

# EXHIBIT B

**OPERATING AGREEMENT  
OF  
LEONIDAS, LLC  
an Arizona limited liability company**

**THIS OPERATING AGREEMENT** is made and entered into effective as of the 9th day of November, 2007, by and among Jeffrey Koontz and Eric Ferguson, as the sole Managers, and each of the persons listed on Exhibit A and executing this Agreement or a counterpart thereof as Members, of LEONIDAS, LLC, an Arizona limited liability company (the "Company").

**Section I  
Formation; Name and Office; Purpose**

1.1. *Formation.* Pursuant to the Arizona Limited Liability Company Act, A.R.S. Sections 29-601 through 29-857 (the "Act"), the parties have formed an Arizona limited liability company effective upon the filing of the Articles of Organization of this Company (the "Articles") with the Arizona Corporation Commission. The parties have executed this Agreement to serve as the "Operating Agreement" of the Company, as that term is defined in A.R.S. Section 29-601(12), and, subject to any applicable restrictions set forth in the Act, the business and affairs of the Company, and the relationships of the parties to one another, shall be operated in accordance with and governed by the terms and conditions set forth in this Agreement. The parties agree to execute all amendments of the Articles, and do all filing, publication, and other acts as may be appropriate from time to time hereafter to comply with the requirements of the Act.

1.2. *Name and Known Place of Business.* The Company shall be conducted under the name of LEONIDAS, LLC, and the known place of business of the Company shall be at such place as the Managers shall determine.

1.3. *Purpose.* The purpose and business of this Company shall consist solely of soliciting funds in the form of cash and using said funds to fund an independent legal campaign in the matter of the seniority integration of the America West Airlines pilots and US Airways pilots, for the benefit of the pilots of the former America West Airlines.

**Section II  
Single Purpose Entity Provisions**

2.1. *Powers and Duties.* Notwithstanding any other provisions of the Articles of Organization or this Operating Agreement, the Company shall have no authority on behalf of the Company to:

- (a) incur any debt, secured or unsecured, direct or indirect;
- (b) seek the dissolution or winding up, in whole or in part, of the Company;
- (c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate, in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;
- (d) file a voluntary petition or otherwise initiate proceedings to have the Company adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company, or file a petition seeking or consenting to reorganization or relief of the Company as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Company; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Company or of all or any substantial part of the properties and assets of the Company, or make any general assignment

for the benefit of creditors of the Company, or admit in writing the inability of the Company to pay its debts generally as they become due or declare or effect a moratorium on the Company debt or take any action in furtherance of any such action; or

(e) amend, modify or alter Section 1.3., 2.1, 2.2, 2.3, 2.4 or 2.5 of these Articles  
[Note: cross reference to actual sections addressed in this form.

Notwithstanding the foregoing and so long as any obligation secured by the Security Instrument remains outstanding and not discharged in full, the Company shall have no authority to take any action in items (a) through (c) and (e) without the written consent of the holder of the Security Instrument.

2.2. All property owned by the Company shall be owned by the Company as an entity and, insofar as permitted by applicable law, no member shall have any ownership interest in any Company property in its individual name or right, and each member's interest in the Company shall be personal property for all purposes.

2.3. The Company has not and shall not:

(a) acquire or own any material asset other than the funds received as contemplated in 1.3, supra.;

(b) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of the holder of the Security Instrument, amend, modify, terminate or fail to comply with the provisions of the Articles of Organization, or the Company's Operating Agreement;

(c) own any subsidiary or make any investment in or acquire the obligations or securities of any other person or entity without the consent of the holder of the Security Instrument;

(d) commingle its assets with the assets of any of its principal(s), affiliates, or of any other person or entity or transfer any assets to any such person or entity other than distributions on account of equity interests in the Company permitted by the Security Instrument and properly accounted for;

(e) allow any person or entity to pay its debts and liabilities (except for a Guarantor or Indemnitor (as defined in the Security Instrument)) or fail to pay its debts and liabilities solely from its own assets;

(f) fail to maintain its records, books of account and bank accounts separate and apart from those of the partners, members, principals and affiliates of the Company, the affiliates of a partner or member of the Company and any other person or entity or fail to prepare and maintain its own financial statements in accordance with generally accepted accounting principles and susceptible to audit, or if such financial statements are consolidated fail to cause such financial statements to contain footnotes disclosing that the Property is actually owned by the Company;

(g) enter into any contract or agreement with any partner, member, principal or affiliate of the Company or any guarantor of all or a portion of the obligations secured by the Security Instrument or any partner, member, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms length basis with third parties other than any partner, member, principal or affiliate of the Company, as the case may be, any guarantor or any partner, member, principal or affiliate thereof;

(h) fail to correct any known misunderstandings regarding the separate identity of the Company;

(i) hold itself out to be responsible or pledge its assets or credit worthiness for the debts of another person or entity or allow any person or entity to hold itself out to be responsible or

pledge its assets or credit worthiness for the debts of the Company (except for a Guarantor or Indemnitor (as defined in the Security Instrument));

(j) make any loans or advances to any third party, including any partner, member, principal or affiliate of the Company, or any partner, member, principal or affiliate thereof;

(k) fail to file its own tax returns or to use separate contracts, purchase orders, stationary, invoices and checks;

(l) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that the Company is responsible for the debts of any third party (including any partner, member, principal or affiliate of the Company or any partner, member, principal or affiliate thereof);

(m) share any common logo with or hold itself out as or be considered as a department or division of (i) any partner, principal, member or affiliate of the Company, (ii) any affiliate of a partner, principal, member or affiliate of the Company, or (iii) any other person or entity or allow any person or entity to identify the Company as a department or division of that person or entity; or

(n) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of the Company or the creditors of any other person or entity.

2.4. The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of a member shall not cause the termination or dissolution of the Company and the business of the Company shall continue. Upon any such occurrence, the trustee, receiver, executor, administrator, committee, guardian or conservator of such member shall NOT have any of the rights of such member, either legal or equitable in nature, for the purpose of settling or managing its estate or property, subject to satisfying conditions precedent to the admission of such assignee as a substitute member.

2.5. Notwithstanding any provision hereof to the contrary, any indemnification claim against the Company arising under the Articles of Organization, the Operating Agreement or the laws of the state of organization of the Company shall be fully subordinate to any obligations of the Company arising under the Security Instrument or any other Loan Document (as defined therein), and shall only constitute a claim against the Company to the extent of, and shall be paid by the Company in monthly installments only from, the excess of net operating income for any month over all amounts then due under the Security Instrument and the other Loan Documents.

2.6. In the event that any provision in this Operating Agreement, the Articles of Organization conflict with the provisions set forth in this Section II, the provisions set forth in this Section II shall control.

### **Section III Capital Contributions**

3.1. *Capital Account.* A Capital Account shall be maintained which accounts for each Member's total contributions to the Company in accordance with the following provisions:

3.1.1. A Member shall be credited with the total amount of money contributed by the Member to the Company;

3.1.2. A Member's Share will be calculated based on the Member's total contributions in the numerator, with the Company's total receipts in contributions in the denominator, less the Company's expenditures in accordance with this Operating Agreement;

3.1.3. To the extent an adjustment to the tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the Book Value of the Company's Property and the Capital Account of the Interest Holders shall be adjusted in a manner consistent with the manner in which the Capital Accounts are required to be adjusted pursuant to that Section of the Regulations.

If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Interest. It is intended that the Capital Accounts of all Interest Holders shall be maintained in compliance with the provisions of Regulation Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts or the Adjusted Book Value of Company Property shall be interpreted and applied in a manner consistent with that Section of the Regulations.

### 3.2. *Capital Contributions.*

3.2.1. *Initial Capital Contributions.* Upon the execution of this Agreement, the Members shall make contributions to the capital of the Company as set forth in *Exhibit A* attached hereto and by this reference made a part hereof.

#### 3.2.2. *Additional Capital Contributions.*

3.2.2.1. A Member shall not be required, nor incur any future obligation, to make contributions to the Company after the initial contribution.

3.2.2.2. No Member shall have any personal liability for any obligation of the Company.

3.3. *Withdrawal or Return of Capital Contributions.* Except as specifically provided in this Agreement, no Member shall have the right to withdraw or reduce the Capital Contributions he or she makes to the Company. Upon dissolution of the Company, each Member shall look solely to the assets of the Company for return of his or her Capital Contributions and, if the Company's property remaining after the payment or discharge of the debts, obligations, and liabilities of the Company is insufficient to return the Capital contributions of each Interest Holder, no Interest Holder shall have any recourse against the Company, any Interest Holder, or Manager.

3.4. *Form of Return of Capital.* Under circumstances requiring a return of any Capital Contributions, no Member shall have the right to receive property other than cash except as may be specifically provided herein.

3.5. *Salary or Interest.* Except as otherwise expressly provided in Section V of this Agreement, no Member or Manager shall receive any interest, salary, or drawing with respect to his or her Capital Contributions, or for services rendered on behalf of the Company.

## **Section IV Allocations and Distributions**

4.1. *Allocations.* Except as provided for in Section 4.2, no Member shall be entitled to any Profits of the Company, nor shall any Member be personally liable for any Losses of the Company.

4.2. *Distributions.* Except as otherwise provided in this Agreement, distributions shall be made to the Members at such times and in such amounts as determined by the Managers in the Managers' sole discretion. Distributions shall be made to the Members pro rata in proportion to their Member Share as provided for in Section 3.1.2.

### 4.3. *General.*

4.3.1. *Timing and Amount of Distributions.* Except as otherwise provided in this Agreement, distributions shall be made to the Members at such times and in such amounts as determined by the unanimous consent of all Managers.

4.3.2. *Form of Distribution.* In connection with any distribution, no Member shall have the right to receive Property other than cash except as may be specifically provided herein.

4.3.3. *Knowledge.* The Interest Holders acknowledge that they understand the economic and income tax consequences of the allocations and distributions under this Agreement and agree to be bound by the provisions of this Section IV in reporting their taxable income and loss from the Company.

## **Section V Management**

5.1. *Management.* Subject to the rights of the Members under the Act, the business and affairs of the Company shall be managed exclusively by its Managers. The Managers shall direct, manage, and control the business of the Company to the best of the Managers' abilities and, subject only to those restrictions set forth in the Act or this Agreement, shall have full and complete authority, power, and discretion to make any and all decisions and to do any and all things which the Managers deem appropriate to accomplish the business and objectives of the Company. **No Member other than a Member who is also a Manager shall have the authority to act for or bind the Company.** Each Member agrees not to incur any liability on behalf of the other Members or otherwise enter into any transaction or do anything which will subject the other Members to any liability, except in all instances as contemplated hereby.

5.2. *Number, Tenure, and Qualifications.* The initial Managers of the Company shall be: Jeffrey Koontz and Eric Ferguson. The number of Managers of the Company shall be fixed from time to time by the unanimous vote of all the Managers, but in no instance shall there be less than one Manager. Each Manager shall hold office until his resignation or removal. Managers need not be residents of the State of Arizona but must be Members of the Company.

5.3. *Management Structure.* Collectively, the Managers will constitute the Board of Directors ("Board"). Unless otherwise provided in this Operating Agreement or unless otherwise mandated by law, all decisions made on behalf of the Company shall be made exclusively by the Board. A majority vote is required by all Managers before the Company can be bound by any obligation to a third party. Without limiting the generality of Section 5.1, the Board shall have power and authority on behalf of the Company:

5.3.1. To remit funds received by the Company to pay for legal representation in connection with promoting the legal interests of the America West pilots in the matter of the seniority integration;

5.3.2. To communicate with and direct the attorneys of the law firm chosen by the Board to prosecute the legal claims of the America West pilots in the matter of the seniority integration with US Airways (and any other company with which the new US Airways may be combined), to insure that America West pilots are fairly represented by the collective bargaining agent by which they are represented, and to insure that all legal rights of the America West pilots are fully realized now and in the future;

5.3.3. To invest Company funds temporarily to the extent not required to pay the current expenses of the Company;

5.3.4. To execute on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes, and any other instruments or documents necessary, in the opinion of the Board, to accomplish the purposes of the Company;

5.3.5. To employ accountants, legal counsel, managing agents, or other experts to perform services for the Company and to compensate them from Company funds;

5.3.6. To enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Board may approve;

5.3.7. To do and perform all other acts as may be necessary or appropriate to accomplish the purposes of the Company; and

5.3.8. To take such other actions as do not expressly require the consent of the Members under this Agreement.

5.3.9 Unless authorized to do so by this Agreement or by the Board, no Member, agent, or employee of the Company shall have any power or authority to bind the Company in any way, to pledge its credit, or to render it liable for any purpose.

5.4. *Actions Requiring Approval of the Members.* No actions will require approval of the Members, including, but not limited to:

5.4.1. Amendment of the Articles, except that any amendments required under the Act to correct an inaccuracy in the Articles may be filed at any time by the Managers;

5.4.2. Selling or disposing of all or substantially all of the assets of the Company in a single transaction or a series of related transactions;

5.4.3. Authorize the Company to make an assignment for the benefit of creditors of the Company, file a voluntary petition in bankruptcy, or consent to the appointment of a receiver for the Company or its assets;

5.4.4. Approve a plan of merger or consolidation of the Company with or into one or more business entities; or

5.4.5. Enter into any contract or agreement between the Company and any Manager, Interest Holder, or Affiliate of a Manager or Interest Holder without the consent of all of the Members not involved in the contract or agreement.

5.5. *Manager Has No Exclusive Duty to Company.* The Managers shall not be required to manage the Company as the Managers' sole and exclusive function and the Managers may engage in other business and investment activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, solely by virtue of this Agreement or its relationship to a Manager or the Company, to share or participate in any such other investments or activities of the Manager or to the income or proceeds derived therefrom. A Manager shall not have any obligation to disclose any such other investments or activities to the Interest Holders unless it actually or potentially adversely affects the business or property of the Company.

5.6. *Resignation.* A Manager may resign as a Manager at any time by giving at least fifteen (15) days' written notice of his resignation to all the Managers.

5.7. *Removal.* A Manager may be removed, with or without cause, on fifteen (15) days' written notice by the affirmative vote of all other Managers, without liability or obligation.

5.8. *Vacancies.* Any vacancy occurring for any reason on the Board, the vacant position shall be filled by the affirmative vote of a three-fifths Majority of the remaining Managers.

5.9. *Books and Records.* At the expense of the Company, the Board shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of transactions with respect to the conduct of the Company's business. The books and records shall be maintained in accordance with sound accounting practices and kept at the Company's known place of business and such other location or locations as the Board shall from time to time determine. At a minimum the Company shall keep at its known place of business the following records:

5.10.1. A current list of the full name and last known business, residence, or mailing address of each Member and Manager;

5.10.2. A copy of the initial Articles and all amendments thereto and restatements thereof;

5.10.3. Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent fiscal years;

5.10.4. Copies of this Agreement and all amendments hereto or restatements hereof, including any prior operating agreements no longer in effect;

5.10.5. Copies of any documents relating to a Member's obligation to contribute cash, property, or services to the Company;

5.10.6. Copies of any financial statements of the Company for the three most recent fiscal years; and

5.10.7. Copies of minutes of all meetings of the Members and all written consents obtained from Members for actions taken by Members without a meeting.

5.11. *Access to Books and Records.* Upon written request to the Manager, each Member shall have the right, during normal business hours, to inspect and copy, at the Member's expense, the Company's books and records.

5.12. *Returns and Other Elections.* The Manager shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. All elections permitted to be made by the Company under federal or state laws shall be made by the Manager in its sole discretion.

5.13. *Annual Accounting Period.* The annual accounting period of the Company shall be its Fiscal Year. The Company's Fiscal Year shall be selected by the Manager, subject to the requirements and limitations of the Code.

5.14. *Title to Company Property.* All real and personal property acquired by the Company shall be acquired and held by the Company in its name.



## **Section VI Members**

6.1. *Meetings.* Unless otherwise prescribed by the Act, meetings of the Members may be called, for any purpose or purposes, by a three-fifths majority of the Managers.

6.2. *Place of Meetings.* The Board may designate any place, either within or outside the State of Arizona, as the place of meeting for any meeting of the Members.

6.3. *Notice of Meetings.* Notice stating the date, time, and place of the meeting, and the purpose or purposes for which the meeting is called, shall be deemed adequate if the notice is delivered by any reasonable means, including, but not limited to: email distribution; announcement on the Company website, <http://www.armyofleonidas.org>. Notice shall be deemed timely so long as it is delivered not less than three (3) nor more than fifty (50) days before the date of the meeting.

6.4. *Meeting of All Members.* If all of the Members shall meet at any time and place, including by conference telephone call, either within or outside of the State of Arizona, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice.

6.7. *Voting Rights of Members.* No Members shall be entitled to vote on any matter related to the operation of the Company.

6.8. *Telephonic Communication.* Members may participate in and hold a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such meeting shall constitute attendance and presence in person, except where the Member participates in the meeting for the express purpose of objecting to the transaction of any business on the ground the meeting is not lawfully called or convened.

6.9. *Waiver of Notice.* When any notice is required to be given to any Member, a waiver thereof in writing signed by the Person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

## **Section VII Dissolution and Termination**

7.1. *Dissolution.* Except as limited by the terms in Section 2, this Section VII shall govern the termination and dissolution of the Company.

7.1.1. *Events of Dissolution.* The Company will be dissolved upon the occurrence of any of the following events:

7.1.1.1. Upon the written consent of all of the Managers;

7.1.1.2. Upon the entry of a decree of dissolution under Section 29-785 of the Act or an administrative dissolution under Section 29-786 of the Act;

7.1.1.3. Upon the occurrence of any Event of Withdrawal with respect to any Member who is a Manager, unless within ninety (90) days after the occurrence of the Event of Withdrawal the business of the Company is continued by the specific consent of a Majority in Interest of the remaining Members. Except as provided in this Section 7.1.1.5, an Event of Withdrawal with respect to a Member shall not cause a dissolution and the Company shall automatically continue following such an Event of Withdrawal;

7.1.1.4. Upon the sale or other disposition of all or substantially all of the Company's assets and receipt by the Company of the proceeds therefrom.

7.1.1.5 Upon the occurrence of an Event of Withdrawal of the last remaining member unless within 90 days all assignees of Interests in the Company consent in writing to admit at least one member pursuant to A.R.S. Section 29-731(B)(4) to continue the business of the company.

7.2. *Distributions and Other Matters.* The Company shall not terminate until its affairs have been wound up and its assets distributed as provided herein. Promptly upon the dissolution of the Company, the Manager shall cause to be executed and filed a Notice of Winding Up with the Arizona Corporation Commission in accordance with Section 29-781 of the Act, and will liquidate the assets of the Company and apply and distribute the proceeds of such liquidation, or distribute the Company's assets in kind, as follows and in the following order:

7.2.1. *Ordinary Debts.* To payment of the debts and liabilities of the Company, including debts owed to Managers, in the order of priority provided by law; provided that the Company shall first pay, to the extent permitted by law, liabilities with respect to which any Interest Holder or Manager is or may be personally liable;

7.2.2. *Reserves and Distributions.* To the setting up of such reserves as the Manager may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company arising out of or in connection with the Company business;

7.2.3. *Remainder.* The balance of the proceeds shall be distributed to the Members in accordance with the Member Share as provided for in Section 1.3.

7.4. *Rights of Members—Distributions of Property.* Except as otherwise provided in this Agreement, each Member shall look solely to the assets of the Company for the return of his or her Capital Contribution and shall have no right or power to demand or receive property other than cash from the Company. No Interest Holder shall have priority over any other Member for the return of his or her Capital Contributions, distributions, or allocations.

7.5. *Articles of Termination.* When all the assets of the Company have been distributed as provided herein, the Manager shall cause to be executed and filed Articles of Termination as required by the Act.

## **Section VIII Other Interests of an Interest Holder or Manager**

Any Member or Manager may engage in or possess interests in other business ventures of every nature and description, independently or with others. Neither the Company nor any Member or Manager shall have any right to any independent ventures of any other Member or Manager or to the income or Profits derived there from.

## **Section IX Indemnity**

9.1. *Indemnity Rights.* The Company shall indemnify each Manager who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of his or her actions as a Manager, or by reason of his or her acts while serving at the request of the Company as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses, including attorneys' fees, and against judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding, provided that the acts of such Manager or Interest Holder were not committed with gross negligence or willful misconduct,

and, with respect to any criminal action or proceeding, such Manager or Interest Holder had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of no contest or its equivalent, shall not, in and of itself, create a presumption that the Manager or Interest Holder acted with gross negligence or willful misconduct, or with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

9.2. *Notice and Defense.* Any Manager or Interest Holder who is or may be entitled to indemnification shall give timely written notice to the Company, the Manager and Interest Holders that a claim has been or is about to be made against him or her, shall permit the Company to defend him or her through legal counsel of its own choosing, and shall cooperate with the Company in defending against the claim. The Manager, or in the event the Manager is seeking indemnity a Majority-in-Interest of the Interest Holders other than the Manager, shall have the sole power and authority to determine the terms and conditions of any settlement of the claim.

9.3. *Other Sources.* The indemnification provided for herein shall apply only in the event, and to the extent that, the person is not entitled to indemnification, or other payment, from any other source (including insurance), and the Company's indemnity obligations hereunder shall be in excess of any indemnification or other payment provided by such other source.

9.4. *Survival.* The indemnification provided for herein shall continue as to a person who has ceased to be a Interest Holder or Manager and shall inure to the benefit of the heirs, executors, and administrators of such person.

## **Section X Miscellaneous**

10.1. *Notices.* Any notice, demand, offer, or other communication which any person is required or may desire to give to any other person shall be delivered in person or by United States mail, electronic mail, facsimile, or overnight or next-day delivery service. If mailed, such notice shall be deemed to be delivered two (2) days after deposited in the United States mail, postage prepaid, addressed to the person at his or her address as it appears on the books of the Company. If transmitted by way of electronic mail or facsimile, such notice shall be deemed to be delivered on the date of such electronic mail or facsimile transmission to the electronic mail address or facsimile number, if any, for the person which has been supplied by such person and identified as such person's electronic mail address or facsimile number. If transmitted by overnight or next-day delivery, such notice shall be deemed to be delivered on the next business day after deposit with the delivery service addressed to the person at his or her address as it appears on the books of the Company.

10.2. *Bank Accounts.* All funds of the Company shall be deposited in a bank account or accounts opened in the Company's name. The Manager shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

10.3. *Partial Invalidity.* The invalidity of any portion of this Agreement will not affect the validity of the remainder hereof.

10.4. *Governing Law; Parties in Interest.* This Agreement will be governed by and construed according to the laws of the State of Arizona without regard to conflicts of law principles and will bind and inure to the benefit of the heirs, successors, assigns, and personal representatives of the parties.

10.5. *Amendment.* This Agreement may only be amended, restated, or revoked by the consent of a simple majority of the Members.

10.6. *Execution in Counterparts.* This Agreement may be executed in counterparts, all of which taken together shall be deemed one original.

10.7. *Titles and Captions.* All article, section, or paragraph titles or captions contained in this Agreement are for convenience only and are not deemed part of the context thereof.

10.8. *Pronouns and Plurals.* All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

10.9. *Waiver of Action for Partition.* The Manager and each of the Interest Holders irrevocably waives any right that he or she may have to maintain any action for partition with respect to any of the Company Property.

10.10. *Entire Agreement.* This Agreement contains the entire understanding between the parties, and supersedes any prior understandings and agreements between or among them with respect to the subject matter hereof.

## **Section XI Definitions**

The following terms shall have the meanings set forth in this Section XI:

“*Act*” means the Arizona Limited Liability Company Act, A.R.S. Sections 29-601 through 29-857, as amended from time to time (or any corresponding provisions of succeeding law).

“*Affiliate*” means, with respect to any Interest Holder or Manager, any Person: (i) who is a member of the Interest Holder's or Manager's Family; (ii) which owns more than twenty-five percent (25%) of the voting or economic interests in the Interest Holder or Manager; (iii) in which the Interest Holder or Manager owns more than twenty-five percent (25%) of the voting or economic interests; or (iv) in which more than twenty-five percent (25%) of the voting or economic interests are owned by a Person who has a relationship with the Interest Holder or Manager described in clause (i), (ii), or (iii) above.

“*Capital Account*” means the account maintained by the Company in accordance with the provisions of Section III.

“*Capital Contribution*” means the total amount of cash and the fair market value of any other assets contributed (or deemed contributed under Regulation Section 1.704-1(b)(2)(iv)(d)) to the Company by an Interest Holder, net of liabilities secured by the contributed Property that the Company is considered to assume or take subject to under Section 752 of the Code.

“*Event of Withdrawal*” means those events and circumstances listed in Section 29-733 of the Act other than subparagraphs 4 or 5 thereof.

“*Family*” means a Person's spouse, lineal ancestors or descendants by birth or adoption, siblings, and trusts for the benefit of such Person or any of the foregoing individuals.

“*Fiscal Year*” or “*Annual Period*” means the fiscal year of the Company, as determined under Section V.

“*Member*” means any Person who has made a capital contribution in the form of cash to the Company, irrespective of the amount contributed.

“*Manager*” means that person designated as such pursuant to Section V of this Agreement.

*"Member"* means each Person signing this Agreement and any Person who subsequently is admitted as a member of the Company until such time as an Event of Withdrawal has occurred with respect to such Member.

*"Membership Rights"* means all of the rights of a Member in the Company, including a Member's: (i) Member Share, and (ii) right to inspect the Company's books and records.

*"Member Share"* means, as to a Member, the percentage set forth after the Member's name on *Exhibit A*, as amended from time to time, and, as to the numerical calculation as provided in Section 3.1.

*"Person"* means and includes an individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

*"Profit"* and *"Loss"* means, for each Fiscal Year of the Company (or other period for which Profit or Loss must be computed), the Company's taxable income or loss determined in accordance with Code Section 703(a).

*"Property"* means all real and personal property (including cash) acquired by the Company, and any improvements thereto.

*"Transfer"* means, when used as a noun, any voluntary or involuntary sale, hypothecation, pledge, assignment, attachment, or other transfer, and, when used as a verb, means voluntarily or involuntarily to sell, hypothecate, pledge, assign, or otherwise transfer.

*"Treasury Regulations"* or *"Regulations"* means the income tax regulations, including any temporary regulations, promulgated under the Code as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

The Managers have executed this Operating Agreement, effective as of the date first set forth above.