as the Manager may otherwise determine.

**1.3 Manager.** The name and address of the Manager of the Company is as follows:

Vestium Management Group, LLC  
Attention: Mr. Robert L. Buckhannon  
13116 Harriers Place  
Bradenton, Florida 34212

**1.4 Purpose.**

(a) The Company was formed for the purposes of managing a private investment fund that will be engaged in an investment strategy as to achieve an above-average rate of return by allocating its assets to a trading strategy that involves the buying and selling of Medium Term Notes (“MTNs”), which are debt securities issued by corporations with a maturity ranging from 1 to 10 years.

(b) The Company shall operate solely for the purposes specified in this Section 1.4. Except as otherwise provided in this Agreement, the Company shall not engage in any other activity or business that is not reasonably necessary or appropriate to the accomplishment of its purposes, and no Member shall have any authority to hold itself out as a general agent of the Company in any other business or activity.

**1.5 Place of Business.** The principal place of business of the Company shall be located at 13116 Harriers Place, Bradenton, Florida 34212, telephone, or at such other place as may be approved by the Manager.

**1.6 Registered Agent for Service.** The Company’s initial registered agent for service of process is Harvard Business Services, Inc., 16192 Coastal Highway, Lewes, Delaware 19958. The Manager may designate a different registered agent, in his sole discretion, from time to time.

**1.7 Term.** The term of the Company shall commence on the date hereof and shall continue until the winding up and liquidation of the Company and completion of its business following a Liquidating Event, as provided in Article XII hereof.

**1.8 Statutory Compliance.** The Company shall exist under and be governed by, and this Agreement shall be construed in accordance with, the applicable laws of the State of Delaware. The Members shall make all filings and disclosures required by, and shall otherwise comply with, all such laws.

**1.9 Title to Property.** All property owned by the Company shall be owned by the Company as an entity, and no Member shall have any ownership interest in such property in its individual name or right, and each Member's interest in the Company shall be personal property for all purposes. The Company shall hold all of its property in the name of the Company and not in the name of any Member.

**1.10 Payments of Individual Obligations.** The Members shall use the Company's credit and assets solely for the benefit of the Company, and no asset of the Company shall be transferred or encumbered for or in payment of any obligation that is unrelated to the business of the Company.

**1.11 Definitions.** Capitalized words and phrases used in this Agreement have the following meanings:

(a) **“Act”** means the Delaware Limited Liability Company Act, as set forth in §18-101, *et seq.*, Title 6 of the Delaware General Statutes, as amended from time to time (or any corresponding provisions of succeeding law).

(b) **“Adjusted Capital Account Deficit”** means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account of any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(I)(5); and

(ii) Debit to such Capital Account of the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

(c) **“Affiliate”** means any Person who or which, directly or indirectly, controls or is controlled by or is under common control with such Person, where the term “control” (including the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

(d) **“Agreement”** means this Limited Liability Company Operating Agreement, as amended from time to time.

(e) **“Assets”** means the Capital Contributions contributed by the Members pursuant to Section 2.1, and all Property acquired by the Company.

(f) **“Bankruptcy”** means, with respect to any Person:

(i) the filing of an application by the Person for, or a consent to, the appointment of a trustee of the Person’s assets;

(ii) the filing by the Person of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing the Person’s inability to pay debts as they come due;

(iii) a general assignment by such Person for the benefit of creditors;

(iv) the filing by the Person of an answer admitting the material allegations of, or the Person’s consenting to, or defaulting in answering a bankruptcy petition filed against the Person in any bankruptcy proceeding; or

(v) the entry of an order, judgment or decree by any court of competent jurisdiction adjudicating the Person bankrupt or appointing a trustee, custodian, receiver or liquidator of such Person’s assets, which order, judgment or decree continues unstayed and in effect for any period of sixty (60) days.

(g) **“Business Day”** means any day, other than a Saturday or a Sunday, on which the banks are open in New York, New York.

(h) **“Capital Account”** means, with respect to any Member, the Capital Account maintained in accordance with the following provisions:

(i) To each Member’s Capital Account there shall be credited such Member’s Capital Contributions, such Member’s distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 3.1, 3.2 and Section 3.3 hereof, and the amount of any Company liabilities assumed by such Member or which are secured by any Property distributed to such Member;

(ii) To each Member’s Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Property distributed to such Member pursuant to any provision of this Agreement, such Member’s distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 3.2 or Section 3.3 hereof, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

(iii) In determining the amount of any liability for purposes of Sections 1.11(h)(i) and 1.11(h)(ii) hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Manager shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company or the Members), are computed in order to comply with such Regulations, the Manager may make such modification, provided that such modification is not likely to have a material effect on the amounts distributable to any Member pursuant to Article XI hereof upon the dissolution of the Company. The Manager also shall (I) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes in accordance with Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

(i) **“Capital Contributions”** means, with respect to any Member, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Company with respect to the Interest held by such Member pursuant to the terms of this Agreement.

(j) **“Code”** means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

(k) **“Company”** means the limited liability company formed by this Agreement and the company continuing the business of this Company in the event of dissolution as herein provided.

(l) **“Company Minimum Gain”** has the meaning set forth in Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

(m) **“Confidential Private Placement Offering Memorandum”** means the Company's Confidential Private Placement Offering Memorandum, as amended from time to time, utilized by the Company for the sale of the LLC Interests described therein and herein.

(n) **“Depreciation”** means, for each Fiscal Year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deductions for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

(o) **“Fiscal Year”** means (I) the period commencing on the effective date of this Agreement and ending on December 31, 2008 (ii) any subsequent twelve (12) month period commencing on January 1 and ending on December 31, or (iii) any portion of the period



described in clause (ii) for which the Company is required to allocate Profits, Losses and other items of Company income, gain, loss or deduction pursuant Article III hereof.

**(p) “Gross Asset Value”** means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

**(i)** The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset as determined by the Manager;

**(ii)** The Gross Asset Values of all Assets shall be adjusted to equal their respective gross fair market values as of the following times: (x) the acquisition of an additional Interest by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (y) the distribution by the Company to a Member of more than a *de minimis* amount of property in consideration for an Interest; and (z) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); *provided, however*, that adjustments pursuant to clauses (x) and (y) above shall be made only if the Manager reasonably determine that such adjustments are necessary to reflect the relative economic interests of the Members in the Company;

**(iii)** The Gross Asset Value of any Asset distributed to any Member shall be adjusted to equal the gross fair market value of such Asset on the date of distribution as determined by the Manager; and

**(iv)** The Gross Asset Values of Assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and Sections 1.11(cc) and Article III hereof; *provided, however*, that Gross Asset Values shall not be adjusted pursuant to this Section 1.11(p)(iv) to the extent the Manager determine that an adjustment pursuant to Section 1.11(p)(ii) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 1.11(p)(iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to Section 1.11(p)(i), Section 1.11(p)(ii), or Section 1.11(p)(iv) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

**(q) “Interest”** means an ownership interest in the Company, including any and all benefits to which the holder of such an interest may be entitled as provided in this Agreement, together with all obligations of such holder to comply with the terms and provisions of this Agreement.

**(r) “Liquidating Event”** has the meaning set forth in Section 12.1.

**(s) “Manager”** means Vestium Management Group, LLC, which shall be the Manager of the Company and shall be vested with full authority to conduct and manage the business of the Company in its sole and absolute discretion.

(t) **“Member Nonrecourse Debt”** has the meaning set forth in Section 1.704-2(b)(4) of the Regulations.

(u) **“Member Nonrecourse Minimum Gain”** means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

(v) **“Member Nonrecourse Deductions”** has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

(w) **“Members”** means those Persons hereafter admitted as Members pursuant to the terms of this Agreement. “Member” means any one of the Members.

(x) **“Net Asset Value”** means the aggregate value of all Assets of the Company, including unrealized gains, less the aggregate value of all liabilities, including unrealized losses, determined on the basis of generally accepted accounting principles, consistently applied.

(y) **“Nonrecourse Deductions”** has the meaning set forth in Section 1.704-2(b)(1) of the Regulations.

(z) **“Nonrecourse Liability”** has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

(aa) **“Percentage Interest”** means, with respect to each Member, such Member’s percentage interest in the Company.

(bb) **“Person”** means any individual, Member, limited liability company, corporation, trust, or other entity.

(cc) **“Profits” and “Losses”** means, for each relevant period, an amount equal to the Company’s taxable income or loss for such period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Section 1.11(cc) shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this Section 1.11(cc) shall be subtracted from such taxable income or loss;

(iii) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 1.11(p)(ii) or Section 1.11(p)(iii) hereof, the amount of such

adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(iv) Gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the Property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Gross Asset Value;

(v) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or other period, computed in accordance with Section 1.11(n) hereof;

(vi) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(vii) Notwithstanding any other provision of this Section 1.11(cc), any items that are specifically allocated pursuant to Section 3.2 and Section 3.3 hereof shall not be taken into account in computing Profits or Losses.

(dd) **“Property”** means all real and personal property acquired by the Company and any improvements thereto, and shall include both tangible and intangible property.

(ee) **“Regulations”** means the Income Tax Regulations, including Temporary Regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

(ff) **“Regulatory Allocations”** has the meaning set forth in Section 3.3.

(gg) **“Subscription Agreement”** means with respect to the Company, the document attached as an exhibit to the Company's Confidential Private Placement Offering Memorandum dated May 1, 2008, and executed by a Member at the time of their subscription for and purchase of a Membership Interest in the Company.

(hh) **“Tax Matters Member”** means the Manager or Member designated by the Manager from time to time as the Tax Matters Member pursuant to Code Section 6231(a)(7) or any successor provision and in any similar capacity under state or local law.

(ii) **“Transfer”** means, as a noun, any voluntary or involuntary transfer, sale, pledge or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell, pledge or otherwise dispose of.

## ARTICLE II

### MEMBERS' CAPITAL CONTRIBUTIONS

**2.1 Members.** Each Member shall make a Capital Contribution to the Company in the form of a bank check, cash or otherwise immediately available funds, concurrently with the execution of this Agreement. The initial Capital Contribution of each member shall be at least Five Hundred Thousand Dollars (\$500,000.00) or such other amount as the Manager may permit in their sole discretion.

**2.2 Member's Suitability Requirements.** Only Members who meet certain suitability standards, including the ability to afford a complete loss of their investment, will be admitted as Members to the Company. Members will be limited to "Accredited Investors" as that term is defined in Rule 501 of Regulation D of Securities Act.

**2.3 Members' Representations, Warranties and Covenants.** Each Member hereby represents, warrants, and covenants that:

**(a) No. Registration.** The Interests in the Company evidenced by this Agreement have not been registered under the Securities Act of 1933, 15 U.S.C. §§ 15b *et seq.*, or any state securities laws (collectively, the "Securities Acts") because the Company is issuing Interests in the Company in reliance upon the exemptions from the registrations requirements of the Securities Acts providing for issuance of securities not involving a public offering.

**(b) Reliance on Members' Representations.** The Company has relied upon the representation made by each Member that such Member's Membership Interest in the Company is to be held by such Member for investment.

**(c) Disclaimer.** This Agreement was drafted by counsel for the Company and said counsel has in no way undertaken to represent any Member individually with respect to the negotiation and drafting of this Agreement. Each Member acknowledges that the Manager has encouraged each other Member to seek competent counsel in connection with the negotiation of the terms and conditions of this Agreement, and that such Member has had an adequate opportunity to do so. Before acquiring any Membership Interest in the Company, each Member has investigated the Company and its business, and the Company has made available to each Member all information necessary for such Member to make an informed decision to acquire a Membership Interest in the Company.

**(d) No Distribution.** Accordingly, each Member hereby represents and warrants to the Company that such Member is acquiring the Membership Interests for such Member's own account, for investment and not with a view to, or for resale in connection with, any distribution of thereof. No such other Person has any interest in or right with respect to the Membership Interest issued to such Member, nor has such Member agreed to give any Person any such interest or right in the future.

**(e) Restrictions on Transfer.** Each Member further agrees that such Member will not transfer their LLC Interest to any person unless: (i) such person agrees to be bound by the representations and warranties contained in this Section 2.3; (ii) to transfer such LLC Interest only to other persons in the future who agree to be similarly bound; and (iii) is a permitted transferee hereunder. Any transfer in violation of this Agreement shall be null and void and shall have no effect.

**(f) No Public Market.** Each Member recognizes that no public market exists with respect to the Membership Interests and no representation has been made that such a public market will exist at a future date.

**(g) No Advertisement.** Each Member hereby represents that such Member has not received any advertisement or general solicitation with respect to the sale of the Interests.

**(h) Pre-Existing Personal or Business Relationship.** Each Member acknowledges that such Member has a pre-existing personal or business relationship with the Company or its Members, managers, officers or directors, or, by reason of such Member's business or financial experience, or the business or financial experience of such Member's business or financial advisors (who are not affiliated with the Company), could be reasonably assumed to have the capacity to protect such Member's own interest in connection with the purchase of the Interests and to evaluate the merits and risks of such Member's investment in the Company. Each Member further acknowledges that such Member is familiar with the financial condition and prospects of the Company's business, and has discussed the current activities of the Company with the other Members. Each Member believes that the Interests are securities of the kind such Member wishes to purchase and hold for investment, and that the nature and amount of the Interests are consistent with such Member's investment program. Each Member is able to bear the risks of an investment in the Company, and at the present time could afford a complete loss of such investment.

**(i) Indemnity.** Each Member understands the meaning and consequences of the representations, warranties and covenants made by such Member set forth herein and that the Company has relied upon such representations, warranties and covenants. To the fullest extent permitted by law, each Member hereby indemnifies, defends, protects and holds wholly free and harmless the Company from and against any and all losses, damages, expenses or liabilities arising out of the breach and/or inaccuracy of any such representation, warranty and/or covenant. All representations, warranties and covenants contained herein, and the indemnification contained in this Section 2.3, shall survive the execution of this Agreement and the formation, dissolution and liquidation of the Company.

**(j) Rescission.** In the event the Company discovers any breach and/or inaccuracy of any of the representations, warranties and/or covenants contained herein by any Member, the Company may, at the Company's election, rescind the issuance of the Membership Interest in the Company issued to such Member. Upon such rescission by the Company, any such Member shall be conclusively presumed to have immediately transferred such Member's Membership Interest in the Company to the Company and to have withdrawn from the Company. In the event of any such rescission, any capital contributions of such Member may, at the election of the Company, be retained and applied in satisfaction of the indemnity described in Section 2.3(i) above.

**(k) Internal Revenue Code Section 754 Elections and Obligations.** Each Member receiving the benefits of any election under the Internal Revenue Code of 1986 (the "Code"), Section 754, 743(b), or 734(b) shall be responsible to pay, or to reimburse the Company for, the direct and/or indirect costs associated with such election in an amount equal to the portion of such costs that corresponds to the ratio of the positive Capital Account balance of such Member prior to such election compared to the positive Capital Account balances of all such benefited Members prior to such election.

**2.4 Initial Capital Contributions.** Each Member shall contribute to the capital of the Company as the Member's initial Capital Contribution the money specified in the Company's Subscription Agreement and Purchaser Questionnaire and Counterpart Signature Page attached hereto. If a Member fails to make the initial Capital Contributions specified in Subscription Agreement and Purchaser Questionnaire and Counterpart Signature Page within the time prescribed therein, no Membership Interest shall be issued to such prospective Member, and such prospective Member shall indemnify and hold the Company and the other Members harmless from any loss, cost, or expense, including reasonable attorney fees caused by the failure to make the initial Capital Contribution. The Manager shall have the authority to contribute capital to the Company in the form of a capital contribution on the same terms and conditions as the other Members pursuant to the Company's Confidential Private Placement Offering Memorandum, Subscription Agreement and Confidential Purchaser Questionnaire.

**2.5 Additional Capital Contributions.** The Members may make additional Capital Contributions from time to time in minimum increments of One Hundred Thousand Dollars (\$100,000.00).

**2.6 Member's Minimum Capital Account Balance.** Members are required to maintain a minimum balance of One Hundred Thousand Dollars (\$100,000.00) in their respective capital accounts. If the balance of a Member's capital account falls below One Hundred Thousand Dollars (\$100,000.00), the Managers may, in their sole discretion, terminate such Member's LLC Membership Interest and return the balance of the funds contained in the Member's capital account.

**2.7 Other Matters.** No Member shall receive any interest, salary or drawing with respect to its Capital Contributions or its Capital Account or for services rendered on behalf of the Company or otherwise in its capacity as Member, except as otherwise provided in this Agreement and the Company's Confidential Private Placement Offering Memorandum.

### ARTICLE III

#### ALLOCATIONS

##### 3.1 Profits and Losses.

(a) Profits and Losses shall be determined as of each calendar month-end and, after giving effect to the Special Allocations set forth in Sections 3.2 and 3.3 hereof, shall be allocated Eighty Percent (80%) to the Members' capital accounts in proportion to the each Member's Percentage Interest and Twenty Percent (20%) will be allocated to the Manager on a high-watermark basis.

(b) If the Percentage Interest of any Member changes during any calendar month, Profits and Losses for each month shall be allocated among the Members in proportion to the Members' Percentage Interests as of the first day of such month, and each Member's share of such Profits and Losses for such calendar quarter shall be equal to the sum of its share of the Profits and Losses for each month during the calendar month.

(c) The Losses allocated pursuant to Section 3.1(a) hereof shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have an

Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section 3.1(a) hereof, the limitation set forth in this Section 3.1(c) shall be applied on a Member-by-Member basis so as to allocate the maximum permissible Losses to each Member under Section 1.704-1(b)(2)(ii)(d) of the Regulations.

**3.2 Special Allocations.** The following special allocations shall be made in the following order:

**(a) Minimum Gain Chargeback.** Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Article III, if there is a net decrease in Company Minimum Gain during any Company Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 3.2(a) is intended to comply with the minimum gain chargeback requirement in such Section of the Regulations and shall be interpreted consistently therewith.

**(b) Member Minimum Gain Chargeback.** Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Article III, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Company Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 3.2(b) is intended to comply with the minimum gain chargeback requirement in such Section of the Regulations and shall be interpreted consistently therewith.

**(c) Qualified Income Offset.** In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), Section 1.704-1(b)(2)(ii)(d)(5) or Section 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 3.2(c) shall be made only if and to the extent that such Member would have Adjusted Capital Account Deficit after all other allocations provided for this Article III have been tentatively made as if this Section 3.2(c) were not in the Agreement.

**(d) Code Section 754 Adjustment.** To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required,

pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts, as a result of a distribution to a Member in complete liquidation of Interests, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specifically allocated to the Members in accordance with their interests in the Company in the event Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Members to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

**(e) Nonrecourse Deductions.** Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated among the Members in proportion to their Percentage Interests.

**(f) Member Nonrecourse Deductions.** Any Member Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-1T(b)(4)(iv)(h).

**(g) Special Allocation of Interest.** Deductions attributable to interest paid to a Member with respect to a loan made by such Member to the Company shall be specially allocated to such Member.

**(h) Payments to Members.** In the event that any amount paid or payable to any Member which the Company deducted or intended to deduct are disallowed as deductions for federal income tax purposes (or it is determined that such amounts are no longer allowable as deductions), (i) the amounts thus disallowed or no longer allowable will be allocated to the Member which received them as income, and (ii) notwithstanding any provision herein to the contrary, the balance of the redetermined income or loss of the Company for the taxable year in question shall, to the extent permitted by law, be allocated among the Members to obtain the same allocation of Company income or loss (after giving effect to the income allocated pursuant to clause (i) hereof) as would have been obtained for such taxable year if the amounts thus disallowed or no longer allowable had been proper deductions by the Company.

**3.3 Curative Allocations.** The allocations set forth in Sections 3.2(a), 3.2(b), 3.2(c), 3.2(d), 3.2(e), and 3.2(f) hereof (“Regulatory Allocations”) are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 3.3. Therefore, notwithstanding any other provision of this Article III (other than the Regulatory Allocations), the Manager shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member’s Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Sections 3.1 and 3.2(g). In exercising its discretion under this Section 3.3, the Manager shall take into account future Regulatory Allocations under Sections 3.2(a) and 3.2(b) that, although not yet made, are likely to offset other Regulatory Allocations previously made under Section 3.2(e) and 3.2(f).

### **3.4 Other Allocation Rules.**



(a) The Members are aware of the income tax consequences of the allocations made by this Article III and hereby agree to be bound by the provisions of this Article III in reporting their shares of Company income and loss for income tax purposes.

(b) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses and any such other items shall, except as otherwise provided herein, be determined on a daily, monthly or other basis, as determined by the Manager using any permissible method under Code Section 706 and the Regulations thereunder.

(c) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), the Members' interests in Company profits are in proportion to their Percentage Interests.

(d) To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the Members shall endeavor not to treat distributions of cash as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt.

**3.5 Tax Allocations; Code Section 704(c).** In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with Section 1.11(p)(i) hereof).

In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 1.11(p)(ii) hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

Any elections or other decisions relating to such allocations shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 3.5 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items of gain or loss, or distributions pursuant to any provisions of this Agreement.

## ARTICLE IV

### DISTRIBUTIONS

**4.1 Distributions.** Except as provided in Section 4.3, Section 12.2, and 5.4 hereof, Profits allocated to the Members pursuant to Section 3.1(a) hereof, shall be distributed by the Manager at such times as the Manager shall determine. The Members shall not be required to return any distributions received as a result of Losses incurred in any subsequent calendar quarter.

**4.2 Tax Distributions.** Notwithstanding the provisions of Section 4.1, the Members shall receive distributions within ninety (90) days following the close of the Company's Fiscal Year equal to the product of (a) the net ordinary income and capital gains of the Company for such Fiscal Year and (b) the maximum combined marginal rate for federal and state individual income tax applicable to such

income and gains, taking into account the deduction for state income taxes provided for in Code Section 164(a)(3). The state of each Member's address listed in the records of the Company shall be referred to for purposes of the calculation of the state income tax rate provided for in this Section 4.2.

**4.3 Amounts Withheld.** All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment or distribution to the Company or the Members shall be treated as amounts distributed to the Members pursuant to this Article IV for all purposes under this Agreement. The Company is authorized to withhold from distribution to the Members and to pay over to any federal, state or local government any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state or local law and shall allocate such amounts to the Members with respect to which such amounts were withheld.

**4.4 Limitations on Distributions.** Notwithstanding the provisions of Section 4.1, if Losses are allocated to a Member in any calendar quarter, Profits allocated to such Member in subsequent calendar quarters shall not be distributed until the Capital Account of such Member equals the sum of the initial Capital Contribution and any additional Capital Contributions made by such Member.

## ARTICLE V

### WITHDRAWALS FROM CAPITAL ACCOUNTS

**5.1 Limitation on Withdrawals from Capital Accounts.** Except as expressly provided herein, no member shall be entitled to withdraw all or any portion of his Capital Account, or any portion thereof, except as.

**5.2 Form of Distributions.** No Member shall have the right to demand and receive property other than cash in return for his contribution, although the Manager may make distribution in kind in their sole and exclusive discretion.

**5.3 Return of Distributions.** When any Member has rightfully received the return in whole or in part of his capital contribution, he shall nevertheless be liable to the Company for any sum, not in excess of the amount returned, to the extent necessary to discharge Company liabilities to any creditor who extended credit to the Company during the period that the contribution was held by the Company or whose claim arose before such return. No provision of this Agreement shall be construed as guaranteeing the return, either by the Manager or by the Company, of all or any part of the capital contributions made to the Company by any Member.

**5.4 Voluntary Withdrawals.** Subject to the provisions of this Section 5.4, ninety (90) days after the making of any capital contribution (the "Lock-Up Period"), a Member may, upon thirty (30) days' prior written notice, withdraw any or all of its initial capital contribution from its capital account, or withdraw from the Fund, to the extent that such withdrawal is allocable to such capital contribution. Investors will be permitted to withdraw profit allocations (in excess of their initial capital contribution) on a monthly basis commencing thirty (30) days from their initial capital contribution upon thirty (30) days' prior written notice to the Manager. Withdrawals of initial capital contributions from a Member's Capital Account prior to the expiration of the ninety (90) period will only be made in circumstances considered by the Manager, after reasonable inquiry, to be extraordinary. The following circumstances would be considered by the Manager to be extraordinary and warrant redemption prior to the end of the ninety (90) lock-up period:

- a. When the holding of the investment by a Member becomes impractical or illegal;
- b. in the event of a Member's death or total disability;
- c. in the event key personnel of the Manager die, become incapacitated, or cease to be involved in the management of the Company for an extended period of time;
- d. in the event of a merger or reorganization of the Company;
- e. in order to avoid a materially adverse tax or regulatory outcome; or
- f. in order to keep the pool's assets from being considered "plan assets" under ERISA.

Amounts withdrawn (net of reserves and expenses for legal, accounting and administrative costs associated with such withdrawal) (the "Withdrawal Proceeds") generally will be paid in U.S. dollars within thirty (30) business days of the Withdrawal Date applicable to any such request for withdrawal. Amounts withheld and reserved for contingencies or other matters will be distributed as promptly as practicable.

**5.5 Mandatory Withdrawals.** The Manager may (i) terminate the interest of any Member in the Company at the end of any calendar month, upon at least ten (10) days' prior written notice and (ii) terminate the interest of any Member at any time upon at least five (5) days' prior written notice, if, among other reasons, the Manager determine that the continued participation of such Member in the Company might cause the Company, the Manager, or any Member to violate any law, to require registration as an Investment Company under the Investment Company Act of 1940 or as an Investment Advisor under the Investment Advisors Act of 1940, or if any litigation is commenced or threatened against the Company or any Member arising out of, or relating to, the participation of such Member in the Company.

**5.6 Suspension of Withdrawals.** The Manager may suspend the payment of any withdrawals from the Members' capital accounts (i) for any period during which, as determined in good faith by the Manager, (a) any stock exchange or over-the-counter market on which a substantial part of the securities directly or indirectly owned by the Company are traded is closed (other than weekend and holiday closings) or trading on any such exchange or market is restricted or suspended, or (b) there exists a state of affairs that constitutes a state of emergency (a breakdown occurs in any of the means normally employed in ascertaining the value of a substantial part of the assets of the Company), as a result of which disposal of the securities owned by the Company is not reasonably practicable or it is not reasonably practicable to determine fairly the value of its assets, (ii) during the existence of any state of affairs which, in the sole opinion of the Manager, makes the determination of the price, value or disposition of the Company's investments impractical or prejudicial to the non-withdrawing Members, (iii) in the event that withdrawals or distributions, in the opinion of the Manager, results in violation of applicable law, or (iv) in the event that all Members, in the aggregate, request withdrawals of twenty-five (25%) percent or more of the Company's Net Worth as of any date of withdrawal. All Members will be notified of any such suspension, and the termination of any such suspension, by means of a written notice.

## ARTICLE VI

### MANAGEMENT OF THE COMPANY

**6.1 General.** Except as otherwise provided in this Agreement, the Manager, acting on behalf of all Members, shall have the exclusive right, full authority and responsibility to manage the business, operations and affairs of the Company and to make all decisions regarding the activities of the Company in its sole and absolute discretion. In this regard, the Manager shall determine the title by which any member serving as a Manager shall be designated.

**6.2 Authority of the Manager.** Subject to the limitations and restrictions set forth in this Agreement (including, without limitation, those set forth in this Article VI), the Manager, is hereby granted the right, power and authority, which may be possessed by “managers” (as that term is defined in the Act) under the Act to do on behalf of the Company all things which, in such Manager’s sole judgment, are necessary, proper or desirable for the conduct of the Company’s business, including, but not limited to the following:

(a) invest, hold, sell, trade, on margin or otherwise, and otherwise deal in domestic and foreign securities, specifically Medium Term Notes (“MTNs”) with a maturity ranging from 1 to 10 years that are issued by institutions whose obligations are rated “A” or better by Moody’s Investors Service, Inc. (“Moody’s”) or the equivalent Standard & Poor’s (“S&P”) rating, and cash equivalent securities and products such as certificates of deposit (CDs);

(b) open, maintain and close accounts with brokers, dealers, banks, currency dealers and others, including the Manager and its affiliates, and issue all instructions and authorizations to entities regarding the purchase and sale of assets, or entering into, as the case may be instruments or agreements consistent with the objectives and purposes of the Company, and to open, maintain and close bank accounts and authorize checks or other orders for the payment of monies;

(c) acquire, lease, sell, hold or dispose of any assets or investments in the name or for the account of the Company, or enter into any contract or endorsement in the name or for the account of the Company with respect to any such assets or investments or in any other manner bind the Company to acquire, lease, sell, hold or dispose of any such assets or investments whatsoever on such terms as the Manager shall determine and to otherwise deal in any manner with the assets of the Company in accordance with the purposes of the Company;

(d) borrow money, post margin on securities or enter into transactions having a similar leveraging effect or for temporary purposes on behalf of the Company, from any source or with any party, upon such terms and conditions as the Manager may deem advisable and proper, to execute promissory notes, drafts, bills of exchange and other instruments and evidences of indebtedness and to secure the payment thereof by mortgage, pledge or assignment of or security interest in all or any part of property then owned or thereafter acquired by the Company, and refinance, recast, modify or extend any of the obligations of the Company and the instruments securing those obligations;

(e) employ, retain, or otherwise secure or enter into contracts, agreements and other undertakings with persons in connection with the management, operation and administration of the Company’s business, including, without limitation, any administrators, attorneys and accountants, and including, without limitation, contracts, agreements or other undertakings and

transactions with the Manager, any other Member or any person controlling, under common control with or controlled by the Manager or any other Member, all on such terms and for such consideration as the Manager deems advisable; provided, however, that any such contracts, agreements or other undertakings and transactions with the Manager, any other Member or any person controlling, under common control with or controlled by the Manager or any other Member shall be on terms which are fair to the parties consistent with appropriate fiduciary standards;

(f) take any and all action which is permitted under the Act and which is customary or reasonably related to the business of the Company including the issuance of different classes of securities with various rights and preferences;

(g) make such elections under the Internal Revenue Code of 1986, as amended (the "Code"), and other relevant tax laws as to the treatment of items of Company income, gain, loss, deduction and credit, and as to all other relevant matters, as may be provided herein or as the Manager deems necessary or appropriate; including, without limitation, elections referred to in Section 754 of the Code, determination of which items of cash outlay are to be capitalized or treated as current expenses, and selection of the method of accounting and bookkeeping procedures to be used by the Company;

(h) bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the Company;

(i) deposit, withdraw, invest, pay, retain and distribute the Company's funds in a manner consistent with the provisions of this Agreement;

(j) cause the Company to carry such insurance, including, without limitation, indemnification insurance, as the Manager deems necessary or appropriate;

(k) do any and all acts on behalf of the Company, and exercise all rights of the Company, with respect to its interest in any property or any person, firm, corporation or other entity, including, without limitation, the voting of securities, participation in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters;

(l) to conduct or promote any lawful businesses or purposes within Delaware or any other jurisdiction which a limited liability company is legally allowed to conduct or promote; and

(m) authorize any officer, director, employee or other agent of the Manager or employee or agent of the Company to act for and on behalf of the Company in any or all of the foregoing matters and all matters incidental thereto as fully as if such person were the Company.

**6.3 Restrictions of Authority of Manager.** The Manager shall not have the authority to do any of the following without the consent of a majority of the Members:

(a) Cause or permit the Company to engage in any activity that is not consistent with the purposes of the Company as set forth in Section 6.2 hereof;

- (b) Knowingly do any act which would make it impossible to carry on the ordinary business of the Company, except as otherwise provided in this Agreement;
- (c) admit any Person as a Manager of the Company except as permitted under this Agreement;
- (d) admit any Person as a Member except as permitted under this Agreement; and
- (e) Merge, consolidate or participate in any transaction the effect of which will require the Company, or its successor, to be taxable as a corporation rather than as a partnership for federal income tax purposes.

**6.4 Right to Rely on Manager.** Persons dealing with the Company are entitled to rely conclusively on the power and authority of any Manager as set forth in this Operating Agreement. Any determination or action authorized or permitted by this Agreement to be made or taken by the Manager shall be made or taken in their sole discretion, shall be final and binding on all Members, and shall not be subject to review by any court or otherwise.

**6.5 Duties and Obligations of Manager.**

(a) The Manager shall cause the Company to conduct its business and operations separate and apart from those of any Member, including, without limitation: (i) maintaining books and financial records of the Company separate from the books and financial records of any Member, and observing all Company procedures and formalities, including, without limitation, maintaining minutes of Company meetings and acting on behalf of the Company only pursuant to due authorization of the Members; (ii) causing the Company to pay its liabilities from assets of the Company; and (iii) causing the Company to conduct its dealings with third parties in its own name and as a separate and independent entity.

(b) The Manager shall take all actions which may be necessary or appropriate (i) for the continuation of the Company's valid existence as a limited liability company under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Members or to enable the Company to conduct the business in which it is engaged and (ii) for the accomplishment of the Company's purposes, including the acquisition, development, maintenance, preservation and operation of the Company's Property in accordance with the provisions of this Agreement and applicable laws and regulations.

(c) The Manager shall be under a fiduciary duty to conduct the affairs of the Company in the best interests of the Company and the Members for their exclusive benefit.

**6.6 Indemnification.** The Company shall indemnify, save harmless, and pay all judgments and claims against the Manager, relating to any liability or damage incurred by reason of any act performed or omitted to be performed by any such Manager or agent in connection with the business of the Company, including attorneys' fees incurred by such Manager in connection with the defense of any action based on such act or omission, which attorneys' fees may be paid as incurred. Notwithstanding anything in this Agreement to the contrary, no Manager shall be indemnified from any liability for fraud, bad faith, willful misconduct or gross negligence.

**6.7 Manager's Compensation and Management Fee.** In addition to the Manager's allocations of profits and losses (as set forth in Article III, Section 3.1 of this Agreement) the Company will pay a management fee (the "Management Fee") to the Manager in an amount equal to Two Percent (2.00%) of the Company's net assets per annum, calculated and paid on a monthly basis. The Manager will receive the Management Fee in an amount equal to (0.166%) of the beginning value of the net assets of the Company allocable to the Members' Capital Accounts as of the first day of each calendar month (which will include subscriptions of LLC Interests accepted as of such first day). The Manager may pay a portion of this Management Fee, only in accordance with and as permitted by applicable laws and regulations, to third parties under the arrangements agreed between them.

**6.8 Company Expenses.**

**(a) Ongoing Company Operational Expenses.** The LLC will be responsible for, and pay, all expenses ("LLC Expenses") including, without limitation:

(i) all expenses incurred in connection with LLC operations, including, without limitation, all expenses incurred with the purchase, holding, sale or proposed sale of any LLC investments including, without limitation, all travel-related expenses and all third party out-of-pocket costs and expenses of custodians, paying agents, registrars, legal counsel, independent accountants, and others;

(ii) all costs incurred in connection with the preparation of or relating to reports made to the Members;

(iii) all costs related to litigation involving the LLC, directly or indirectly, including, without limitation, attorneys' fees incurred in connection therewith;

(iv) all costs related to the LLC's indemnification or contribution obligations set forth in Section 6.6;

(v) all Administration and Trustee Service fees and costs;

(vi) the Trustee Service Fee, which shall be equal to Two Percent (2%) Company's net assets per annum, calculated and paid on a monthly basis;

(vii) the costs of any litigation, director and officer liability or other insurance and indemnification or extraordinary expense or liability relating to the affairs of the LLC;

(viii) all unreimbursed out-of-pocket expenses relating to transactions that are not consummated including legal, accounting and consulting fees and all extraordinary professional fees incurred in connection with the business or management of the LLC;

(ix) all expenses of liquidating the LLC; and

(x) any taxes, fees or other governmental charges levied against the LLC and all expenses incurred in connection with any tax audit, investigation, settlement or review of the LLC.

(xi) all costs incurred in connection with the preparation of or relating to Company's formation, its organizational documents, and its private placement offering memorandum, including, without limitation, attorneys' fees incurred in connection therewith

**(b) Organizational Expenses.** The Company's organizational expenses have been estimated by the Manager and are not expected to exceed Forty Thousand Dollars (\$40,000). Such organizational expenses shall be paid by the Manager and reimbursed by the Company as follows: the Manager will amortize its organizational expenses over a period of twelve (12) months from the date of the initial capital contributions to the Company.

**6.9 Members' Expenses.** Each Member shall be solely responsible for its own expenses and out-of-pocket costs incurred in connection with the organization of, its admission to, and the maintenance of its LLC Interest in, the Company.

## ARTICLE VII

### ACCOUNTING; BOOKS AND RECORDS

**7.1 Accounting, Books and Records.** The Company shall cause to be maintained separate books of account for the Company which shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received, and all income derived in connection with the conduct of the Company and the operation of its business in accordance with generally accepted accounting principles consistently applied or, to the extent inconsistent therewith, in accordance with this Agreement. The Company shall use the accrual method of accounting in preparation of its annual reports and for tax purposes and shall keep its books and records accordingly. Any Member or its designated representative shall have the right, at any reasonable time, to have access to and inspect and copy the contents of such books or records.

### 7.2 Reports.

**(a) In General.** The Manager shall be responsible for the preparation of financial reports of the Company and the coordination of financial matters of the Company with the Company's accountants.

**(b) Annual Report.** Within 75 days after the end of each Fiscal Year and at such time as distributions are made to the Members pursuant to Section 12.2 hereof after the occurrence of a Liquidating Event, the Manager shall cause to be prepared and each Member to be furnished with financial statements prepared and fairly stated in all material respects in accordance with generally accepted accounting principles, or, to the extent inconsistent therewith, in accordance with this Agreement, including the following:

**(i)** A copy of the consolidated balance sheet of the Company as of the last day of such Fiscal Year;

**(ii)** A statement of income or loss for the Company for such Fiscal Year;



(iii) A statement of the Members' Capital Accounts and changes therein for such Fiscal Year.

**7.3 Tax Information.** All necessary tax information, including without limitation a copy of Schedule K-1 to the Form 1065 required to be filed by the Company with the Internal Revenue Service, shall be delivered to each Member after the end of each Fiscal Year of the Company together with the annual reports described in Section 7.2(c) hereof.

**7.4 Tax Matters Member.** Each Member hereby consents to the designation of Vestium Management Group, LLC as Tax Matters Member. Each Member hereby irrevocably waives any rights to file a petition for a readjustment of Company items pursuant to Code Section 6226 and agrees that the Tax Matters Member shall have the exclusive authority to negotiate and enter into settlement agreements on such Members' behalf with the Internal Revenue Service in connection with any tax audit proceeding involving any Company item and waives any right to negotiate or enter into such settlement agreements.

Each Member hereby makes, constitutes and appoints the Tax Matters Member, with full power of substitution, the Member's true and lawful attorney, in the Member's name, place and stead to make any and all elections for federal, state and local tax purposes including, without limitation, any election, if permitted by applicable law; (i) to adjust the basis of Company Property pursuant to Code Sections 754, 734(b), and 743(b), or comparable provisions of state or local law, in connection with transfers of interests in the Company and Company distributions; (ii) to extend the statute of limitations for assessment of tax deficiencies against the Members with respect to adjustments to the Company's federal, state or local tax returns; and (iii) to the extent provided in Code Sections 6221 through 6231, to represent the Company and the Members before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company and the Members in their capacity as such and to file any tax returns and to execute any agreements or other documents relating to or affecting such tax matters, including agreements or the documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company and the Members. The foregoing power of attorney will be deemed to be coupled with an interest, is irrevocable, and will survive each Member's dissolution and liquidation. Each Member hereby waives any and all defenses which may be available to contest, negate or disaffirm the action of the Tax Matters Member taken in good faith pursuant to such power of attorney.

## ARTICLE VIII

### REPRESENTATIONS AND WARRANTIES

**8.1 Representations and Warranties.** As of the date hereof, each Member hereby makes each of the representations and warranties set forth in this Section 8.1 applicable to such Member.

(a) **Due Incorporation or Formation; Authorization of Agreement.** If a corporation, limited partnership, limited liability company or other entity, such Member is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation and has the power and authority to own its property and carry on its business as owned and carried on at the date hereof and as contemplated hereby. Such Member is duly licensed or qualified to do business and in good standing in each of the jurisdictions in which the failure to be so licensed or qualified would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder. Such Member has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution, delivery

and performance of this Agreement has been duly authorized. This Agreement constitutes the legal, valid and binding obligation of such Member.

**(b) No Conflict with Restrictions; No Default.** Neither the execution, delivery and performance of this Agreement, nor the consummation by such Member of the transactions contemplated hereby, (i) will conflict with, violate or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction, decree, determination or award of any court, any governmental department, board, agency, or instrumentality, domestic or foreign or any arbitrator applicable to such Member, or (ii) will conflict with, violate, result in a breach of, or constitute a default under any of the terms, conditions or provisions of the articles of incorporation or bylaws of such Member, or of any material agreement or instrument to which such Member is a party or by which such Member is or may be bound or to which any of its material properties or assets is subject.

**(c) Governmental Authorizations.** Any registration, declaration, or filing with, or consent, approval, license, permit, or other authorization or order by, any governmental or regulatory authority, domestic or foreign, that is required in connection with the valid execution, delivery, acceptance and performance by such Member under this Agreement or the consummation by such Member of any transaction contemplated hereby has been completed, made or obtained on or before the effective date of this Agreement.

**(d) Absence of Litigation, Claims and Regulatory Actions.** There are no suits, claims, litigation, arbitration, demands or proceedings pending, asserted or threatened against or relating to the Member or the Member's shareholders, or the Member's business, properties, assets or activities nor is there any meritorious basis for any such suit, claim, litigation, arbitration, demand or proceeding, nor is there in existence any judgment or award against the Member or its shareholders related to or affecting the Member's business, properties, assets or activities. To the best of such Member's knowledge, the Member is not under investigation for violation of any law or regulation related to or affecting the business, properties, assets or activities of the Member.

**(e) Confidentiality.** Except as contemplated hereby or required by a court of competent jurisdiction, each Member shall keep confidential and shall not disclose to others and shall use its reasonable efforts to prevent its present or former employees, agents and representatives from disclosing to others without the prior written consent of all Members any information which (i) pertains to this Agreement, any negotiations pertaining thereto, any of the transactions contemplated hereby, or the business of the Company (including the reports described in Article VII), or (ii) pertains to confidential or proprietary information of any Member or the Company or which any Member has labeled in writing as confidential or proprietary; provided that any Member may disclose to its employees, agents and representatives any information made available to such Member who requires such information in connection with their employment or engagement by the Member. No Member shall use any information which (iii) pertains to this Agreement, any negotiations pertaining hereto, any of the transactions contemplated hereby or the business of the Company, or (iv) pertains to the confidential or proprietary information of any Member or the Company or which any Member has labeled in writing as confidential or proprietary, except in connection with the transactions contemplated hereby.

**8.2 Survival and Indemnification.** Each representation and warranty made by the Members in this Article VIII shall survive without time limit. Each Member shall indemnify and hold harmless the Company, the Manager, and the other Members from any and all losses, damages, liabilities and claims, and all fees, costs and expenses of any kind related thereto, including reasonable attorneys' fees, based upon or resulting from the inaccuracy or breach of any representation or warranty made in this Agreement.

## ARTICLE IX

### AMENDMENTS

**9.1 Amendment.** This Agreement may be modified or amended at any time in a written statement signed by the Manager and by Members owning at the time more than 50% of the Percentage Interests then owned by all the Members. The Manager may, in its sole discretion, without the consent of the Members, amend any provision of this Agreement for any of the following purposes:

(a) for the purpose of adding to this Agreement any further covenants, restrictions, deletions or provisions for the protection of the Members;

(b) to cure an ambiguity or to correct or supplement any provision contained herein which may be defective or inconsistent with any other provisions contained herein;

(c) to make such other provision in regard to matters or questions arising under the Agreement which shall not adversely affect the interest of the Members;

(d) to cause the allocations contained in Article III to comply with Section 704 of the Internal Revenue Code or any other statutory provisions or regulations relating to such allocations; and

(e) to cause the provisions of this Agreement to comply with any applicable legislation, regulation or rule enacted or promulgated.

Notwithstanding anything in this Section to the contrary, no such modification or amendment shall have any of the following effects without the written consent of the Members affected: reduce the liabilities, obligations or responsibilities of the Manager; increase the liabilities of the Members; reduce the participation of the Members in allocations to Capital Accounts or distributions of the Company; or extend the term of the Company.

## ARTICLE X

### ADDITIONAL MEMBERS

**10.1 Admission.** The Company may admit additional Members, on such terms and conditions as the Manager may approve in its sole discretion.

**10.2 Admission Procedure.** No Person shall be admitted as an additional Member unless such Person executes, acknowledges and delivers to the Company such instruments as the Manager may

deem necessary or advisable to effect the admission of such Person as an additional Member, including without limitation, the written acceptance and adoption by such Person of the provisions of this Agreement, including any amendments hereto required in connection with such admission.

## ARTICLE XI

### WITHDRAWAL OF MEMBERS; TRANSFERS

#### 11.1 Withdrawal of a Member.

(a) Withdrawal of a Member includes cessation of his status as a Member as a result of death, dissolution, Bankruptcy, incapacity, voluntary withdrawal, or any other reason, other than termination of the Company.

(b) Upon the withdrawal of a Member, such Member, or his heirs, executors or administrators shall be entitled to withdraw the Capital Account of such Member in accordance with Section 5. It is expressly agreed and acknowledged that, except as provided in this Section 10.1, upon the withdrawal of a Member, such Member shall have no rights or privileges accruing to a Member in the Company as provided herein or under applicable law, including, without limitation, any voting rights whatsoever.

**11.2 Required Withdrawal.** The Manager may, at any time, require any Member to withdraw entirely from the Company, or to withdraw a portion of his Capital Account, as of any month-end, by giving not less than twenty (20) days advance notice in writing to the Member. The Member shall withdraw from the Company or withdraw that portion of his Capital Account specified in such notice, as the case may be, as of such month-end. The Member shall be deemed to have withdrawn from the Company or to have made a partial withdrawal from his Capital Account, as the case may be, without further action on the part of the Member.

**11.3 Restriction on Transfers.** Except as otherwise permitted by this Agreement, a Member shall not Transfer all or any portion of its Interest without the consent of the Manager, which consent may be withheld in the Manager's sole and absolute discretion.

**11.4 Prohibited Transfers.** Any Transfer of an Interest by any Member that is not consented to by the Manager in writing shall be null and void and of no force or effect whatever; provided, however, that, if the Company is required by law to recognize a Transfer, the Interest transferred shall be strictly limited to the transferor's rights to allocations and distributions as provided by this Agreement with respect to the transferred Interest, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations or liabilities for damages that the transferor or transferee of such Interest may have to the Company.

**11.5 Assignment; Rights of Unadmitted Assignees.** A Person who acquires an Interest but who is not admitted as a substituted Member pursuant to Section 11.6 hereof shall be entitled only to allocations and distributions with respect to such Interest in accordance with this Agreement, and shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights of a Member under the Act or this Agreement.

**11.6 Admission of Substituted Members.** Subject to the other provisions of this Article XI, a transferee of an Interest may be admitted to the Company as a substituted Member only upon satisfaction of the conditions set forth in this Section 11.6:

(a) The Manager consents to such admission, which consent may be given or withheld in the sole and absolute discretion of the Manager;

(b) The transferee becomes a party to this Agreement as a Member and executes such documents and instruments as the Manager may reasonably request as may be necessary or appropriate to confirm such transferee as a Member of the Company and such transferee's agreement to be bound by the terms and conditions hereof;

(c) The transferee pays or reimburses the Company for all reasonable legal, filing, and publication costs that the Company incurs in connection with the admission of the transferee as a Member with respect to the Transferred Interest.

**11.7 Distributions and Allocations in Respect of Transferred Interests.** If any Interest is Transferred during any Fiscal Year in compliance with the provisions of this Article XI, Profits, Losses, each item thereof, and all other items attributable to the transferred Interest for such Fiscal Year shall be divided and allocated between the transferor and the transferee by taking into account their varying Percentage Interests during the Fiscal Year in accordance with Code Section 706(d), using any conventions permitted by law and selected by the Manager. All distributions on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee. Solely for purposes of making such allocations and distributions, the Company shall recognize such Transfer not later than the end of the calendar month during which it is given notice of such Transfer; provided, that if the Company is given notice of a Transfer at least 10 Business Days prior to the Transfer, the Company shall recognize such Transfer as of the date of such Transfer; and, provided further, that, if the Company does not receive a notice stating the date such Interest was transferred and such other information as the Manager may reasonably require within 30 days after the end of the Fiscal Year during which the Transfer occurs, then all such items shall be allocated, and all distributions shall be made, to the Person who, according to the books and records of the Company, was the owner of the Interest on the last day of such Fiscal Year. Neither the Company nor the Manager shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 11.7, whether or not the Manager or the Company has knowledge of any Transfer of ownership of any Interest.

## ARTICLE XII

### DISSOLUTION AND WINDING UP

**12.1 Liquidating Events.** The Company shall dissolve and commence winding up and liquidating upon the first to occur of any of the following ("Liquidating Events"):

(a) The sale of all or substantially all of the assets of the Company;

(b) The determination of the Manager, to dissolve, wind up and liquidate the Company;

(c) Upon the withdrawal from Company by the Manager or the dissolution or bankruptcy of the Manager;

(d) The happening of any other event that makes it unlawful, impossible or impractical to carry on the business of the Company.

The Members hereby agree that, notwithstanding any provision of the Act, the Company shall not dissolve prior to the occurrence of a Liquidating Event.

**12.2 Winding Up.** Upon the occurrence of a Liquidating Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its Assets and satisfying the claims of its creditors and Members, and no Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the Assets have been distributed pursuant to this Section 12.2. The Manager shall be responsible for overseeing the winding up and dissolution of the Company, shall take full account of the Company's liabilities and Assets, shall cause the Assets to be liquidated as promptly as is consistent with obtaining the fair value thereof unless the Members unanimously consent to distributions of all or any part of the Assets in kind, and shall cause the Assets or the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed in the following order:

(a) First, to the payment and discharge of all of the Company's debts and liabilities to creditors other than to Members;

(b) Second, to the payment and discharge of all of the Company's debts and liabilities to Members; and

(c) The balance, if any, to the Members in accordance with their Capital Accounts, after giving effect to all contributions, distributions and allocations for all periods.

No Member or Manager shall receive any additional compensation for any services performed pursuant to this Article XII. Each Member understands and agrees that by accepting the provisions of this Section 12.2 setting forth the priority of the distribution of the assets of the Company to be made upon its liquidation, such Member expressly waives any right which it, as a creditor of the Company, might otherwise have under the Act to receive distributions of assets *pari passu* with the other creditors of the Company in connection with a distribution of assets of the Company in satisfaction of any liability of the Company, and hereby subordinates to said creditors any such right.

**12.3 Rights of Members.** Except as otherwise provided in this Agreement, (a) each Member shall look solely to the Assets for the return of its Capital Contribution and shall have no right or power to demand or receive property other than cash from the Company, and (b) no Member shall have priority over any other Member as to the return of its Capital Contributions, distributions or allocations.

**12.4 No Deficit Capital Account Restoration.** In the event the Company is "liquidated" within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this Article XII to the Members that have positive Capital Account balances. If any Member has a deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all Fiscal Years, including the Fiscal Year in which the liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such

deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever.

### ARTICLE XIII

#### MISCELLANEOUS

**13.1 Notices.** Any notice to the Company relating to this Agreement shall be in writing and delivered in person or by registered or certified mail and addressed to the Manager at the principal office of the Company. All notices and reports sent to the Members shall be addressed to each Member at the address set forth in such Member's subscription agreement. Any Member may designate a new address by written notice to the Company. Unless otherwise specifically provided in this Agreement, a notice shall be deemed to have been given to the Company when received by the Manager, and to have been given to a Member when deposited in a post office or regularly maintained letterbox or when delivered in person. The Manager may in their discretion waive any notice requirement relating to notice to the Company or to themselves, but no such waiver shall constitute a continuing waiver.

**13.2 Binding Effect.** Except as otherwise provided in this Agreement, every covenant, term and provision of this Agreement shall be binding upon and inure to the benefit of the Members and their respective successors, transferees, and assigns.

**13.3 Construction.** Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Member. The terms of this Agreement are intended to embody the economic relationship among the Members and shall not be subject to modification by, or be conformed with, any actions by the Internal Revenue Service except as this Agreement may be explicitly so amended and except as may relate specifically to the filing of tax returns.

**13.4 Headings.** Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

**13.5 Severability.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement.

**13.6 Further Action.** Each Member, upon the request of the Manager, agrees to perform all further acts and execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the provisions of this Agreement.

**13.7 Waiver of Action for Partition; No Bill For Accounting.** Each Member irrevocably waives any right that it may have to maintain any action for partition with respect to any of the Assets of the Company. To the fullest extent permitted by law, each Member covenants that it will not (except with the consent of the Manager) file a bill for a Company accounting.

**13.8 Counterpart Execution.** This Agreement may be executed in any number of counterparts with the same effect as if all the Members had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

**13.9 Sole and Absolute Discretion.** Except as otherwise provided in this Agreement, all actions that the Manager may take and all determinations that the Manager may make pursuant to this Agreement may be taken and made at the sole and absolute discretion of the Manager.

**13.10 Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

**13.11 Arbitration.** Any dispute, controversy or claim arising out of or relating to the construction or interpretation of this Agreement shall be settled by arbitration, held in New York, New York in accordance with the rules of the American Arbitration Association. The decision of the panel of arbitrators shall be final, and judgment upon any such decision rendered may be entered in any court, state or federal, having jurisdiction. Each party shall pay its own expenses and the expenses of arbitration shall be equally divided between the parties.

**IN WITNESS WHEREOF,** the parties have entered into this Limited Liability Company Operating Agreement as of the day first above set forth.

**MANAGER:**

For: **VESTIUM MANAGEMENT GROUP, LLC**

By:



Robert L. Buckhannon

Its: Manager

**MEMBERS:**

**Note:** Please refer to the Counterpart Signature Page(s) executed by the Members and attached hereto as **Exhibit A**. The list of Members, their addresses, their respective capital contributions, the number of Membership Interests owned, and the Percentage Interest owned by each is maintained by the Company at the Company's principal executive office. Such information is available to other Members of the Company, but is otherwise confidential.

**MEMBER SIGNATURE PAGES TO FOLLOW**



**EXHIBIT A**

**COUNTERPART SIGNATURE PAGE  
OPERATING AGREEMENT OF VESTIUM EQUITY FUND, LLC**

A. The undersigned, desiring to become a Member of Vestium Equity Fund, LLC (the “Company”), pursuant to the Limited Liability Company Operating Agreement of the Company dated May 19, 2008 and as amended from time to time (the “Agreement”), a copy of which has been delivered to the undersigned, hereby incorporates the terms of the Agreement herein by this reference as if set forth herein verbatim and adopts, accepts and agrees to all of the terms and provisions of the Agreement.

B. In consideration for the execution of the Agreement, the undersigned Member (1) hereby agrees to contribute to the Company cash as set forth below in exchange for the number of LLC Interests in such Company as set forth below, and (2) hereby tenders payment to the Company of such amount, which constitutes the initial Capital Contribution of the undersigned in accordance with the Agreement.

C. This Counterpart Signature Page has been executed by the undersigned Member. The Manager of the Company, as defined in the Agreement, is hereby authorized to attach this Counterpart Signature Page to a copy of the Agreement, together with executed Counterpart Signature Pages of the other Members, as Exhibit A. The undersigned agrees that when this Counterpart Signature Page has been appended to the Agreement by the Manager, the Agreement shall thereupon become a binding agreement between the undersigned, the Company, and other Members who have executed similar Counterpart Signature Pages, enforceable against the undersigned in accordance with its terms, without further action by the undersigned.

CAPITAL CONTRIBUTION	NUMBER OF LLC INTERESTS
\$ _____	

**IN WITNESS WHEREOF**, the undersigned has executed and delivered this Counterpart Signature Page as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**MEMBER:**

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

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Social Security Number: \_\_\_\_\_