

# **METALAST International, LLC**

## **Operating Agreement**



**EXHIBIT A**  
**METALAST INTERNATIONAL, LLC**

**OPERATING AGREEMENT**

**December 1, 1994**  
**as amended June 6, 1996**

**ARTICLE I**

**PURPOSE**

**1. 1. Purpose.** The purpose of METALAST International, LLC (the ("Company")) is to market and license the worldwide rights (excluding Japan) of METALAST, a patented and proprietary aluminum surface treatment technology, further enhance and develop computer software for the METALAST Process Control System ("MPCS"), and research and develop additional uses for the technology.

**ARTICLE II**

**OFFICES**

**2. 1. Principal Office.** The principal office of the Company in the State of Nevada shall be located at The METALAST Tech Center, 2241 Park Place, Minden, Nevada 89423. The Company may have such other offices, either within or without the State of Nevada, as the Manager, may designate or as the business of the Company may from time to time require.

**2.2. Registered Office.** The registered office of the Company, required by the Nevada Limited Liability Company Act, Nevada Revised Statutes Chapter 86 (the (the "Act")), to be maintained in the State of Nevada, may, but need not, be identical with the, Principal Office in the State of Nevada. The address of the initial registered office of the Company is 548 California Street, Suite C, Reno, Nevada 89507 and the initial registered agent at such address is Garrett Sutton, Esquire. The registered office and the registered agent may be changed from time to time by action of the Members and by filing the prescribed form with the Nevada Secretary of State.

**ARTICLE III**

**DEFINITIONS**

**3.1. "Act"** means, Nevada Limited Liability Company Act, Nevada Revised Statutes, Chapter 86.

**3.2. "Affiliate"** means any individual, partnership, corporation, trust or other entity, or association, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the Member. The term "control" means, with respect to a corporation or a limited liability company the right to exercise, directly or indirectly, more than 50% of the voting rights attributable to the controlled corporation or limited liability company and, with respect to any individual, partnership, trust, other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.



- 3.3. "Capital Contribution"** means the amount of cash or the agreed fair market value of property contributed to the capital of the Company as shown on the Certificate of Interest of each Member, as well as any additional contributions made by agreement of the Members.
- 3.4. "Common Interest(s)"** means the Interests in the Company owned by Common Members, of which 3,000,000 are authorized.
- 3.5. "Common Member(s)"** means the holders of Common Interests in the Company.
- 3.6. "Company Minimum Gain"** has the meaning ascribed to the term "Partnership Minimum Gain" in Regulations Section 1.704-2(d).
- 3.7. "Interests"** means the Common Interests and the Preferred Interests.
- 3.8. "I.R.C."** means the Internal Revenue Code of 1986, as the same may be amended from time to time.
- 3.9. "Manager"** means METALAST International, Inc., or such other person or entity as may be elected by a majority in interest of the Interests.
- 3.10. "Member(s)"** means both Common Member(s) and Preferred Member(s).
- 3.11. "Member Nonrecourse Debt"** has the meaning ascribed to the term "Partner Nonrecourse Debt" in Regulations Section 1.704-2(b)(4).
- 3.12. "Memorandum"** means that certain Private Placement Memorandum dated December 19, 1994, pursuant to which the Company offered the Preferred Interests.
- 3.13. "Net Cash"** means (a) gross cash proceeds from the Company's operations less the portion thereof used to pay or establish reserves for all Company expenses, debt, capital improvements, replacements and contingencies, and (b) net cash proceeds from all sales, other dispositions and refinancings of Company assets, including any principal and interest payments with respect to any note or other obligation received by the Company in connection with such sale or disposition, less any portion thereof used to establish reserves, in each case as determined by the Manager in its sole discretion. "Net cash" shall not be reduced by depreciation, amortization, cost recovery deductions or similar allowances, whether funds are derived from or financed through a particular source or used for a particular purpose.
- 3.14. "Nonrecourse Liability"** shall have the meaning set forth in Regulations Section 1.752-1(a)(2).
- 3.15. "Offering"** means the private offering described in the Memorandum.
- 3.16. "Operating Agreement"** means this Operating Agreement of METALAST International, LLC, a Nevada Limited Liability Company, as the same may be amended from time to time.
- 3.17. "Preferred Interest(s)"** means the Preferred Interests in the Company sold pursuant to the Offering, of which 112.5 are authorized. ,
- 3.18. "Preferred Members"** means the holders of the Preferred Interests.
- 3.19. "Priority Amount"** has the meaning set forth in Section 8.3(a) hereof.



**3.20. "Profits" and "Losses"** mean, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with 1. R. C. Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to I.R.C. Section 703(a)(1) shall be included in taxable income or loss), with the following exceptions:

(a) 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 shall be added to such taxable income or loss; and

(b) Any expenditures of the Company described in I.R.C. Section 705(a)(2)(B) or treated as I.R.C. Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.7041(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this Section shall be subtracted from such taxable income or loss.

**3.21. "Redemption Amount"** has the meaning set forth in Section 8.3(c) hereof.

**3.22. "Regulations"** shall mean the regulations currently in force as final or temporary that have been issued by the U.S. Department of Treasury pursuant to its authority under the **I.R.C.**

## **ARTICLE IV**

### **MEETINGS**

#### **4.1. Voting Rights of Members.**

(a) Preferred Members: Power of Attorney. Preferred Members shall be entitled to vote only upon any amendment of this Agreement or the Articles which would: (i) reduce the Priority Amount, defer the date from which the Priority Amount will accrue, cancel accrued and unpaid Priority Amounts or change the relative seniority rights of the Preferred Members as to the payment of distributions in relation to the holders of any other equity interest in the Company; (ii) "reduce the amount payable to Preferred Members upon voluntary or involuntary liquidation dissolution or winding up of the Company or change the relative seniority of the liquidation preferences of the Preferred Members to the rights upon liquidation of the holders of any other equity interests in the 'Company; (iii) reduce the Redemption Amount, including any reduction in the amount or percentage of Common Interests issuable upon the Redemption Date; or (iv) increase or decrease the amount of authorized Common LLC Interests only if the Preferred Members are affected by such increase or decrease. Any such amendment shall require the unanimous vote, approval or consent of the Preferred Members voting as a class. For purposes of voting on the foregoing matters, meetings of Preferred Members may be called and written consents - solicited in the same manner as for Common Members.

For purposes. of any other matter on which the Act or this Agreement grants Members a voting right including the right to elect the Manager, to consent to transfers of Interest and admission of substitute Members, to continue the business of the Company after a Dissolution Event and to amend this Agreement in other respects, each Preferred Member hereby grants the Manager an irrevocable power of attorney to vote or consent to such matters in such manner as the Manager, in its sole discretion determines is in the best interests of the Company, and to execute, acknowledge and file all documents to amend the Articles and this Agreement, to reflect transfer of Interests and to continue business of the Company after a Dissolution Event.

(b) All Members.

(1) Unanimous Approval. The following matters shall require the unanimous vote, approval or consent of all Members who are not the subject of a Dissolution Event or an assignor of an Interest:



(i) Any amendment of the Articles of Organization of the Company.

(ii) A decision to dissolve the Company.

(2) Approval by Members Holding a Majority Interest. The following matters shall require the vote, consent or approval of Members holding a majority of the Interests (including any Preferred Interest which the Manager is entitled to vote hereunder):

(i) A decision to continue the business of the Company after the occurrence of a Dissolution Event.

(ii) Election or removal of the Manager.

(iii) Subject to rights of Preferred Members (if any) under Section 4.1 (a), a decision to convert the Company from a limited liability company to a corporation.

(iv) Admission of New Members.

**4.2 Annual Meeting.** The annual meeting of the Members shall be held on the first Monday in the month of September each year, beginning with the year 1995 at 10:00 o'clock a.m., (or at any other time, date and place as may be determined by the Manager) for the purpose of election of the Manager and the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day. If the election of the Manager shall not be held on the day designated herein for the annual meeting of the Members, or at any adjournment thereof, the Members shall cause the election to be held at a special meeting of the Members as soon thereafter as it may conveniently be held.

**4.3 Regular Meetings.** The Common Members may, by resolution, prescribe the time and place for the holding of regular meetings and may provide that the adoption of such resolution shall constitute notice of such regular meetings. If the Common Members do not prescribe the time and place for the holding of regular meetings, such regular meetings shall be held at the time and place specified by the Manager in the notice of each such regular meeting.

**4.4. Special Meetings.** Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Manager or by any two Common Members.

**4.5. Notice of Meeting.** Written or telephonic notice stating the place, day and hour of the meeting and, in case of a special meeting, the purposes for which the meeting is called shall be delivered not less than three days before the date of the meeting, either personally or by mail, by or at the direction of the Manager, to each Member of record entitled to vote at such meeting, if mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his address as it appears on the books of the Company, with postage thereon prepaid. When all the Members of the Company are present at any meeting, or if those not present sign in writing a waiver of notice of such meeting, or subsequently ratify all the proceedings thereof, the transactions of such meeting are as valid as if a meeting were formally called and notice had been given.

**4.6. Quorum.** At any meeting of the Common Members, a majority of the Common Interests determined by the capital contribution of each Member as reflected on the books of the Company, represented in person or by proxy, shall constitute a quorum at a meeting of the Common Members. If less than said majority of the Common Interests are represented at a meeting, a majority of the Common Interests so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The Common Members present at a duly organized meeting may continue to transact business until adjournment,



notwithstanding the withdrawal of enough members to leave less than a quorum.

**4.7. Proxies.** At all meetings of Common Members, a Common Member may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. Such proxy shall be filed with the President of the Manager of the Company before or at the time of the meeting. No proxy shall be valid after three months from the date of execution, unless otherwise provided in the proxy.

**4.8. Voting by Entities; Trustees; etc.** Common Interests in the Company held in the name of a corporation, partnership or company may be voted by such officer, partner, agent or proxy as the Bylaws of such entity may prescribe or, in the absence of such provision, as the Board of Directors of such entity may determine. Certificate(s) held by a trustee, personal representative, administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such certificates into his name.

**4.9. Manner of Acting.**

(a) Procedure. The President or Chief Operating Officer of the Manager of the Company shall preside at meetings of the Members, may move or second any item of business, but shall not vote upon any matter when there is an even number of Members present and the Members are evenly divided as to an issue. A record shall be maintained of the meetings of the Members.

(b) Presumption of Assent. A Member of the Company, who is present at a meeting of the Members, at which action on any matter is taken, shall be presumed to have assented to the action taken, unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by certified mail to the secretary of the meeting immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Member who voted in favor of such action.

(c) Action by Written Consent. Unless otherwise provided by law, any action required to be taken at a meeting of the Members, or any other action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by A the Members entitled to vote with respect to the subject matter thereof

**4. 10. Telephonic Meeting.** Members of the Company may participate in any meeting of the Members by means of conference telephone or similar communication if all persons participating in such meeting can hear one another for the entire discussion of the matter(s) to be voted upon. Participating in a meeting pursuant to this Section shall constitute presence in person at such meeting.

## ARTICLE V

### FISCAL MATTERS

**5.1. Fiscal Year.** The fiscal year of the Company shall begin on the first day of January and end on the last day of December each year, unless otherwise determined by resolution passed by a majority of the Members.

**5.2 Deposits.** All funds of the Company shall be deposited from time to time to the credit of the Company in such banks, trust companies or other depositories as the Manager may select.

**5.3 Checks, Drafts, Etc.** All checks, drafts or other orders for the payment of money, and all notes or other evidences of indebtedness issued in the name of the Company shall be signed by the Manager.

## ARTICLE VI



## FISCAL MATTERS

### CERTIFICATES OF INTEREST AND THEIR TRANSFER

**6.1 Certificates of Interest.** Certificates of Interest, both Preferred and Common, representing ownership interests in the Company shall be in such form as shall be determined by the Manager. Such Certificates of Interest shall be signed by the President of the Manager. All Certificates of Interest, both Preferred and Common, shall be consecutively numbered or otherwise identified. The name and address of the person to whom the Certificates of Interest are issued, with the capital contribution and the date of issue, shall be entered in the Certificate of Interest Register of the Company. In case of a lost, destroyed or mutilated Certificate of Interest; a new one may be issued upon such terms and indemnity to the Company as the Manager may prescribe.

**6.2. Certificate of Interest Register.** Any and all changes in Members or their amount of capital contribution shall be maintained by the Company, the most recent of which shall be deemed the Register of Certificates of Interest.

**6.3. Transfer and Assignment of Interests.** No Member shall be entitled to transfer, assign, convey, sell, encumber or in any way alienate all or any part of his or her Interest except with the prior written consent of all of the other Members, which consent may be given or withheld, conditioned or delayed (as allowed by this Agreement or the Act), as the other Members may determine in their sole discretion, and compliance with the other provisions of this Agreement. After the consummation of any transfer of any part of an Interest, the Interest so transferred shall continue to be subject to the terms and provisions of this Agreement and any further transfer shall be required to comply with all of the terms and provisions of this Agreement. Any person who obtains the written consent of all other Members and otherwise complies with the provisions of this Agreement shall become a substituted Member. Transfers in violation of this Section 6.3 shall be effective only to the extent set forth in Section 6.12. No Interest may be transferred to, or acquired by, any person until such person has signed and delivered to the Company a counterpart of this Operating Agreement.

**6.4. Permitted Transfers.** Notwithstanding the foregoing, any Member may transfer all or part of his Interests in the Company to any member of his family or to another Member in the Company. However, such transferee must agree in writing to assume all of the obligations and undertakings of the transferor under the terms of this Operating Agreement and no transfer shall be valid unless and until the transferor executes and delivers such instrument to the President of the Manager. "Member of his family" includes only the parent, spouse, sister, brother, descendant, or spouse of a descendant of the Member, or any trust or corporation in which the Member is the majority beneficial owner.

**6.5 Limitation on Transfers Affecting Status of Company.** Anything contained herein to the contrary notwithstanding, no Member may assign the whole or any part of his Interests, and no attempted or purported transfer or assignment of an Interest (whether or not such assignee or transferee becomes a substituted Member) shall be effective if it prejudices or affects, or would prejudice or affect: (a) the continuity of the Company for the purposes of Section 708 of the I.R.C. or (b) the classification of the Company as a partnership and not as an association taxable as a corporation for purposes of the I.R.C. The Manager is expressly authorized to enforce this provision by notifying the Members that all transfers or assignments will be suspended for a period of up to 12 months whenever interest totaling 25% or more in interest of the Company shall have been effectively transferred in any 12 month period. Prior to any such transfer or assignment become effective, the Manager may require an opinion of counsel to the effect that the transfer will not adversely affect the Company or any of the non-transferring Members, and such transferor or assignor shall be responsible for paying said counsel's fee for the opinion.

**6.6. Unregistered Interests: General Conditions to Transfer.** All Members acknowledge that the Interests have not been registered under (i) the Securities Act of 1933, as amended (the "1933 Act"), in reliance on the exemptions afforded by Section 3(a)(1) and Section 4(2) of the 1933 Act, or (ii) the securities laws of the State of





Nevada or any other state (the "State Securities Laws") in reliance on exemptions afforded by the Uniform Limited Offering Exemption or other similar exemption adopted pursuant to the State Securities Laws. Therefore, to preserve said exemptions and notwithstanding anything contained herein to the contrary, the Members hereby agree that the Interests shall be nontransferable and non-assignable except in compliance with the registration provisions of the 1933 Act and the State Securities Laws, or an exemption or exemptions therefrom, and any attempted or purported transfer or assignment in violation of the foregoing shall be void and of no effect. As an additional condition precedent to any assignment or other transfer of any Interest in the Company, the Manager may require an opinion of counsel satisfactory to the Manager that such assignment or transfer will be made in compliance with the registration provisions of the 1933 Act and the State Securities Laws or exemption(s) therefrom, and such transferor or assignor shall be responsible for paying said counsel's fees for the opinion.

**6.7. Rights to Purchase at Death.** Upon the death of a Member ("Deceased Member"), the Company shall have the right, but not the obligation, to purchase all of the Deceased Member's Interest upon the following terms and conditions:

(a) The personal representative of the Deceased Member shall give written notice ("Notice") to the Company that Deceased Member has died and that the personal representative offers to sell all of the Deceased Member's Interest, first to the Company, and then to the other Members. The Company shall have ninety (90) days from the service of the Notice to accept the offer to purchase. The purchase price and other terms shall be determined in accordance with Sections 6.7 and 6.8 hereof

(b) If the Company declines to purchase any of the Interest of the Deceased Member, it shall give Notice to the other Members informing them of the identity of the Deceased Member, the portion of the Interest in the Company which it does not desire to purchase and which is available to purchase by the Members (as used in this subparagraph (b) the "Available Interest"), and the purchase price (as determined under Section 6.7) and, on behalf of the personal representative of the Deceased Member, shall offer the Available Interest to each Member in proportion to his then-current Interest in the Company (without taking into account the Interest of the Deceased Member). Within thirty (30) days thereafter, each Member who desires to purchase the Available Interest shall so notify the Company of how much of such Interest he desires to purchase pursuant to this offer and in accordance with the purchase price and terms under Sections 6.7 and 6.8 below. After the expiration of ninety (90) days from the date of service of the Notice, the personal representative of the Deceased Member may then sell or otherwise dispose of the Interest in the Company which was not purchased by the Company or the remaining Members. Any such transferee shall be subject to all the provisions of this Operating Agreement, including the restrictions on transfers contained in Sections 6.3 through 6.10, inclusive.

**6.8. Right of First Refusal/Option to Purchase.**

(a) Right of First Refusal. The Company shall have the right but not the obligation, to purchase the Interest of a Member ("Selling Member") who desires to sell, exchange, assign, encumber, pledge, hypothecate, use as collateral or in any way transfer (including without limitation by operation of law), all or any part of his legal or beneficial Interest in the Company to any person or entity other than the Company or those entities or individuals specified in Section 6.8.

(1) Notice. Before a Member may sell, exchange, assign, or transfer any Interest in the Company, or before any Interest is transferred by operations of law, he must notify the Company of his intention to transfer or to dispose and must inform the Company of: (i) the Interest to be transferred; (ii) the price and all of the terms at which the Interest is to be sold or transferred; (iii) names and address, and identity of the prospective buyers or transferees; (iv) terms and conditions of the sale or transfer and (v) expiration date of the offer, if any.

Before a Member may pledge, encumber, hypothecate or use as collateral for all or any part of his Interest, and before the Interest is subject to pledge, hypothecation, encumbrance or a security interest, the





Member must notify the Company of his intention to encumber, pledge, hypothecate or use as collateral and must inform the Company of (a) the interest subject to security interest; (b) the amount and terms of the debt secured by the interest and (c) name, address and identity of creditor or lender.

(2) Company's Rights. The Company shall have the right to purchase any or all the Interest to be sold, pledged, encumbered, hypothecate, assigned or in any way transferred, at the price and upon the terms set forth in Sections 6.9 and 6. 10, below; provided, that the Company notifies the Selling Member of its election to exercise the right of first refusal within sixty (60) days of the date it receives notice, as provided in subparagraph (a) above. Neither the Selling Member nor his nominee shall vote as Member on the question of whether or not the Company shall exercise its option pursuant to this paragraph.

(3) Failure to Exercise. If the Company does not exercise its right to purchase the Interest of Selling Member within sixty (60) days after receipt of the notice, the Selling Member may then sell or otherwise dispose of his Interest in the Company to a third person or entity; provided, however, that if the Selling Member: (i) desires to sell the Interest to the same third person or entity for a different price or on different terms or (ii) desires to sell to a different third person or entity, the Selling Member must, before selling or transferring his Interest to any third person or entity, resubmit his Interest to the Company subject to the provisions of this paragraph. Any such transferee shall in turn be subject to all the provisions of this Operating Agreement, including the restrictions on transfer contained in this Article VI. The Company's failure to exercise its right of first refusal under this subparagraph 6.8 shall not constitute a waiver of the Company's right to purchase under subparagraph 6.8(b).

(b) Option to Purchase. The legal and beneficial Interest of a Member in the Company, shall not be subject to attachment, execution, garnishment, creditor claims or legal process and no person shall acquire any interest in the interest by attachment, execution, garnishment, foreclosure, divorce, exercise of creditor rights or other legal process unless the Company has failed to exercise its right to purchase.

(1) Company's Rights. In the event any or all of any Member's Interest in the Company shall be acquired whether by operation of law, property division in conjunction with a divorce proceeding, by execution, foreclosure or exercise of any creditors' rights or other legal process, or a creditor attaches, garnishes or liens any or all his Interest in the Company, the Company shall have irrevocable option to purchase any or all of such interest at the price and upon the terms set forth in Sections 6.9 and 6. 10 below, provided, the Company exercises its option within 60 days after receipt of notice of the person acquiring or claiming an interest in said Interest which sets forth the (a) interest subject to the claim, and (b) name, address, and identity of the person acquiring or claiming such an interest in the Interest.

(2) Failure to Exercise. If the Company does not exercise its rights to purchase the Interest of the Member within 60 days after receipt of Notice, the person shall acquire the Interest subject to all of the terms of this Operating Agreement including the restriction on transfer contained in this Article VI.



## **6.9. Purchase Price.**

(a) The Members agree that the purchase price to be paid for each Member's Interest shall be determined by an appraiser duly selected and appointed for that purpose by the mutual agreement of the Manager and the Selling Member or the personal representative of a Deceased Member. If an appraiser cannot be selected within fifteen (15) days by mutual agreement, then the Company shall select an appraiser within ten (10) days and Selling Member or the personal representative of a Deceased Member shall elect an appraiser within ten (10) days. The two (2) appraisers shall select a third appraiser within ten (10) days. Failure to select an appraiser as provided herein shall give either party the right to apply to the District Court of the State of Nevada to have an appraiser so designated.

(b) The appraisers shall, as soon as practicable after their appointment, but not longer than forty-five (45) days, render an opinion as to the value of the Interest in the Company. The appraisers shall value the Company's assets at fair market value and shall attribute a premium of ten percent (10%) for any controlling Interest in the Company purchased hereunder. "Controlling Interest" shall be defined as any Interest consisting of at least fifty percent (50%) of the equity Interest in the Company. The opinion of the appraiser(s) shall be final and binding. If unable to reach a unanimous opinion, the averaged opinion of the appraisers shall prevail.

## **6.10 Payment Terms.**

(a) Down Payment. Twenty percent (20%) of the total purchase price shall be paid within ninety (90) days after the Company of Member, as the case may be, exercises its right to purchase the Interest as provided hereunder.

(b) Promissory Note The principal balance of the purchase price shall be paid pursuant to the terms of a promissory note which shall provide for the payment of the balance in twelve (12) equal monthly installments, including accrued interest at the rate of ten percent (10%) per annum. The first monthly installment shall be paid on the first day of the second calendar month following the date of the down payment and the payments shall continue on the first day of each calendar month thereafter until the entire balance of principal and accrued interest is paid in full. Principal and/or interest on the promissory note may be prepaid at any time without penalty. The purchased Interest shall be pledged as collateral for the promissory note.

(c) Other Promissory Note Provisions. The promissory note referred to above shall include a provision that the entire unpaid balance shall become due and payable at the option of the holder on the happening of any of the following conditions: (i) the sale of more than sixty-five percent (65%) of the Company's assets; (ii) the voluntary or involuntary petition by or on behalf of the maker for a reorganization, a liquidation, or protection from creditors, under Title I I of the U.S. Code ("Bankruptcy Code."); (iii) maker becoming subject to a receivership, insolvency, dissolution, bankruptcy or liquidation proceeding under state law; (iv) upon the default by the maker of payment of any amounts required pursuant to the terms of the promissory note; and/or (v) an assignment for the benefit of creditors of maker.

(d) Delivery of Certificates of Interest. No payment shall be made hereunder until the personal representative or Selling Member delivers the properly endorsed Certificate of Interest to the Manager of the Company.

**6.11. Restrictive Certificate Legend.** The following legends shall be placed on all the Certificates of Interest of the Company:

"Ownership, issuance, transfer, encumbrance, attachment, hypothecation and any other disposition (including by operation of law or other legal process) of the Interest represented by this Certificate are restricted by and subject to the provisions of any Operating Agreement between the Members of the Company. The Operating, Agreement is available for inspection at the principal office of the Company. Any transfer or disposition in violation of the Operating Agreement is null and void. The Operating Agreement is automatically binding upon any person or entity who acquires this Interest in the Company."



and

"THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED OR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS QUALIFIED OR REGISTERED UNDER APPLICABLE FEDERAL AND STATE SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS AND CONDITIONS WHICH ARE SET FORTH HEREIN."

**6.12. Substituted Members; Economic Transferees.** A substituted Member is a person admitted with the unanimous consent of the Members in accordance with the Act and shall be entitled to all the rights of a Member who has died or has assigned his Interest in this Company pursuant to the terms of this Operating Agreement. The substituted Member has all the rights and powers and is subject to all the restrictions and liabilities of his assignor. In the event a majority of the Members do not consent, in writing, to a proposed transfer or assignment, the transferee of the Members interest has no right to participate in the management or affairs of the Company or to become a Member. The transferee is only entitled to receive the share of profits or other compensation by way of income, and the return of contributions, to which that Member would be entitled.

## ARTICLE VII

### BOOKS AND RECORDS

**7.1. Books and Records.** The books and records of the Company shall be kept at the principal office of the Company or at such other places, within or without the State of Nevada, as the Manager shall from time to time determine.

**7.2. Right of Inspection.** Any Member of the Company shall have the right to examine at any reasonable time or times for any purpose, the books and records of account, minutes and records of Members and to make copies thereof. Such inspection may be made by any agent or attorney of the Member. Upon the written request of any Member of the Company, it shall mail to such Member its most recent financial statements, showing in reasonable detail its assets and liabilities and the results of its operations.

**7.3. Financial Records.** All financial records shall be maintained and reported consistent with generally acceptable accounting practices.

**7.4. Tax Information.** The Manager shall cause to be prepared at least annually, at Company expense, information necessary for the preparation of the Members federal and state income tax returns. The Manager shall send or cause to be sent to each Member within 90 days after the end of each taxable year such information as is necessary to complete federal and state income tax or information returns and, upon the request of a Member, a copy of the Company's federal, state and local income tax or information returns for that year.



## ARTICLE VIII

### CAPITAL CONTRIBUTIONS AND DISTRIBUTIONS

**8.1. Initial Capital Contributions.** Each Member shall contribute such amount as is set forth on Exhibit A as his or her initial Capital Contribution which Exhibit A shall be revised to reflect any additional contributions in accordance with Section 8.2.

**8.2. Additional Capital Contributions.** No Member shall be required to make any additional Capital Contributions. To the extent unanimously approved by the Manager and Members who hold a majority in interests of the outstanding Interests, from time to time, the Members may be permitted to make additional Capital Contributions if and to the extent they so desire, and if the Manager determines that such additional Capital Contributions are necessary or appropriate for the conduct of the Company's business, including without limitation, expansion or diversification. In that event, the Members shall have the opportunity, but not the obligation, to participate in such additional Capital Contributions on a pro rata basis in accordance with their percentage interest in the Company.

**8.3 Priority Distribution to Preferred Members.** Each Preferred Member shall be entitled to receive the Priority Amounts and the Redemption Amount at the time, in the manner and in the priority provided in this Section 8.3.

(a) Priority Amount. The Company agrees to pay the Preferred Members annual interest equal to a 14% cumulative non-compounded yield (the "Priority Amount") from the date of investment until the Redemption Date (as defined in Section 8.3(b) hereof). The Company will pay to the Preferred Members all unpaid Priority Amounts accruing after 1995 out of the first Net Cash available for distribution and prior to any distributions of Net Cash to the Common Members; if the Company has paid all accrued Priority Amounts (other than the Priority Amounts accrued in 1995), any additional Net Cash may be distributed to the Common Members. The 1995 Priority Amount shall be paid on the Redemption Date or at such earlier time as the Manager may determine in its discretion.

(b) Election Date: Redemption Notice: Payment of Redemption Amount On the Election Date, the Company will notify the Preferred Members that it will pay them the Redemption Amount (the "Redemption Notice"). The Election Date shall be on or before March 31, 1998, March 31, 1999 or September 1, 2000. After receipt of the Redemption Notice, each Preferred Member must elect on or before June 30 (if the Election Date occurs in 1998 or 1999) or on or before December 15 (if the Election Date occurs in 2000) to receive either the applicable percentage of original cash investment or the applicable percentage of Common Interests, as more fully described in Section 8.3(c). The Company must then pay the Redemption Amount, including issuance of any Common Interests, by December 31 of the year in which the Election Date occurs. If the Election Date has not occurred by September 2, 2000, each Preferred Member will be entitled to receive the applicable Redemption Amount (including Common Interests issuable) and any accrued and unpaid Priority Amounts by December 31, 2001 or as soon thereafter as Net Cash permits.

(c) Redemption Amount. The Redemption Amount is an amount equal to:

- (1) all previously unpaid capital investment made by the Preferred Member plus:
- (2) any accrued but unpaid Priority Amounts (including the 1995 Priority Amount) plus
- (3) at the option of each Preferred Member,

(i) if the Election Date occurs on or before March 31, 1998, either (A) an amount equal to 30% of the Preferred Member's original capital investment or (B) for each Preferred Interest, an amount equal to .02666% of the authorized Common LLC Interests; or



(ii) if the Election Date occurs on or before March 31, 1999, either (A) an amount equal to 40% of the Preferred Member's original capital investment or (B) for each Preferred Interest, an amount equal to .03555% of the authorized Common LLC Interests, or

(iii) if the Election Date occurs on or before September 1, 2000, either (A) an amount equal to 50% of the Preferred Member's original capital investment or (B) for each Preferred Interest, an amount equal to .0444% of the authorized Common LLC Interests; or

(iv) if the Election Date has not occurred by September 2, 2000, both (A) an amount equal to 50% of the Preferred Member's original capital investment and (B) for each full Preferred Interest, an amount equal to .0444% of the authorized Common LLC Interests.

(d) Limitation on Rights of Payment. Preferred Members have no right or power to require payment of the Redemption Amount or the Priority Amount at any time unless the Company has Net Cash.

(e) Early Redemption Notice. The Company may elect at any time after the Initial Closing of the Offering to give the Redemption Notice and to pay the Redemption Amount that would be due December 31, 1998, including Priority Amounts accrued through the date of such Redemption Notice.

(f) Return of Capital. The Company may elect to return all or any portion of the capital of Preferred Members at any time after the Initial Closing of the Offering if the Company has paid all Priority Amounts accruing after 1995 and Net Cash otherwise permits.

**8.4. Distributions to Common Members.** Subject to the provisions of Section 8.3 hereof, the Manager may from time to time unanimously declare, and the Company may distribute, Net Cash to Common Members. Such distributions shall be made pro rata to Common Members based on each Member's ownership interest in the Company.

**8.5. Restriction on Distributions.**

- (a) No distribution shall be made 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 course of business;
  - (2) The Company's total assets would be less than the sum of its total liabilities plus, unless this Agreement provides otherwise, the amount that would be needed, if the Company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other Members, if any, upon dissolution that are superior to the rights of the Member receiving the distribution;
- (4) The Manager may base a determination that a distribution is not prohibited on any of the following:
  - (1) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances;
  - (2) A fair valuation;
  - (3) Any other method that is reasonable in the circumstances.



The effect of a distribution is measured as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or the date payment is made if it occurs more than 120 days after the date of authorization.

(c) A Member who votes for a distribution in violation of this Agreement or the Act is personally liable to the Company for the amount of the distribution that exceeds what could have been distributed without violating this Agreement or the Act. Any Member who is so liable shall be entitled to compel contribution from (i) each other Member who, also is so liable and (ii) each Member for the amount the Member received with knowledge of the facts indicating that the distribution was made in violation of this Agreement or the Act.

## ARTICLE IX

### FEDERAL TAX PROVISIONS

**9.1. Partnership Status.** It is intended that the Company be treated as a partnership subject to Subchapter K of the I.R.C. for federal income tax purposes.

**9.2. Capital Accounts.**

(a) "Capital Account", as to any Member, means such Member's Capital Contribution increased by his share of (a) income, (b) gain, and (c) tax-exempt income of the Company and reduced by its share of (i) deductions, (ii) loss and (iii) other Company expenditures that are not deductible for federal income tax purposes including expenses paid with respect to the sale of an Interest which will be attributed to each Member's Capital Account in an amount equal to the amount expended with respect to such Member's Interest, but not including payments of indebtedness or expenditures to the extent included in the basis of any Company asset.

(b) Notwithstanding any other provision in this Operating Agreement, each Member's Capital Account shall be maintained and adjusted in accordance with I.R.C. Section 704 and the Treasury Regulations thereunder and appropriate adjustments to capital accounts permitted in the case of a Member who receives, upon the election by the Company, the benefit or detriment of any special basis adjustment under Sections 734, 743 and 754 of the I.R.C. It is intended that appropriate adjustments shall thereby be made to Capital Accounts to give effect to any income, gain, loss or deduction (or items thereof) that is specially allocated pursuant to this Operating Agreement. Each Member's Capital Account shall include that of any person who is a predecessor holder of the Interest of such Member.

(c) Upon the transfer of all or any part of an Interest, the transferor's Capital Account that is attributable to the transferred Interest shall carry over to the transferee Member. If the transfer of any Interest in the Company causes a termination of the Company under Section 708(b)(1)(B) of the I.R.C., the Capital Account that carries over to the transferee Member shall be adjusted in accordance with this Operating Agreement, the I.R.C. and all Treasury Regulations. The constructive reformation of the Company shall be treated as the formation of a new company, and the capital accounts of the Members of such new company shall be determined and maintained accordingly.

(d) Adjustments to Capital Accounts in respect to Company income, gain, loss, deduction and non-deductible expenditures (or item thereof) shall be made with reference to the federal tax treatment of such items (and in the case of book items, with reference to the federal tax treatment of the corresponding tax items) at the Company level, without regard to any requisite or elective tax treatment of such items at the Member level.

(e) If there is a distribution of any Company assets as described in I.R.C. Section 734, or if there is a transfer of a Member's Interest as described in I.R.C. Section 743, then, upon the request of any Member, the Manager may in its discretion cause the Company to file an election under I.R.C. Section 754 to provide for an





optional adjustment to the basis of Company assets. To the extent a Section 754 adjustment to the adjusted tax basis of any Company asset pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) is to be taken into account in determining Capital Accounts, 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 allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

(f) If the foregoing rules fail to provide guidance on how adjustment to Capital Accounts should be made to reflect particular adjustments to Company capital on the books of the Company, adjustments to Capital Accounts shall be made in a manner that: (i) maintains equality between the aggregate Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes; (ii) is consistent with the underlying economic arrangement of the Members and (iii) is based, wherever practicable, on federal tax accounting principles.

(g) Upon liquidation of the Company (or any Member's Interest in the Company), liquidating distributions are required in all cases to be made in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the Company taxable year during which such liquidation occurs.

**9.3. Profits, Losses and Allocation.** The Profits and Losses of the Company shall be allocated to the Members as follows:

(a) The Preferred Members shall only be allocated interest income or their Priority Amount to the extent that cash distributions are made to such Preferred Members in accordance with Section 8.3 of this Agreement. Losses of the Company shall not be allocated to the Preferred Members.

(b) The Common Members shall be allocated the balance of the Profits, if any, not allocated pursuant to Section 9.3(a) and all of the Losses of the Company, in proportion to their ownership interest in the Company as shown on the Certificate of Interest.

(c) Notwithstanding Section 9.3(b), allocations of Losses to a Member shall be made only to the extent that such allocations will not create a deficit Capital Account balance for that Common Member in excess of an amount, if any, equal to such Member's share of Company Minimum Gain that would be realized on a foreclosure of the Company's property. Any Losses not allocated to a Common Member because of the foregoing provision shall be allocated to the other Members (to the extent the other Members are not limited in respect to the allocation of losses under this Section 9.3(c)). Any Losses reallocated under this Section 9.3(c) shall be taken into account in computing subsequent allocations of Profits and Losses pursuant to this Article IX, so that the net amount of any item so allocated and the Profits and Losses allocated to each Member pursuant to this Article IX, to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to this Article IX if no reallocation of Losses had occurred under this Section 9.3(c)

**9.4. Special Allocations.**

(a) Minimum Gain Chargeback. Notwithstanding Section 9.3, if there is a net decrease in Company Minimum Gain during any fiscal year, each Member shall be specially allocated items of Company income and gain for such fiscal year (and, if necessary, in subsequent fiscal years) in an amount equal to the portion of such Members share of the net decrease in Company Minimum Gain that is allocable to the disposition of Company property subject to a Nonrecourse Liability, which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(g)(2). Allocations pursuant to this Section 9.4(a) shall be made in proportion to the amounts required to be allocated to each Common Member under this Section 9.4(a). The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f). This Section 9.4(a) is intended to





comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Chargeback of Minimum Gain Attributable to Member Nonrecourse Debt. Notwithstanding Section 9.3 of this Agreement, if there is a net decrease in Company Minimum Gain attributable to Member Nonrecourse Debt, during any fiscal year, each Member who has a share of the Company Minimum Gain attributable to such Member Nonrecourse Debt (which share be determined in accordance with Regulations Section 1.704-2(i)(5)) shall be specially allocated items of Company income and gain for such fiscal year (and, if necessary, in subsequent fiscal years) in an amount equal to that portion of such Member's share of the net decrease in Company Minimum Gain attributable to such Member Nonrecourse Debt that is allocable to the disposition of Company property subject to such Member Nonrecourse Debt (which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(i)(5)). Allocations pursuant to this Section 9.4(b) shall be made in proportion to the amount required to be allocated to each Member under this Section 9.4(b). The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section 9.4(b) is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Nonrecourse Deductions. Notwithstanding Section 9.3, any nonrecourse deductions (as defined in Regulations Section 1.704-2(b)(1)) for any fiscal year or other period shall be specially allocated to the Common Members in proportion to their ownership interest in the Company.

(d) Member Nonrecourse Deductions. Notwithstanding Section 9.3, those items of Company loss, deduction or I.R.C. Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt 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 items are attributable in accordance with Regulations Section 1.704-2(l).

(e) Qualified Income Offset. Notwithstanding Section 9.3, if a Member unexpectedly receives any adjustments, allocations or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), or any other event creates a deficit balance in such Member's Capital Account in excess of such Member's share of Company Minimum Gain, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such excess deficit balance as quickly as possible. Any special allocations of items of income and gain pursuant to this Section 9.4(e) shall be taken into account in computing subsequent allocations of income and gain pursuant to this Article IX so that the net amount of any item so allocated and the income, gain and losses allocated to each Member pursuant to this Article IX to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Section 9.4(e) if such unexpected adjustments, allocations or distributions had not occurred.

**9.5. Code Section 704(c) Allocations.** Notwithstanding any other provision in this Article IX, in accordance with Code Section 704(c) and the Regulations promulgated 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 fair market value on the date of contribution. Allocation pursuant to this Section 9.5 are solely for purposes of federal, state and local taxes. As such, they shall not affect or in any way be taken into account in computing a Members Capital Account or share of Profits, Losses or other items of distributions pursuant to any provision of this Agreement.



**9.6. Allocation of Net Profits and Losses and Distributions in Respect of a Transferred Interest.** If any Interest is transferred or is increased or decreased by reason of the admission of a new Member or otherwise, during any fiscal year of the Company, each item of income, gain, loss, deduction or credit of the Company for such fiscal year shall be assigned pro rata to each day in the particular period of such fiscal year to which such item is attributable (i.e., the date on or during which it is accrued or otherwise incurred) and the amount of each such item so assigned to any such day shall be allocated to the Member based upon his or her respective Interest at the close of such day.

However, for the purpose of accounting convenience and simplicity, the Company shall treat a transfer of, or an increase or decrease in, an Interest which occurs at any time during a semi-monthly period (commencing with the semi-monthly period including the date hereof) as having been consummated on the last day of such semi-monthly period, regardless of when during such semimonthly period such transfer, increase or decrease actually occurs (i.e., sales and dispositions made during the first fifteen (15) days of any month will be deemed to have been made on the 15th day of the month).

Notwithstanding any provision above to the contrary, gain or loss of the Company realized in connection with a sale or other disposition of any of the assets of the Company shall be allocated solely to the parties owning Interests as of the date such sale or other disposition occurs.

**9.7. Obligations of Members to Report Allocations.** The Members are aware of the income tax consequence of the allocations made by this Article DC and hereby agree to be bound by the provisions of this Article IX in reporting their shares of Company Profits and Losses for income tax purposes.

## ARTICLE X

### DISSOLUTION OF COMPANY

**10.1 Dissolution Events.** The Company shall dissolve upon the happening of any of the following events:

(a) The sale of all or substantially all of the Company's assets, unless all of the Members unanimously agree in writing within ninety (90) days of such sale to continue the Company.

(b) The election by all the Members to dissolve the Company.

(c) The death, retirement, resignation, expulsion, bankruptcy, or dissolution of a Common or Preferred Member or occurrence of any event which terminates the continued membership of a Common or Preferred Member in the Company and the failure of a majority of the remaining Common Members to agree within ninety (90) days after such occurrence to continue the Company.

(d) The expiration of the 30 year term of the Company.

(e) Any occurrence or occurrences causing the Company to have less than two

(f) The happening of any other event causing the dissolution of the Company under the laws of the State of Nevada.

**10.2. Date of Dissolution.** The dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until (a) the Certificate of Dissolution is filed with the Office of the Nevada Secretary of State; and (b) the Company assets shall have been distributed as provided in this Operating Agreement.



**10.3. Distribution of Capital Accounts.** Each Member shall look solely to the Company assets for all distributions with respect to the Company, his Capital contribution thereto, his Capital Account and his share of profits and losses, and shall have no recourse therefor (upon dissolution or otherwise) against the other Members or the Manager.

**10.4. Priority of Distributions.** Upon dissolution of the Company, the Members shall liquidate the Company's assets, and after allocating the gain or loss realized thereon under this Operating Agreement, shall apply and distribute the proceeds in the following order:

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

(b) Second, to the payment of any unpaid portion of the Redemption Amount (including any accrued but unpaid Priority Amounts, return of capital and percentage return) to Preferred Members;

(c) Third, to the payment and discharge of all the Company's debts, preferred payments (other than the Redemption Amount) and liabilities to the Members:

(d) The balance, if any, to the Members holding Common Interests, in proportion to the then positive balances in their Capital Accounts as of the date of such distribution, after giving effect to all contributions, distributions, and allocations for all periods.

**10.5. Deferred Liquidation.** Notwithstanding other provisions of this Operating Agreement, in the event that a majority in ownership interest of the Members determine that an immediate sale of all or any portion of the Company assets would cause undue loss to the Members, the Members, in order to avoid such loss, may, to the extent not then prohibited by the Act, either defer liquidation of and withhold from distribution for a reasonable time any of the Company's assets except those necessary to satisfy the Company's debts and obligations, or distribute the assets to the Members in kind.

## ARTICLE XI

### MANAGEMENT

**11.1. Management.** The business of the Company shall be conducted under the exclusive management of the Manager, except for matters in which the approval of the Members is expressly required by this Operating Agreement or the Act. The Manager shall have full, exclusive and complete authority to act for the Company in all matters. The Manager shall be paid an annual management fee by the Company equal to 1% of the Net Cash.

**11.2. No Management by Members.** The Members shall have no power to participate in the management of the Company, except as expressly authorized by this Agreement or required by the Act. No Member shall have any power or authority to bind or act on behalf of the Company in any way, to pledge its credit or to render it liable for any purpose, unless expressly and duly authorized to do so by the Manager.

**11.3. Manager.**

(a) The Manager shall preside at all meetings of the Members and be the official spokesperson entity for the Company.

(b) The Treasurer of the Manager is hereby designed as the "Tax Matters Member" of the Company under I.R.C. Section 6231(a)(7) of the I.R.C. to manage administrative tax proceedings conducted at the Company level by the Internal Revenue Service with respect to Company matters.



(c) The President of the Manager shall be the President of the Company and shall be responsible for the general overall supervision of the business and affairs of the Company. The specific authority and responsibility of the President shall include the following:

(1) The President shall effectuate this Operating Agreement and the decisions of the Manager.

(2) The President shall direct and supervise the operation of the Company.

(3) The President shall be the Chief Executive Officer of the Company and may sign, on behalf of the Company, such deeds, mortgages, bonds, contracts or other instruments which have been appropriately authorized to be executed by the Manager, except in cases where the signing or execution thereof shall be expressly delegated by the Manager to some other officer of the Manager.

(4) The President, within such parameters as may be set by the Manager, shall establish such charges for services and products of the Company as may be necessary to provide adequate income for the efficient operation of the Company.

(5) The President, within the budget established by the Manager, shall set and adjust wages and rates of pay for all personnel of the Company including the salaries of others and shall appoint, hire and dismiss all personnel and regulate their hours of work.

(6) The President shall keep the Manager and the Members advised in all matters pertaining to the operation of the Company, services rendered, operating income and expense, financial position, and to this end, shall prepare and submit a report to the Members at each annual meeting and at other times as may be directed by the Manager.

**11.4. Other Officers.** The Manager may, at its discretion, appoint additional officers of the Company including, without limitation, one or more Vice Presidents to perform the duties and exercise the powers of the President in the absence or disability of the President, a Secretary to record the minutes of the Members and to attest the signature of the President of the Manager and a Treasurer to account for the financial transactions of the Company. These other officers need not be selected from among the Members and shall be appointed by the Manager. One person may hold two or more offices. When the incumbent of an officer is (as determined by the incumbent himself or by the Members) unable to perform the duties thereof or, when there is no incumbent of an office (both such situation referred to hereafter as the "absence" of the Officer), the duties of the office shall be performed by the person specified by the Manager.

**11.5. Salaries.** The salaries of the officers shall be fixed from time to time by the Manager and no officer shall be prevented from receiving such salary because of the fact that he is also a Member of the Company.

**11.6. Limitation of Liability.** The Manager and the Officers shall not be liable, responsible or accountable in damages or otherwise to the Members for any act or omission performed or omitted by it or any Affiliate in good faith pursuant to the authority granted to it by this Operating Agreement in a manner reasonably believed by it to be within the scope of the authority granted to it by this Operating Agreement and not opposed to the best interests of the Company or the Members; provided, however, that the Manager or the Officers shall not be relieved of liability with respect to any claim, issue or matter as to which it or any affiliate shall have been adjudged to be liable for fraud or bad faith in the performance of its fiduciary duty to the Members and the Company. Except in the case of any such judgment of liability, the Company shall indemnify the Manager, the Officer or affiliate as provided in Section 13. 1.



## ARTICLE XII

### ARBITRATION AND ATTORNEY'S FEES

**12.1. Arbitration.** In the event of any dispute between the parties involving any matter relating to this Operating Agreement, the parties will make a sincere and earnest effort to resolve and settle such dispute by friendly and good faith negotiation and discussion. If, despite such cooperative efforts, any such dispute cannot be resolved within ten (10) days, the dispute shall, thereafter, upon ten (10) days' prior written notice from one party to the other, be submitted and settled by arbitration. Such arbitration shall be effected by the demand of a party (the Demanding Party) on the party or parties (the Responding Party) under the following procedures:

(a) The Demanding Party shall send notice of his or her demand to the Responding Party specifying the issue or issues in dispute with reasonable particularity and include -the name, address and telephone number of the arbitrator selected by the Demanding Party. Within fifteen (15) days after service of such demand for arbitration, the Responding Party receiving notice shall serve a response to said demand. Such response shall specify with reasonable particularity any additional disputed issues and shall include the name, address and telephone number of the arbitrator selected by the Responding Party. If the Responding Parties shall agree upon single arbitrator. The failure to do so, or the failure of a Responding Party to designate an arbitrator, shall confer upon the Second Judicial District Court of the State of Nevada, in and for the County of Douglas, the right, upon the application of the Demanding Party, to designate a single arbitrator for the Responding Parties;

(b) The two arbitrators shall thereupon meet and attempt to resolve the dispute. If they are unable to do so, the two arbitrators shall jointly select a third (3rd) neutral arbitrator. The arbitrators shall appoint a time and place for the hearing, give notice thereof, and conduct said hearing in accordance with Section 38.075, Nevada Revised Statutes; and

(c) The right to arbitration provided herein shall not preclude or limit the right of any party to seek or obtain a restraining order or other appropriate order pending resolution of such dispute by arbitration. The decision of the arbitrators shall be final, conclusive, and binding upon the parties, and a judgment may be obtained thereon in any court of competent jurisdiction. Such decision may include an award of damages to an injured party but no punitive or exemplary damages may be awarded. A demand for arbitration imposes upon all parties the responsibility to take reasonable steps to mitigate damages. Each party shall bear his, her or its respective costs and expenses for attorney's fees in connection with the arbitration. In the event of the failure of any party or any arbitrator to act expeditiously and in good faith to resolve such dispute, any court having jurisdiction shall, upon application of any party hereto, enter such order or orders as the court deems appropriate to accomplish the intent and purpose of this paragraph.

**12.2. Attorney's Fees.** In the event any party hereto should commence legal proceedings to enforce any of the terms of this Operation Agreement, the prevailing party in the legal proceeding shall be entitled to a reasonable sum as attorneys' fees and costs as may be allowed by the Court.

## ARTICLE XIII

### INDEMNIFICATION AND INSURANCE

**13.1. Indemnification By Company.** The Company shall indemnify any person who was or is a party defendant or is threatened to be made a party defendant to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Company) by reason of the fact that he is or was the Manager or a Member of the Company, Officer, employee or agent of the Company, or is or was servicing at the request of the Company, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such



action, suit or proceeding if the Manager determines that he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Company, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of noel contenders or its equivalent, shall not in itself create a presumption that the person did or did not act in good faith and in a manner which he reasonably believed to be in the best interest of the Company and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

**13.2. Indemnification Funding.** The Company shall fund the indemnification obligations provided by Section 13.1 in such manner and to such extent as the Manager may from time to time deem proper.

**13.3. Insurance.** The Company shall have the power to purchase and maintain insurance on behalf of any person or entity who is or was an agent of the Company against any liability asserted against such person or entity and incurred by such person or entity in any capacity, or arising out of such person or entity's status as an agent, whether or not the Company would have the power to indemnify such person or entity against such liability under the provisions of Section 13.1 or applicable law.

## ARTICLE XIV

### MISCELLANEOUS

**14.1. Notice.** Any notice required or permitted to be given, pursuant to the provisions of the Act, the Articles of Organization of the Limited Liability Company or this Operating Agreement, shall be effective as of the date personally delivered, or if sent by mail, on the date deposited with United States Postal Service, prepaid and addressed to the intended receiver at his last known address as shown in the records of the Company.

**14.2. Waiver of Notice.** Whenever any notice is required to be given pursuant to the provisions of the Act, the Articles of Organization of the Company or this Operating Agreement, a waiver thereof, in writing, signed by the persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such Notice.

**14.3. Duty of Loyalty and Good Faith.** The Manager and the Members of this Company have a duty of undivided loyalty to this Company in all matters affecting this Company's interests and are obligated to act in good faith in dealing with the Company and other Members.

**14.4. Other Transactions.** The manager and any Member may engage independently or with others in other business ventures of every nature and description. Nothing in this Operating Agreement shall be deemed to prohibit the Manager or any Member or any affiliate of any Member from dealing, or otherwise engaging in business with, persons transacting business with the Company, or from providing services related to the operation of the Company and receiving compensation therefor, not involving any rebate or other reciprocal arrangement which would have the effect of circumventing the Manager and each Member's obligation of good faith dealings with the other Members as set forth in Section 14.3. Neither the Company, the Manger nor any Member shall have any right by virtue of this Operating Agreement or the Member relationship created hereby in or to such other ventures or activities or to the income or proceeds derived therefrom, and the pursuit of such ventures, unless such ventures are in competition with the business of the Company, shall not be deemed wrongful or improper.

**14.5. Gender and Number.** As used in this Operating Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be considered to include the others whenever the context so indicates.

**14.6. Spousal Approval.** Each party to this Operating Agreement shall obtain the consent and approval of his or her spouse, if any, or future spouses, by such signature to this Operating Agreement.





**14.7. Headings.** The headings in this Operating Agreement are inserted for convenience of reference only and are not to be used in construing or interpreting any of the provisions of this Operating Agreement.

**14.8. Legal Counsel.** Each Member hereto acknowledges that he has had an opportunity to seek and consult with independent legal and investment counsel with respect to legal and investment consequences to him or her arising from or connected with this Operating Agreement and has freely and voluntarily entered into this Operating Agreement with knowledge of the legal consequences of such action, including substantial restrictions on the transfer and marketability of his interest in the Company, which in many instances lowers the value of a Member's interest. The parties to this Operating Agreement further acknowledge that this Operating Agreement has been prepared by the Law Offices of James L. Hillman (the "Law Firm") on behalf of the parties hereto. There is an inherent potential for conflicts of interest among the parties to this Operating Agreement because this Operating Agreement establishes the rights and obligations of each of the parties to this Operating Agreement. Due to such potential conflicts of interest, the Law Firm has advised and hereby advises each of the parties that it would be in their best interest to obtain the services of their own independent legal counsel to review this document. Notwithstanding the fact that the Law Firm has prepared this Operating Agreement and has provided legal advice to one or more of the parties in preparation of this Operating Agreement and in related matters, the parties hereby waive as evidenced by the execution of the Operating Agreement any potential conflicts of interest that may arise as a result of the above actions by the Law Firm.

**14.9. Governing Law.** This Operating Agreement shall be governed by and interpreted in accordance with the laws of the State of Nevada.

**14.10. Severability.** This Operating Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Operating Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Operating Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

**14.11. Counterparts.** This Operating Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one of the same instrument.

## ARTICLE XV

### AMENDMENTS

**15.1 Amendments.** This Operating Agreement may be amended, restated, or repealed and a new Operating Agreement may be adopted by Members holding more than seventy-five percent (75%) of the Interests of the Company, after notice and opportunity for discussion of the proposed amendment, restatement, or repeal; provided, however, that any amendment that would change the preferences or priorities of the Preferred Members also shall require the unanimous written consent of the Preferred Members.





**RATIFICATION**

The undersigned, being the initial Common Members of METALAST International, LLC, hereby evidence their adoption and ratification of the foregoing Operating Agreement of the Company.

Executed by each of the initial Members on the date indicated and by the following Common LLC Members and Preferred LLC Members.

David Michael Semas, Chairman/CEO of  
MII, Manager for MILLC

Dated: \_\_\_\_\_