

# L020000028966

**TRANSMITTAL LETTER**  
**FOR FLORIDA LIMITED LIABILITY COMPANY**

Registration Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

**SUBJECT: CJ, LLC**

300008385883--4  
-10/15/02--01086--001  
\*\*\*\*160.00 \*\*\*\*160.00

Enclosed is an original and one (1) copy.

Also enclosed is a check made out to the Florida Department of State for a total of \$160.00:

- \$100.00 – Filing Fee
- \$25.00 – Fee for Designation of Registered Agent
- \$30.00 – Fee for Certified Copy Of Record
- \$5.00 – Fee For Certificate of Status

**FROM:** Jeff A. Doria  
4285 N.W. 66<sup>th</sup> Place  
Boca Raton, Florida 33496  
(561) 982 – 8577

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
02 OCT 15 AM 9:13

EFFECTIVE DATE  
10/14/02



FLORIDA DEPARTMENT OF STATE  
Jim Smith  
Secretary of State

October 17, 2002

JEFF A. DORIA  
4285 N.W. 66TH PLACE  
BOCA RATON, FL 33496

SUBJECT: CJ, LLC  
Ref. Number: W02000029949

We have received your document for CJ, LLC and your check(s) totaling \$160.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

We do not file Operating Agreements. Enclosed is a copy of our blank form, with instructions, for filing a new Florida LLC.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6958.

Lee Rivers  
Document Specialist

Letter Number: 802A00057786

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
OCT 15 AM 9:13

- made necessary changes, please  
note Articles on pp. 3-4
- please send back stamped filed copy.

**ARTICLES OF ORGANIZATION  
AND OPERATING AGREEMENT  
OF  
CJ, LLC  
A FLORIDA LIMITED LIABILITY COMPANY  
EFFECTIVE OCTOBER 14, 2002**

**THIS OPERATING AGREEMENT** of CJ, LLC, (the "Company"), is entered on October 14, 2002 by and among the persons executing this Operating Agreement as Members of the Company.

**WHEREAS**, the persons signing below desire to enter into this Operating Agreement to define and express the terms and conditions pursuant to which the business and affairs of CJ LLC, a Florida limited liability company, will be operated and to further define and confirm their respective rights and obligations as interest holders of the Company; and

**WHEREAS**, the persons signing below desire to be bound by this Operating Agreement pursuant to the terms hereof.

**NOW, THEREFORE**, in consideration of the promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

**ARTICLE 1  
Definitions**

**1.1 Definitions.** The following terms used in this Operating Agreement shall have the following meanings (Unless otherwise expressly provided herein):

a. "Act" shall mean the Florida Limited Liability Company Act as may be modified from time to time.

b. "Articles of Organization" shall mean the Articles of Organization of CJ, LLC as filed with the Secretary of State of the State of Florida as may be amended from time to time.

c. "Business Day" shall mean any day on which the New York Stock Exchange is open for trading.

d. "Capital Account" shall mean the Capital Contribution to the Company by a Member as adjusted pursuant to this Operating Agreement.

**EFFECTIVE DATE**  
10/14/02

e. "Capital Contribution" shall mean any contribution to the capital of the Company in cash or property by a Member made pursuant to the terms of this Operating Agreement. Any reference in this Agreement to the Capital Contribution of a Member shall include the Capital Contribution made by any predecessor holder of a Member. The Managing Members shall have the absolute discretion to accept, or decline to accept, any contributions proposed to be made to the Company in the form of property and the absolute discretion as to the manner and method to value such contribution

f. "Class A Membership Interest" shall mean the share of net profits and net losses allocable to each Class A Member. Such percentage shall be determined each Fiscal Period by dividing the Class A Member's Opening Capital Account by the aggregate of all other Opening Capital Accounts of Class A Members.

g. "Class B Membership Interest" shall mean the share of net profits (losses) with respect to the trading account assigned to the individual Class B Member.

h. "Clearing Broker" shall mean the registered broker-dealer of the employing broker-dealer, (or any successor broker-dealer chosen thereafter by the employing broker-dealer), with whom it has entered into a clearing arrangement with pursuant to which the accounts of the employing broker-dealer, are cleared and carried, or any successor clearing firm chosen by the employing broker-dealer or, if the Company itself becomes a broker-dealer, the Company's clearing firm.

i. "Clearing Broker's Month" shall mean the period of time represented by the Clearing broker's monthly statement. Such period may or may not be equal to a calendar month and may be based on trade date or settlement date.

j. "Company" shall mean CJ, LLC, and any successor entity.

k. "Distribution" shall mean all cash, securities or other property delivered to a Member by the Company.

l. "Distribution Date" shall mean any date upon which a Distribution is made to a Member.

m. "Fiscal Year" shall mean the Company's fiscal year, which shall be the calendar year.

n. "IRC" shall mean Internal Revenue code of 1986, as may be amended from time to time, or corresponding provisions of subsequent superseding federal revenue laws.

o. "Majority in Interest" shall mean those Class A Members having more than a fifty percent (50%) aggregate interest in the Company's profits and Capital Accounts.

p. "Managing Member" shall mean each person listed on Exhibit A to this Operating Agreement selected to manage the affairs of the Company pursuant to this Operating Agreement.

q. "Member" shall mean each Person who has been admitted as a Class A or Class B Member of the Company and who executes a counterpart of this Operating Agreement as a Member.

r. "Membership Interest" shall mean a Class A or Class B Member's percentage interest in the Company.

s. "Person" shall mean any individual, corporation, partnership, limited liability company, trust, estate or any other association or entity.

t. "Treasury Regulations" or "Treas. Reg." shall include proposed, temporary, and final regulations promulgated under the IRC in effect as of the date of filing the Articles of Organization and the corresponding sections of any regulations subsequently issued that amend or supersede those regulations.

u. "TMP" shall mean the individual designated a Tax Matters Partner in Section 7.9, or his successor.

## **ARTICLE 2.**

### **Formation of the Company**

### **Articles of Incorporation**

2.1 **Formation.** The Company has been organized as a limited liability company pursuant to the Act by the filing of the Articles of Organization with the Secretary of State of the State of Florida. The rights and liabilities of all Members shall be as provided under the Act, the Articles of Organization and this Operating Agreement.

2.2 **Name.** The name of the Company is CJ, LLC. The Company may also conduct its business under one or more assumed or trade names.

2.3 **Principal Place of Business.** The principal place of business of the Company with the State of Florida shall be at 4285 N.W. 66<sup>th</sup> Place, Boca Raton, Florida 33496 or such other place as the Managing Members shall designate.

2.4 **Registered Agent.** The Company's registered agent shall be Jeff A. Doria. The registered agent may be changed from time to time in accordance with the Act.

a. The name and address of the registered agent and office is:

Jeff A. Doria  
4285 N.W. 66<sup>th</sup> Place  
Boca Raton, Florida 33496

*Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.*

  
\_\_\_\_\_  
Jeff A. Doria

10-14-02  
Date

**2.5 Term.** The term of the Company shall be perpetual unless dissolved and its affairs wound up in accordance with the Act and this Operating Agreement.

**2.6 Purpose.** The business of the company shall be:

a. to invest all or a portion of its assets in one or more broker-dealers, including without limitation, the employing broker-dealer, investment advisors, investment partnerships, other investment vehicles and/or other businesses; and if deemed appropriate by the Managing Members, to operate as a broker-dealer, investment advisor or investment vehicle or any combination of the foregoing.

b. to exercise all other powers that may be legally exercised by limited companies under the Act; and

c. to engage in all activities necessary, convenient, or incident to any of the foregoing.

**2.7 Relationship With Default Rules of the Act.** If any provision of the Agreement conflicts with a default rule under the Act, the provisions of this Agreement shall control and the default rule shall be deemed modified or negated accordingly. If it is necessary to construe a default rule under the Act as modified or negated in order to effectuate any provision of this Agreement, the default rule is modified or negated accordingly.

**2.8 Powers.** The Company is authorized to do any and all acts and things necessary for the furtherance and accomplishment of its purpose including, without limitation, to:

a. acquire property from any Person and to develop, renovate, improve, lease, subdivide, sell, assign, convey or otherwise transfer title to any portion of, or interest in, the Company's property.

b. purchase, lease or otherwise acquire or obtain the use of machinery, equipment, personnel and materials that may be deemed necessary or desirable in connection with carrying on the business of the Company.

c. borrow money from banks or other lenders on such terms as the Managing Members deem appropriate, and in connection therewith encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums.

d. prepay in whole or in part, refinance, recast, increase, modify, consolidate, correlate or extend on such terms as the Managing Members may deem proper, any debts of the Company.

e. purchase liability and other insurance to protect the Company's property and business.

f. invest any Company funds temporarily in time deposits, short term government obligations, commercial paper or other similar investments.

g. execute all instruments and documents including without limitation, checks, drafts, notes and other negotiable instruments, mortgages or deeds for trust, security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's property, assignments, bills of sale, leases, partnership agreements, operating agreements of other limited liability companies and other instruments or documents necessary to the business of the Company.

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

i. enter into any and all other agreements with any other Person for any purpose, in such form as the Managing Members may approve.

j. adjust, compromise, settle or refer to litigation or arbitration any claims in favor of or against the Company or any property held or owned by the Company, and to institute, prosecute and defend any legal proceedings as the Managing Members shall deem advisable.

k. conduct its business, carry on its operation and have and exercise all of the powers granted by the Act in any state, territory district of possession of the United States, or in any foreign country which may be necessary or convenient to effect any or all of the purposes for which it is organized.

l. invest in, own and/or manage all, or any portion, of one or more securities broker-dealers, investment advisors, investment partnerships, other investment vehicles or any combination of the foregoing.

m. open, maintain, and close bank and brokerage accounts, including margin accounts with broker-dealers.

n. indemnify a Managing Member, or a former Managing Member, and in the discretion of the Managing Members, on or more Members, and make other indemnification to the fullest extent permitted by this Agreement or the Act.

o. purchase or otherwise acquire, own, hold, encumber, sell, convey and otherwise dispose of and trade in securities and other instruments, or interests therein and to exercise all voting and other rights, powers and privileges appertaining to securities acquired by the Company.

p. prepare and file an application for registration as a securities broker-dealer and/or investment advisor with the Securities and Exchange Commission, to prepare and file applications for membership in the National Association of Securities Dealers, to prepare and file state applications for broker-dealer and/or investment advisor registration and to disclose as required, personal information with respect to the Members and Managing Members in connection with such applications, and to prepare and file any other certificates, documents, instruments or surety bonds as the Managing Members may deem to be necessary or appropriate, in their sole discretion in connection with such applications for registrations and/or memberships.

q. do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

**2.9 Other Instruments.** Each Member shall execute and deliver to the Company within five (5) days after receipt of a written request therefore such other and further documents and instruments, statements of interest and holdings, designations, powers of attorney and other instruments and take such other action as the Company deems necessary to enable the Company to fulfill its responsibilities under this Agreement. If a written request to execute any document or instrument described in this Section is delivered by the Company to a Member in accordance with the notice provisions of this Agreement and such Member fails to object in writing to the document or instrument, or to return the document or instrument within twenty (20) days after the receipt of such written request, such Member shall be deemed to consent and agree to said document and the actions contemplated therein and hereby authorized any of the Managing Members to execute such document as such Member's attorney-in-fact.

**2.10 Member's Representations and Warranties.** Each Member hereby represents and warrants to the Company, the Managing Members and each other Member as follows:

a. the Member has such knowledge and experience in financial matters that he or she is capable of evaluating the relative risks and merits of an investment in the Company;

b. the Member is very knowledgeable about trading securities and, in particular, day trading, a highly speculative strategy of trading securities on an intra-day basis;



c. the Member has adequate means of providing for the Member's current financial needs and personal contingencies, such investment in the Company is made solely with discretionary assets of the Member, and he or she has no need for liquidity in the Member's investment in the Company;

d. all documents and records requested by the Member have been delivered or made available to the Member, and the Member's investment decision is based upon the Member's own investigation and analysis of the Company and the Managing Members;

e. none of the Managing Members, any other Members, or any representative or agent of the foregoing has made any representations, agreements or promises of any kind with respect to the Company, the profitability or risks involved, except as otherwise contained in this Agreement, and duly authorized and executed amendment hereto, the Subscription Agreement executed by such Member or any written documents provided by the Managing Members to such Member;

f. the Member understands that the Membership Interests have not been, and will not be, registered under the Securities Act of 1933, as amended, and may not be registered under state securities or "Blue Sky" laws in reliance upon applicable exemptions from registration;

g. the Member is acquiring his or her Membership Interest for the Member's own account for investment and not with view to the resale, distribution or fractionalization thereof;

h. no other Person has a legal or beneficial interest in the Membership Interest being acquired by such Member, and all monies and property used to acquire such Membership Interest belong exclusively to such Member;

i. the Member's authorization, execution, delivery and performance of this Agreement does not conflict with (i) any law, rule or court order applicable to that Member, or (ii) any other agreement or arrangement to which that Member is a party or by which it is bound;

j. the Member has duly executed and delivered the Subscription Agreement and Limited Power of Attorney annexed thereto, and each is legally binding and enforceable against the Member in accordance with its terms.

**2.11 Class B Member's Obligation to Secure Registration as an Equity Trader.** As a condition of becoming a Class B Member of the Company (other than as a Managing Member), each Class B Member shall secure registration as an Equity (Series 55) Trader of the employing registered broker-dealer (or any successor broker-dealer selected by the Managing Members) with the NASD and shall further secure registration as a salesman of the employing broker-dealer (or any successor broker-dealer selected by the Managing Members) within the State of Florida. To that end, each Class B represents and warrants that he or she is qualified as a General Securities (Series 7) Representative, is eligible for registration as a salesman of the employing broker-dealer (or any successor broker-dealer selected by the Managing Members) with Florida

by virtue of having, among other conditions, successfully passed the Uniform Securities Agent State Law (Series 63) Examination (or has a bona fide waiver there from), and is either qualified as all Equity (Series 55) Trader. He or she further represents and warrants that a true and complete copy of his Uniform Application for Securities Industry Registration or Transfer on Form U4 is annexed hereto, and that the answers and statements indicated thereon are true and accurate in all material respects. He or she covenants to the Company that if he or she is not yet eligible to be all Equity Trader, he or she will take all necessary steps to become so qualified within a one hundred eighty (180) day period following the signing of this document, including studying for, scheduling and passing the appropriate examinations.

**2.12 *Class B Member's Continuing Education Requirement.*** Each Class B further represents that he or she has successfully completed the closest scheduled Regulatory Element Computer Based Training of the Continuing Education Requirement, or if not yet completed or scheduled to be taken, he or she covenants to complete such requirements within the required time frame set by the NASD.

**2.13 *Reliance on Class B Member's Representations, Warranties and Covenants.*** Each Class B Member acknowledges and agrees that the foregoing representations, warranties and covenants, including without limitation, the answers and statements provided on his Form U-4 for registration with the employing broker-dealer, separately and jointly, are each material inducements to the Company to admit him or her as a Member hereof. He or she acknowledges and agrees that should he or she not become so qualified, or is otherwise unable to maintain his registration with the employing broker-dealer (or any successor broker-dealer selected by the Managing Members) as an Equity Trader for any reason, the Managing Members may immediately remove him or her as a Class B Member thereof and effect his withdrawal from the Company, provided, however, that such removal and/or withdrawal shall not relieve or otherwise negate any financial obligation he or she may have with the Company, or otherwise limit the Company's rights against the Class B Member as provided herein or in any amendment hereto.

**2.14 *Class B Member's Activities with the employing broker-dealer (or any successor broker-dealer selected by the Managing Members).*** Upon the admission of each Class B Member, subject to, among all other conditions, the funding by such Member of his Capital Account and securing his registration on behalf of the employing broker-dealer (or any successor broker-dealer selected by the Managing Members) with the NASD and the State of Florida, the Company shall make arrangements with the employing broker-dealer (or any successor broker-dealer selected by the Managing Members) to provide the Class B Member with a proprietary trading account (an "Account") of the employing broker-dealer (or any successor broker-dealer selected by the Managing Members), to be handled by the Class B Member as an Equity Trader, which Account will be funded, in whole or in part, by the Company through its membership interest in the employing broker dealer (or the successor broker-dealer selected by the Managing Members). Each Class B Member (other than the Managing Members) shall trade his or her assigned Account on behalf of the employing broker-dealer (or the successor broker-dealer selected by the Managing Members), on a proprietary basis, and shall be authorized, subject to the restrictions, risk parameters, and principles of trading established by the Managing Members and other principals of the employing broker-dealer (or the successor broker-dealer selected by the Managing Members), to effect transactions in securities traded in the Nasdaq Stock Market, listed on the New York Stock Exchange, Inc., and such other securities which the Managing Members shall approve in advance. Except as provided herein, each Class B Member shall be responsible for selecting and effecting the trades for his or her assigned Account, subject to the

restrictions, risk parameters, and principles of trading established by the employing broker-dealer (or the successor broker-dealer selected by the Managing Members), if any, and the Managing Members as outlined in the Company's "House Rules", a copy of which is annexed hereto as Exhibit "C". House Rules are subject to change, at any time, in the sole discretion of the Managing Members. Any such change in the House Rules will be posted in the Offices of the Company or otherwise communicated to the affected Class B Members by a Managing Member. If the employing broker-dealer (or the successor broker-dealer selected by the Managing Members) changes any of its restrictions, risk parameters or principles of trading, the Managing Members will, upon notification thereof, so notify each Class B Member. The employing broker-dealer (or the successor broker-dealer selected by the Managing Members) and the Managing Members each have the right to reject any selected potential trade and/or to liquidate any position already established in the Class B Member's assigned Account.

**2.15 *Advice of Counsel.*** Each Member (a) understands that this Agreement contains legally binding provisions; (b) has had the opportunity to consult with a lawyer; and (c) has either consulted a lawyer or consciously decided not to consult one.

**2.16 *Accounting.*** The Managing Members will make all decisions as to accounting matters. The Managing Members at their sole discretion shall select the Company's accountants. The books and records of the Company shall be kept in accordance with generally accepted accounting principles consistently applied. Unless a Member has challenged a particular accounting decision or has a special economic arrangement with the Company, the fees of the Company's accountants will be borne by the Class A Members of the Company, otherwise such fees will be assessed solely against the Member or Members challenging the accounting decision or those with a special economic arrangement with the Company. Notwithstanding anything to the contrary herein above, the Managing Members shall have final authority with regard to any accounting questions or decisions that may arise during the course of the business of the Company or which otherwise affect the Company.

**2.17 *Financial Reports.*** As soon as reasonably practicable after the end of each fiscal year of the Company, the Managing Members shall cause to be prepared and delivered to each Member all information with respect to the Company necessary for the Members' Federal and State income tax returns, including a Form K-1 or its equivalent and a financial report for the preceding fiscal year which shall include financial statements prepared in accordance with generally accepted accounting principles applied on a consistent basis, which shall be audited by an independent certified public accounting firm.

### **ARTICLE 3**

#### **Members**

**3.1 *Classes of Membership Interests.*** The Company is authorized and permitted to have two classes of Members; Class A and Class B. The Manager shall maintain a list of all Members, their Class of Membership Interest, the last known business, residence or mailing address and the percentage such Membership Interest represents in terms of all Capital Accounts of the Company.

**3.2 Restrictions on Member's Authority.** No member shall have the authority, on behalf of the Company;

- a. to acquire property from any Person;
- b. to borrow money for the Company from banks, other lending institutions, Members, or affiliates of the Members;
- c. to do any act which is detrimental to the best interest of the Company or which would make it impossible to carry on the ordinary business of the Company;
- d. to sell, convey, or otherwise dispose of the property of the Company or any portion thereof;
- e. to confess a judgment against the Company or submit a Company claim to arbitration; and
- f. to release, compromise, assign or transfer any claims, rights or benefits of the Company.

**3.3 Limitation of Liability.** A Member will not be personally liable for any debt, obligation or liability of the Company or of any other Member, Manager, employee or agent of the Company by reason of being a Member of the Company, except that such Member shall remain personally liable for the payment of the Member's Capital Contribution and as otherwise set forth in this Agreement and the Act.

**3.4 List of Members.** Upon written request of any Member, the Company shall provide a list showing the names, addresses, and Membership Interests of all Members.

**3.5 Company Books.** In accordance with Section 7.7 below, the Company shall maintain and preserve, during the term of the Company, and for five (5) years thereafter, all accounts, books, and other relevant Company documents. Upon reasonable request, each shall have the right, during ordinary business hours, to inspect those Company documents.

**3.6 Liability of a Member to the Company.** A Member, who rightfully receives the return in whole or in part of a Capital Contribution, is liable to the Company only to the extent now or hereafter provided by the Act. A Member who receives a distribution made by the Company, which is either in violation of this Operating Agreement, or made when the Company's liabilities exceed its assets (after giving effect to the distribution) is liable to the Company for the amount of such distribution.

**3.7 Priority and Return of Capital.** No Member shall have priority over any other member, whether for the return of a Capital Contribution or for net profits, net losses or a distribution; provided however, that this restriction shall not apply to the repayment of a loan or other indebtedness (as distinguished from a Capital Contribution) due to a Member by the Company.

**ARTICLE 4.**  
**Meetings of Members**

**4.1 *Meetings of Members.*** An annual meeting of the Members shall be held at such time as shall be determined by the Managing Members for the purpose of the transaction of any business as may come before such meetings. Special meetings of the Members for any purpose or purposes may be call by any Managing Member or by any Member or Members holding not less than twenty-five percent (25%) of all Membership interests (based upon the percentage such Membership interest represents in terms of all Capital Accounts of the Company).

**4.2 *Place of Meetings.*** Meetings of the Members may be held at any place either within or outside the State of Florida. If no designation is made in any notice of such meeting, or if a special meeting is otherwise called, the place of meeting shall be the principal executive office of the Company in the State of Florida.

**4.3 *Notice of Meetings.*** Except as provided in Section 4.4 below, written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered no fewer than five (5), nor more than thirty (30), working days before the date of the meeting, either personally, by facsimile transmission (if possible) or by mail, by or at the direction of the Members or person calling the meeting, to each Member entitled to vote at the meeting.

**4.4 *Meeting of All Members.*** If all of the Members shall meet at any time and place, either within or outside the State of Florida, and consent to the holding of a meeting at that time and place, the meeting shall be valid without call or notice, and at the meeting lawful action may be taken.

**4.5 *Record Date.*** For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment of the meeting, or Members entitled to receive payment of any distribution, or to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring the distribution is adopted, as the case may be, shall be the record date for the determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this section, the determination shall apply to any adjournment of the meeting.

---

**4.6 Quorum.** A Majority in Interest, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any meeting of Members, a majority of the Class A Membership Interests so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days without further notice, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At an 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 noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of that number of Class A Membership Interests whose absence would cause less than a quorum.

**4.7 Manner of Acting.** If a quorum is present, the affirmative vote or written consent of Members holding a majority of the Membership Interests (based upon the size of their Capital Accounts in the Company) represented at such meeting shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, by the Articles of Organization, or by this Operating Agreement. Unless otherwise expressly provided in this Operating Agreement or required under applicable law, Members who have an interest (economic or otherwise) in the outcome of any particular matter upon which the Members vote or consent, may vote or consent upon any such matter and their vote or consent, as the case may be, shall be counted in the determination of whether the requisite matter was approved by the Members.

**4.8 Proxies.** At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member, or by a duly authorized attorney-in-fact. The proxy shall be filed with the Company before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

**4.9 Action by Members Without a Meeting.** Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote, and delivered to the Company for inclusion in the minutes or for filing with the Company records. Action taken under this section is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

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

## **ARTICLE 5**

### **Management**

**5.1 *Management.*** The management of the Company shall be vested exclusively in the Managing Member or Members. Except as specifically provided in this Agreement or required by the Act, no Member who is not a Managing Member shall have any right to vote on any matter or participate in any decision with respect to any action to be taken or not to be taken by the Company or any other aspect of the operation, management, policies and activities of the Company.

**5.2 *Number and Qualifications of Managing Members.*** The Persons listed on Exhibit "A" to this Agreement shall serve as the Managing Members of the Company. A Managing Member may not be removed or replaced without cause by the Members of the Company.

**5.3 *Powers of the Managing Members.*** The Managing Members shall have the exclusive power and authority, on behalf of the Company, to: (a) manage the business activities of the Company; (b) establish additional classes of Members in accordance with this Agreement; (c) purchase, lease or otherwise acquire from, or sell, lease or otherwise dispose of any property to any Person, (d) open bank accounts and otherwise invest the funds of the Company, (e) purchase insurance on the business and assets of the Company, (f) commence lawsuits and other proceedings, (g) enter into any agreement, instrument or other writing, (h) retain accountants, attorneys or other agents, and (i) take any other lawful action that the Managing Members consider necessary, in their sole discretion, convenient or advisable in connection with any business of the Company.

**5.4 *Binding Authority.*** Unless authorized to do so by this Agreement or by the express written consent of the Managing Members, no Person, other than a Managing Member, shall have any power or authority to bind the Company. No other Member or Person shall have any power or authority to bind the Company unless such Person has been authorized by a Managing Member to act on behalf of the Company in accordance with the immediately preceding sentence.

**5.5 *Liability for Certain Acts.*** The Managing Members shall perform their duties in good faith, in a manner that they reasonably believe to be in the best interests of the Company and with such care, as an ordinarily prudent person in a similar position would use under similar circumstances.

**5.6 *No Exclusive Duty to Company.*** The Managing Members shall not be required to manage the Company as their sole and exclusive function and may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right pursuant to this Agreement to share or participate in such other business interests or activities or to the income or proceeds derived therefrom. The Managing members shall not incur any liability to the Company or any Member as a result of engaging in any other business interests or activities.

**5.7 *Indemnification.***

a. The Company shall indemnify and hold harmless the Managing Members from and against all claims and demands to the maximum extent permitted under the Act. Subject to

the limitations and conditions provided in this Section 5.7 and in the Act, each Managing Member (an "Indemnified Person") who was or is made a party or is threatened to be made a party to or is otherwise involved in, any threatened, pending or completed inquiry, investigation, examination, action, suit or proceeding, whether civil (including, without limitation, any arbitration), criminal or administrative, whether initiated by a private party, a federal or state securities regulatory authority, exchange, self regulatory organization, including, without limitation, the SEC or NASD (collectively, a "Proceeding"), or any appeal in such a Proceeding, or any matter action that could lead to such a Proceeding, by reason of the fact that he or she was or is: (a) a Managing Member; (b) the legal representative of a Managing Member or a Member (a "Legal Representative"); or (c) an officer or agent of the Company, shall be indemnified by the Company against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable costs and expenses (including, without limitation, attorneys fees) actually incurred by such indemnified Person in connection with such Proceeding if (i) such Indemnified Person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interest of the Company and (ii) the indemnified Person's conduct did not constitute gross negligence or willful or wanton misconduct. The termination of any action, Suit or 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 indemnified Person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Company;

b. With the approval of the Managing Members, and except as provided herein or the Act, the Company shall indemnify a Member of any other Class, for all expenses (including attorneys fees) actually and reasonably incurred or paid by such Member in connection with the defense or settlement of any Proceeding (but not for other losses, liabilities and damages assessed against such Member in connection therewith), and further, provided, that such claim arose in connection with the business of the Company. Notwithstanding anything to the contrary herein above, the Company's obligation to indemnify such other Member shall be required only if such Member acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Company, and no indemnification shall be made in respect of any claim issue or matter as to which such Member shall have been adjudged to be liable for gross negligence or willful or wanton misconduct in the performance of his or her duty to the Company (or the employing broker-dealer, or any successor broker-dealer chosen by the Managing Members) Unless, and only to the extent that, the court or arbitration panel in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such Member is fairly and reasonably entitled to indemnity for such expenses as the court or arbitration panel shall deem proper;

c. Indemnification Under this Section 5.7 shall continue as to a Member including a Managing Member who has ceased to serve in the capacity which initially entitled such Member to indemnity hereunder. The rights granted pursuant to this Section 5.7 shall be deemed contract rights, and no amendment, modification or repeal of this Section 5.7 shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal;

d. The right to indemnification conferred by Section 5.7(a) and (b) shall include the right to be paid or reimbursed by the Company for the reasonable expenses incurred in advance of the final disposition of the Proceeding and without any determination as to the Person's ultimate entitlement to indemnification; provided however, that the payment of such expenses incurred in advance of the final disposition of a Proceeding shall be made only upon



delivery to the Company of a written affirmation by such Person of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Section 5.7 and a written undertaking, by or on behalf of such Person, to repay all amounts so advanced if it shall ultimately be determined that such Person is not entitled to be indemnified under this Section 5.7 or otherwise;

e. The right to indemnification and the advancement and payment of expenses conferred by this Section 5.7 shall not be exclusive of any other right which a Person may have or hereafter acquire under any law (common or statutory), provision of the Articles of Organization, agreements, vote of Members or otherwise;

f. The Company may purchase and maintain insurance at its expense to protect itself and any Person who is or was serving as a Managing Member, other Member, officer, employee or agent of the Company or is or was serving as an employee, agent or similar functionary of a Managing Member against any expense, liability or loss, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under this Section 5.7. The Company may also purchase and maintain insurance to protect itself, any Managing Member and/or any other Member against any expense, liability or loss, whether or not the Company would have the power to indemnify such Person against such expenses, liability or loss under this Section 5.7. In such instance, the Managing Members shall have the right to allocate the cost of such insurance to each Member of the Company in proportion to the value of his or her Capital Account;

g. If Section 5.7(a) or (b) or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Indemnified Person as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Section 5.7 that shall not have been invalidated and to the fullest extent permitted by applicable law;

h. Notwithstanding anything to the contrary hereinabove, each Member shall indemnify, defend and hold harmless the Company, the Managing Members and all other Members from and against all Proceedings brought against the Company or its Members and to indemnify the Company from and against any liabilities, losses, damages, expenses, attorneys' fees and costs arising out of one or more of the following:

i. any failure of the Member to properly perform his regulatory duties, obligations or responsibilities with respect to the trading of his assigned Account in accordance with the employing broker-dealer's or any successor broker-dealer's Supervisory and/or Compliance Procedures;

ii. any dishonest fraudulent, criminal act or omission on the part of the Member, or any violation of federal, state or local law, rule or regulation, or the Constitution, Bylaws, rules or policies of any governmental agency, stock exchange and/or securities self-regulatory organization, including, without limitation, the NASD, having jurisdiction over the Company, the Member, the employing broker-dealer or any successor broker-dealer, committed or omitted, or purported to be committed or omitted, by such Member;

iii. any investigation or inquiry by any federal, state or local governmental agency, stock exchange or securities self-regulatory organization, including, without limitation, the SEC or the NASD, arising out of the Member's activities;

iv. the Member's failure to maintain his or her registrations with the employing broker-dealer (or any successor broker-dealer) in good standing with the NASD, stock exchange (if applicable) and/or any state regulatory authorities having jurisdiction over him or her, the employing broker-dealer, or any successor broker-dealer; and/or;

v. the breach by the Member of any of his covenants, representations or warranties made by him or her with respect to his admission and continuance as a Member of the Company or as an equity trader of the employing broker-dealer or any successor broker-dealer;

i. to the fullest extent permitted by the Act or other applicable law, no Person who shall be authorized to and shall perform or exercise any of the powers or duties set forth in Section 2.8 or otherwise with respect to the management of the Company, shall have any personal liability to the Company or any other Member for monetary damages for breach of any fiduciary or other duty owed to any person; and

j. The remedies of the Company and the Members admitted to the Company now or hereinafter are cumulative and shall not exclude any other remedies to which the Company or a Member may be lawfully entitled. The Members acknowledge that all legal remedies for any breach of this Agreement may be inadequate, and therefore they consent to any appropriate equitable remedy; provided however, that any failure of a Member to abide by the terms of this Agreement, including, without limitation, any vote or consent that should bind a Member, or any other failure to adhere to the terms of this Agreement which costs the Company legal and court (or arbitration) costs to enforce same shall render the breaching Member liable to the Company for all such fees and costs. In the event the Company is made a party to any claim, dispute or litigation or otherwise incurs any loss and expense, including reasonable attorneys' fees, as a result of or in connection with any Member's (or Member's assignee's) obligations or liabilities unrelated to the Company business, such Member (or assignee's cumulatively) shall indemnify and reimburse the Company for any losses and expenses incurred including attorneys' fees.

**5.8 Resignation.** A Managing Member may resign at any time by giving written notice to the Company. The resignation of any Managing Member shall take effect upon receipt of such notice or at any later time specified in such notice. Unless otherwise specified in such notice, the acceptance of the resignation shall not be necessary to make it effective. The resignation of a Managing Member who is also a Member shall not affect such Managing Member's rights as a Member and shall not constitute a withdrawal as a Member.

**5.9 Salaries.** A Managing Member shall not be prevented from receiving a salary or other compensation from the Company because such Managing Member is also a Member. Any such salary or other compensation shall be treated as expenses of the Company and shall not be deemed to constitute Distributions to the recipient of any profits or losses in the Company.

5.10 **Expenses.** The Managing Members shall be reimbursed for all reasonable expenses incurred in organizing and managing the Company and for any costs of the Company, which any of them shall advance. Any reimbursements shall be treated as expenses of the Company and shall not be deemed to constitute Distributions to the recipient of any profit or loss of the Company.

5.11 **Officers.**

a. The Managing Members may designate one or more individuals as officers of the Company, who shall have such titles and exercise and perform such powers and the Managing Members shall assign duties to them from time to time. The Managing Members may remove any officer at any time, with or without cause. Each officer shall hold office until his or her successor is elected and qualified. The same individual may hold any number of offices. The Managing Members shall fix the salaries and other compensation of the officers.

b. Pursuant to such authority, the Managing Members hereby appoint the individual or individuals listed on Exhibit "D" hereto as the "Managing Directors" of the Company. The Managing Director shall exercise and perform services and duties as shall be assigned to them, from time to time, by the Managing Members.

## **ARTICLE 6**

### **Classes of Membership; Capital Contributions and Capital Accounts**

6.1 **Classes of Members.**

a. The Company initially shall have two classes of Members: Class A and Class B.

b. The Class A Members of the Company shall be those individuals identified on Exhibit B. All net profits and net losses of the Company not otherwise allocable to other Members of the Company shall be allocated to Class A Members based upon the Class A Percentage held by such Class A Member.

c. Class B Members shall receive a special allocation in an amount based upon a percentage (as agreed in a separate writing between the Managing Members and the Class B Member) of the net profit or the net loss attributed to the trading results of the Class B Member's assigned Account. Such allocation will be calculated as of the last day of the Clearing Broker's Month and shall be based upon the profit or loss reflected in the Class B Member's assigned Account as of such date, less the monthly expenses applicable to such Class B Member, as determined by the Managing Members (if such expenses are not already included in the profit or loss in the Account), provided, however, that losses in excess of the total Capital Contributions made by the Class B Member will be allocated to such Class B Member only to the extent that there are cumulative profits in such Class B Member's Capital Account. Losses in excess of such amount will be allocated to the Class A Members. In addition, there will be no special allocation of profits to such Class B Member until or unless there are profits generated by such Class B Member which exceed any previous loss which has not been allocated to such Class B Member. Notwithstanding anything to the contrary herein, no Member of the Company (as opposed to the

Company) has a right to the profits or losses of his or her assigned Account or to the capital of the Company, if any, deposited therein. The allocations provided herein are simply based on a formula using the trading results obtained in such assigned Accounts.

d. The Managing Members may create, from time to time, one or more additional classes of Membership Interests in the Company. Such additional classes of Membership Interests shall have such rights and obligations as shall be determined by the Managing Members, in their sole discretion, and as shall be detailed in an amendment to this Operating Agreement, provided, however, that no new Class of Membership Interests shall be given rights which adversely affect an existing Member's Voting rights or such Member's Membership Interest in the net profits (losses) attributable to the trading account that he or she is then responsible for trading (except as otherwise affected by the overall net profits and losses of the Company and, in particular, losses which may arise in one or more other Accounts which impact the capital of the Company).

e. Unless otherwise provided in the instrument establishing each additional class of Members (and then only with respect to such additional class of Members), all general administrative and overhead expenses incurred by the Company in connection with the management of the Company shall be borne the Managing Members in proportion to their respective Class A Membership Interests.

f. Notwithstanding the foregoing, however, it is understood and agreed by all existing and future Members that those expenses arising from a Class B Member's actual handling of securities trading activities of all or a portion of the Company's capital, whether directly or indirectly through the Company's position as a member of the employing broker-dealer (or its ownership, management or handling of one or more Accounts with any other broker-dealer selected by the Managing Members), shall be allocated to the Class B Member who has actually incurred such expenses in connection with the Account assigned to such Class B Member. Such expenses may include, without limitation, ticket charges, commissions, SEC fees, stock exchange fees, Nasdaq fees, ECN fees, margin to carry long positions, and subscription fees for research services selected by such Class B Member ("Trading Expenses"). If within the reasonable control of the Managing Members, such Trading Expenses will be allocated to the subject Class B Member as soon as practical after the conclusion of each month of trading the assigned Account.

g. If the Managing Members are unable, for any reason, to calculate the exact amount of any Trading Expense incurred by the Company, the Managing Members shall make a good faith estimate of such expense(s) charge(s) or fee(s) and assign a pro rata share thereof to the monthly charges otherwise attributable to those Class B Members of the Company who, the Managing Members believe may have incurred or otherwise benefited from such expense(s), charge(s) or fee(s). Such good faith calculation by the Managing Members shall be conclusive and not subject to challenge.

**6.2 Capital Contributions.** Each Member shall contribute the amount of cash or other property set forth on Exhibit B to this Agreement as the Capital Contribution to be made by him or her.

#### **6.4 *Capital Accounts.***

a. There shall be established for each Member an "Opening Capital Account" the books of the Company as of:

- i. the date the Company was organized;
- ii. the first day of each Fiscal Year;
- iii. each day on which a Person is admitted as a Member of the Company;
- iv. each day on which a Capital Contribution is made by a member to the Company;
- v. each day on which a Member makes an additional Capital Contribution to the Company pursuant to Section 6.3 hereof;
- vi. each other day next succeeding a day as of which a Member shall have withdrawn any amount from his or her Capital Account pursuant to Section 6.8 hereof; and
- vii. the first business day following the conclusion of a Clearing Broker's Month.

b. Each of the dates referred to Section 6.4(a) above shall hereinafter be called a "Fiscal Date" A "Fiscal Period" shall be the period Commencing on a Fiscal Date and ending on the first to occur of the day immediately preceding the next succeeding Fiscal Date or the date the Company shall be terminated. The Opening Capital Account of each Member for the Fiscal Period during which such Member was admitted to the Company shall be an amount equal to such Member's Capital Contribution to the Company pursuant to Section 6.2 hereof. The Opening Capital Account of each Member for each other Fiscal Period shall be an amount equal to the Closing Capital Account of such Member (determined as provided in Section 6.4(c)) for the preceding Fiscal Period, plus the amount of any additional Capital Contribution made by such Member to the Company as of the beginning of such Fiscal Period pursuant to Section 6.2 hereof.

c. Each Member's Capital Account shall be increased by the value of each Capital Contribution made by the Member during the Fiscal Period and allocations to such Member of the net profits for the Fiscal Period. Each Member's Capital Account will be decreased by the value of each Distribution made to the Member by the Company during the Fiscal Period and his or her share of the net losses allocable to him or her hereunder for the Fiscal Period. Each Member's Capital Account as so increased and/or decreased in respect of a Fiscal Period, less any withdrawals permitted to be made by each Member from his or her respective Capital Account, shall constitute his or her Closing Capital Account for such Fiscal Period.

---

**6.5 Transfers.** Upon a permitted sale or other transfer of a Membership Interest in the Company, the Capital Account of the Member transferring his or her Membership Interest shall become the Capital Account of the Person to which or whom such Membership Interest is sold or transferred in accordance with Section 1.704-1 (b)(2)(iv) of the Treasury Regulations.

**6.6 Modifications.** The manner in which Capital Accounts are to be maintained pursuant to this Section is intended to comply with the requirements of Section 704(b) of the Code. If in the opinion of the Managing Members the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified to comply with Section 704(b) of the Code, then the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

**6.7 Deficit Capital Account.** Except as otherwise required under the Code, the Florida Act or this Agreement or any amendment thereto, no Member shall have any liability to restore all or any portion of a deficit balance in his or her Capital Account.

**6.8 Withdrawal or Reduction of Capital Contributions.** A Member shall not receive from the Company any portion of a Capital Contribution until all indebtedness, liabilities and obligations of the Company, except any indebtedness, liabilities and obligations to Members on account of their Capital Contributions, have been paid or there remains property of the Company, in the sole discretion of the Managing Member, sufficient to pay them. A Member, irrespective of the nature of the Capital Contribution of such Member, has only the right to request and receive cash in return for such Capital Contribution. However, the Managing Members shall have the right, upon the effective withdrawal of a Member, to return his or her Capital Account in the form of cash, securities or any combination of the foregoing.

**6.9 Voluntary Withdrawal of a Class B Member.** Unless otherwise agreed to in Writing by the Managing Members, no Class B Member shall be permitted to withdraw from the Company or otherwise withdraw any of the capital contributed by such Class B Member to the Company without the prior consent of the Managing Members. The Managing Members may require, as a condition of such Withdrawal, at least thirty (30) days' prior written notice. Upon receipt of such written notice, the Managing Members will assume control of the Account assigned to such Class B Member and, will, in their sole discretion, liquidate any open positions. As soon as practical thereafter, the Managing Member's will perform, or cause to be performed, an accounting of the results of the Account managed by the withdrawing Class B Member and subtract or add the result thereof, as the case may be, to the then Capital Account of such Class B Member. The withdrawal of a Class B Member's Capital Account is also subject to a reserve as provided in Section 12.4.

**ARTICLE 7**  
**Allocations, Income Tax, Distributions, Elections and Reports**

**7.1 *Allocations of Profits and Losses.*** At the end of each Fiscal Period, the net profits and net losses for such Fiscal Period shall be allocated to the Capital Account of each Member in accordance with his or her Membership Interest (based upon such Member's percentage of net profits (losses) or, in the case of the Class A Members, the Class A Percentage attributable to such Class A Member, as of the beginning of each such Fiscal Period.

**7.2 *Distributions.*** The Managing Members may make Distributions from time to time in their sole discretion to all or any of the Members or Class of Members, including themselves, and; need not be made proportionately. Distributions shall be applied against such affected Member's Capital Account. Distributions will generally be made in cash, but may be made in securities or any combination of the two, in the sole discretion of the Managing Members. All Distributions are subject to the Company's ability to receive distributions or withdrawals of its capital from the employing broker-dealer or any successor broker-dealer in which the Company holds an interest. The Company's rights are, in turn, subject to the operative agreements between the Company and the employing broker-dealer (or any successor broker-dealer) as well as the employing broker-dealer (or any successor broker-dealer's) ability to make such distributions or permitted withdrawals under applicable law, rules and regulations, including, without limitation, Rules 15c3-1 and 17a-11 under the Securities Exchange Act of 1934, as amended.

**7.3 *Offset.*** The Company may offset all amount owing to the Company by a Member against any Distribution to be made to such Member.

**7.4 *Limitation Upon Distributions.*** No distribution shall be declared and paid unless, after distribution is made, the assets of the Company are in excess of all liabilities of the Company.

**7.5 *Accounting Principles.*** The profits and losses of the Company shall be determined in accordance with generally accepted principles applied on a consistent basis using the cash method of accounting.

**7.6 *Accounting Period.*** The Company's accounting period shall be the calendar year.

**7.7 *Records, Audits, and Reports.*** Proper and complete records and books of account shall be kept or shall be caused to be kept by the Managing Members in which shall be entered fully and accurately all transactions and other matters relating to the company's business in the detail and completeness customary and usual for business of the type engaged in by the Company. The books and records shall at all times be maintained at the principal executive office of the Company and shall be open to the reasonable inspection and examination of the Members or their duly authorized representatives during reasonable business hours. At a minimum, the Company shall keep at its principal place of business the following records:

- a. true and full information regarding the status and financial condition of the Company;
- b. a current list of the full name and last known business, residence, or mailing address of each Member and Managing Member, both past and present;
- c. a copy of the Articles of Organization of the Company and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;
- d. copies of the Company's federal, state, and local income tax returns and reports, if any, for the four most recent years;
- e. copies of the Company's currently effective written Operating Agreement, copies of any writings permitted or required with respect to a Member's obligation to contribute cash, property, or services, and copies of any financial statements of the Company for the three most recent years;
- f. minutes of every annual meeting, special meeting, and court-ordered meeting;
- g. any written consents obtained from Members for actions taken by Members without a meeting.

**7.8 Returns and Other Elections.** The Managing Members shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the IRC and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. All elections permitted to be made by the Company under federal and state laws shall be made by the TMP, in the TMP's discretion. Notwithstanding the foregoing, no election shall be made by the Company to be excluded from the application of any provision of Subchapter K, Chapter 1 of Subtitle A of the IRC, or from any similar provisions of any state tax laws.

**7.9 Tax Matters Partner.** The Members hereby appoint the Managing Members as the "TMP" as defined in Section 6231 (a)(7) of the IRC. The TMP is authorized to take such actions and to execute all statements and forms on behalf of the Company which may be permitted or required by the applicable provision of the IRC or of the Treasury Regulations promulgated there under, and the Members shall take any other action as may be necessary to effect the designation of the Managing Members as the TMP. In the event of an audit of the company's income tax returns by the Internal Revenue Service, the TMP may, at the expense of the Company, retain accountants and other professionals to participate or assist in the audit process. All expenses incurred by the TMP in such person's capacity as TMP shall be expenses of the Company and paid from Company funds.



## **ARTICLE 8**

### **Transferability**

8.1 **General.** No Member may gift, sell, assign, pledge, hypothecate, exchange or otherwise transfer any portion of its Membership interest (whether based upon the capital account percentage of such Member or the percentage of net profits (losses) attributable to such Membership Interest) without the prior approval of the Managing Members which consent may be given or withheld in the sole and absolute discretion of the Managing Members.

8.2 **Transferee Not Member.** No Person acquiring a Membership Interest pursuant to this Section, other than a Member, shall become a Member unless such person is approved in writing by the Managing Members. If no such approval is obtained, such Person's Membership Interest shall only entitle such Person to receive the allocations and Distributions of profits and losses to which the Member from whom such Person received such Membership interest would be entitled. Any such approval may be subject to any terms and conditions imposed by the Managing Members. In the event of an attempted transfer of any Membership Interest or any economic benefit therein, that has not received the approval required by this Article 8, the parties engaging or attempting to engage in such transfer shall indemnify and hold harmless the Company and the other Members from all cost, liability and damage that any of such indemnified persons may incur (including without limitation, incremental tax liability and attorney fees and expenses) as a result of such transfer or attempted transfer and the enforcement of this indemnity.

## **ARTICLE 9**

### **Additional Members**

9.1 **Admission to Membership.** From the date of the formation of the Company, any Person acceptable to the Managing Members may become a Member in the Company either by the issuance by the Company of Membership interests for such consideration as the Managing Members shall determine, or as transferee of a Member's Membership Interest or any portion thereof, subject to the terms and conditions of this Operating Agreement.

9.2 **Financial Adjustments.** No new Members shall be entitled to any retroactive allocation of losses, income, or expenses deductions incurred by the Company. The Managing Members may, at the Managing Members' option, at any time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, income, and expenses deductions to a new Member for that Portion of the Company's tax year in which a Member was admitted in accordance with the provisions of IRC § 706(d) and the Treasury Regulations promulgated thereunder.

**ARTICLE 10**  
**Disassociation of a Member**

**10.1 *Disassociation.*** A Member (other than a Managing Member) shall cease to be a Member upon the happening of any of the following events:

- a. the voluntary withdrawal of a Member;
- b. the decision of the Managing Members to remove or terminate a Member;
- c. the bankruptcy of a Member;
- d. the Member's assignment to creditors;
- e. the death of a Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's estate;
- f. where a Member who is acting as a Member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);
- g. where a Member that is a separate entity other than a corporation, the dissolution and commencement of winding up of the separate entity;
- h. where a Member that is a corporation, the filing of a certificate of dissolution or its equivalent, or the revocation of its charter; or
- i. where the Member is an estate, the distribution by the fiduciary of the estate's entire interest in the Company.

**10.2 *Rights upon Disassociation.*** Upon the occurrence of any of the events specified in Section 10.1, the Company shall distribute to such Member, or such other person as required by law, the amount of the Capital Account allocable to such former Member as determined by the Managing Member's as of the date of such event, in accordance with generally accepted accounting principles. The Managing Members may require, if there exists a liability or contingent liability pertaining to that Member, a reserve to satisfy that liability or contingent liability. The reserve will be released upon the resolution of the liability or contingent liability or after a reasonable time during which the contingent liability does not occur.

**10.3 *Power of Attorney.*** Each Disassociating Member hereby appoints each Managing Member as his or her attorney-in-fact, which shall be deemed to be a power coupled with an interest, in recognition of the reliance of such Members on the authority of the Managing Members to implement the terms of this Agreement, including the express authority in the Managing Member's sole discretion to terminate Member's Interest, and to conform all of the Company's records to indicate that such Person is no longer a Member of the Company.

**ARTICLE 11**  
**Dissolution and Termination**

11.1 ***Dissolution.*** The Company shall be dissolved upon the consent of at least two-thirds in interest of all Members as reflected by their Membership Interests; or upon the death, retirement, resignation, expulsion, bankruptcy, or dissolution of all the Managing Members or the death, retirement, resignation, expulsion, bankruptcy, or dissolution of the remaining Managing Members unless the business of the company is continued by the consent of a Majority in Interest of each Class of the remaining Members within 180 days after the triggering event.

11.2 ***No dissolution upon the Death, Resignation, Withdrawal, etc. of a Non-Managing Member.*** The Company shall not be dissolved upon the death, resignation, withdrawal, insanity, expulsion, bankruptcy or dissolution of any Member.

11.3 ***Purchase of Membership Interest Upon Death of a Managing Member.*** In the event of the death of a Managing Member, his Class A Membership Interest shall be transferred and assigned to the estate and/or personal representative of such deceased Managing Member. Such estate and/or personal representative shall be entitled to receive, for a period of thirty-six (36) months from the date of the Managing Member's death, the allocations and Distributions of profits and losses which the deceased Managing Member would have been entitled to, provided however, that such estate and/or personal representative shall not otherwise possess the rights and powers of a Managing Member of the Company. At the expiration of the aforesaid thirty-six (36) month period, the Company shall have a thirty (30) day option to purchase the Membership Interest from the estate or personal representative of the deceased Managing Member at the net book value as of the end of such thirty six (36) month period. If the Company does not purchase such Membership Interest, the remaining Managing Members shall have an option, for an additional thirty (30) days, to purchase such Membership Interest on the same terms and conditions as that afforded to the Company. If more than one Member desires to purchase such Membership Interest, such interested Members shall be entitled to acquire such Membership interest in the same proportion as each such Member's Membership Interest bears to each of the other interested Member's Membership Interest in the Company (as of the end of the aforesaid thirty six (36) month period).

11.4 ***Winding Up.*** Upon dissolution of the Company an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities, operations, from the date of the last previous accounting until the date of dissolution. The Managing Members shall immediately proceed to wind up the affairs of the Company. If the Company is dissolved and its affairs are to be wound up, the Managing Members shall:

a. sell or otherwise liquidate all of the Company's assets as promptly as practicable;

b. discharge all liabilities of the Company, including liabilities to Members who are creditors, to the extent otherwise permitted by law, other than liabilities to Members for distributions, and establish such reserves as may be reasonably necessary to provide for contingencies or liabilities of the Company (for purposes of determining the Capital Accounts of the Members, the amount of such reserves shall be deemed to be an expense of the Company);

c. distribute the remaining assets to each Member first for the return of their Capital Contributions, to the extent not previously returned, and second, in accordance with their positive Capital Account balance.

d. notwithstanding anything to the contrary in this Operating Agreement, upon a liquidation within the meaning of Treas. Reg § 1.704-1 (b)(2)(ii)(g), if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations, and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), the Member shall have no obligation to make any Capital Contribution, and the negative balance of the Member's Capital Account shall not be considered a debt owed by the Member to the Company or to any other Person for any purpose whatsoever;

e. upon completion of the winding up, liquidation, and distribution of the assets, the Company shall be deemed terminated; and

f. the Managing Members shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

**11.5 Articles of Dissolution.** When all debts, liabilities, and obligations have been paid and discharged or adequate provisions have been made therefore and all of the remaining property and assets have been distributed to the Members, articles of dissolution shall be executed in duplicate and verified by the person signing the articles, which articles shall set forth the information required by the Act. Duplicate originals of the articles of dissolution shall be delivered to the Florida Department of State.

**11.6 Return of Contribution Nonrecourse to Other Members.** Except as provided by law or as expressly provided in this Operating Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members, the Members shall have no recourse against any other Member.

**11.7 Termination.** Upon completion of the dissolution, winding up, liquidation, and distribution of the assets of the Company, the Company shall be deemed terminated.

## **ARTICLE 12**

### **Miscellaneous Provisions**

**12.1 *Return of Documents.*** Upon the effective date of a Member's withdrawal or removal from the Company, such Member shall return to the Company all records, correspondence, forms, contracts or written information which pertained to or were used in the Company's business including, but not limited to, any and all names, addresses or other information concerning the Company's Members, potential Members, employees, applicants for employment, prospects for possible solicitation as Members of the Company or traders for the employing broker-dealer or any other broker-dealer in which the Company has an economic interest in, and any copies of the foregoing.

**12.2 *Attorneys Fees.*** In the event that a Member breaches the terms hereof or in any amendment hereto, or any of the obligations or undertakings which form a part of it, he or she shall be obligated to reimburse the Company for its reasonable attorney's fees and expenses, at all levels of investigation and proceedings, incurred as a result of such breach.

**12.3 *Member's Responsibility for Income Taxes and FICA.*** For purposes of federal, state and local income taxes, each Member shall be responsible for timely filing all federal, state and local income tax returns and reports and making timely and complete payment of all federal, state and local income taxes, as well as the total of all FICA payments, if any, pertaining to his or her portion of the net profits allocated and/or distributed to him or her. In furtherance thereof each Member shall indemnify and hold harmless the Company, its Managing Members and all other Members from and against any past, present or future liability arising from or related to such Member's financial interest in the Company, the Account he or she, is, or was handling or his association with the employing broker-dealer or any other broker-dealer, investment adviser or other company. Notwithstanding anything to the contrary hereinabove, if the Company believes that a Member has not made such payment, or it believes that it may be subject to making such payments on behalf of a Member, it shall have the right to make such payments to such tax authorities, and deduct the same from the appropriate Member's Capital Account or the reserve described in Section 12.4 hereof.

**12.4 *Reserve.*** Notwithstanding anything to the contrary hereinabove, upon the effective withdrawal or removal of a Class B Member, the Managing Members may withhold ten percent (10%) percent of the Capital Account to be returned to such Member as a reserve against any contingent or potential liabilities or adjustments. This reserve may be used by the Company to satisfy the Class B Member's obligations hereunder. If no claim is assessed within six (6) months after such Class B Member's effective date of withdrawal or removal from the Company, or if all such known claims have been resolved by then, the Company shall return the balance of the reserve to the Class B Member, provided, however, that the Company shall have the right to wait until thirty, (30) days after the Company's independent accountants have delivered to the Managing Members their completed audit of the Company's books and records.

**12.5 Disclaimer of Liability and Warranties.** The Company assumes no responsibility for any Member's use of the DOT System, Nasdaq Terminal, computers, ECN systems and all other machinery, equipment, hardware and software provided by the Company to the Member in connection with his trading activity with the employing broker-dealer or any successor broker-dealer (collectively referred to herein as the "Systems"). Each Member assumes all liabilities and risks associated with the use of the Systems. All Systems services, including all associated software, documentation, and equipment are provided "as is". The Company makes no representations of any kind, express or implied, with respect to the Systems, and the Company disclaims any implied warranty or merchantability, and fitness for a particular purpose. There is no assurance that the Systems will meet the Member's requirements, be error-free, or operate without interruption. In particular, the Company makes no warranty that orders processed through the Systems will be properly executed. Each Member agrees that the Company shall not be liable for any loss, damage, cost or expense whatsoever, which may arise out of or be in any way related to the use of the Systems.

**12.6 No Promises, Representations or Guarantees Have Been Made.** By becoming a Member, such Member represents and warrants that no express or implied, written or oral, direct or indirect representations, warranties, or promises have been made by the Company, any of the Managing Members, other Members of the Company, the employing broker-dealer or any third party, which are not expressly set forth herein, the Subscription Agreement provided to such Member or in any other written document prepared and delivered by the Managing Members to such Member, or to the effect that the Member will earn, or is guaranteed to earn a profit from investing in the Company or trading his assigned account. To the contrary, each Member acknowledges and agrees that the Company has informed him or her of the attendant risks to day trading, including the possibility that he or she may lose his or her entire Capital Contributions to the Company, including any appreciation thereafter, and potentially more should he or she violate the terms of this Agreement. Furthermore, a Member's right to its Capital Account, ability to withdraw from the Company and entitlement to his or her portion of his or her allocable net profit are each expressly subject to the obligations of the Company to all third parties, including, without limitation, the employing broker-dealer, or any successor broker-dealer. That is, each Member's Capital Account is subject to all of the claims, liabilities and obligations of the Company, including those due its creditors, and its obligations to the employing broker-dealer or any successor broker-dealer.

**12.7 Exhibits.** All Exhibits referred to herein or attached hereto, including, without limitation, such Member's Form U-4, are specifically incorporated herein by reference and form and integral part hereof.

**12.8 Notices.** Any notice, demand or other communication required or permitted to be given pursuant to this Agreement shall have been sufficiently given for all purposes if: (a) delivered personally to the party or to an executive officer, general partner or Managing Member of the party to whom such notice, demand or other communication is directed on the date of such personal delivery; (b) sent by registered or certified mail, postage prepaid, addressed to the Member or the Company at his or her address set forth in this Agreement on the fifth Business Day after the date on which it was deposited in a regularly maintained receptacle for the deposit of United States mail; (c) sent by facsimile transmission, on the date of such transmission, if confirmed as received that day by the receiving party, and the original notice is sent that day by, first class mail, postage prepaid; or (d) sent by overnight delivery service (e.g., Federal Express, UPS Overnight Mail, Express Mail, etc.) at his or her address set forth in this Agreement on the second Business Day after the date on which it was delivered to such overnight delivery service.

**12.9 Amendments.** This Agreement contains the entire agreement among the Members with respect to the subject matter of this Agreement, and supersedes each course of conduct previously pursued or acquiesced in, and each oral agreement and representation previously made, by the Members with respect thereto, whether or not relied or acted upon. No course of performance or other conduct subsequently pursued or acquiesced in, and no oral agreement or representation subsequently made, by the Members, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall amend this Agreement or impair or otherwise affect any Member's obligations pursuant to this Agreement or any rights and remedies of a Member pursuant to this Agreement. Except as expressly provided herein, no amendment to this Agreement shall be effective unless made in a writing duly executed by the Managing Members and a Majority in interest of all Members in terms of all Capital Accounts of the Company; provided, however, that no such amendment shall increase the liabilities, obligations or responsibilities, or reduce the rights or remedies, of the Members without the consent of the Members so affected; and provided, further, that the Managing Members may amend this Agreement without the consent of the other Members to reflect the valid admission of new Members or to reflect changes made in the Membership Interests held by any of the Members in accordance with this Agreement. Anything in the foregoing provisions of this Section 12.9 to the contrary notwithstanding, this Agreement shall be amended from time to time in each and every manner necessary to comply with the then existing requirements of the Code, the Treasury Regulations and the rulings of the Internal Revenue Service affecting the status of the Company as a partnership for federal income tax purposes.

**12.10 Construction.** Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

**12.11 Headings.** The headings in this Agreement are for convenience only and shall not be used to interpret or construe any provision of this Agreement.

**12.12 Waiver.** No failure of a Member to exercise, and no delay by a Member in exercising, any right or remedy under this Agreement shall constitute a waiver of such right or remedy. No waiver by a Member of any such right or remedy under this Agreement shall be effective unless made in a writing duly executed by all Members and specifically referring to each such right or remedy being waived.

**12.13 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Agreement shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law or if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.

**12.14 Binding.** This Agreement shall be binding upon and inure to the benefit of all Members, and each of the successors and assignees of the Members.

**12.15 Governing Law.** This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of Florida, without regard to principles of conflict of laws thereunder.

### **CERTIFICATION**


The undersigned hereby agree, acknowledge, and certify that the foregoing Operating Agreement, consisting of 30 pages, excluding the attached Exhibits, constitutes the Operating Agreement of CJ, LLC, adopted by the Members of the Company as of October 14, 2002.

#### **CLASS A MEMBERS**



---

Jeff A. Doria  
14-64-1443



---

Christopher Muro  
096-70-5943



**EXHIBIT A**  
**Listed in Section 1.1(k)**

**Managing Members**

1.     Name:           Jeff A. Doria  
  
       Address:       4285 N.W. 66<sup>th</sup> Terrace  
                      Boca Raton, Florida 33496  
  
       Phone Number: (561) 241-9036  
  
       Social Security#: 114-64-1443
  
2.     Name:           Christopher Muro  
  
       Address:       6631 NW 43<sup>rd</sup> Terrace  
                      Boca Raton, Florida 33496  
  
       Phone Number: (954) 994-6444  
  
       Social Security#: 096-70-5943

**EXHIBIT B**  
**Listed in Section 1.1(m)**

**Initial Class A Members**

<b><u>Name</u></b>	<b><u>Address</u></b>	<b><u>Capital Contribution</u></b>	<b><u>Class A Membership Interest Percentage</u></b>
Jeff A. Doria	4285 N.W. 66 <sup>th</sup> Terrace Boca Raton, Florida 33496	\$1.00	50%
Christopher Muro	6631 NW 43 <sup>rd</sup> Terrace Boca Raton, Florida 33496	\$1.00	50%

**EXHIBIT C**  
**Listed in Section 2.14**  
**Company's "House Rules"**

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
02 OCT 15 AM 9:13