

## **OPERATING AGREEMENT**

THIS OPERATING AGREEMENT (“Agreement” or “agreement”) of [NAME OF LLC] is entered into as of the date set forth on the signature page hereto by each of the persons named in Exhibit A hereto (referred to individually as a “Member” and collectively as the “Members”).

A. \_\_\_\_\_ has been formed as a limited liability company under The Florida Code (the “Florida” Limited Liability Company Act”), by the filing of the certificate of formation with the office of the Secretary of State of Florida. \_\_\_\_\_ may carry on any lawful business, purpose or activity permitted under the Act.

B. The location of the principal place of business of \_\_\_\_\_ shall be determined by the Manager. In addition, \_\_\_\_\_ may maintain such other offices as the Manager may deem advisable at any other place or places within or without the United States.

C. The registered agent for \_\_\_\_\_ is set forth in \_\_\_\_\_’s certificate of formation, provided that the Manager may from time to time designate another registered agent by appropriate filings with the Secretary of State.

D. The term of \_\_\_\_\_ commenced on the date of filing of the certificate of formation and shall be perpetual, unless an earlier term is specified in Section 8.1 or \_\_\_\_\_ is dissolved and terminated in accordance with the provisions of this Agreement.

NOW, THEREFORE, the Members agree as follows:

### **ARTICLE 1 DEFINITIONS**

Capitalized terms used in this agreement have the meanings specified in this Article or elsewhere in this agreement and when not so defined shall have the meanings set forth in the Florida Limited Liability Company Act.

“Affiliate” means with respect to a Person, any other Person that, directly or indirectly, controls, is controlled by, or is under common control with, the specified Person. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise. Ownership of more than 50% of the beneficial interests of an entity shall be conclusive evidence that control exists.

“Capital Contribution” means the amount of cash, property or services contributed to \_\_\_\_\_.

“\_\_\_\_\_” means \_\_\_\_\_, a Florida limited liability company.

“Majority” means more than 51% on Membership Interests

“Member” means a Person who acquires Membership Interests, as permitted under this agreement, and who becomes or remains a Member.

“Membership Interests” means either Percentage Interest or Units, based on how ownership in \_\_\_\_\_ is expressed on Exhibit A.

“Percentage Interest” means a percent ownership in \_\_\_\_\_ entitling the holder to an economic and voting interest in \_\_\_\_\_.

“Person” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

“Super Majority” means more than 91% of the Membership Interests

“Unit” means a unit of ownership in \_\_\_\_\_ entitling the Member holding such Unit to an economic interest and a voting interest in \_\_\_\_\_.

## **ARTICLE 2 CAPITAL AND CAPITAL CONTRIBUTIONS**

**2.1. Initial Capital Contributions and Membership Interests.** The Capital Contributions of the initial Members, as well as the Membership Interests of each Member, are listed in Exhibit A, which is made part of this agreement. Membership Interests in \_\_\_\_\_ may be expressed either in Units or directly in Percentage Interests.

**2.2. Subsequent Contributions.** No Member shall be obligated to make additional capital contributions.

**2.3. Additional Capital.** If a majority of Members agree additional capital is required each Member has the right to contribute his/her pro rata share of the required capital. In the case a Member does not make his pro rata contribution, the other Members may contribute additional capital to cover the non-participating Members share. The contributing Members would be entitled to a preferred return of 1.15 times their contributed capital for any additional capital contributions above their pro rata share.

**2.4. Capital Accounts.** Individual capital accounts may be maintained for each Member consisting of that Member’s Capital Contribution, (a) increased by that Member’s share of profits, (b) decreased by that Member’s share of losses and \_\_\_\_\_ expenses, (c) decreased by that Member’s distributions, and (d) adjusted as required in accordance with applicable tax laws.

**2.5. Interest.** No interest shall be paid on Capital Contributions or on the balance of a Member’s capital account.

**2.6. Limited Liability.** A Member shall not be bound by, or be personally liable for, the expenses, liabilities, or obligations of \_\_\_\_\_ except as otherwise provided in this agreement or as required by law.

**ARTICLE 3  
DIVISION OF CASH FLOWS**

**3.1. Cash Flows from \_\_\_\_\_.** All available cash flows from \_\_\_\_\_ shall be used for 1) paying expenses, taxes, loan principal and interest payments, and other payments; 2) investing in new business opportunities and otherwise expanding the business for the benefit of the Members with the majority agreement of Members; 3) as available, making distributions to the Members pro rata to their respective Membership Interests, including distributions for individual tax payments.

**3.2. Distributions.**

\_\_\_\_\_ shall make distributions of all available cash and property to the Members, first any members entitled to preferred returns, preferred contributions above the pro rata capital account share will receive 50% of any distributions to be applied against preferred contributions until all preferred contributions have been paid. Second, after the preferred return payment are made available cash will go to the pay the relative capital accounts of members. Third, once all capital accounts are paid the distributions will be relative to the Membership Interests.

**ARTICLE 4  
MANAGEMENT**

**4.1. Management.** The business of \_\_\_\_\_ shall be managed by one Manager. The Manager may bind \_\_\_\_\_ in all matters in the ordinary course of business.

**4.2. Meetings of Members.** Regular meetings of the Members are not required but may be held at such time and place as the Manager deems necessary or desirable for the reasonable management of \_\_\_\_\_. Meetings may take place in person, by conference telephone or by any other means permitted under Florida law.

**4.3. Banking.** The Manager is authorized to set up one or more bank accounts and are authorized to execute any banking resolutions provided by the institution where the accounts are being set up. All funds of \_\_\_\_\_ shall be deposited in one or more accounts with one or more recognized financial institutions in the name of \_\_\_\_\_.

**4.4. Officers.** The Manager is authorized to appoint one or more officers from time to time. The officers shall hold office until their successors are chosen and qualified. Subject to any employment agreement entered into between the officer and \_\_\_\_\_, an officer shall serve at the pleasure of the Manager. The current officers of \_\_\_\_\_ are listed on Exhibit C.

**4.5. Authority of Members to Bind the Company:** The Members hereby agree that only the Manager shall have the authority to bind the Company to any transaction greater than \$5,000.00. No Member shall take any action to bind the Company for any costs that are not associated with standard business operations and authorized projects, and shall indemnify the Company for any costs or damages incurred by the Company as a result of the unauthorized action of such Member that is not associated with standard business operations and/or authorized projects. The Manager, on behalf of the Company, has the power to do all things necessary or convenient to carry out the business and affairs of the Company, including, without limitation:

- a. Purchase, receipt, lease, sale conveyance, pledge, exchange, disposition, or other transaction dealing with property, wherever located;
- b. Entering into contracts and guaranties; incurring of liabilities, borrowing money, issuance of notes, bonds, and other obligations and the securing of any of its obligations by mortgage or pledge of any of its property or income;
- c. Investment, and reinvestment of the Company's funds.;
- d. Conducting the Company's business, the establishment of Company offices, and the exercise of the powers of the Company within or without the State;
- e. Appointment of employees and agents of the Company, the defining of their duties, and the establishment of their compensation;
- f. Payment of pensions and establishment of pension plans, pension trusts, profit sharing plans, and benefit incentive plans for all or any of the current or former Members, employees, and agents of the Company;
- g. Purchase of insurance on the life of any Member or employment for the benefit of the Company;
- h. Participation in partnership agreements, joint ventures, or other associations of any kind; and
- i. Indemnification of Members or any other person.

**4.6 Authority of a Super Majority of Members:** The Members hereby agree that only Members possessing a Super Majority of the Membership Interests shall have the authority to:

- a. Enter into an agreement to sell the Company
- b. Amend the Company operating agreement
- c. Dissolve the Company

## **ARTICLE 5 ACCOUNTS AND ACCOUNTING**

**5.1. Accounts.** Complete books of account of \_\_\_\_\_'s business, in which each \_\_\_\_\_ transaction shall be fully and accurately entered, shall be kept at \_\_\_\_\_'s principal executive office and shall be open to inspection and copying on reasonable notice by any Member, Manager or their authorized representatives during normal business hours for purposes reasonably

related to the interest of such person as a Member or Manager. The costs of such inspection and copying shall be borne by the Member or Manager.

**5.2. Records.** At all times during the term of existence of \_\_\_\_\_, and beyond that term if the Manager deems it necessary, the Manager shall keep or cause to be kept the following:

(a) A current list of the full name and last known business or residence address of each member and Manager, together with the Capital Contribution, the amount and terms of any agreed upon future Capital Contribution, and Membership Interest of each Member;

(b) A copy of the certificate of formation, as amended;

(c) Copies of \_\_\_\_\_'s federal, state, and local income tax or information returns and reports, if any, for the three most recent taxable years; and

(d) An original executed copy or counterparts of this agreement and any amendments.

**5.3. Income Tax Returns.** Within 45 days after the end of each taxable year, \_\_\_\_\_ shall use its best efforts to send to each of the Members all information necessary for the Members to complete their federal and state income tax or information returns and a copy of \_\_\_\_\_'s federal, state, and local income tax or information returns for such year.

**5.4. Tax Matters Member.** An independent tax advisor expert will be appointed by the majority of the Members.

## **ARTICLE 6 MEMBERSHIP—MEETINGS, VOTING**

**6.1. Members and Voting Rights.** Subject to compliance with Sections 4.5 and 4.6, except as otherwise provided in Section 4.1, Members shall have the right and power to vote on all matters with respect to which this agreement or Florida law requires or permits such Member action. Voting shall be based on Membership Interests. Unless otherwise stated in this Agreement or under Florida law, the vote of the Members holding a majority of the Membership interests shall be required to approve or carry an action.

**6.2. Meetings.** Regular or annual meetings of the Members are not required but may be held at such time and place as the Members deem necessary or desirable for the reasonable management of \_\_\_\_\_.

A written notice shall be given not less than 10 days or more than 60 days before the date of the meeting to each Member entitled to vote at the meeting. In any instance in which the approval of the Members is required under this agreement, such approval may be obtained in any manner permitted by Florida law, including by conference telephone or similar communications equipment. In addition, any action which could be taken at a meeting can be approved without a meeting and without notice if a consent in writing, stating the action to be taken, is signed by the holders of the minimum Membership Interest needed to approve the action.

A consent transmitted by electronic transmission shall be deemed to be written and signed for purposes of this paragraph.

## **ARTICLE 7 WITHDRAWAL AND TRANSFERS OF MEMBERSHIP INTERESTS**

**7.1. Withdrawal.** A Member may withdraw from \_\_\_\_\_ prior to the dissolution and winding up of \_\_\_\_\_ with the unanimous consent of the other Members, or if such Member transfers or assigns all of his or her Membership Interests pursuant to Section 7.2 below. A Member who withdraws pursuant to this Section 7.1 shall be entitled to a distribution in an amount equal to such member's Capital Account.

**7.2. Restrictions on Transfer.** No Member may transfer any part of its Membership Interest except with the written consent of all Members. A person who acquires Membership Interests in accordance with this section shall be admitted as a Member of \_\_\_\_\_ after the person has agreed to be bound by the terms of this Operating Agreement by executing a consent in the form of Exhibit D.

**7.3. Requirement for Transfer :** Any Member may dispose of all or a portion of its, his or her Membership Interest upon compliance with this section. No Membership Interest shall be disposed of:

7.3.1. b. Without a legal opinion from a licensed lawyer satisfactory to the Managing Members

7.3.2. Unless and until the Company receives from the assignee the information and agreements that the Managing Members may reasonably require, including, but not limited to, any taxpayer identification number and any agreement that may be required by a taxing jurisdiction;

7.3.3. Unless the Company has been given an opportunity to acquire the Member's interest on the same terms and conditions as the transferee; and

7.3.4. Unless individual Members are given the opportunity to acquire the Member's interest if the Company does not elect to purchase the Interests on the same terms and conditions as the transferee;

7.3.5. Unless and until all Members have consented to such disposition which may be withheld for any reason.

## **ARTICLE 8 DISSOLUTION AND WINDING UP**

**8.1. Dissolution.** \_\_\_\_\_ shall be dissolved upon the first to occur of the following events:

(a) The vote of Members holding a Super Majority of the outstanding Membership Interests and each Manager to dissolve \_\_\_\_\_;

(b) Entry of a decree of judicial dissolution under the Florida Limited Liability Company Act;

(c) At any time there are no Members, provided that \_\_\_\_\_ is not dissolved and is not required to be wound up if, within 180 days after the occurrence of the event that terminated the continued membership of the last remaining Member, the legal representative of the last remaining Member agrees in writing to continue \_\_\_\_\_ and to the admission of the legal representative of such Member or its assignee to \_\_\_\_\_ as a Member, effective as of the occurrence of the event that terminated the continued membership of the last remaining Member.

**8.2. No Automatic Dissolution Upon Certain Events.** Neither the death, incapacity, disassociation, bankruptcy or withdrawal of a Member shall automatically cause a dissolution of \_\_\_\_\_.

**8.3. Bankruptcy.** Except by the unanimous consent of all Managers, \_\_\_\_\_ shall not file a voluntary petition in bankruptcy or otherwise seek relief under Title 11 of the United States Code or any successor statute thereto, or under any similar applicable state law.

## **ARTICLE 9 INDEMNIFICATION**

**9.1. Indemnification.** \_\_\_\_\_ shall have the power to indemnify any Person who was or is a party, or who is threatened to be made a party, to any proceeding by reason of the fact that such Person was or is a Member, Manager, officer, employee or other agent of \_\_\_\_\_, or was or is serving at the request of \_\_\_\_\_ as a director, manager, officer, employee, or other agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by such Person in connection with such proceeding, if such Person acted in good faith and in a manner that such Person reasonably believed to be in the best interests of \_\_\_\_\_, and, in the case of a criminal proceeding, such Person had no reasonable cause to believe that the Person's conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner that such Person reasonably believed to be in the best interests of \_\_\_\_\_, or that the Person had reasonable cause to believe that the Person's conduct was unlawful.

To the extent that an agent of \_\_\_\_\_ has been successful on the merits in defense of any proceeding, or in defense of any claim, issue, or matter in any such proceeding, the agent shall be indemnified against expenses actually and reasonably incurred in connection with the proceeding. In all other cases, indemnification shall be provided by \_\_\_\_\_ only if authorized in the specific case unanimously by all of the Members.

“Proceeding” as used in this section, means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative.

**9.2. Expenses.** Expenses of each Person indemnified under this agreement actually and reasonably incurred in connection with the defense or settlement of a proceeding may be paid by \_\_\_\_\_ in advance of the final disposition of such proceeding, as authorized by the Members or Managers, as the case may be, who are not seeking indemnification upon receipt of an undertaking by such Person to repay such amount unless it shall ultimately be determined that such Person is entitled to be indemnified by \_\_\_\_\_.

“Expenses” as used in this section, includes, without limitation, attorney fees and expenses of establishing a right to indemnification, if any, under this section.

## **ARTICLE 10 GENERAL PROVISIONS**

**10.1. Entire Agreement; Amendment.** This agreement constitutes the whole and entire agreement of the parties with respect to the subject matter of this agreement, and it shall not be modified or amended in any respect except by a written instrument executed by all of the Members. This agreement replaces and supersedes all prior written and oral agreements by and among the Members.

**10.2. Governing Law; Severability.** This agreement shall be construed and enforced in accordance with the internal laws of the State of Florida. If any provision of this agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this agreement shall remain in effect.

**10.3. Benefit.** This agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, and permitted successors and assigns.

**10.4. Number and Gender.** Whenever used in this agreement, the singular shall include the plural and the plural shall include the singular, and the neuter gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning of this agreement may require.

**10.5. No Third Party Beneficiary.** This agreement is made solely for the benefit of the parties to this agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this agreement.

**10.6. Binding Arbitration.** Except as otherwise provided in this Agreement, any controversy or dispute arising out of this Agreement, the interpretation of any of the provisions hereof, or the action or inaction of any Member or Manager hereunder shall be submitted to arbitration in Miami-Dade County in the State of Florida before the American Arbitration Association under such procedures and rules of the American Arbitration Association in existence at such time. Any award or decision obtained from any arbitration proceeding shall be final and binding on the parties, and judgment upon any award thus obtained may be entered in any court having jurisdiction thereof. No action at law or in equity based upon any claim arising out of or



related to this Agreement shall be instituted in any court by any Member except (a) an action to compel arbitration pursuant to this section, (b) an action to enforce an award obtained in an arbitration proceeding in accordance with this section, or (c) as required by the substantive laws of the State of Florida.

**10.7. Confidentiality Obligations of Members.** Each Member expressly covenants and agrees that neither such Member nor any Affiliate (to the extent any such Affiliate has received Confidential Information) will disclose, divulge, furnish or make accessible to anyone (other than the Company or any of its Affiliates or representatives) any Confidential Information, or in any way use any Confidential Information in the conduct of any business; provided, however, that nothing in this Section will prohibit the disclosure of any Confidential Information (a) which is required to be disclosed by the Member or any such Affiliate in connection with any court action or any proceeding before any governmental or regulatory authority; (b) in connection with the enforcement of any of the rights of the Member hereunder or (c) in connection with the defense by the Member of any claim asserted against it hereunder, provided, however, that in the case of a disclosure contemplated by clause (a), no disclosure shall be made until the Member shall give prior written notice to the Company of the intention to disclose such Confidential Information so that the Company may contest the need for disclosure, and the Member, at the Company's expense, will cooperate (and will cause its Affiliates and their respective representatives to cooperate) with the Company in connection with any such proceeding. "Confidential Information" means all data and information relating to the Company or any of its Subsidiaries or Affiliates, without regard to form or medium and whether or not identified as "confidential information," which is not generally known by the general public including scientific, technical and non scientific data, chemical structures, sequences, formulae, specifications, compilations, products, devices, methods, concepts, know how, techniques, strategies, designs, drawings, processes, financial data, marketing data, financial plans, product plans, service plans, marketing plans, and surveys or lists of actual or potential customers or suppliers. Confidential Information does not include any data or information that has been voluntarily disclosed to the public by the Company or that has been independently developed and disclosed by others, or that otherwise enters the public domain through lawful means (e.g., not in violation of this Agreement).

**10.8. Non-competition.** At no time during the term of this Agreement and for a two (2) year period following the termination of this Agreement for any reason, Palm Coast Masonry Construction Inc., shall not in any capacity (whether in the capacity as a partner, manager, consultant, agent or owner, directly or indirectly, advise, manage, render or perform services to any person or entity which is engaged in a business competitive to that of \_\_\_\_\_ or any of its subsidiaries or associated companies within fifty (50 miles) wherein \_\_\_\_\_ or any of its subsidiaries renders, sells or markets its services at the time of such termination or within one-year prior to such termination.

**IN WITNESS WHEREOF**, the parties have executed or caused to be executed this Operating Agreement as of the date below.

Dated: \_\_\_\_\_, 202\_\_\_\_

By \_\_\_\_\_

Managing Member

By \_\_\_\_\_

Authorized Member

By \_\_\_\_\_

Authorized Member

By \_\_\_\_\_

Authorized Member

**EXHIBIT A  
MEMBERS**

The following persons are the initial Members of \_\_\_\_\_, and their initial Capital Contributions and Membership Interests are set forth below.

<u>Name</u>	<u>Capital Contribution (\$)</u>	<u>Percentage Interest</u>
	\$	%
	\$	%
	\$	%
	\$	%

**EXHIBIT B  
MANAGERS**

The following person(s) are elected as Manager(s) of \_\_\_\_\_.

**EXHIBIT C  
OFFICERS**

The following person(s) are elected as officers of \_\_\_\_\_:

Name of Officer

Title  
Member