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ABC SERVICES, L.L.C.

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FOURTH AMENDED AND RESTATED  
OPERATING AGREEMENT

Dated as of \_\_\_\_\_, 20\_\_

THE MEMBERSHIP INTERESTS REPRESENTED BY THIS FOURTH AMENDED AND RESTATED OPERATING AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE FEDERAL OR STATE SECURITIES LAWS. SUCH INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER RESTRICTIONS ON TRANSFER SET FORTH HEREIN.

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FOURTH AMENDED AND RESTATED  
OPERATING AGREEMENT  
OF  
ABC SERVICES, L.L.C.  
a Delaware Limited Liability Company

This FOURTH AMENDED AND RESTATED OPERATING AGREEMENT is entered into this date, \_\_\_\_\_, 20\_\_, by those persons who execute this Agreement on the date hereof and from time to time thereafter. This Agreement amends and restates in its entirety that certain Operating Agreement of the Company dated as of \_\_\_\_\_, as amended by that certain Amended and Restated Operating Agreement of the Company dated as of \_\_\_\_\_, as further amended by that certain Second Amended and Restated Operating Agreement of the Company dated as of \_\_\_\_\_, and as further amended by that certain Third Amended and Restated Operating Agreement of the Company dated as of \_\_\_\_\_.

ARTICLE I

DEFINITIONS

“Act” means the Delaware Limited Liability Company Act, as amended from time to time.

“Additional Interests” means (i) any Interests in the Company, whether now authorized or not, (ii) any rights, options or warrants to purchase any such Interests, or to purchase securities that may become convertible into, exercisable for or exchangeable for such Interests, (iii) any securities convertible into, exercisable for or exchangeable for Interests, and (iv) notes or debt securities containing equity or profit participation features; provided, however, Additional Interests shall not include (a) securities offered by the Company pursuant to a Public Offering, (b) securities issued as a dividend on, subdivision of or other distribution in respect of all Interests, (c) securities issued upon conversion, exercise or exchange of any previously issued Additional Interests so long as such securities are issued pursuant to the terms of such previously issued Additional Interests as in effect at the time of such prior issuance in accordance with Section 3.6, (d) securities issued pursuant to the acquisition of another Person by the Company by merger, purchase of substantially all of the assets of such other entity, or by other transaction or reorganization whereby the Company ends up owning, directly or indirectly, greater than 50% of the equity and voting power of such entity or otherwise controls such entity, (e) Interests issued to employees, officers or members of the Operating Board of the Company pursuant to a compensation-related plan of the Company approved by the Operating Board, (f) Interests issued in conjunction with non-capital raising transactions, such as to vendors, (g) Interests issued in an amount less than \$500,000 in any single transaction where the purchase price per Interest is not less than the Class A Purchase Price, provided that the aggregate amount of all such transactions shall not exceed \$1,500,000, or (h) rights, options or warrants (A) to purchase 9,286 Class B Interests at \$26.92 per Interest to be issued to certain holders of Class B or Class C Interests on or after the Effective Date, (B) to purchase 100,000 Class A Interests at \$.01 per Interest issued to certain holders (or Affiliates of certain holders) of Class A Interests (subject to the options of certain holders of Class B and Class C Interests to purchase such options) on the Effective Date, (C) to purchase 84,113 Class A Interests at \$26.92 per Interest issued to the Agents, and (D) to purchase Class B Interests constituting, in the aggregate, not more than 5% of the total outstanding Interests, on a fully diluted basis, to be granted to executive officers at a price of \$33.65 per Interest; and (i) Interests issued upon exercise of any of the rights, options, or warrants described in (h) above.

“Adjusted Capital Account Balance” shall mean, with respect to any Member, the balance in such Member’s Capital Account, increased by the sum of (i) such Member’s share of partnership minimum

gain (determined pursuant to Treas. Reg. 1.704-2(d)), and (ii) such Member's share of partner nonrecourse debt minimum gain (determined pursuant to Treas. Reg. 1.704-2(i)(3)). In the event that a Member holds Interests of more than one class, a separate Adjusted Capital Account Balance shall be computed with respect to each such class of Interest.

“Affiliate” with respect to any Member shall mean: (i) any Person controlling, controlled by or under common control with said Member (including any partnership in which such Member serves as a general partner or any entity in which such Member owns greater than 50% of the issued and outstanding voting equity); and (ii) any officer, director, trustee or general partner of any Person so controlling, controlled by or under common control with said Member.

“Adjusted Unrecovered Capital” means, with respect to Mozart Capital Partners II Limited Partnership (or its successors or assigns permitted under this Agreement), an aggregate amount equal to \$6,000,000. The Adjusted Unrecovered Capital shall be reduced by the cumulative amount distributed to such Member pursuant to Section 4.2.

“Agents” means, collectively, The XYZ Group LLC ("XYZ") and Value Investing Partners, Inc. ("VIP").

“Agreement” means this Agreement, as amended, modified or supplemented from time to time.

“Book Value” means, with respect to Company property, the Company's adjusted basis for federal income tax purposes, adjusted from time to time to reflect the adjustments required or permitted by Treasury Regulation 1.704-1(b)(2)(iv)(d)-(g).

“Business Day” means any day on which business is ordinarily conducted in the State of Illinois, which excludes all United States national, Illinois and bank holidays. If any notice or other communication is required to be delivered, pursuant to the terms of this Agreement, on a day which is not a Business Day, such notice shall not be required to be delivered until the next Business Day after the original required delivery date.

“Capital Account” means, with respect to each Interest Holder, the account on the books of the Company which will initially equal the cash or property contributed by such Interest Holder to the Company, and throughout the term of the Company will be (i) increased by the (A) Net Profits allocated to such Interest Holder pursuant to Article V, and (B) cash and the fair market value of property (as determined by the Operating Board) subsequently contributed by such Interest Holder to the Company (net of liabilities secured by the property that the Company is considered to assume or take subject to), and (ii) decreased by the amount of (A) Net Losses allocated to such Interest Holder pursuant to Article V, and (B) the amount of distributions in cash and the fair market value of distributions of property (net of liabilities secured by the property that the Interest Holder is considered to assume or take subject to) distributed to such Interest Holder, and (iii) further adjusted according to the terms of this Agreement or as otherwise deemed appropriate by the Operating Board to comply with the tax laws.

The Operating Board shall revalue the Members' Capital Accounts as required by Section 5.4, and may revalue the Members' Capital Accounts upon the happening of an event described in, and in the manner required by, Treas. Reg. § 1.704-1(b)(2)(iv)(f).

“Class A Interest” means an Interest in the Company designated as Class A Interest and having such rights, preferences and obligations of Class A Interests as specified in this Agreement. Class A Interests are owned by Interest Holders as set forth on Schedule A hereto, as amended from time to time.

“Class A Purchase Price” means \$25.00 per Class A Interest.

“Class B Interest” means an Interest in the Company designated as Class B Interest and having such rights, preferences and obligations of Class B Interest as specified in this Agreement. Class B Interests are owned by Interest Holders as set forth on Schedule A hereto, as amended from time to time.

“Class C Interest” means an Interest in the Company designated as Class C Interest and having such rights, preferences and obligations of Class C Interests as specified in this Agreement. Class C Interests are owned by Interest Holders as set forth on Schedule A hereto, as amended from time to time.

“Class C Profits Amount” means, on any determination date and with respect to each Class C Interest Holder, an account maintained on the books and records of the Company that reflects the cumulative amount of Net Profits (less Net Losses) allocated to such Class C Interest Holder from and after his or her admission to the Company, reduced by all distributions made to such Class C Interest Holder, and increased by any capital contributions made by such Class C Interest Holder.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commission” means the Securities and Exchange Commission.

“Company” means the limited liability company formed in accordance with this Agreement.

“Convertible Securities” means any securities convertible into or exchangeable or exercisable for Additional Interests, other than Interests issued to employees, officers or directors upon exercise of options (or similar securities) pursuant to compensation plans approved by the Operating Board.

“Effective Date” means the date of this Fourth Amended and Restated Operating Agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Fiscal Year” means the Company’s taxable year ending December 31.

“GAAP” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or any successor authority) that are applicable as of the date of determination, consistently applied.

“Independent Third Party” means any Person who, immediately prior to a contemplated Sale of the Company, does not directly or indirectly own in excess of 5% of the Interests (on a fully diluted basis), who is not controlling, controlled by or under common control with any such 5% owner of Interests and who is not the spouse or descendent (by birth or adoption) of any such 5% owner of Interests.

“Interest” means an ownership interest in the Company.

“Interest Holder” means any Person who holds an Interest, whether as a Member or as an unadmitted assignee of a Member.

“Involuntary Withdrawal” means, with respect to any Member, the occurrence of any of the following events:

(i) the Member (A) makes an assignment for the benefit of creditors; (B) files a voluntary petition of bankruptcy; is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding; (C) seeks, consents to, or acquiesces in the appointment of a trustee for, receiver for, or liquidation of the Member or of all or any substantial part of the Member's properties; (D) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in subsections (A) through (C);

(ii) if the Member is a partnership or another limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company unless the Interest of such Member are distributed to the partners or members of such Member in accordance with Section 9.1;

(iii) if the Member is a corporation, the dissolution of the corporation or the revocation of its charter; or

(iv) if the Member is an individual, his or her death or legal incompetency.

"Junior Interests" shall mean the Class B Interests and the Class C Interests and any other class or series of Interests, whether now existing or hereafter created, to the extent that such class or series of Interests ranks junior to the Class A Interests as to rights with respect to liquidation or distributions.

"Member" means each Person signing this Agreement as a Member and any Person who subsequently is admitted as a Member of the Company pursuant to Section 7.3 below.

"Net Profits and Net Losses" shall mean for each Fiscal Year, an amount equal to the Company's taxable income or loss for such Fiscal Year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

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

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

(iii) Items of gain, loss, depreciation, or amortization that would be computed for federal income tax purposes by reference to the adjusted tax basis of an item of Company property shall be determined by reference to such item's Book Value; and

(iv) The amount of items of Company income, gain, loss or deduction available to be specially allocated pursuant to Article IV hereof shall be determined by applying rules analogous to those set forth in this definition of Net Profits and Net Losses.

"Parity Interests" shall mean any class or series of Interests, whether now existing or hereafter issued, to the extent that such class or series of Interests ranks on a parity basis with the Class A Interests as to rights with respect to liquidation or distributions.



“Permitted Transferee” with respect to an Interest Holder means (i) a transferee taking an Interest pursuant to applicable laws of descent or distribution, (ii) a trust whose beneficiary(ies) is such Interest Holder, such Interest Holder’s spouse or a descendant of such Interest Holder, (iii) an Affiliate of an Interest Holder, (iv) another Interest Holder, (v) the Company, (vi) the partners or members of an Interest Holder that is a partnership or limited liability company, respectively, or (vii) a transferee approved by the Operating Board.

“Person” means and includes any individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

“Profits and Losses” means the income or losses of the Company as determined in accordance with the method of accounting followed by the Company for Federal income tax purposes, including any separately stated items under Code Section 702(a).

“Public Offering” means a public offering of Interests of the Company (or any successor to all or substantially all of the Company’s assets or securities) registered under the Securities Act.

A “Required Vote of the Class A Interests” means the affirmative vote or written consent of the holders of a majority of the outstanding Class A Interests, voting together as a class.

“Lincoln Group” means Industrial Cleaning Specialists, Inc., Clean Up Acquisition, L.L.C., Abraham Lincoln.

“Sale of the Company” means the sale of the Company to an Independent Third Party or affiliated group of Independent Third Parties pursuant to which such party or parties acquire (i) a majority of Interests in the Company (whether by sale of Interests or merger or otherwise), or (ii) all or substantially all of the Company’s assets, determined on a consolidated basis.

“Secretary of State” means the Secretary of State of the State of Delaware.

“Securities Act” means the Securities Act of 1933, as amended.

“ABC” means ABC Investments, Inc., a Delaware corporation.

A “Subsidiary” of any Person (the “first Person”) shall mean any other Person (the “second Person”) of which the first Person owns, directly or indirectly, equity securities or other ownership interests equal to more than 30% of the outstanding equity securities or other ownership interests of the second Person, and which equity securities or other ownership interests have ordinary voting power sufficient to elect a majority of the board of directors or other persons performing similar functions.

“Transfer” means any sale, disposition, assignment, pledge, hypothecation, encumbrance or other direct or indirect transfer of any Interest or any interest therein.

“Unrecovered Capital” means, with respect to any Class A Interest Holder, the excess, if any, of (i) the cumulative amount of capital contributed by such Member to the Company pursuant to this Agreement, over (ii) the cumulative amount distributed to such Member pursuant to Section 4.2. In the event of a Transfer of Class A Interests, the portion of the Unrecovered Capital attributable to such Transferred Interests shall become the Unrecovered Capital of the Transferee. In the event of a change in the number of Class A Interests pursuant to the operation of anti-dilution provisions, option exercise, or otherwise, the aggregate Unrecovered Capital shall not be increased or decreased but rather shall be

allocated among the number of Class A Interests held by such Person after such adjustment. The initial Unrecovered Capital of each Member holding Class A Interests is set forth on Exhibit A hereto.

## ARTICLE II

### ORGANIZATIONAL MATTERS

SECTION 2.1 Organization. The Company was formed as a limited liability company pursuant to the Act and the provisions of this Agreement by the filing of the Certificate of Formation with the Secretary of State on\_\_\_\_\_.

SECTION 2.2 Name of the Company. The name of the Company is “ABC Industrial Services, L.L.C.” The Company may do business under that name and under any other name or names which the Operating Board selects subject to any limitations contained in the Act.

SECTION 2.3 Purpose. The purpose of the Company is to engage in any lawful act or activity for which a Company may be organized under the Act.

SECTION 2.4 Term. The term of the Company began with the filing of the Certificate of Formation with the Secretary of State and shall be perpetual, unless sooner terminated as provided in this Agreement.

SECTION 2.5 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 Operating Board 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 Operating Board shall promptly designate a replacement registered agent or file a notice of change of address as the case may be. If the Operating Board shall fail to designate a replacement registered agent or change of address of the registered office, any Member may designate a replacement registered agent or file a notice of change of address.

SECTION 2.6 Principal Office. The principal office of the Company shall be located at **123 Main Street, Any Town, USA**, or at such other location as the Operating Board shall determine.

SECTION 2.7 Foreign Qualification. The Company may qualify to do business in any states which recognize limited liability companies.

## ARTICLE III

### CAPITAL AND CONTRIBUTIONS

SECTION 3.1 Interests and Capital Structure. The capital of the Company shall be divided into Interests which shall constitute limited liability company interests under the Act and shall be divided into three classes: the Class A Interests, the Class B Interests, and the Class C Interests. The relative rights, powers, preferences, duties, liabilities, and obligations of the Class A Interest Holders, the Class B Interest Holders, and the Class C Interest Holders shall be as set forth herein. All Interests issued hereunder from time to time may be represented by a Certificate of Interests issued by the secretary or assistant secretary of the Company.

The Company may authorize and issue such additional Interests as may be necessary to meet its obligations under the warrants and options granted by the Company and to comply with the anti-dilution and other provisions of this Agreement and the Company's other Convertible Securities and rights to purchase Interests which contemplate or permit the authorization and/or issuance of additional Interests.

SECTION 3.2 Initial Capital Contributions. Upon or prior to the execution of this Agreement, the Members shall have contributed to the Company cash, property or personal services in the amounts agreed to by the Operating Board or appropriate officer of the Company.

SECTION 3.3 Additional Capital Contributions. The Operating Board, in its sole discretion, shall have the right to raise additional equity capital for the Company by causing the Company to issue Interests to one or more Persons, and to admit the Persons investing such capital as additional Members, subject to Section 3.6 below; provided, however, the Company shall not, and the Operating Board shall not permit the Company to, without the Required Vote of the Class A Interests, issue any Interests that are pari passu with or senior in liquidation preference or right of payment to the Class A Interests or issue any Interests that are senior with respect to payment of distributions to the Class A Interests.

SECTION 3.4 Capital Accounts; Return of Capital. A separate Capital Account shall be maintained for each Interest Holder. Members shall not be paid interest on their Capital Accounts. No Interest Holder shall be entitled to a return of its capital contribution except as provided for in this Agreement. If an Interest Holder is to receive a return of a capital contribution or other distribution, the Interest Holder shall not have the right to receive anything but cash. No Member shall be required to restore any negative Capital Account.

SECTION 3.5 Loans. If the Operating Board so approves, any Member may make or cause a loan to be made to the Company in any amount and on those terms upon which the Operating Board and such Member agree.

SECTION 3.6 Pre-Emptive Rights.

(a) If the Operating Board authorizes the issuance and sale of Additional Interests, then the Company will offer to sell (the "Offer") to the Interest Holders, and each Interest Holder may elect to purchase, up to that number of each class or series of Additional Interests (the "Additional Investor Interests"), such that following such purchase, each such party is able to maintain the same percentage ownership (on a fully diluted basis) of the Interests which such party owned immediately prior to the offer of Additional Interests.

(b) The Company shall give written notice of the issuance of Additional Interests (the "Issuance Notice"), which notice shall set forth the price and other terms of such issuance, to each Interest Holder not more than 60 days nor less than 10 business days prior to the issuance of such Additional Interests (the "Issuance Date"). Upon receipt of the Issuance Notice, the Interest Holders may accept the Offer by giving written notice to the Company within 10 days following receipt of the Issuance Notice (which acceptance may be conditioned upon issuance of all Additional Interests described in the Issuance Notice), which written notice shall specify the number of Additional Investor Interests which the party wishes to purchase, along with a cashier's or certified check or wire transfer in the full amount of the price for the Additional Investor Interests to be purchased.

(c) Each Interest Holder will be entitled to purchase Additional Investor Interests at the same price and upon the same terms as Additional Interests being offered to the other purchasers thereof;

provided that, if such other persons are to pay for such Additional Interests in whole or in part with consideration other than cash, then the Operating Board, in its sole discretion, shall make a determination of the fair market value of such consideration, and each Interest Holder will be entitled to purchase the Additional Investor Interests for cash equal to the fair market value of the aggregate cash and non-cash consideration each of them would otherwise pay hereunder. Notwithstanding the foregoing, no Interest Holder will be permitted to exercise its rights under this Section 3.6 unless it agrees to purchase its proportionate amount of each class or series of securities offered as a package or unit in the issuance of the Additional Interests.

SECTION 3.7 Antidilution Rights. (a) If the Operating Board authorizes the issuance and sale of Additional Interests to one or more Persons at a price of less than the Class A Purchase Price (each, a “Dilutive Sale”), then, irrespective of whether the Class A Interest Holders shall have exercised their preemptive rights pursuant to Section 3.6 above, contemporaneous with the issuance and sale of such Additional Interests in such Dilutive Sale, there shall be issued to the Class A Interest Holders without the payment by the Class A Interest Holders of any additional consideration (but in further consideration of their original investment in the Company), a number of Additional Interests such that the total number of Interests held by each Class A Interest Holder after such issuance shall equal the number of Interests which such Class A Interest Holder held immediately prior to such Dilutive Sale multiplied by a fraction, (i) the numerator of which is the Class A Purchase Price and (ii) the denominator of which is the Class A Purchase Price multiplied by a fraction (x) the numerator of which shall be equal to the sum of (A) the number of Interests issued and outstanding immediately preceding such Dilutive Sale on an as converted, as exercised basis and (B) the number of Interests which the aggregate consideration received (or by the express provisions hereof is deemed to have been received) by the Company for the total number of Additional Interests so issued or sold would purchase at the Class A Purchase Price in the Dilutive Sale and (y) the denominator of which shall be equal to the number of Interests issued and outstanding on an as converted, as exercised basis, after giving effect to such issuance and sale of such Additional Interests. By way of example, if:

1,000 = the number of Class A Interests outstanding prior to the Dilutive Sale;

\$10.00 = the Class A Purchase Price;

10,000 = the number of Interests issued and outstanding immediately prior to such Dilutive Sale on an as converted, as exercised basis;

\$2.00 = the per Interest purchase price of the Interests sold in the Dilutive Sale; and

2,000 = the number of Interests sold in the Dilutive Sale;

then, the number of Additional Interests issuable to the Class A Interest Holder as a result of the Dilutive Sale shall equal 153.845, calculated as follows:

$$1,000 \times (\$10.00 \times 1) / (\$10.00 \times (10,000 + 400) / 12,000) = 1,153.845$$

$$1,153.845 - 1,000 = 153.845$$

(b) For the purpose of making any adjustment required under this Section 3.7, the consideration for any issue or sale of securities shall be deemed to be (A) to the extent it consists of cash, equal to the gross amount paid in such issuance or sale, (B) to the extent it consists of property other than cash, equal to the fair market value of that property, and (C) if Additional Interests, Convertible Securities

or rights or options to purchase either Additional Interests or Convertible Securities are issued or sold together with other stock, securities or assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Operating Board to be allocable to such Additional Interests, Convertible Securities or rights or options.

(c) For the purpose of the adjustment required under this Section 3.7, if the Company issues or sells any Convertible Securities and if the Effective Price of such Convertible Securities is less than the Class A Purchase Price, then in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the amount of Additional Interests issuable upon exercise, conversion or exchange thereof, irrespective of whether the holders thereof have the fully vested legal right to exercise, convert or exchange the Convertible Securities for Additional Interests and to have received as consideration for the issuance of such Additional Interests an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the consideration, if any, payable to the Company upon the exercise of such rights or options, plus, in the case of Convertible Securities, the consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the exercise, conversion or exchange thereof. No further adjustment pursuant to this Section 3.7 shall be made as a result of the actual issuance of Additional Interests on the exercise of any such rights or options or the conversion or exchange of any such Convertible Securities. If any such rights or options or the conversion or exchange privilege represented by any such Convertible Securities shall expire without having been exercised, the adjustment made pursuant to this Section 3.7 shall be recalculated on the basis that the only Additional Interests so issued were the Additional Interests, if any, actually issued or sold on the exercise of such rights or options or rights of conversion or exchange of such Convertible Securities, and such Additional Interests, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of the rights or options whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities. The “Effective Price” of Convertible Securities shall mean the quotient determined by dividing the total amount of Additional Interests issued or sold, or deemed to have been issued or sold, by the Company under this subsection into the aggregate consideration received, or deemed to have been received, by the Company for such issue under this subsection, for such Additional Interests.

### SECTION 3.8 Class C Interests.

(a) Consent to Issuance of Equity and Execution of Incentive Bonus Agreements. All Interest Holders acknowledge and consent that the Class C Interests are outstanding and that the Company has entered into Incentive Bonus Agreements with Michael Chakos and John Manta (who, at the date hereof, hold Class C Interests) providing for bonus payments, upon certain events, in addition to payments hereunder in respect of Class C Interests.

(b) Nontransferability and Forfeiture of Class C Interests. The Class C Interests are nontransferable and are subject to the forfeiture conditions set forth below (the “Restrictions”), which Restrictions have lapsed or shall lapse pursuant to the terms described in Section 3.8(c) below. If a Class C Interest Holder’s employment with the Company (i) is terminated by the Company for Good Cause (as defined in such Class C Interest Holder’s Employment Agreement with the Company dated as of the Effective Date), or (ii) is voluntarily terminated by such Class C Interest Holder other than for Good Reason (as defined in such Employment Agreement), ((i) and (ii) together being the “Triggering Events”),

all Class C Interests still subject to Restrictions ("Unvested Interests") shall be forfeited and returned to or canceled by the Company, appropriately adjusted for any change in the capital of the Company by reason of any dividend or distribution, split, recapitalization, reorganization, merger, consolidation, split-up, combination or exchange of Interests, or any similar change affecting the capital of the Company, which has occurred after the date hereof, and shall be deemed to have been forfeited by such holder. Upon a forfeiture of any Class C Interests, the Company will not be obligated to pay such holder any consideration whatsoever for the forfeited Class C Interests.

(c) Lapse of Restrictions.

(i) For each Class C Interest Holder, the Restrictions have lapsed as to 44.444% of the Class C Interests and, with respect to the balance of the Class C Interests, the Restrictions shall lapse as to an additional one-twentieth (1/20th) on the first day of May, 2000, and on the first day of each of the succeeding nineteen (19) months; provided all Restrictions shall lapse with respect to Unvested Interests held by a Class C Interest Holder upon a Public Offering, a Sale of the Company, his death, his Permanent Disability, or the termination of his employment with the Company by the Company without Good Cause or the termination of his employment with the Company by such holder for Good Reason. "Permanent Disability" shall mean when an employee is unable to perform his stated duties with the Company by reason of illness, accident, or other incapacity and does not engage in any occupation or employment for wage or profit for which the employee is reasonably qualified by education, training, or experience.

(ii) To the extent the Restrictions shall have lapsed under this Section 3.8(c) with respect to any portion of the Class C Interests subject to this Agreement, those Class C Interests ("Vested Interests") will thereafter be free of the terms and conditions of Section 3.8(b); provided, however, that all Vested Interests shall at all times be nontransferable and shall remain subject to the terms and conditions set forth elsewhere in this Agreement.

(d) Put Arrangement.

(i) Within 90 days after a Sale of the Company or the termination of employment with the Company of a Class C Interest Holder for any reason, such Class C Interest Holder shall have the right to require the Company to repurchase all (but not less than all) of the Vested Interests held by such Class C Interest Holder at the Class C Put Price by delivering a written notice to the Company (the "Class C Put Notice").

(ii) Upon the delivery of the Class C Put Notice, the Company and such Class C Interest Holder shall in good faith promptly determine the Class C Put Price as provided hereunder, and subject to the provisions hereof within 10 days after the determination of the Class C Put Price, the Company will purchase and such Class C Interest Holder will sell all his Vested Interests at a mutually agreeable time and place, but not later than 45 days after the date of the Class C Put Notice. The "Class C Put Price" shall mean 75% of the fair market value of the Vested Interests, without discount for minority interests or lack of liquidity (but taking into account, not by means of limitation, the Class C Profits Amount limitation on distributions) as determined by an investment banking firm nationally recognized in the United States with no material relationship to the Company or such Class C Interest Holder ("IB Firm") selected by the Company and the Class C Interest Holder or, if the Company and such Class C Interest Holder cannot agree, by an IB Firm selected by two other IB Firms, one of which is chosen by the Company and the other of which is chosen by such Class C Interest Holder; the fees of the IB Firm ultimately selected to be borne equally by the Company and the Class C Interest Holder.

(e) Call Arrangement.

(i) Within 90 days after a Sale of the Company or the termination of employment with the Company of a Class C Interest Holder for any reason, the Company shall have the right to purchase all (but not less than all) of the Vested Interests held by such Class C Interest Holder at the Class C Call Price by delivering written notice to such Class C Interest Holder (the "Class C Call Notice").

(ii) Upon delivery of the Class C Call Notice, the Company and the Class C Interest Holder shall in good faith promptly determine the Class C Call Price as provided hereunder, and subject to the provisions hereof, within 10 days after the determination of the Class C Call Price, the Company shall purchase all of such Class C Interest Holder's Vested Interests at a mutually agreeable time and place, but not later than 45 days after the date of the Class C Call Notice. The "Class C Call Price" shall be determined in the same manner as the Class C Put Price is determined in Section 3.8(d) above; provided, however, that for the determination of the Class C Call Price, 100% of the fair market value of the Vested Interests shall be used.

(f) Public Offering or Sale of the Company. If the Company purchases Class C Interests from a Class C Interest Holder pursuant to the terms of Section 3.8(d) or 3.8(e) and the Company consummates a Public Offering or a Sale of the Company within 180 days thereafter, and the implied or realized value of a Class C Interest (had it been held by the former Class C Interest Holder as of the sale) upon such an event exceeds the Call Price or the Put Price, as applicable, then the Company shall pay to each former Class C Interest Holder who sold such Class C Interests pursuant to Section 3.8(d) or 3.8(e) an amount in cash equal to the difference between the aggregate of such implied or realized value and the Call Price in connection with a sale under Section 3.8(e), or an amount in cash equal to the difference between 75% of the aggregate of such implied or realized value and the Put Price, in connection with a sale under Section 3.8(d), as applicable.

(g) Payment of Class C Put Price and Class C Call Price. If the Company exercises its call rights under Section 3.8(e)(i) as a result of either (i) a termination of employment by the Company other than for Good Cause, or (ii) a termination of employment by a Class C Interest Holder for Good Reason, the Call Price shall be paid as provided in Section 3.8(e)(ii). In any other case, if the Company is unable to pay the Class C Put Price or the Class C Call Price through available cash, the sale of equity interests or the incurrence of other indebtedness (either senior or mezzanine), the Company may elect to pay 20% of the Class C Put Price or the Class C Call Price in cash within 45 days of the Class C Put Notice or Class C Call Notice and 80% through delivery of a subordinated obligation of the Company payable 50% (of the remaining 80%) per year over a two-year period with interest payable semi-annually at an annual rate of 15.0%. If payment under the subordinated obligation shall cause the Company to be in default under any of the terms of its senior indebtedness, such payment can be deferred by the Company until no default shall continue to exist; however, the Company shall, on a best efforts basis, cause the loan agreements to provide for the potential Put obligations, and in any event, the Put shall be payable not later than two years after the date of the Class C Put Notice or Class C Call Notice.

## ARTICLE IV

### DISTRIBUTIONS

SECTION 4.1 Distributions Generally. Subject to the provisions of this Article IV and Section 6.7, the Operating Board shall have the right to determine whether, and to what extent, distributions shall be made by the Company to the Interest Holders.

SECTION 4.2 Distributions. Subject to the provisions of Section 8.2 and Section 4.3, when and to the extent the Operating Board (with the approval of a Required Vote of the Class A Interests) determines that, after providing for the Company's present and anticipated debts and obligations, capital needs, expenses and reasonable reserves for contingencies, it is appropriate and in the best interests of the Company to make distributions, such distributions shall be made to the Interest Holders as follows:

- (a) first, to all Interest Holders, pro rata in proportion to their ownership of Interests, until the Class C Interest Holders have been distributed the Class C Profits Amount as of the date of the distribution;
- (b) second, to the Class A and Class B Interest Holders, pro rata in proportion to their ownership of Class A and Class B Interests.

SECTION 4.3 Tax Distributions. The Company shall distribute sufficient cash to enable the Interest Holders (or such Interest Holders' partners or members) to pay Federal and state income taxes arising from Profits of the Company allocated to the Interest Holders during a taxable year, in an amount equal to the Company's Profits and Losses allocated to each Interest Holder for such year multiplied by the sum of the highest marginal Federal, state and local income tax rates for such year applicable to any Interest Holder. Such distribution shall be paid with respect to a taxable year of the Company within 90 days after the end of such taxable year, or at such earlier times and in such amounts as determined in good faith by the Operating Board to be appropriate to enable the Interest Holders to pay estimated income tax liabilities. Distributions required by this Section 4.3 shall reduce amounts distributable pursuant to Sections 4.2 and 8.2, such that the aggregate amounts distributable to each of the Interest Holders pursuant to Sections 4.2, 4.3, and 8.2 shall be equal to the amount that would have been distributable to each such Interest Holder under Sections 4.2 and 8.2 as if Section 4.3 were not in effect.

SECTION 4.4 In-Kind Distributions. At any time, and from time to time, in the sole discretion of the Operating Board (with the approval of a Required Vote of the Class A Interests), the Company may distribute to its Interest Holders securities or other property held by the Company; provided, that any such distribution shall not satisfy any of the Company's obligations pursuant to Section 4.3 above. To the extent the Operating Board so determines to distribute such property, the property will be distributed among the Interest Holders in the same proportions as cash equal to the fair market value of such property (as determined in the reasonable good faith judgment of the Operating Board) would be distributed among the Interest Holders pursuant to Section 4.2. The Operating Board may require as a condition of such distribution of securities hereunder that the Interest Holders execute and deliver such documents as the Operating Board may deem necessary or appropriate to ensure compliance with all federal and state securities laws which apply to such distribution and any further transfer of the distributed securities, and may appropriately legend the certificates which represent such securities to reflect any restriction on transfer with respect to such laws.

SECTION 4.5 Mandatory Distribution. Should the Members decide to change the structure of the Company such that the Company would no longer be classified as a partnership for federal income tax purposes (the "Conversion"), and as a result of the Conversion any Member would incur, or if such Member is a "pass through" entity for tax purposes, the owners thereof would incur, any Federal, state, or local income tax liability (a "Conversion Liability"), then immediately prior to the Conversion the Company shall distribute to each Member who has, or whose owners have, a Conversion Liability an amount equal to such Conversion Liability



(distributed on a pro rata basis) (the "Conversion Distribution"). All Members agree to cause the entity resulting from the Conversion to assume the obligations described hereunder or otherwise cause the payment of an amount equal to the Conversion Distribution to the Members. The Conversion Liability shall be calculated using the highest marginal level of federal, state, or local tax applicable to a Member having a Conversion Liability. The Conversion Distribution shall be treated as if it were made to all the Interest Holders (except for ABC, TSG Co-Investors, LLC, Value Investing Partners I, L.L.C., and such of their Affiliates who receive and exercise warrants or options as described in paragraphs (h)(B) or (h)(C) of the definition of Additional Interests), pro rata in accordance with their Interests, under Section 4.3, and shall reduce the amounts otherwise distributable to such Members under this Agreement, as provided in such Section.

## ARTICLE V

### TAX ALLOCATIONS

#### SECTION 5.1 Allocation of Net Profits and Net Losses.

Except as otherwise required by Code Section 704 and the regulations thereunder, Net Profits and Net Losses, for each Fiscal Year or other period ("Period") of the Company shall be allocated as follows:

(a) The Net Profits and Net Losses shall be allocated among the Interest Holders in such a manner that, as of the end of such Period, the Adjusted Capital Account Balance of each Interest Holder shall be equal to the respective net amounts, positive or negative, which would be distributed to them under this Agreement, determined as if the Company were to (i) liquidate the assets of the Company for an amount equal to their Book Value, (ii) pay the liabilities of the Company (provided, in the case of nonrecourse liabilities secured by property, the amount of each such liability taken into account shall be limited to the Book Value of the asset(s) securing such liability), and (iii) distribute the proceeds of the liquidation pursuant to Section 8.2 (without regard to Section 8.2(b), except in the case of allocations made in respect of the taxable year in which the Company dissolves and winds up, and distributes its assets under Section 8.2).

(b) For purposes of Section 5.1(a), if the Company has Net Profits for a Period, (i) items of loss and deduction shall first be allocated to the Interest Holders whose Adjusted Capital Account Balances are to be reduced (if any) as a result of the allocations under Section 5.1(a), in an amount equal to the amount by which such Adjusted Capital Account Balances are to be reduced, and (ii) remaining Net Profits shall be allocated to Interest Holders whose Adjusted Capital Account Balances are to be increased (if any) as a result of the allocations under Section 5.1(a), in the proportion that the amount of the increase in such Interest Holder's Adjusted Capital Account Balances as a result of the allocations under Section 5.1(a) bears to the aggregate amount of the increase in all such Interest Holder's Adjusted Capital Account Balances under Section 5.1(a).

(c) For purposes of Section 5.1(a), if the Company has Net Losses for a Period, (i) items of income and gain shall first be allocated to Interest Holders whose Adjusted Capital Account Balances are to be increased (if any) as a result of the allocations under Section 5.1(a), in an amount equal to the amount by which such Adjusted Capital Account Balances are to be increased, and (ii) remaining Net Losses shall be allocated to the Interest Holders whose Adjusted Capital Account Balances are to be reduced (if any) as a result of the allocations under Section 5.1(a), in the proportion that the amount of the reduction in such Interest Holder's Adjusted Capital Account Balances as a result of the allocations under Section 5.1(a) bears to the aggregate amount of the reduction in all such Interest Holder's Adjusted Capital Account Balances as a result of the allocations under Section 5.1(a).

(d) Nonrecourse deductions (determined pursuant to Treas. Reg. 1.704-2(b)(1) and Treas. Reg. 1.704-2(c)) shall be allocated among the Interest Holders in proportion to their Interests.

(e) The provisions of the Treasury Regulations issued under Code Section 704 addressing qualified income offset provisions, partnership and partner minimum gain chargeback requirements, and allocations of deductions attributable to partner nonrecourse debt, are hereby incorporated by reference.

SECTION 5.2 Allocations in Event of Transfer or Disposition. If an Interest is transferred or disposed of in accordance with Article VII hereof, the Net Profits and Net Losses of the Company shall be calculated (i) as of the end of the month immediately prior to the month in which such transfer or disposition occurs, if such transfer or disposition occurs on or prior to the fifteenth day of the month, or (ii) as of the end of the month if such transfer or disposition occurs after the fifteenth day of the month (such month end, the "Calculation Date"). The transferor Member shall be allocated an amount equal to the Net Profits and Net Losses of the Company allocable to the period ending on the Calculation Date. The transferee of the interest in the Company to be so transferred shall be allocated an amount equal to the Net Profits and Net Losses of the Company allocable to the remainder of the calendar year. The portion of Net Profits and Net Losses for a Fiscal Year that is attributable to each such period shall be determined by using the closing of the books method of accounting. As of the Calculation Date, the transferee shall succeed to the Capital Account of the transferor Member with respect to the transferred Interest. This paragraph shall apply for purposes of computing a Member's Capital Account and for federal income tax purposes.

SECTION 5.3 Tax Allocations.

(a) Except as provided in paragraph (b) below, items of Company income, gain, loss, deduction, and credit shall be allocated, for federal, state, and local income tax purposes, among the Interest Holders in accordance with the allocation of such income, gain, losses, deductions, and credits among the Interest Holders under Section 5.1 for computing their Capital Accounts.

(b) In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property revalued or contributed to the capital of the Company shall, solely for tax purposes and not for purposes of maintaining Capital Accounts, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value. Any elections or other decisions relating to such allocations shall be made by the Operating Board in any manner that reasonably reflects the purpose and intention of this Agreement.

SECTION 5.4 Adjustment in Event of Exercise of Company Option. At such time that a holder (the "Exercising Member") of rights, options, and/or warrants described in paragraph (h) of the definition of Additional Interests, or any other rights, options, and/or warrants hereafter issued by the Company (collectively, "option") duly exercises such option, the Capital Account balances of the Members, including the Exercising Member, shall be revalued to reflect the then fair market value of the Company's assets as determined in good faith by the Operating Board, and the Members' Capital Accounts shall be maintained in compliance with Treas. Reg. § 1.704-1(b)(2)(iv)(f). All allocations of gain resulting from such revaluation shall be made consistently with such regulation. In making such revaluation, the distribution priorities of Section 8.2 shall be taken into consideration so that the Members' respective Capital Account balances following such revaluation reflect the amount that would be distributed to each Member at such time if the Company sold all its assets for their fair market value, satisfied all outstanding debts, and made liquidating distributions to all the Members in the order and priority

set forth in Section 8.2. The "book-tax" difference resulting from such revaluation shall be allocated pursuant to Section 5.3 and in accordance with the Treasury Regulations. The Operating Board has the authority to vary the adjustments under this Section 5.4 if the Board concludes that a different methodology would more clearly reflect the economic arrangement among the Members surrounding a particular exercise of an option.

## ARTICLE VI

### MANAGEMENT POWER, RIGHTS AND DUTIES

#### SECTION 6.1 Management.

(a) Operating Board. Subject to Section 6.7, the business and affairs of the Company shall be managed by the Members in their membership capacity through an operating board (the "Operating Board") which shall consist of \_\_\_\_\_ individuals designated as follows: (1) one individual (initially Abraham Lincoln) shall be designated by the Lincoln Group; (2) one individual (\_\_\_\_\_) shall be designated by a group of Members consisting of \_\_\_\_\_; (3) one individual (initially \_\_\_\_\_) shall be designated by \_\_\_\_\_; (4) one individual (initially \_\_\_\_\_) shall be designated by \_\_\_\_\_; (5) one individual (initially \_\_\_\_\_) shall be designated by a group of Members consisting of \_\_\_\_\_, and each of the Persons in the Lincoln Group; and (6) two individuals (initially \_\_\_\_\_) shall be designated by ABC. ABC shall be entitled at any time to designate a third individual to the Operating Board, and the Operating Board will be expanded to eight individuals upon the election of such individual. Other than the expansion referred to in the immediately preceding sentence, the Operating Board may not expand the number of individuals serving on the Operating Board. Any Person or group of Persons having the right to designate a member or members of the Operating Board shall also have the power to remove or replace members of the Operating Board so designated by such Person or group of Persons.

(b) Committees. Subject to Section 6.7, each of the Compensation and Audit Committees of the Operating Board shall consist of three members and shall include one of the Operating Board representatives elected by the holders of the Class A Interests.

(c) General Powers. Subject to Section 6.7, the business and affairs of the Company shall be managed by or under the direction of the Operating Board. Decisions of the Operating Board within its scope of authority shall be binding upon the Company. Except for situations in which approval of the Members is expressly required by this Operating Agreement or by nonwaivable provisions of the Act, the Operating Board shall have full, exclusive, and complete discretion, power, and authority, subject to any other provisions of this Agreement, to manage the business and affairs of the Company, and to make all significant decisions affecting such business and affairs, including, without limitation, to:

- (i) prepare or contract for the preparation of, all requisite reports on behalf of the Company;
- (ii) acquire by purchase, lease or otherwise, any real or personal property, tangible or intangible;
- (iii) sell, dispose, trade, or exchange Company assets in the ordinary course of the Company's business;
- (iv) authorize agreements and contracts and to give receipts, releases, and discharges;

- (v) borrow money for and on behalf of the Company;
- (vi) purchase liability and other insurance to protect the Company's properties and business;
- (vii) make any and all expenditures which the Operating Board, in its sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities under this Agreement, including, without limitation, all legal, accounting and other related expenses incurred in connection with the organization, financing and operation of the Company;
- (viii) enter into any kind of activity necessary to, in connection with, or incidental to, the accomplishment of the purposes of the Company; and
- (ix) direct or delegate any Person to take all actions and execute all documents or instruments as are necessary to carry out the intentions and purposes of the above duties and powers.

In connection with the exercise of the foregoing powers, all representatives of the Operating Board shall be furnished with any information and access necessary to adequately fulfill their fiduciary responsibilities, including (A) all management letters of accountants, (B) an annual budget for the following year before the prior year's end, (C) notification of defaults or anticipated defaults under material agreements, (D) notification of either threatened or actual material litigation, and (E) copies of all filings, if any, made with the Commission.

(d) Meetings of the Operating Board. Meetings of the Operating Board shall be held at least quarterly and shall be held at the principal place of business of the Company or at any other place that a majority of the members of the Operating Board determine. At any meeting, any member of the Operating Board may participate by telephone or similar communication equipment, provided each member of the Operating Board can hear the others. Persons present by telephone shall be deemed to be present "in person" for purposes hereof. The Operating Board also may make decisions, without holding a meeting, by unanimous written consent of the members of the Operating Board. Minutes of each meeting and a record of each decision shall be kept by a designee of the Operating Board and shall be given to the Members promptly after the meeting. All decisions of the Operating Board shall require the approval of a majority of its members. All Operating Board materials prepared in advance of meetings shall be distributed to members of the Operating Board at least 24 hours prior to any such meetings.

(e) Officers. Subject to Section 6.7, the Operating Board may appoint officers of the Company in its sole discretion, which may include a chief executive officer, a chief financial officer, one or more presidents, one or more vice presidents, and a secretary and one or more assistant secretaries. Any number of offices may be held by the same person. The Operating Board may choose such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Operating Board. The officers of the Company as of the date hereof are as follows:

Abraham Lincoln	Chief Executive Officer
_____	Chief Financial Officer
_____	President

\_\_\_\_\_  
President

\_\_\_\_\_  
Executive Vice President and Secretary

(i) The Chief Executive Officer shall be the principal executive officer of the Company and shall, in general, supervise and control all of the business and affairs of the Company, unless otherwise provided by the Operating Board. The Chief Executive Officer shall have general powers of supervision and shall be the final arbiter of all differences between officers of the Company and his decision as to any matter affecting the Company shall be final and binding as between the officers of the Company subject only to the Operating Board's direction. In general, the Chief Executive Officer shall perform all duties incident to the office of chief executive officer and such other duties as the Operating Board may from time to time prescribe. The Chief Executive Officer shall have authority to open bank accounts on behalf of, and in the name of, the Company on such terms as he shall determine in his sole discretion.

(ii) The President shall perform such other duties and have such other powers as the Chief Executive Officer may from time to time prescribe.

(iii) When authorized by the Chief Executive Officer or the Operating Board, the Chief Financial Officer shall perform the duties of the Chief Executive Officer, as the case may be, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer. The Chief Financial Officer and each Vice President and Executive Vice President shall perform all such duties as from time to time may be assigned by the Chief Executive Officer or the Operating Board. At the request of the President or in his absence or in the event of his inability or refusal to act, the Chief Financial Officer or the Vice President, or if there shall be more than one, the Vice Presidents in the order determined by the Operating Board (or if there be no such determination, then the Chief Financial Officer and the Vice Presidents in the order of their election), shall perform the duties of the President, and, when so acting, shall have the powers of and be subject to the restrictions placed upon the President in respect of the performance of such duties.

(iv) The Secretary or the Assistant Secretary shall attend all meetings of the Members and of the Operating Board, and shall record all proceedings of such meetings in a book to be kept for that purpose and shall perform such duties as may be prescribed by the Operating Board, under whose supervision the Secretary shall be. The Secretary or the Assistant Secretary shall have custody of the Company seal and shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his or her signature or by the signature of such Assistant Secretary. The Operating Board may give general authority to any other officer to affix the seal of the Company and to attest the affixing of signatures.

(f) Limitation on Authority of Members. 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. This Section 6.1 supersedes any authority granted to the Members pursuant to the Act. Any Member who takes any action or binds the Company in violation of this Section 6.1 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.

(g) Payment of Operating Board Members' Expenses. The Company shall reimburse all members of the Operating Board for any out-of-pocket expenses incurred in attending meetings of the Operating Board.

SECTION 6.2 Meetings of and Voting by Members.

(a) Notwithstanding anything contained herein, no Person shall be entitled to vote with respect to any Interest unless such Person is a Member. All holders of Class A Interests, Class B Interests and Class C Interests shall vote together as a single class. Except as provided in this Agreement, none of such holders shall have any right to vote as a separate class.

(b) A meeting of the Members may be called at any time by the Operating Board or by the Majority Holders. Meetings of Members shall be held at the Company's principal place of business or at any other place designated by the Operating Board. Not less than 10 nor more than 90 days before each meeting, the Operating Board shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the time, place and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting the Member signs a waiver of the notice which is filed with the records of Members' meetings, or is present at the meeting in person. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person of Members holding greater than 50% of the outstanding Interests shall constitute a quorum. A Member entitled to vote may vote only in person. Persons present by telephone shall be deemed to present be "in person" for purposes hereof.

(c) Except as otherwise provided in this Agreement, the affirmative vote of Members holding greater than 50% of the outstanding Interests (the "Majority Holders") shall be required to approve any matter coming before such Members. In lieu of holding a meeting, the Members entitled to vote may vote or otherwise take action by a written consent signed by Members holding at least the percentage of Interests that would be required to approve such action if submitted to vote at a meeting of Members entitled to vote.

SECTION 6.3 Personal Services; Compensation. No Member shall be required to perform services for the Company solely by virtue of being a Member. Except as approved by the Operating Board and for the Financial Services/Closing Fee Letter entered into by the Company on the Effective Date, and the Engagement Letter entered into by the Company and the Agents dated \_\_\_\_\_, 20\_\_, no Member shall perform services for the Company or be entitled to compensation for services performed for the Company, and in all cases such compensation shall be at arm's length and on commercially reasonable terms. The Members acknowledge that certain Members of the Company (including \_\_\_\_\_) (the "Service Providers") have provided (and subject to the continuing approval of the Operating Board, will continue to provide) services to the Company, and in exchange therefor, the Company has paid (and subject to the continuing approval of the Operating Board, will continue to pay) the Service Providers certain amounts as guaranteed payments or salary. Such amounts shall not be treated as distributions to such Members.

SECTION 6.4 Other Business Interests. Nothing in this Agreement shall be deemed to restrict in any way the rights of any Member, or any Affiliate of any Member, or of any member of the Operating Board, to conduct any other business or activity whatsoever, and Members shall not 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; provided, however, that nothing in this Section 6.4 shall affect or supersede any such restrictions imposed on a Member by any other contract or agreement to which both the Company and/or any of its Affiliates, and such Member are a party. 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 Affiliates. Each Member understands and acknowledges that the conduct of the

Company's business may involve business dealings and undertakings with Members and their Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms.

**SECTION 6.5 Liability and Indemnification.** Neither the Operating Board nor any of its members, nor any officer of the Company, shall be liable, responsible, or accountable, in damages or otherwise, to any Member or to the Company for any act performed by them, or failure to act, within the scope of the authority conferred on the Operating Board by this Agreement or on such officers by this Agreement or by the Operating Board, except for acts, or failures to act, constituting fraud, gross negligence, or an intentional breach of this Agreement. The Company shall indemnify the Operating Board and each of its members and all officers of the Company for any act performed by them with respect to Company matters, including expenses (including, but not limited to, attorney's fees) actually and reasonably incurred by any such Person in connection therewith, as and to the full extent permitted by Delaware law except that no Person shall be indemnified for any act constituting fraud, gross negligence or an intentional breach of this Agreement. Amounts in respect of the indemnification provided hereunder shall be advanced by the Company in advance of the final disposition of any action, suit or proceeding upon receipt of an undertaking by the Person being indemnified to repay such amount if it shall be ultimately determined that such Person is not entitled to be indemnified by the Company. Whenever any indemnification has been paid to or expenses advanced to any party, such occurrence shall be reported to the Members prior to or with the next notice of a meeting of Members. The indemnification and advancement of expenses provided by this Section 6.5 shall continue as to a Person who has ceased to be an officer of the Company or member of the Operating Board and shall inure to the benefit of the heirs, executors, and administrators of such a Person.

**SECTION 6.6 Power of Attorney.**

(a) **Grant of Power.** Each Member constitutes and appoints the Chief Executive Officer as the Member's true and lawful attorney-in-fact, and in the Member's name, place and stead, to make, execute, sign, acknowledge, and file:

(i) all documents (including amendments to the Certificate of Formation) which the attorney-in-fact deems appropriate to reflect any written amendment, change or modification of this Agreement approved in accordance with Section 11.4 below;

(ii) upon the requisite approval, if any, required elsewhere in this Agreement, any and all other certificates or other instruments required to be filed by the Company under the laws of the State of Delaware or of any other state or jurisdiction, including, without limitation, any certificate or other instruments necessary in order for the Company to continue to qualify as a limited liability company under the laws of the State of Delaware;

(iii) one or more applications to use an assumed name; and

(iv) all documents which may be required to dissolve and terminate the Company and to cancel its Certificate of Formation upon the requisite approval required elsewhere in this Agreement.

(b) **Irrevocability.** The foregoing power of attorney is irrevocable and is coupled with an interest, and, to the extent permitted by applicable law, shall survive the death or disability of a Member. It also shall survive the Transfer of an Interest, except that if the transferee is approved for admission as a

Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the Attorney-in-Fact to execute, acknowledge and file any documents needed to effectuate the substitution. Each Member shall be bound by any representations made by the attorney-in-fact acting in good faith pursuant to this power of attorney, and each Member hereby waives any and all defenses which may be available to contest, negate or disaffirm the action of the attorney-in-fact taken in good faith under this power of attorney.

SECTION 6.7 Protective Provisions for Class A Interests. Notwithstanding anything in this Agreement to the contrary, a Required Vote of the Class A Interests shall be required to:

- (i) amend, alter, or repeal any provision of this Operating Agreement (including, without limitation, any amendment, alteration or repeal resulting from a merger, consolidation, binding share exchange or other business combination transaction to which the Company is a party, by the filing of a certificate of designations or otherwise) that adversely affects the voting powers, preferences, or other special rights or privileges, qualifications, limitations or restrictions of the Class A Interests;
- (ii) authorize or issue any Interests that are pari passu with or senior in liquidation preference of right of payment to the Class A Interests or authorize or issue any Interests that are senior with respect to payment of distributions to the Class A Interests;
- (iii) authorize, issue or sell more than \$3 million of Interests in any fiscal year or more than \$6.5 million of Interests in any five-year period;
- (iv) enter into any agreement that would restrict the Company's right to perform its obligations under this Operating Agreement or the Purchase Agreement pursuant to which the Class A Interests were issued;
- (v) purchase, repurchase, redeem or retire any Interests of the Company or any Subsidiary;
- (vi) declare or pay any distribution with respect to any Junior Interests, unless an equivalent distribution is simultaneously paid to holders of Class A Interests;
- (vii) participate in any merger, reorganization or consolidation involving the Company or any of its Subsidiaries or any transaction which would result in a Sale of the Company;
- (viii) enter into any transaction with any "affiliate" or "associate" (as such terms are defined under Rule 12b-2 under the Exchange Act) of any Member (other than arrangements that have been approved by the Operating Board) (for purposes of this clause (viii), any material change in the compensation of the Chief Executive Officer shall be deemed an "affiliate" transaction);
- (ix) create, incur, assume or guarantee in any fiscal year additional indebtedness for borrowed money in an aggregate amount (as to the Company and all of its Subsidiaries) in excess of 10% of the amount of such indebtedness outstanding as of the end of the Company's immediately preceding fiscal year, other than indebtedness incurred pursuant to agreements in effect on the Effective Date and other than capital expenditures;
- (x) purchase, acquire or obtain capital stock, assets or business of any entity (including by merger, consolidation or other business combination transaction) in any fiscal year



in an aggregate amount (as to the Company and all of its Subsidiaries) in excess of 15% of the Company's EBITDA for the Company's immediately preceding fiscal year;

(xi) sell, lease, transfer or otherwise dispose of any assets in an aggregate amount (as to the Company and all of its Subsidiaries) in any fiscal year in excess of \$5,000,000;

(xii) liquidate, dissolve or wind up, voluntarily or involuntarily, the Company;

(xiii) commence or make preparations to commence a Public Offering or engage a person to act as lead managing underwriter for any Public Offering;

(xiv) appoint or remove the Company's chief executive officer, president, chief financial officer, chief operating officer or vice president of operations, or make any material change to the employment agreements of any key executive;

(xv) enter into any other line of business other than businesses substantially similar or related to the Company's existing business; or

(xvi) initiate any insolvency proceedings of the Company or any material Subsidiary, decide not to contest any initiation of insolvency proceedings instituted against the Company or any material Subsidiary by third parties or make any general assignment for the benefit of the Company's or any material Subsidiary's creditors.

## ARTICLE VII

### TRANSFERS OF INTERESTS: ADMISSION OF MEMBERS

SECTION 7.1 Restrictions on Transfer. No Member may Transfer any Class C Interests. No Member may Transfer any other Interests except Transfers (i) pursuant to an effective registration statement under the Securities Act, (ii) to a Permitted Transferee, or (iii) pursuant to Sections 3.8, 7.6, 7.7, 7.8 or 7.9 herein. In no event (other than if approved in advance by the Operating Board) may any Member Transfer any Interests to any competitor of the Company or any Person that owns more than 5% of the equity interests of any competitor of the Company. Except in the case of clause (i) of this Section 7.1, no Transfer will be made until the transferor delivers to the Company an opinion of counsel (reasonably acceptable in form and substance to the Operating Board) that neither registration nor qualification under the Securities Act and applicable state securities laws is required in connection with such Transfer. Any certificate representing Interests will bear the following legend:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THEY MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THAT ACT AS TO SAID SECURITIES OR AN OPINION, IN FORM AND SUBSTANCE SATISFACTORY TO THE COMPANY AND GIVEN BY COUNSEL REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH REGISTRATION IS NOT REQUIRED. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER SET FORTH IN THE OPERATING AGREEMENT OF THE COMPANY, A COPY OF WHICH

OPERATING AGREEMENT CAN BE OBTAINED AT THE PRINCIPAL OFFICES OF THE COMPANY.

SECTION 7.2 Acceptance of Transfer. No Transfer of Interests shall be deemed effective, unless and until the transferee shall execute a written instrument, in a form reasonably satisfactory to counsel for the Company, agreeing to be bound by all of the terms and provisions of this Agreement and all amendments and supplements hereto, to the same extent and on the same terms as the transferor thereof.

SECTION 7.3 Admission of Members or Transfers of Economic Interests. Upon the admission to the Company of a Member, the Operating Board shall amend this Agreement, and any Schedules hereto, to reflect such admission. No transferee (other than Permitted Transferees, it being expressly understood that each such transferee shall be automatically admitted as a Member upon such Permitted Transferee's execution of this Agreement pursuant to Section 7.2 above) shall be admitted as a Member without the approval of the Operating Board, it being agreed that the Operating Board has the right to withhold approval of any such transferee as a Member provided such approval shall not be unreasonably withheld. In the event the Operating Board disapproves of any transferee, it will work promptly in good faith with the transferring Member to assist the transferring Member in the sale of its Interest, including, without limitation, promptly identifying for the transferring Member a list of potential transferees who would be approved by the Operating Board. If a transferee of any Interest that is not admitted as a Member pursuant to the operation of this Article VII, such transferee shall instead succeed to the economic interests in the Company so transferred, be it profits, losses and/or capital, but shall not succeed to any other rights (including voting rights) of the transferor as a Member and such non-transferred rights shall remain with the transferor so long as such transferor is alive and competent or maintains its existence, as the case may be.

SECTION 7.4 Withdrawal of Members. No Member shall have the right to withdraw from the Company, except in the case of an Involuntary Withdrawal. Immediately upon the occurrence of an Involuntary Withdrawal, the successor of the Member so withdrawing shall thereupon become an Interest Holder but shall not become a Member. If the Company is continued pursuant to Section 8.1(c) below, neither the successor Interest Holder nor the predecessor Member shall be entitled to receive in liquidation of the withdrawing Member's Interests the fair market value of such Interests as of the date of the Involuntary Withdrawal.

SECTION 7.5 Reserved.

SECTION 7.6 Right of First Offer. Prior to making any Transfer, a holder of Interests (the "Disposing Interest Holder") will deliver a written notice (the "Interest Sale Notice") to the Company and the other Interest Holders disclosing the Interests proposed to be Transferred (the "Offered Interests"). The Disposing Interest Holder agrees not to consummate any such Transfer until the parties to the Transfer have been finally determined pursuant to this Section 7.6 (the "Interest Authorization Date"). The Company and the Interest Holders may elect to purchase all or a portion of the Offered Interests upon such terms and conditions as set forth in a written notice of such election to the Disposing Interest Holder (the "Offer Notice") within 30 days after the receipt of the Interest Sale Notice by the Company. If the Company and one or more Interest Holders elect to purchase the Offered Interests, the Company shall be entitled to purchase all of the Offered Interests it elects to purchase, and the remaining Offered Interests shall be allocated among the electing Interest Holders pro rata based on the number of Interests held by each of them, or in such other proportions as they may agree. If (i) the Interest Holders and/or the Company have not elected to purchase all, and not less than all, of the Offered

Interests within 35 days of receipt of the Interest Sale Notice by the Company, (ii) the Disposing Interest Holder has accepted the offer by the Company and/or the Interest Holders and the Company or the Interest Holders have not consummated the purchase of such shares within 55 days of the receipt of the Interest Sale Notice by the Company, or (iii) the Disposing Interest Holder has not accepted the offer by the Company and/or the Interest Holders, the Disposing Interest Holder may, subject to the provisions of Section 7.1 above, Transfer the Offered Interests at a price and on terms no more favorable to the transferee(s) thereof than those specified in the Interest Sale Notice, during the 180-day period immediately following the Interest Authorization Date. Any Interests not transferred within such 180-day period will be subject to the provisions of this Section 7.6 upon subsequent Transfer.

**SECTION 7.7 Participation Rights.** In addition to the restrictions on Transfer in Section 7.1 above and subject to Section 7.6 above, whenever a Class B or Class C Interest Holder (each individually, the “Selling Holder”) shall receive from a prospective purchaser (other than a Permitted Transferee or the Company pursuant to Section 3.8) a bona fide offer to purchase Interests from the Selling Holder (whether held on the date hereof or acquired thereafter), which the Selling Holder wishes to accept, the Selling Holder may engage in such transaction so long as all other holders of Interests (each individually, a “Tag-Along Holder”) also shall be afforded the right to sell to the prospective purchaser simultaneously therewith (on terms and conditions at least as favorable to each Tag-Along Holder as the terms and conditions set out in the offer received by such Selling Holder, except as set forth below) the number of Interests which bears the same proportion to the number of Interests owned by such Tag-Along Holder, as the number of Interests being sold by such Selling Holder bears to the total number of Interests owned by such Selling Holder. If the prospective purchaser will not purchase all of the Interests which the Selling Holder and each of the Tag-Along Holders wishes to sell pursuant to this Section 7.7, the number of Interests which each of the Selling Holder and Tag-Along Holders shall be permitted to sell to such prospective purchaser shall be determined pro rata, based on each Selling Holder’s and Tag-Along Holder’s percentage of ownership of Interests. Upon receipt by a Selling Holder of a bona fide offer to purchase its Interests pursuant to this Section 7.7, such Selling Holder shall notify each Tag-Along Holder, in writing, of such offer and its terms and conditions, which written notice shall include the number of Interests the Selling Holder desires to sell, the name of the purchaser(s) and the consideration offered in connection therewith. Each Tag-Along Holder may exercise its right to sell under this Section 7.7 by giving written notice to the Selling Holder within 30 days after the date on which such Tag-Along Holder received notice of the sale from the Selling Holder pursuant to this Section 7.7 and the Selling Holder will not consummate any sale of Interests until the aggregate number of Interests to be sold by each Tag-Along Holder in accordance with this Section 7.7 shall have been determined in accordance herewith.

**SECTION 7.8 Sale of the Company.**

(a) If the Operating Board, the holders of a majority of the Interests and the holders of a majority of the aggregate Class A Interests approve a Sale of the Company (the “Approved Sale”), then each Member and Interest Holder will consent to and raise no objections to the Approved Sale, and if the Approved Sale is structured as a sale of Interests, then each Member and Interest Holder will agree to sell all of the Interests on the same terms and conditions as approved by the Operating Board (subject to the per-Interest price determination set forth in Section 7.8(b)) and consistent with the terms of this Agreement. Each Member and Interest Holder will take all actions which the Operating Board deems necessary in connection with the consummation of the Approved Sale in each case consistent with the terms of each Interest Holder’s Interest set forth in this Agreement.

(b) The obligations of the Members and Interest Holders with respect to the Approved Sale are subject to the satisfaction of the following condition: upon the consummation of the Approved Sale, all of the holders of Interests will receive substantially the same form and amount of consideration for their Interests sold or if any such holders are given an option as to the form and amount of consideration to be received, all holders will be given the same option. Notwithstanding the foregoing, the amount of consideration to be received with respect to each Interest outstanding shall be determined as if the sales proceeds were proceeds arising from the liquidation of the Company to be distributed according to Section 8.2.

(c) Each Member and any other holders of Interests will bear their pro rata share (based upon the total consideration received for the Interests sold) (i) of the costs of any sale of Interests pursuant to an Approved Sale to the extent such costs are incurred for the benefit of all holders of Interests and are not otherwise paid by the Company and (ii) of any indemnification obligations in connection with the Approved Sale. Costs incurred by Members and the other holders of Interests, on their own behalf, will not be considered costs of the transaction contemplated hereunder.

#### SECTION 7.8A Sale of the Company; IPO.

(a) Subject to Section 6.7, the Members agree (for the benefit of the shareholders of ABC, who shall be express, third party beneficiaries of this Section 7.8A) that they will use their respective best efforts to structure any sale of all or substantially all of the equity interests or assets of the Company and its Subsidiaries (a “Company Sale”) either: (a) as a sale of the membership interests in the Company held by all Members other than ABC (collectively, the “Direct Membership Interests”) and a contemporaneous sale of 100% of the capital stock and other securities of ABC (collectively, the “ABC Stock”), or (b) a sale or sales of assets of the Company and/or its Subsidiaries; provided that:

(i) the election to structure a Company Sale in the manner described in clause (a) above versus in the manner described in clause (b) above, or vice versa, shall be made by the holders of a majority of the Interests (other than ABC) in good faith;

(ii) in the case of a Company Sale of a type described in clause (a) above, the aggregate consideration to be paid for the Direct Membership Interests and the ABC Stock will be allocated among the respective holders of the Direct Membership Interests and the ABC Stock as if (x) such consideration were distributed by the Company to its members pursuant to Section 8.2 and (y) the holders of the ABC Stock, and not ABC, held the membership interests of the Company then held by ABC;

(iii) in the case of a Company Sale of a type described in clause (a) above, the shareholders of ABC shall indemnify the acquiror of the ABC Stock and its successors and assigns in respect of all Unrelated Liabilities, on terms reasonably acceptable to the holders of a majority of the Interests (other than ABC) and such acquiror;

(iv) in the case of a Company Sale of a type described in clause (b) above, ABC will be reimbursed from the proceeds of such Company Sale for any tax measured by income or gain that is imposed on ABC as a result of such Company Sale (with a “gross-up”, to the extent that such reimbursement and any such “gross-up” is taxable), with the effect that the amount of such tax (and gross-up) will be borne by the Members (including ABC) by virtue of there being a smaller amount of such proceeds to distribute pursuant to Section 8.2; and

(v) if the holders of a majority of the Interests (other than ABC) request in good faith that ABC provide the indemnity described in clause (iii) above, or that the holders of the ABC

Stock participate as sellers in a Company Sale structured as described in clause (a) above, and the shareholders of ABC or any such holder does not do so, then the Company shall not be obligated to make the payment described in clause (iv) above.

As used in this Section 7.8A, the term “Unrelated Liability” means any liability or obligation of ABC other than (a) its liabilities and obligations under this Agreement and the Registration Rights Agreement, and (b) any other liability or obligation arising by operation of law solely by reason of ABC’s status as a member of the Company holding the membership interest in the Company acquired by it on the date of this Agreement; provided that the Unrelated Liabilities will include, without limitation, any liability of ABC for any tax on income or gains arising by reason of its status as a member of the Company, including by reason of allocations to it pursuant to Article V.

(b) The Members agree to use their respective best efforts to utilize ABC as the successor corporation in any Public Offering, so long as shareholders of ABC agree to indemnify the successor corporation and hold it harmless in respect of all Unrelated Liabilities, on terms reasonably acceptable to the holders of a majority of the Interests (other than ABC) and the underwriter(s) managing any related public offering. If ABC is the successor corporation, then shareholders of ABC shall receive the shares of the successor corporation that otherwise would have been issued to ABC pursuant to Section 8.2(a), and such shares will be deemed to be Registrable Securities for purposes of the Registration Rights Agreement.

#### SECTION 7.9 Class A Put Arrangement.

(a) At any time after the fifth anniversary of the Effective Date and prior to the seventh anniversary of the Effective Date, the holders of a majority of Class A Interests (the “Initiating Class A Holders”) shall have the right to require the Company to repurchase all of the Class A Interests held by such holders at the Class A Put Price by delivering a written notice to the Company (the “Class A Put Notice”). The Company will promptly deliver to all other holders of Class A Interests a copy of the Class A Put Notice. Such holders will have the right to require the Company to repurchase all of the Class A Interests held by such holders at the Class A Put Price by delivering written notice to the Company within 10 calendar days after receipt of the Class A Put Notice.

(b) Upon the delivery of the Class A Put Notice, the Company and the Initiating Class A Holders shall in good faith promptly (and in any event within 30 calendar days) determine the Class A Put Price as provided hereunder, and subject to the provisions hereof, within 10 days after the determination of the Class A Put Price, the Company will purchase and the holders of Class A Interests electing to have their Class A Interests repurchased will sell all the Class A Interests at a mutually agreeable time and place. The “Class A Put Price” shall mean the higher of the Class A Purchase Price for the number of Class A Interests being redeemed or the fair market value of the Class A Interests, without discount for minority interests or lack of liquidity and which price could otherwise be obtained in a Public Offering as determined in good faith by an independent firm as selected by the Operating Board and the Initiating Class A Holders. If the Company is unable to pay the Class A Put Price through available cash, sale of equity or incurrence of other indebtedness (either senior or mezzanine), the Company may elect to pay 20% of the Class A Put Price in cash within 45 days of the Class A Put Notice and 80% through delivery of a subordinated obligation of the Company payable 50% (of the remaining 80%) per year over a two-year period with interest payable semi-annually at an annual rate of 15.0%. If payment under the subordinated obligation shall cause the Company to be in default under any of the terms of its senior indebtedness, such payment can be deferred by the Company until no default shall continue to exist; however, the Company shall, on a best efforts basis, cause the loan agreements to provide for the potential put obligations, and in any event, the Class A Put Price shall be payable not later

than two years after the date of the Class A Put Notice. In the event the initial cash price shall not have been paid when due or the remaining Class A Put Price shall not have been paid in full within the two-year deferral period, the Class A Holders may require the holders of all other Interests to join with the Class A Holders in the sale of their interest in the Company, and the Initiating Class A Holders may satisfy the Class A Put Price from the proceeds of such sale. All Holders will, in connection with such sale, enter into three-year non-compete and non-solicitation agreements in favor of the purchaser of the Company in a form customary for transactions of that type. Any security not put to the Company as provided shall remain outstanding.

SECTION 7.10 Conversion on IPO. Notwithstanding any other provision contained herein (including in Article VIII), upon the consummation of the Company's initial Public Offering, each Interest shall be converted into the same number of shares of common stock, without respect to the rights to any liquidation or similar preferences herein contained; provided, however, that the number of shares of common stock issued in such conversion shall reflect, including a reduction if appropriate, the Conversion Distribution described in Section 4.5.

## ARTICLE VIII

### DISSOLUTION OF THE COMPANY

SECTION 8.1 Events of Dissolution. The Company shall be dissolved upon the happening of either of the following events:

- (a) upon the approval of the Operating Board;
- (b) upon the occurrence of an initial Public Offering; or
- (c) upon the occurrence of an Involuntary Withdrawal, unless, within 90 days after the occurrence of the Involuntary Withdrawal there are at least two (2) remaining Members and the Members holding greater than 50% of the Interests elect to continue the business of the Company pursuant to the terms of this Agreement.

SECTION 8.2 Procedure for Winding Up and Dissolution. If the Company is dissolved, the Operating Board shall wind up its affairs. On winding up of the Company, the assets of the Company shall be distributed, first, to creditors of the Company, including Interest Holders who are creditors, in satisfaction of the liabilities of the Company, and then the remaining proceeds ("Remaining Proceeds") to the Interest Holders in the following order of priority:

- (a) (i) First, to the Class A Interest Holders, pro rata in accordance with their shares of Unrecovered Capital (if any), until each Class A Interest Holder has been distributed its Unrecovered Capital;
- (ii) Second, to the Class A Interest Holders having positive Pro Rata Amounts, pro rata in accordance with such amounts. For these purposes, the "Pro Rata Amount" of a Class A Interest Holder shall equal the excess, if any, of (A) an amount equal to the Remaining Proceeds, multiplied by a fraction, the numerator of which is the number of Class A Interests held by such Interest Holder, and the denominator of which is the total number of Interests of all classes outstanding, on a fully diluted basis, over (B) the amount, if any distributed or distributable to such Interest Holder under Section 8.2(a)(i)

(b) Third, proceeds remaining for distribution, if any, shall be distributed to **Mozart Capital Partners**, or its successors or assigns permitted under this Agreement ("Mozart"), as a holder of Class A Interests, until Mozart has received the amount, if any, by which "x" exceeds "y" where:

$x$  = Mozart's Unrecovered Capital in respect of its Class A Interests plus the result of multiplying " $n$ " times the excess of: (i) the Remaining Proceeds, over (ii) the Adjusted Unrecovered Capital of Mozart in respect of its Class A Interests.

$y$  = Assets distributed or distributable to Mozart under Section 8.2(a).

$n$  = a fraction, the numerator of which is the number of Class A Interests held by Mozart at the date of such distribution, on an as converted, as exercised basis, and the denominator of which is the total number of Interests of all classes then outstanding, on an as converted, as exercised basis.

(c) Fourth, proceeds remaining for distribution, if any, shall be distributed to the Class B and Class C Interest Holders, pro rata in accordance with their Interests; until the Class C Interest Holders have received their Class C Profits Amount;

(d) Fifth, proceeds remaining for distribution shall be distributed to the Class B Interest Holders, pro rata in accordance with their Interests.

Notwithstanding any provision of this Agreement to the contrary, in the event that the amount required to be distributed to a Member in accordance with Section 8.2 exceeds that Member's positive Capital Account balance, Net Profits and Net Losses (or, if necessary, items of gross income, gain and loss) for the Fiscal Year in which the liquidation of the Company occurs (or, to the extent approved by the Operating Board and not inconsistent with the tax laws, to the extent that Net Profits and Net Losses (or items of gross income, gain and loss) for the Fiscal Year in which the liquidation of the Company occurs are not sufficient, Net Profits and Net Losses (or, if necessary, items of gross income, gain and loss) for such number of immediately preceding Fiscal Years as shall be necessary starting with the most recent Fiscal Year, shall be allocated (or reallocated if with respect to a preceding Fiscal Year) in the minimum amount necessary so as to cause the positive Capital Account balance of each Member to be equal to the amount to be distributed to such Member pursuant to Section 8.2.

SECTION 8.3 Filing of Articles of Dissolution. If the Company is dissolved, the Operating Board shall promptly file Articles of Dissolution with the Secretary of State. If there is no Operating Board, the Articles shall be filed by the Members; if there are no remaining Members, the Articles shall be filed by the last Person to be a Member; if there are no remaining Members, or a Person who last was a Member, the Articles shall be filed by the legal or personal representatives of the Person who last was a Member.

## ARTICLE IX

### BOOKS AND RECORDS

SECTION 9.1 Bank Accounts. Except as may be agreed to by the Operating Board, all funds of the Company shall be deposited and maintained in the Company's name in a bank account or accounts of one or more commercial banks, each having combined capital and surplus of at least \$500 million, or shall be invested in obligations of the United States

government or any agency thereof or obligations guaranteed by the United States government or commercial paper with a rating of at least "Prime-1" by Moody's Investors Service, Inc.; provided that, except with the prior written approval of the Operating Board, the Company will not make any such deposit or investment unless the stated maturity thereof is no greater than one year from the date the Company makes such deposit or investment. Subject to the foregoing, the Chief Executive Officer shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the individuals who will have authority with respect to the accounts and the funds therein.

SECTION 9.2 Books and Records. The Company shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of the transactions with respect to the conduct of the Company's business. The records shall include, but not be limited to, complete and accurate information regarding the state of the business and financial condition of the Company, a copy of the Certificate of Formation and this Agreement and all amendments to the Certificate of Formation and this Agreement; a current list of the names and last known business, residence, or mailing addresses of all Members; and the Company's federal, state or local tax returns. The books and records shall be maintained in accordance with sound accounting practices and shall be available at the Company's principal office for examination by any Member or such Person's duly authorized representative at any and all reasonable times during normal business hours. In addition, each Member shall be afforded reasonable access to the management and accountants of the Company.

SECTION 9.3 Annual Accounting Period. The annual accounting period of the Company shall be its Fiscal Year. The Company's Fiscal Year shall be the twelve month period ended December 31 of each year, subject to the requirements and limitations of the Code.

SECTION 9.4 Financial Statements and Other Reports. The Company will maintain, a system of accounting, established and administered in accordance with sound business practices, to permit preparation of financial statements in conformity with GAAP. In addition, the Company will deliver the following to each holder of Class A Interests:

(a) Monthly Financial Statements. As soon as practicable after the end of each month of each fiscal year and in any event within 30 days thereafter, a balance sheet of the Company as of the end of such period and the related statements of income and cash flow for such period;

(b) Year End Financial Statements. As soon as available, and in any event within 120 days after the end of each Fiscal Year, a balance sheet of the Company as of the end of such year and the related statements of income and cash flow for such Fiscal Year, as audited by a firm of independent certified public accountants of recognized national standing selected by the Operating Board, and reasonably approved by the holders of a majority of the aggregate Class A Interests;

(c) Non-Compliance Reports. Within five days of discovery, a notice of non-compliance with any material agreement of the Company indicating the scope and nature of such non-compliance; and

(d) Operating Budget. Within 30 days of the end of the Fiscal Year, a detailed annual operating budget as approved by the Operating Board.

Each of the financial statements referred to in subparagraphs (a) and (b) will be complete and correct in all material respects as of the dates and for the periods stated therein, subject in the case of the unaudited financial statements to changes resulting from normal year-end audit adjustments (none of which would,



alone or in the aggregate, be materially adverse to the financial condition, operating results, assets, operations or business prospects of the Company).

Except as otherwise required by law or judicial order or decree or by any governmental agency or authority, the Interest Holders shall use their best efforts to maintain the confidentiality of all nonpublic information obtained by it hereunder which the Company has reasonably designated as proprietary or confidential in nature; provided that the Interest Holders may disclose such information in connection with the sale or transfer or proposed sale or transfer of any interests in the Company, if the transferee or proposed transferee agrees in writing to be bound by the provisions hereof.

SECTION 9.5 Tax Matters Partner. The Chief Financial Officer shall be the Company's "tax matters partner" and, as such, shall have all powers and responsibilities provided in Code Section 6221, et seq. or such other provisions as may become applicable to limited liability companies.

SECTION 9.6 Tax Elections. The Operating Board shall have the authority to make all Company elections permitted under the Code; provided, however, notwithstanding the foregoing, the Company shall make an election under Code Section 754 upon the reasonable written request of any Member, and no election shall be made by the Company or any Members for the Company to be taxed as a corporation without the consent of all Members.

## ARTICLE X

### RESERVED

## ARTICLE XI

### MISCELLANEOUS

SECTION 11.1 Notices, Consents, etc. Any notices, consents or other communications required to be sent or given hereunder by any of the Members shall in every case be in writing and shall be deemed properly served if (a) delivered personally, (b) sent by registered or certified mail, in all such cases with first class postage prepaid, return receipt requested, (c) delivered by a recognized overnight courier service, or (d) sent by facsimile transmission to each Member at the addresses as set forth on the books and records of the Company, or at such other addresses as may be furnished in writing by such Member. Date of service of such notice shall be (w) the date such notice is personally delivered, (x) five days after the date of mailing if sent by certified or registered mail, (y) one business day after date of delivery to the overnight courier if sent by overnight courier, or (z) the next succeeding business day after transmission by facsimile.

SECTION 11.2 Public Announcements. No Member shall make any public announcement or filing with respect to the transactions provided for herein without the prior consent of the Operating Board, unless such party has been advised by counsel such disclosure is required by applicable law. To the extent reasonably feasible, any press release or other announcement or notice regarding the transactions contemplated by this Agreement shall be made by the Operating Board or any other party designated by the Operating Board.

SECTION 11.3 Severability. Should any provision of this Agreement be held to be enforceable only if modified, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon each Member with any such

modification to become a part hereof and treated as though originally set forth in this Agreement. The Members further agree that any court or arbitrator is expressly authorized to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as it deems warranted to carry out the intent and agreement of the Members as embodied herein to the maximum extent permitted by law. The Members expressly agree that this Agreement as so modified shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been set forth herein.

SECTION 11.4 Amendment and Waiver. Subject to Section 6.7, this Agreement may be amended, or any provision of this Agreement may be waived, by the Majority Holders; provided that any amendment that would have an adverse effect on (1) holders of Class A Interests must be approved by holders of a majority of the aggregate Class A Interests together voting as a separate class, (2) holders of Class B Interests must be approved by the holders of a majority of the Class B Interests, or (3) holders of Class C Interests must be approved by the holders of a majority of the Class C Interests. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other breach; provided, however, that any waiver, consent, or agreement of amendment or modification affecting the rights of a holder(s) of any Class A Interests, Class B Interests or Class C Interests in a disproportionate manner as the other holder(s) of Class A Interests, Class B Interests or Class C Interests, as the case may be, shall only be effective upon the consent of such holder(s) so disadvantaged.

SECTION 11.5 Documents. Each Member will execute all documents and take such other actions as the Operating Board may reasonably request in order to consummate the transactions provided for herein and to accomplish the purposes of this Agreement.

SECTION 11.6 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Members hereto and delivered to the Company.

SECTION 11.7 Governing Law. This Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Agreement shall be governed by, the laws of the State of Delaware, without giving effect to provisions thereof regarding conflict of laws.

SECTION 11.8 Headings. The subject headings of Articles and Sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

SECTION 11.9 Assignment. Except as otherwise specifically provided herein, this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, heirs, administrators, executors, successors and permitted assigns.

SECTION 11.10 Entire Agreement. This Agreement and all the Schedules attached to this Agreement (all of which shall be deemed incorporated in this Agreement and made a part hereof) and all other agreements between or among any of the parties hereto dated of even date herewith set forth the entire understanding of the Members with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, of the Members, and shall be modified or amended as provided herein.

SECTION 11.11 Third Parties. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, the parties to this Agreement and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

SECTION 11.12 Interpretative Matters. Unless the context otherwise requires, (a) all references to Articles, Sections or Schedules are to Articles, Sections or Schedules in this Agreement, (b) each accounting term not otherwise defined in this Agreement has the meaning assigned to it in accordance with GAAP, and (c) words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter.

SECTION 11.13 Construction. Each Member hereto agrees that this Agreement is the product of negotiations between sophisticated parties and individuals, all of whom were represented by counsel, and each of whom had an opportunity to participate in, and did participate in, the drafting of each provision hereof. Accordingly, ambiguities in this Agreement, if any, shall not be construed strictly or in favor of or against any party hereto but rather shall be given a fair and reasonable construction without regard to the rule of contra proferentum.

SECTION 11.14 Waiver and Approval Each Interest Holder as of \_\_\_\_\_ and as a party to the Operating Agreement and acting in its or his capacity as a Member or manager of the Company or member of the Operating Board hereby waives all right to notice of a meeting and such other procedures as set forth in Article VII and elsewhere in the Operating Agreement of the Company dated as of \_\_\_\_\_, the Amended and Restated Operating Agreement dated as of \_\_\_\_\_, the Second Amended and Restated Operating Agreement dated as of \_\_\_\_\_, the Third Amended and Restated Operating Agreement dated as of \_\_\_\_\_ and as otherwise required by contract or statute in connection with the execution of this Agreement.

\* \* \*

IN WITNESS WHEREOF, we have hereunto set our hand and seals on the date set forth beside our names

THE COMPANY:

ABC INDUSTRIAL SERVICES, L.L.C.

By: \_\_\_\_\_  
Abraham Lincoln

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

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

THE INTEREST HOLDERS:

By: \_\_\_\_\_  
Abraham Lincoln

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

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

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

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

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

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

**SIGNATURE PAGE TO  
FOURTH AMENDED AND RESTATED OPERATING AGREEMENT**

INDUSTRIAL CLEANING SPECIALISTS, INC.

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

CLEANUP ACQUISITION, L.L.C.

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

MOZART CAPITAL PARTNERS

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

THE WARRANT HOLDERS: THE XYZ GROUP LLC

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

VALUE INVESTING PARTNERS, INC.

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

ABC INVESTMENTS, INC

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

**SCHEDULE A**

**AUTHORIZED AND ISSUED INTERESTS**

Name	Class A Interests	A-1 Warrants to Purchase Class A Interests	A-2 Warrants to Purchase Class A Interests	Class B Interests	Warrants to Purchase Class B Interests	Class C Interests
ABC Investments, Inc. <sup>1</sup>						
(TSG) The XYZ Group <sup>2</sup>						
(VIP) Value Investing Partners, LLC <sup>2</sup>						
Mozart Capital Partners II Limited Partnership <sup>3</sup>						
Industrial Cleaning Specialists, Inc.	----					----
CleanUp Acquisition, L.L.C.	----					----
	----					----
	----					----
	----					----
	----			----		
	----			----		
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<sup>1</sup> Initial Unrecovered Capital is \$50,000

<sup>2</sup> Initial Unrecovered Capital is \$15,000, allocated 15% to ABC, and 5% to VIP.

<sup>3</sup> Initial Unrecovered Capital is \$6,000,000

Name	Class A Interests	A-1 Warrants to Purchase Class A Interests	A-2 Warrants to Purchase Class A Interests	Class B Interests	Warrants to Purchase Class B Interests	Class C Interests
<b>TOTAL</b>						

**TOTAL OF CLASS A, B AND C INTERESTS: 3,000,000**

\_\_\_\_\_