

# EXHIBIT A

## OPERATING AGREEMENT

This Limited Liability Company Operating Agreement (the "Agreement") dated as of February 10, 2012 among Roberto Caporuscio ("Caporuscio") and Sandra G. Manzella ("Manzella"), Caporuscio and Manzella collectively, the "Members" and individually, a "Member") of Keste Group LLC (the "Company").

### ARTICLE I

#### FORMATION

1.1 Organization. The Company has been formed pursuant to the provisions of the New York Limited Liability Company Act (the "Act") by causing Articles of Organization conforming to the requirements of the Act to be filed with the Office of the Secretary of State of the State of New York.

1.2 Name. Unless and until amended in accordance with the provisions of this Agreement and the Act, the name of the Company is Keste Group LLC.

1.3 Principal Office. The Principal Office of the Company shall be located at 271 Bleecker Street, New York, New York.

1.4 Registered Agent and office. The registered agent for the service of process and the registered office shall be that Person and location reflected in the Articles as filed in the office of the Secretary of State. The Members, may, from time to time, change the registered agent or office through appropriate filings with the Secretary of State. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Members shall promptly designate a replacement registered agent or file a notice of change of address as the case may be.

1.5 Agreement, Effect of Inconsistencies with Act. For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members executing the Agreement hereby agree to the terms and conditions of the Agreement, as it may from time to time be amended according to its terms. It is the express intention of the Members that the Agreement shall be the sole source of agreement of the parties, and, except to the extent a provision of the Agreement expressly incorporates federal income tax rules by

reference to sections of the Code or Regulations or is expressly prohibited or ineffective under the Act, the Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law or rule. To the extent any provision of the Agreement is prohibited or ineffective under the Act, the Agreement shall be considered amended to the smallest degree possible in order to make the agreement effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to make valid any provision of the Agreement that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. The Members hereby agree that each Member shall be entitled to rely on the provisions of this Agreement, and no Member shall be liable to the Company or to any other Member for any action or refusal to act taken in good faith reliance on the terms of this agreement.

1.6 Business. The purpose of the Company is to engage in any lawful act or activity for which a limited liability company may be organized under the Act, provided that the Company shall not engage in the practice of any profession requiring a license under the laws of the State of New York without first obtaining such license.

1.7 Term. The term of the Company has begun upon the filing of the Articles of Organization and shall continue until December 31, 2043 unless its existence is sooner terminated pursuant to Article XII of this Agreement.

1.8 Definitions. Terms not otherwise defined in this Agreement shall have the meanings set forth in Article XIII.

## ARTICLE II

### MEMBERSHIP

2.1 Initial Members. The initial Members of the Company were Rosario Procino, Frank Garritano, Sandra Manzella and Sandro Paterno. After the inception of the Company Sandro Paterno has been substituted by Roberto Caporuscio and eventually the Company has re-purchased the shares of Procino and Garritano leaving as Members Caporuscio and Manzella.

2.2 Representations and Warranties. Each Member hereby represents and warrants to the Company and each other Member as follows:

(a) Authorization. He or she has full power and authority to execute and enter into this Agreement and to perform his or her obligations hereunder and that all actions necessary for the due authorization, execution, delivery and performance by that Member of this Agreement have been duly taken;

(b) Compliance with Other Instruments. The Member's authorization, execution, delivery, and performance of this Agreement do not conflict with any other agreement or arrangement to which such Member is a party or by which he or she is bound; and

(c) Purchase Entirely for Own Account. The Member is acquiring his or her interest in the Company for the Member's own account for investment purposes only and not with a view to or for the resale, distribution, subdivision or fractionalization thereof and has no contract, understanding, undertaking, agreement or arrangement of any kind with any Person to sell, transfer or pledge to any Person his or her interest or any part thereof nor does such Member have any plans to enter into any such agreement.

2.3 Company Shares. Ownership of the Company shall be divided into and represented by shares of the Company (the "Shares"). The Company shall issue a single class of Shares. The total number of Shares which the Company is authorized to issue shall be one thousand (1,000).

2.4 Additional Members. Additional Persons may be issued Shares of the Company and admitted to the Company as a Member upon such terms and conditions as the Members may determine.

2.5 Admission of Substitute Members. An Assignee of Shares of the Company shall be admitted as a Substitute Member and admitted to all the rights of the Member who assigned the Shares of the Company only with the approval of the Members. If so admitted, the Substitute Member shall have all the rights and powers and will be subject to all the restrictions and liabilities of the Member who originally assigned the Shares of the Company. The admission of a Substitute Member shall not release any Member who assigned the Shares from liability to the Company that may have existed prior to such substitution.

2.6 Resignation or Withdrawal of a Member. Except as specifically provided below, and subject to the provisions for transfer contained in Article X, no Member shall have the right

to resign or withdraw from membership in the Company or withdraw his or her interest in the capital of the Company.

2.7 Dissociation of a Member. The death, Bankruptcy or dissolution of a Member (i) will cause such Member to be dissociated from the Company (a "Dissociated Member"), (ii) will terminate the continued membership of such Member in the Company, and (iii) may or may not cause a dissolution of this Company pursuant to Article XII hereof.

2.8 Rights of Dissociating Member. In the event any Member becomes a Dissociated Member:

(a) If the dissociation causes a dissolution and winding up of the Company under Article XI, the Dissociated Member shall be entitled to participate in the winding up of the Company to the same extent as any other Member owning the same class of Shares;

(b) If the dissociation does not cause a dissolution and winding up of the Company under Article XI, the legal representative of the Dissociated Member may request admission to the Company as a Substitute Member pursuant to Section 2.5. If such legal representative requests that it be admitted as a Substitute Member within ninety (90) days of the event causing dissociation and is denied Substitute Member status, the legal representative shall be entitled to (i) demand, within thirty (30) days from the date of such denial, that the Company repurchase the Dissociated Member's Shares for an amount equal to their fair market value of such Shares as of the date of such demand, the full amount of which shall be paid within one year of the date of demand; or (ii) continue in the status of an Assignee. If no request for Substitute Member status is made within the ninety (90) day period referred to above, the legal representative of the Dissociated Member shall thereafter have only those rights of an Assignee under this Agreement.

### ARTICLE III

#### CONTRIBUTIONS TO CAPITAL

3.1 Initial Contributions. Contemporaneously with the execution of this Agreement, each Member shall contribute to the capital of the Company the amount set forth opposite such Member's name on Schedule A. At the same time each Member will co-sign as a personal guarantor a loan agreement with JP Morgan

Chase Bank which has agreed to finance \$ 450,000 towards the repurchase by Keste of the shares of Procino and Garritano. The repurchase price agreed upon is \$ 600,000 which will be paid with the Bank's financing and the contribution of \$ 125,000 by Caporuscio and \$ 25,000 by Manzella

3.2 Issuance of Shares. In exchange for the Initial Contribution of the Members and for their personal guarantee of the loan by JP Morgan Chase Bank, the Members shall be issued that number of Shares set forth opposite their names on Schedule A.

3.3 Additional Contributions. No Member shall be permitted or required to make any additional contribution to the capital of the Company without the consent of the Members.

3.4 Interest. No Member shall be entitled to any interest with respect to contributions to or share of the capital of the Company.

3.5 Maintenance of Capital Accounts. The Company shall establish and maintain a Capital Account for each Member. Each Member's Capital Account shall be increased by (1) the amount of any money actually contributed by the Member to the capital of the Company, (2) the fair market value of any property contributed, as determined by the Company and the contributing Member at arm's length at the time of contribution (net of liabilities assumed by the Company or subject to which the Company takes such Property, within the meaning of Section 752 of the Code), and (3) the Member's share of net profits of the Company and of any separately allocated items of income or gain except adjustments of the Code (including any gain and income from unrealized income with respect to accounts receivable allocated to the Member to reflect the difference between the book value and tax basis of assets contributed by the Member). Each Member's Capital Account shall be decreased by (1) the amount of any money distributed to the Member by the Company, (2) the fair market value of any property distributed to the Member, as determined by the Company and the contributing Member at arm's length at the time of contribution (net of liabilities of the Company assumed by the Member or subject to which the Member takes such property within the meaning of Section 752 of the Code), and (3) the Member's share of net losses and of any separately allocated items of deduction or loss (including any loss or deduction allocated to the Member to reflect the difference between the book value and tax basis of assets

contributed by the Member). The foregoing provisions, and the other provisions of this Agreement relating to Capital Accounts, are intended to comply with Treasury Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations.

#### ARTICLE IV

##### MANAGEMENT AND RESTRICTIONS

4.1 Management by Members. The Company shall be managed and controlled by its Members by the affirmative vote of a majority in interest of the Members (unless otherwise provided herein) and shall not have any Managers within the meaning of the Act. Notwithstanding anything to the contrary contained in the provisions of this Agreement, the Members agree that Caporuscio and Manzella shall have primary responsibility for running the day-to-day operations of the Company.

##### 4.2 Vote Required.

4.2.A. The vote of a majority in interest of the Members shall be required to (i) approve the dissolution of the Company in accordance with the Act, (ii) approve the sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the Company and (iii) require additional capital contributions be made to the Company.

4.2.B. Notwithstanding the provisions of Section 4.2.A, the unanimous vote of all of the Members shall be required to:

(i) admit a person as a member and issue such person a membership interest in the Company;

(ii) approve the incurrence of indebtedness by the Company other than the indebtedness currently existing and other than indebtedness incurred in the ordinary course of its business;

(iii) adopt, amend, restate or revoke the Articles of Organization or this Agreement; and

(iv) approve a merger or consolidation of the Company with or into another limited liability company or foreign limited liability company which is wholly unrelated to the Members of the Company.

##### 4.3 Restrictions on Members.

(a) The Members shall devote such time to the business and affairs of the Company as is necessary to carry out this Agreement.

(b) Nothing in this Agreement shall be deemed to restrict in any way the rights of any Member, or of any entity affiliated with any Member, to conduct any other business or activity whatsoever, and no Member shall be accountable to the Company or to any other Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to the Members' respective rights (or the rights of their respective affiliated entities) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of any other Member or the Member's affiliated entities.

#### 4.4 Authority of Members.

(a) The Members may exercise all powers of the Company to the extent authorized by a majority of the interests which vote of the Company, and do all such lawful acts and things as they may determine to be necessary or appropriate in the ordinary course of the trade or business of the Company. Notwithstanding the foregoing, no Member is an agent of the Company solely by virtue of being a Member, and no Member has authority to act for the Company solely by virtue of being a Member. Any Member who takes any action or binds the Company in violation of this Section shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

(b) Notwithstanding the above, the Members may not do or permit to be done any of the following without the express approval of all of the Members:

(i) Any act or thing which this Agreement expressly requires to be approved, consented to, determined or authorized by the Members;

(ii) Voluntarily cause the dissolution of the Company;

(iii) Sell any part of the Company's assets, or engage in any material recapitalization or merger; or



(iv) Incur any liabilities except as specifically stated in this Agreement.

( c) Unless the Act or this Agreement expressly requires a greater vote or consent, all matters requiring the vote, approval, consent, authorization or determination of the Members shall require the vote or consent of the Members holding a majority of the issued and outstanding voting interests held by all of the Members.

4.5 Meetings. The Members of the Company may hold meetings, both regular and special, either within or without the State of New York. The meetings may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Members, or as shall be specified in a written waiver signed by all of the Members. Regular meetings of the Members may be held without notice at such time and at such place as shall from time to time be determined by the Members.

4.6 Special Meetings. Special meetings of the Members may be called by Members holding at least forty percent of the issued and outstanding interests held by all Members on five (5) business days' notice to each Member by notice delivered by recognized courier (e.g., federal express or DHL).

4.7 Action without Meeting. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if a majority of all Members consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Members meetings.

4.8 Telephonic Meetings. Members may participate in 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 such participation in a meeting shall constitute presence in person at the meeting.

4.9 Compensation of Members. Unless otherwise expressly approved by the Members, no Member shall be entitled to any compensation for services or activities undertaken in its capacity as a Member of the Company. Notwithstanding the foregoing, each of the Members agrees that Caporuscio and Manzella shall be entitled to compensation, taken at such times and in such amounts as they reasonably determine, for running the day-to-day operations of the Company.

4.10 Amendment of Articles or Agreement. The Members shall have the due authority to amend the Articles of Organization or this Agreement as and to the extent necessary to reflect any and all changes or corrections necessary or appropriate as a result of any action taken by the Members in accordance with the terms of this Agreement.

## ARTICLE V

### NOTICES

5.1 Notices. Whenever, under the provisions of the Act, the Articles of Organization or this Agreement, notice is required to be given to any Member, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such Member at its address as it appears on the records of the Company with postage thereon prepaid and such notice shall be deemed to be given at the time when the same shall be deposited in United States mail. Notice to Members may also be given by telegram, facsimile or courier service.

5.2 Waiver of Notice. Whenever any notice is required to be given under provisions of the statutes, the Articles of Organization or this Agreement, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein shall be deemed equivalent thereto.

## ARTICLE VI

### ACCOUNTING AND RECORDS

6.1 Financial and Tax Reporting. The Company shall prepare its financial statements in accordance with generally accepted accounting principles as from time to time in effect and shall prepare its income tax information returns using such methods of accounting and tax year as the Members deem necessary or appropriate under the Code and Treasury Regulations.

6.2 Supervision; Inspection of Books. Proper and complete books of account and records of the business of the Company shall be kept under the supervision of the Members at the Company's principal office and at such other place as designated by the Members. Such books and records shall be open to inspection,

audit and copying by any Member, or his designated representative, upon reasonable notice at any time during business hours for any purpose reasonably related to the Member's Interest in the Company. Any information so obtained or copied shall be kept and maintained in strictest confidence except as required by law.

6.3 Reliance on Records and Books of Account. Any Member shall be fully protected in relying in good faith upon the records and books of account of the Company and upon such information, opinions, reports or statements presented to the Company by its Member, any of its other Members, officers, employees or committees, or by any other person, as to matters the Member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

6.4 Annual Reports. The annual financial statements of the Company shall be reported on as of the end of each Fiscal Year by the Members. A copy of the annual report shall be transmitted to the Members within ninety (90) days after the end of each Fiscal Year.

6.5 Tax Returns. The Company shall, within ninety (90) days after the end of each Fiscal Year, file a Federal income tax information return and transmit to each Member a schedule showing such Member's distributive Share of the Company's income, deductions and credits, and all other information necessary for such Members timely to file their Federal income tax returns. The Company similarly shall file, and provide information to the Members regarding, all appropriate state and local income tax returns.

6.6 Member's Right to Audit. Notwithstanding anything to the contrary contained in this Agreement, each Member, at his or her sole cost and expense, shall have the right to audit the Company's books and records. Such audit shall be conducted at the location where the Company's records are kept, at such times and dates as may be mutually agreed upon.

## ARTICLE VII

### ALLOCATIONS

#### 7.1. Allocation of Net Income.

7.1.A. For each Accounting Period, Net Income of the Company (other than Net Income resulting from the sale or liquidation of the Company or substantially all of its assets) shall be allocated to the Members in proportion to their respective ownership interests as set forth on Schedule A, annexed.

7.1.B. Net Income resulting from the sale or liquidation of the Company or substantially all of its assets shall be allocated to the Members as follows:

(I) First, among the Members in proportion to their relative capital account deficits, if any;

(II) Second, to all Members in proportion to their ownership interests.

#### 7.2. Allocation of Net Loss.

7.2.A. For each Accounting Period, Net Losses of the Company (other than Net Losses resulting from the sale or liquidation of the Company or substantially all of its assets) shall be allocated to the Members pro rata in proportion to their respective Capital Account balances until such Capital Account balances have been reduced to zero and thereafter to all Members in proportion to their ownership interests.

7.2.B. Net Losses resulting from the sale or liquidation of the Company or substantially all of its assets shall be allocated to the Members as follows:

(I) First, to the Members to the extent of their positive Capital Account balances; and

(II) Second, to all Members in proportion to their ownership interests.

7.3. Time of Allocations. The Net Income or Net Loss of the Company for each Accounting Period shall be allocated to the Members at the end of the Accounting Period in accordance with the provisions of Sections 7.1 and 7.2 above.

#### 7.4. Special Tax Provisions.

(a) The Members expect and intend that the Company shall be treated as a partnership for all federal income tax purposes and each Member and the Members agree that they (i) will not take a position on any federal, state, local or other tax

return, and will not otherwise assert or act inconsistent with such expectation and intent; or (ii) do any act or thing which could cause the Company to be treated as other than a partnership for federal income tax purposes.

(b) Tax Allocation. Except as otherwise provided in this Article VII, items of income, gain, loss or deduction recognized for income tax purposes shall be allocated in the same manner that the corresponding items entering into the calculation of Net Income and Net Loss are allocated pursuant to this Agreement.

(c) Section 704(c) Adjustments. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, items of income, gain, loss and deduction with respect to an asset, if any, contributed to the capital of the Company shall, solely for tax purposes, be allocated between 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 Value upon contribution to the Company.

(d) Section 754 Election. A Section 754 election may be made for the Company at the sole discretion of the Members. In the event of an adjustment to the adjusted tax basis of any Company asset under Code Section 734(b) or Code Section 743(b) pursuant to a Section 754 election by the Company, subsequent allocations of tax items shall reflect such adjustment consistent with the Treasury Regulations promulgated under Sections 704, 734 and 743 of the Code.

(e) Allocations upon Transfers of Company Interests. If, during an Accounting Period, a Member (the "Transferring Member") transfers Shares to another person (but only in accordance with and subject to all of the terms and conditions of this Agreement), items of Net Income and Net Loss, together with corresponding tax items, that otherwise would have been allocated to the Transferring Member with regard to such Accounting Period shall be allocated between the Transferring Member and the Substitute Member in accordance with their respective Shares during the Accounting Period using any method permitted by Section 706 of the Code and selected by the Member.

## ARTICLE VIII

### DISTRIBUTIONS

8.1 Distributions of Cash Flow. Cash Flow for each taxable year of the Company (other than Cash Flow arising from the proceeds from (x) the sale of the Company or liquidation of all or substantially all of the Company's assets as set forth in Section 8.6 or (y) the refinancing of any or all of the Company's assets as set forth in Section 8.7) shall be distributed as often as practicable in the exercise of reasonable business judgment by the Members as follows:

(a) First, to pay off the Company's liabilities in the ordinary course of business.

(b) Second, to pay each of the Members, on an equal basis, the amount of principal and interest on their loans, if any, to the Company, until such time as each Member has received, cumulatively, since the inception of the Company, aggregate distributions in an amount equal to each of such lending Members' loans to the Company.

(c) Third, to the Members in proportion to their respective ownership interests as set forth on Schedule A, annexed.

8.2 Mandatory Distributions. The Members shall cause the Company to distribute, as soon as reasonably possible, an amount equal 50% of the Company's Net Income each year.

8.3 Discretionary Distributions. To the extent the Company's cash on hand exceeds its current and anticipated needs, including, without limitation, needs for operating expenses, debt service, acquisitions, reserves and required distributions under Section 8.2, if any, and subject to Section 8.5 below, the Members may cause the Company to make distributions.

8.4 Distributions in Kind. All distributions shall be made in cash or cash equivalents unless the Members shall have approved a distribution of assets in kind.

8.5 Restriction on Distributions and Withdrawals.

(a) The Company shall not make any distribution to the Members unless immediately after giving effect to the distribution, all liabilities of the Company, other than liabilities to Members on account of their interest in the Company and liabilities as to which recourse of creditors is limited to specified property of the Company, do not exceed the fair value of the Company assets, provided that the fair value of any property that is subject to a liability as to which recourse of creditors is so limited shall be included in the Company

assets only to the extent that the fair value of the property exceeds such liability.

(b) No Member shall be liable to the Company for the amount of a distribution received provided that, at the time of the distribution, such Member did not know that the distribution was in violation of Section 8.5(a). A Member which receives a distribution in violation of Section 8.5(a), and which knew at the time of the distribution that the distribution violated such condition, shall be liable to the Company for the amount of the distribution.

8.6 Distribution of Proceeds from Sale or Liquidation. The proceeds to the Company resulting from (i) the liquidation of any substantial portion of Company assets or (ii) any sale by the Company of all or any substantial part of its assets, shall be distributed and applied in the following order of priority:

8.6.A. To the payment of debts and liabilities of the Company (including all expenses of the Company incident to any such liquidation of the Company or sale referred to in this Section), and to the setting up of any reserves which the Members deem reasonably necessary for contingent, unmatured or unforeseen liabilities or obligations of the Company, specifically excluding any liabilities to Members in respect of any distributions of Cash Flow;

8.6.B. To the Members in the same manner as other distributions.

8.7 Distribution of Proceeds from Refinancing. The proceeds to the Company from the refinancing of any of the assets of the Company shall be distributed in the following order of priority:

8.7.A. First, to the payment of debts and liabilities resulting from the refinancing;

8.7.B. Second, to the setting up of any reserves which the Members deem reasonably necessary for the repayment of indebtedness of the Company, or contingent, unmatured or unforeseen liabilities or obligations of the Company;

8.7.C. Third, to the repayment of any unpaid loans and interest due any Member for loans made by him to the Company;

8.7.D. Fourth, to all Members in proportion to his Membership interest.

8.8 No Other Withdrawals. Except as provided in this Article VIII and in Section 2.8, no withdrawals or distributions shall be required or permitted.

## ARTICLE IX

### TRANSFER OF MEMBERSHIP

9.1 Transfer. Any Member or Assignee may transfer, sell, encumber, mortgage, assign or otherwise dispose of any portion of its Shares only if (i) the transferor shall have complied with the Right of First Refusal imposed by Section 9.5 hereof; (ii) the Assignee shall have agreed in writing to assume all of the obligations of the assignor with respect to the Shares assigned (including the obligations imposed hereunder as a condition to any transfer), and (iii) the Member shall have concluded (which conclusion may be based upon an opinion of counsel satisfactory to it) that such assignment or disposition would not (A) result in a violation of the Securities Act of 1933 as amended, or any other applicable statute of any jurisdiction; (B) result in a termination of the Company for Federal or state income tax purposes or result in the Company being taxed as a corporation for Federal income tax purposes; or (C) result in a violation of any law, rule or regulation by the Member, the Assignee, the Company or the Members.

9.2 Transfer Void. Any purported transfer, sale, encumbrance, mortgage, assignment, or disposition of Shares in contravention of this Article IX shall be void and of no effect to, on or against the Company, any Member, any creditor of the Company or any claimant against the Company.

9.3 Rights of Assignees. The Assignee of any Shares has no right to vote or to participate in the management of the business and affairs of the Company or to become a Member. The Assignee is only entitled to receive distributions and to be allocated the Net Profits and Net Losses attributable to the Shares transferred to the Assignee.

9.4 Admission of Permitted Transferees. Notwithstanding Section 9.5 below, the Shares of any Member shall be transferable free from any Right of First Refusal if (i) the transfer occurs by reason of or incident to the dissolution, liquidation, merger or termination of the transferor Member, (ii) the transferee is a Permitted Transferee, and (iii) such Permitted Transferee agrees in writing to be bound by the terms and conditions of this Agreement as fully as if it were an original signatory hereto. A "Permitted Transferee" is any Person controlling, controlled by, or under common control with such Member.



#### 9.5 Right of First Refusal.

(a) Grant. The Company is hereby granted the right of first refusal (the "First Refusal Right"), exercisable in connection with any proposed transfer of Shares. For this purpose, the term "transfer" shall include any sale, assignment, pledge, encumbrance or other disposition for value of the Shares intended to be made by a Member other than permitted transfers under Section 9.4.

(b) Notice of Intended Disposition. In the event a Member desires to accept a bona fide third-party offer for the transfer of any or all of the Member's Shares (the shares of the selling Member subject to such offer, the "Target Shares"), such Member shall promptly (i) deliver to the Secretary of the Company written notice (the "Disposition Notice") of the terms and conditions of the offer, including the purchase price and the identity of the third-party offeror, and (ii) provide satisfactory proof that the disposition of the Target Shares to such third-party offeror would not be in contravention of the provisions set forth in Section 9.1.

(c) Exercise of Right. The Company (or its assignees) shall, for a period of sixty (60) days following receipt of the Disposition Notice, have the right to purchase all (but not less than all) of the Target Shares specified in the Disposition Notice upon the same terms and conditions specified therein or upon terms and conditions which do not materially vary from those specified therein. Such right shall be exercisable by delivery of written notice (the "Exercise Notice") to the transferor Member prior to the expiration of the sixty (60) day exercise period. If such right is exercised with respect to the Target Shares specified in the Disposition Notice, then the Company (or its assignees) shall effect the purchase of the Target Shares, including payment of the purchase price, on the same payment terms specified in the Exercise Notice; and Member shall deliver to the Company the certificates representing the Target Shares to be purchased, each certificate to be properly endorsed for transfer. Should the purchase price specified in the Disposition Notice be payable in property other than cash or evidences of indebtedness, the Company (or its assignees) shall have the right to pay the purchase price in the form of cash equal in amount to the value of such property. If the Member and the Company (or its assignees) cannot agree on such cash value within ten (10) days after the Company's receipt of the Disposition Notice, the

valuation shall be made by an appraiser of recognized standing selected by the Member and the Company (or its assignees) or, if they cannot agree on an appraiser within twenty (20) days after the Company's receipt of the Disposition Notice, each shall select an appraiser of recognized standing and the two appraisers shall designate a third appraiser of recognized standing, whose appraisal shall be determinative of such value. The cost of such appraisal shall be shared equally by the Member and the Company. The closing shall then be held on the later of (i) the fifth business day following delivery of the Exercise Notice or (ii) the fifth business day after such cash valuation shall have been made.

(d) Non-Exercise Of Right. In the event the Exercise Notice is not given to the proposed transferor member within sixty (60) days following the date of the Company's receipt of the Disposition Notice, such Member shall have a period of forty-five (45) days thereafter in which to sell or otherwise dispose of the Target Shares to the third-party offeror identified in the Disposition Notice upon terms and conditions (including the purchase price) no more favorable to such third-party offeror than those specified in the Disposition Notice; provided, however, that any such sale or disposition must not be effected in contravention of the provisions of Section 9.1. In the event the proposed transferor Member does not effect such sale or disposition of the Target Shares within the specified forty-five (45) day period, the Company's First Refusal Right shall continue to be applicable to any subsequent disposition of the Target Shares by Member.

## ARTICLE X

### INDEMNIFICATION AND LIMITATION OF LIABILITY

#### 10.1 Indemnification.

(a) To the fullest extent permitted by the Act and by law, the Members and the partners, shareholders, controlling persons, officers, directors and employees of any of the foregoing (collectively, the "Indemnitees" and individually, an "Indemnatee" shall, in accordance with this Section 10.1, be indemnified and held harmless by the Company from and against any and all loss, claims, damages, liabilities, expenses, judgments, fines, settlements and other amounts arising from any and all claims (including reasonable legal expenses), demands, actions,

suits or proceedings (civil, criminal, administrative or investigative) in which they may be involved, as a party or otherwise, by reason of their management of, or involvement in, the affairs of the Company, or rendering of advice or consultation with respect thereto, or which relate to the Company, its properties, business or affairs, if such Indemnatee acted in good faith and in a manner such Indemnatee reasonably believed to be in, or not opposed to, the best interests of the Company, and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct of such Indemnatee was unlawful. The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not, of itself, create a presumption that the Indemnatee did not act in good faith and in a manner which the Indemnatee reasonably believed to be in, or not opposed to, the best interests of the Company or that the Indemnatee had reasonable cause to believe that the Indemnatee's conduct was unlawful (unless there has been a final adjudication in the proceeding that the Indemnatee did not act in good faith and in a manner which the Indemnatee reasonably believed to be in or not opposed to the best interests of the Company; or that the Indemnatee did have reasonable cause to believe that the Indemnatee's conduct was unlawful).

(b) The Company may also indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the Company to procure a judgment in its favor by reason of the fact that such Person is or was an officer, employee or agent of the Company, against expenses actually or reasonably incurred by such Person in connection with the defense or settlement of such action, if such Person acted in good faith and in a manner such Person reasonably believed to be in, or not opposed to, the best interests of the Company, except that indemnification shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable for misconduct in the performance of the Person's duty to the Company only to the extent that the court in which such action or suit was brought, or another court of appropriate jurisdiction, determines upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. To the extent that the Person has been successful on the merits or otherwise in defense of any proceedings referred to herein, or in defense of any claim, issue or matter therein, the Person shall be indemnified by the Company

against expenses actually and reasonably incurred by the Person in connection therewith. Notwithstanding the foregoing, no Person shall be entitled to indemnification hereunder for any conduct arising from the gross negligence or willful misconduct of such Person or reckless disregard in the performance of its duties hereunder.

(c) Expenses (including attorneys' fees) incurred in defending any proceeding under Sections 10.1(a) or (b) may be paid by the Company in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the Indemnitee or Person to repay such amount if it shall ultimately be determined that the Indemnitee or Person is not entitled to be indemnified by the Company as authorized hereunder.

(d) The indemnification provided by this Section 10.1 shall not be deemed to be exclusive of any other rights to which any Person may be entitled under any Agreement, or as a matter of law, or otherwise, both as to action in a Person's official capacity and to action in another capacity.

(e) The Members shall have power to purchase and maintain insurance on behalf of the Company, the Members, officers, employees or agents of the Company and any other Indemnitees at the expense of the Company, against any liability asserted against or incurred by them in any such capacity whether or not the Company would have the power to indemnify such Persons against such liability under the provisions of this Agreement.

10.2 Limitation of Liability. Notwithstanding anything to the contrary contained herein, the debts, obligations and liabilities of the Company shall be solely the debts, obligations and liabilities of the Company; no Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member of the Company.

## ARTICLE XI

### TERMINATION

11.1 Termination. The Company shall be dissolved, its assets disposed of and its affairs wound up upon the first to occur of the following:

(a) the expiration of its stated term;

(b) the written consent of the Members;

(c) the death, Bankruptcy or dissolution of a member (a "Dissolution Event"), and the failure of the Members that remain to consent to continue the business of the Company within 90 days following the occurrence of any such event, pursuant to Section 11.2(a) below; or

(d) the entry of a decree of judicial dissolution under the Act.

11.2 Continuance of the Company. Notwithstanding the provisions of Section 11.1, upon the occurrence of a Dissolution Event, if there are at least two remaining Members, the remaining Members have the right to avoid dissolution of the Company and elect to continue the business of the Company on the same terms as this Agreement. Such right can be exercised by the vote of the remaining Members to continue the business of the Company within 90 days after the occurrence of a Dissolution Event. Expenses incurred in the continuance of the Company shall be deemed expenses of the Company.

11.3 Authority to Wind Up. The Members shall have all necessary power and authority required to marshal the assets of the Company, to pay its creditors, to distribute assets and otherwise wind up the business and affairs of the Company. In particular, the Members shall have the authority to continue to conduct the business and affairs of the Company insofar as such continued operation remains consistent, in the judgment of the Members, with the orderly winding up of the Company.

11.4 Winding Up and Certificate of Cancellation. The winding up of the Company shall be completed when all debts, liabilities and obligations of the Company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the Company have been distributed to the Members. Upon the completion of winding up of the Company, a Certificate of Cancellation shall be filed with the New York Secretary of State.

11.5 Distribution of Assets. Upon dissolution and winding up of the Company, the affairs of the Company shall be wound up and the Company liquidated by the Members. The assets of the Company shall be distributed as follows in accordance with the Act:

(a) to creditors of the Company in the order of priority provided by law;

(b) to Members and Dissociated Members for any amounts the Company owes them, other than in respect of the positive balance of their Capital Accounts;

(C) to the Members in proportion to their ownership of Shares.

## ARTICLE XII

### DEFINITIONS

12.1 Definitions. The following terms shall have the meanings set forth below for purposes of this Agreement:

(A) "Accounting Period" shall mean for each Fiscal Year the period beginning on the 1st of January and ending on the 31st of December.

(B) "Agreement" shall mean this limited liability company Agreement as the same shall be amended from time to time.

(C) "Additional Member" shall mean a Member admitted as a Member after the date this Agreement becomes effective.

(D) "Assignee" shall mean a transferee or a Permitted Transferee of Shares who has not been admitted as a Substitute Member.

(E) "Bankruptcy" shall mean with respect to any Person that a petition shall have been filed by or against such Person as a "debtor" and the adjudication of such Person as a bankrupt under the provisions of the bankruptcy laws of the United States of America shall have commenced, or that such Person shall have made an assignment for the benefit of its creditors generally or a receiver shall have been appointed for substantially all of the property and assets of such Person.

(F) "Capital Contribution" of a Member shall mean that amount of capital actually contributed by the Member to the Company pursuant to Article III hereof.

(G) "Capital Account" shall mean the account maintained for a Member determined in accordance with Article III.

(H) "Cash Flow" means all cash funds derived from operations of the Company, without reduction for any non-cash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by and upon the Approval of the Members. Cash Flow shall not include proceeds from any capital assets which are to be replaced in the ordinary course but shall be increased by the reduction of any reserve previously established.

(I) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(J) "Dissociated Member" shall have the meaning given that term in Section 2.7 hereof.

(K) "Dissolution" of a Member which is not a natural person shall mean that such Member has terminated its existence, wound up its affairs and dissolved.

(L) "Dissolution Event" shall mean the Bankruptcy or Dissolution of a Member, the occurrence of which terminates the Member's continued membership in the Company and results in the dissolution of the Company under the Act unless the Members agree otherwise pursuant to Section 11.2.

(M) "Fiscal Year" shall mean the period from January 1 to December 31 of each year, or as otherwise required by law.

(N) "Members" shall mean all Initial Members, including Substitute Members, and Additional Members, but does not include Assignees.

(O) "Net Income or Net Loss" shall mean for any Accounting Period the amount computed as of the last day thereof of the net income or loss computed under generally accepted accounting principles.

(P) "Permitted Transferee" shall have the meaning given that term in Section 9.4 hereof.

(Q) "Person" shall mean a natural person, partnership (whether general or limited and whether domestic or foreign), Company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or representative capacity.

( R) "Substitute Member" shall mean an Assignee who has been admitted to all of the rights of membership pursuant to this Agreement.

(S) "Treasury Regulations" means regulations issued pursuant to the Code.

#### ARTICLE XIII

##### MISCELLANEOUS

13.1 Amendment. This Agreement may be amended only with the consent of all of the Members.

13.2 Legends. The Company may issue certificates to its Members evidencing a Member's interest in the Company, and each such certificate, if issued, shall bear a legend to the effect that the Shares are subject to the restrictions on transferability and sale set forth in this Agreement and under the Act.

13.3 Withholding Taxes. In the event that the Company is obligated to withhold and pay any taxes with respect to any Member, any tax required to be withheld may be withheld from any distribution otherwise payable to such Member, or in lieu thereof upon remittance to the appropriate tax authority may be charged to that Member's Capital Account as if the amount of such tax had been distributed to such Member.

13.4 Further Assurances. The parties agree to execute and deliver any further instruments or documents and perform any additional acts which are or may become necessary to effectuate and carry on the Company created by this Agreement.

13.5 Binding Effect. Subject to the restrictions on transfer set forth in Article IX, this Agreement shall be binding



on and inure to the benefit of the Members and their respective transferees, successors, assigns and legal representatives.

13.6 Governing Law. Except as otherwise expressly stated, this Agreement shall be governed by and construed under the laws of the State of New York as applied to agreements among New York residents entered into and to be performed entirely within New York.

13.7 Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter herein.

13.8 Notices. Any notice or other communication which one or more Members may desire to give to another Member or the Company, shall be in writing, and shall be deemed effectively given upon personal delivery, upon deposit in any United States mail box, by registered or certified mail, return receipt requested, upon confirmed facsimile transmission, for delivery to such other Member, or upon delivery by nationally recognized courier (such as Federal Express or DHL):

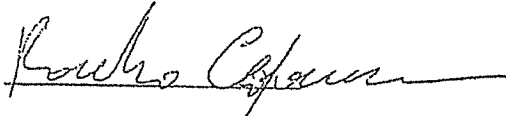
(a) at the address or facsimile number shown in the records of the Company, except that notice relating to Company meetings shall be in accordance with the Act; or

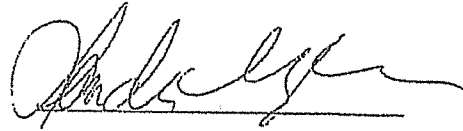
(b) at such other address or facsimile number as such Member may designate by fifteen (15) days' advance written notice to all other Members and the Company.

13.9 Counterparts. This Agreement may be executed in one or more counterparts with the same force and effect as if each of the signatories had executed one and the same instrument.

13.10 Headings and Captions. The headings and captions contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

  
Roberto Caporuscio

  
Sandra G. Manzella