

**OPERATING AGREEMENT OF**  
**HUGH HARRIS CONSTRUCTION, LLC**  
**A KENTUCKY LIMITED LIABILITY COMPANY**

This Operating Agreement is made and entered into this 5<sup>th</sup> day of August, 2013 by and among the undersigned as the Members of Hugh Harris Construction, LLC, a Kentucky Limited Liability Company (hereinafter referred to as the "Company"). The parties hereto enter into this Operating Agreement as said Company's and their binding agreement and for all purposes permitted to an operating agreement under Kentucky law.

**ARTICLE I**  
**FORMATION**

**Section 1.1 Organization**

The parties hereto hereby organize this limited liability company pursuant to the provisions of the Kentucky Limited Liability Company Act (hereinafter referred to as the "Act").

**Section 1.2 Intent**

It is the intent of the parties to this Operating Agreement that the Company shall always be operated in a manner consistent with its treatment as a "partnership" for federal and state income tax purposes.

**Section 1.3 Agreement**

For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties executing this Agreement hereby agree to the terms and conditions of this Operating Agreement, as it may from time to time be amended according to its terms. To the extent that any provision of the Operating Agreement is prohibited, invalid, or ineffective under the Act, the Operating Agreement shall be considered amended to the smallest degree possible in order to make the agreement effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to make any provision of the Operating Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

**Section 1.4 Name of Company**

The name of the Company is Hugh Harris Construction, LLC and all business of the

Company shall be conducted under that name.

### **Section 1.5 Effective Date of Agreement**

The Operating Agreement of this Company shall become effective upon the filing of the Articles of Organization and acceptance of same with the Secretary of State for the Commonwealth of Kentucky.

### **Section 1.6 Term of Company Existence**

The Company shall be perpetual unless the Company is dissolved and its affairs wound up in accordance with the Act or this Operating Agreement.

### **Section 1.7 Principal Executive Office of Company**

The principal executive office of the Company shall be in the City of Lebanon Junction, County of Bullitt, Commonwealth of Kentucky.

### **Section 1.8 Registered Agent and Registered Office of Company**

The registered agent for service of process and registered office of the Company will be as follows:

Hugh Harris  
711 Beech Grove Road  
Lebanon Junction, KY 40150

The Managers of the Company, may, from time to time, change the registered agent or office through appropriate filings with the Secretary of State for the Commonwealth of Kentucky.

### **Section 1.9 Other Company Offices**

The Company may have other offices at such places within and without the Commonwealth of Kentucky as the Managers of the Company may determine from time to time.

### **Section 1.10 Company Business**

The object and purpose of the Company and the general nature of the business it proposes to transact shall include all transactions of any or all lawful business for which limited liability companies may be formed under the laws of the State of Kentucky.

### **Section 1.11. Company Members**

The name and address of each of the members of this Company and the percentage interest of each are as follows:

<b>Name</b>	<b>Address</b>	<b>Percentage Interest</b>
Hugh Harris	711 Beech Grove Rd., Lebanon Junction, KY 40150	100

## **ARTICLE II**

### **Management of Company**

#### **Section 2.1 Management Vested in Managing Members**

The ordinary and day-to-day decisions concerning the business affairs of the Company shall be made by the Managing Members of the Company (hereinafter sometimes referred to as "Managers"). The names and addresses of the initial Managing Members are as follows:

<b>Name</b>	<b>Address</b>
Hugh Harris	711 Beech Grove Rd., Lebanon Junction, KY 40150

#### **Section 2.2 Terms in Office of Managing Member**

No Managing Member shall have any contractual right to serve as a Managing Member of the Company. Each Managing Member shall serve as such until the earliest of the following events:

- (i) The disassociation from the Company of the Managing Member;
- (ii) The removal of the Managing Member as provided for in this Operating Agreement.

#### **Section 2.3 Binding Authority of Managing Members**

The parties hereto hereby agree that only the Managing Members of the Company shall have the authority to bind the Company. No Member other than a Managing Member shall take any action as a Member to bind the Company, and shall indemnify the Company for any costs or

damages incurred by the Company as a result of the unauthorized action of such Member. Each Managing Member has the power to do all things necessary or convenient to carry out the business and affairs of the Company, including, but not limited to the following actions:

(i) The 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;

(ii) the purchase, receipt, lease or other acquisition, ownership, holding, improvement, use and other dealing with property, wherever located;

(iii) the sale, conveyance, mortgage, pledge, lease, exchange, and other disposition of property;

(iv) the lending of money, investment and reinvestment of Company funds, and receipt and holding of property as security for repayment, including the loaning of money to Company Members, employees, and agents;

(v) The appointment of employees and agents of the Company and the establishment of their compensation;

(vi) the payment of compensation, or additional compensation to any or all Members, and employees on account of services previously rendered to the Company, whether or not an agreement to pay such compensation was made before such services were rendered;

(vii) the participation in partnership agreements, joint ventures, or other associations of any kind of any person(s) or entities;

#### **Section 2.4 Compensation of Managing Members**

Each Managing Member shall be reimbursed for any and all reasonable expenses incurred in managing the Company and shall be entitled to compensation, in an amount to be determined from time to time by the affirmative vote of all of the Members of the Company.

#### **Section 2.5 Differences Among the Managing Members**

Each Managing Member has the power to bind the Company as provided in this Article II.

#### **Section 2.6 Removal of Managing Member**

Any Managing Member may be removed by the affirmative vote of a majority of the Members of the Company. Each Member's vote shall be weighted in proportion to the Member's percentage interest in the Company.

## **ARTICLE III**

### **RIGHTS AND DUTIES OF COMPANY MEMBERS**

#### **Section 3.1 Limitation of Liability**

Each Member's liability for debts and obligation of the Company shall be limited as set forth in Section 275.150 of Kentucky Limited Liability Company Act and other applicable law and in the Articles of Organization.

#### **Section 3.2 Lists of Members**

Upon written request of any Member, the Managers of the Company shall provide a list showing the names, last known addresses and Interests of all Members in the Company.

#### **Section 3.3 Member's Management Rights**

All Company Members who have not become disassociated with the Company shall be entitled to vote on any matter submitted to vote of the Members by the Managing Members. Each Member's vote shall be weighted in proportion to the Member's percentage interest in the Company. Notwithstanding the foregoing, the following actions require unanimous written consent of the Company Members:

- (i) the sale of all or substantially all assets of the Company;
- (ii) a mortgage or encumbrance upon all or substantially all assets of the Company;
- (iii) disposal of the goodwill of the Company;
- (iv) submission of a claim of the Company to arbitration;
- (v) confession of a judgment;
- (vi) commission of any act which would make it impossible for the Company to carry on its ordinary course of business;
- (vii) amendment of this Operating Agreement;
- (viii) amendment of the Articles of Organization to change the management of the Company from managers to members; and
- (ix) the continuation of the Company after any event causing dissolution

#### **Section 3.4 Company Books**

The Managers shall maintain and preserve at the Company's registered office during the term of the Company, and for five (5) years thereafter, all accounts, books, and other relevant Company documents, including, but not limited to, a copy of the Articles of Organization initially filed with the Secretary of State for the Commonwealth of Kentucky, copies of this Operating Agreement, together with any supplements, modification, or amendments thereto, any prior operating agreements no longer in effect, written agreements by a member to make a capital contribution to the Company, copies of the Company's federal, state, and local income tax

returns and reports and copies of all financial statements. Upon reasonable request, each member shall have the right during ordinary business hours, to inspect such Company documents at the Member's expense.

### **Section 3.5 Priority and Return of Capital**

No Member shall have priority over any other Member, with respect to the return of capital contributions or to profits, losses, or distributions; provided that this Section 3.5 shall not apply to loans which a Member has made to the Company.

### **Section 3.6 Annual Meeting**

An annual meeting of all of the Members, including Managing Members, shall be held on the 1<sup>st</sup> Monday of January, or at such other time as shall be determined by the Mangers, commencing with the year 2014, for the purposes of the transaction of such business as may come before the meeting.

## **ARTICLE IV**

### **CONTRIBUTIONS TO CAPITAL AND CAPITAL ACCOUNTS**

#### **Section 4.1 Initial Capital Contributions**

Each Member agrees to make the following initial capital contributions to the Company. No interest shall be paid on any capital.

<b>Name</b>	<b>Amount of Contributions</b>	<b>Percentage of Interest</b>
Hugh Harris	\$5,000.00	100

#### **Section 4.2 Capital Accounts**

A separate capital account shall be maintained for each Member in accordance with applicable provisions of the Federal Treasury Regulations;

(a) Each Member's capital account shall be increased by (1) such Member's capital contributions, (2) such Member's distributive share of profits allocated to such Member in accordance with the provisions of this Agreement, (3) the fair market value of property contributed by such Member (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), and (4) allocations to such Member of income described in section 705(a)(1)(B) of the Code.

(b) Each Member's capital account shall be debited by (1) the amount of cash distributed to such Member in accordance with this Agreement, (2) the fair market value of

property distributed to such Member by the Company (net liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code), (3) allocations to such Member of expenditures described in Section 705(a)(2)(B) of the Code, and (4) allocations to the account of such Member of Company loss and deduction as set forth in such Regulations, taking into account adjustments to reflect book value.

(c) In the event any interest in this Company is transferred in accordance with the terms of Article VI of this Agreement, the transferee shall succeed to the capital account of the transferor to the extent it relates to the transferred interest in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

(d) In the event that gross asset values of the Company assets are adjusted pursuant to this Agreement or any amendments thereto, the capital accounts of all Members shall be adjusted simultaneously to reflect the aggregate net adjustments, as if this Company had recognized gain or loss equal to the amount of such aggregate net adjustment and the resulting gain or loss had been allocated among the Members in accordance with this Agreement.

#### **Section 4.3 Compliance with Section 704(b) of the Code**

The foregoing provisions and the other provisions of this Operating Agreement relating to the maintenance of capital accounts are intended to comply with Section 704(b) of the Internal Revenue Code of 1986, as amended and applicable Treasury Regulations promulgated thereunder and shall be interpreted and applied in a manner consistent therewith. If, in the opinion of the Company's accountants, the manner in which capital accounts are to be maintained pursuant to this Operating Agreement should be modified in order to comply with Section 704(b) of the Code and the Regulations thereunder, then notwithstanding anything to the contrary contained in the preceding provisions of this Article IV, the method in which the capital accounts are maintained shall be modified; provided, however, that any change in the manner of maintaining capital accounts shall not materially alter the economic agreement between the Members.

### **ARTICLE V**

#### **ALLOCATIONS AND DISTRIBUTIONS**

##### **Section 5.1 Profits and Losses**

Subject to any provision of this Agreement to the contrary, each Member shall share equally in the profits and losses of the Company in proportion to the Member's percentage interest in the Company.

## **Section 5.2 Distributions**

Except as provided otherwise in this Agreement, all distributions of cash or other property shall be made to the Company Members in proportion to their percentage interests in the Company on the date of the distribution. All distributions shall be made at such time as is determined by the Managing Members of the Company. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to this Section 5.2.

## **Section 5.3 Limitation Upon Distributions**

No distribution shall be declared and paid unless, after the distribution is made, the assets of the Company are in excess of all liabilities of the Company, except liabilities to Members on the account of their contributions.

## **Section 5.4 Accounting Method**

The books and records of account of the Company shall be maintained in accordance with the standard method of accounting.

## **Section 5.5 Accounting period**

The Company's accounting period shall be the calendar year.

## **Section 5.6 Tax Returns and Elections**

The Managing Members shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the company does business. Copies of such returns shall be furnished to the Members within Thirty (30) days after the end of the Company's fiscal year. All elections permitted to be made by the Company under federal or state laws shall be made by the Managing Members of the Company.

## **Section 5.7 Special Allocations**

(i) Qualified Income Offset: In the event that any member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704(b)(2)(ii)(d)(6), which creates or increases a deficit capital account for that Member, the items of Company income and gain shall be specially credited to such Member's capital account in an amount and manner sufficient to eliminate, as quickly as possible, and to the extent required by the applicable Treasury Regulations, the deficit balances in the Member's capital account so created. Any special allocations of items of income or gain provided for under this subsection shall be taken into account in computing subsequent allocation of profits pursuant to this Article V, so that the net amount of any items so allocated



and the profits, losses, or other items allocated to each member pursuant to this Article shall, to the extent possible, be equal to the net amount that would have been allocated to each Member pursuant to this Article as if such unexpected adjustments, allocations, or distributions had, in fact, not occurred.

(ii) Section 704(c) Allocations: In accordance with Section 704(c)(1)(A) of the Code and Section 1.704-1 (b)(2)(i)(iv) of the Treasury Regulations, if a Member contributes property with a fair market value that differs from its adjusted basis at the time of contributions, income, gain, loss and deductions with respect to the property shall, solely for federal income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company and its fair market value at the time of contributions. Pursuant to Section 704(c)(1)(B) of the Code, if any contributed property is distributed by the Company other than to the contributing Member within five (5) years of being contributed, then, except as provided in Section 704(c)(2) of the Code, the contributing Member shall be treated as recognizing gain or loss from the sale of such property in an amount equal to the gain or loss that would have been allocated to such Member under Section 704(c)(1)(A) of the Code if the property had been sold at its fair market value at the time of the distribution. In the case of any distribution by the Company to a Member, such Member shall be treated as recognizing gain in an amount equal to the lesser of:

(1) the excess (if any) of the fair market value of the property (other than money) received in the distribution over the adjusted basis of such Member's interest in the Company immediately before the distribution reduced (but not below zero) by the amount of money received in the distribution; or

(2) the net precontribution gain, as defined in Section 737(b) of the Code, of the Member. The net precontribution gain means the net gain (if any) which would have been recognized by the distributee Member under Section 704(c)(1)(B) of the Code of all property which (i) has been contributed to the Company within five (5) years of the distribution, and (ii) is held by the Company immediately before the distribution had been distributed by the Company to another Member. If any portion of the property distributed consists of property which had been contributed by the distributee Member to the Company, then such property shall not be taken into account in determining the amount of the net precontribution gain. If the property distributed consists of an interest in an entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such entity after such interest had been contributed to the Company.

(iii) Company Minimum Gain Chargeback: If there is a net decrease in the Company's minimum gain for a taxable year, as

defined in Treasury Regulation 1.704-2(d), each Member's capital account must be allocated items of income and gain for that taxable year in an amount equal to the Member's share of the net decrease in Company minimum gain. This subsection is intended to comply with the minimum gain chargeback requirement of Section 1.704-2 of the Treasury Regulation. A Member is not subject to the Company minimum gain chargeback requirements to the extent the Member's share of the net decrease in Company minimum gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member nonrecourse liability, and the Member bears the economic risk of loss for the newly guaranteed, refinanced, or otherwise changed liability.

(iv) Member Minimum Gain Chargeback: Except as otherwise provided for in Section 1.704-2(i)(4) of the Treasury Regulations, notwithstanding any other provision of this Article V, if there is a net decrease in member nonrecourse debt minimum gain attributable to a Member nonrecourse debt during any fiscal year, each person who has a share of the Member nonrecourse debt minimum gain attributable to such member nonrecourse debt, determined in accordance with Section 1.704-2(i)(6) of the Treasury Regulations, shall be specially allocated items of Company income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such person's share of the net decrease in member nonrecourse debt minimum gain attributable to such Member nonrecourse debt, determined in accordance with Section 1.704-2(i)(4) and (j)(2) of the Treasury Regulations. This subsection is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Treasury Regulations and shall be interpreted consistently therewith.

## **ARTICLE VI**

### **TRANSFERABILITY OF MEMBER INTERESTS**

#### **Section 6.1 Restrictions on Transferability of Interests**

No Member shall have any right to sell, transfer, or assign an interest in the Company without the written consent and approval of all the Managing Members. The purchaser, transferee, or assignee of an interest in the Company shall not become a Member of the Company except as provided for in Section 6.2 of this Article VI.

## **Section 6.2 Additional Members**

After the formation of the Company, any person acceptable to all of the Members may become a Member of the Company for such consideration as the Members by their unanimous written consent shall determine. Any additional Member must acknowledge in writing all of the terms and provisions of this Operating Agreement or of any other operating agreement of the Company and must agree to be bound thereby.

## **ARTICLE VII**

### **DISSOLUTION, TERMINATION AND WINDING UP THE COMPANY**

#### **Section 7.1 Events Causing Dissolution**

The Company shall be dissolved upon the happening of the first to occur of the following:

- (a) Any order of competent jurisdiction requiring dissolution;
- (b) The unanimous written consent of all Members entitled to vote to dissolve the Company;
- (c) a merger or exchange in which the Company is not the surviving or acquiring company.

#### **Section 7.2 Continued Existence for Purposes of Winding Up**

The Company shall continue to exist after the happening of any events set forth in Section 7.1 of this Article solely for the purpose of winding up its affairs in accordance with the Act.

#### **Section 7.3 Procedure upon Liquidation**

Upon the dissolution of the Company, the Managing Members shall liquidate the assets of the Company and apply the proceeds of liquidation in the order of priority provided in Section 7.4 of the Article VII.

A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of its liabilities to minimize the losses that might otherwise occur in connection with the liquidation. Upon liquidation and winding up of the Company, unsold Company property shall be valued to determine the gain or loss that would have resulted if the property were sold, and the capital accounts of the Members that have been maintained in accordance with this Operating Agreement shall be adjusted to reflect the manner in which the gain or loss would have been allocated if the property had been sold at its assigned values. Upon completion of the liquidation of the Company and distribution of the proceeds, the Managing

Members shall file articles of dissolution with the Secretary of State's Office in and for the Commonwealth of Kentucky.

#### **Section 7.4 Proceeds of Liquidation**

The proceeds from the liquidation of the assets of the Company, the proceeds from the collection of the receivables of the Company, and the assets distributed in kind shall all be distributed in the following order of priority:

(a) first, to payment of debts and liabilities of the company which are properly due and

(b) second, to the settling up of reserves to disburse the reserves in payment of contingent liabilities or obligations of the Company, and, at the expiration of the reserve period the balance of the reserves, if any, shall be distributed as liquidating proceeds received at the end of the reserve period; and

(c) third, to the Members in proportion to and to the extent of the balances of their Capital Accounts.

All distributions pursuant to clause (c) shall be made no later than the end of the Company's fiscal year during which the liquidation of the Company occurs, (or, if late, within ninety (90) days after the date of liquidation.

### **ARTICLE VIII**

#### **ADDITIONAL PROVISIONS**

##### **Section 8.1 Complete Agreement**

This Operating Agreement and the Article of Organization of the Company constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter hereof. This Operating Agreement and the Articles of Organization supersede all prior written and oral statements or agreements and no representation, statement, or condition or warranty not contained in this Operating Agreement or the Articles of Organization shall be binding on the Members or have any force or effect whatsoever.

##### **Section 8.2 Governing Law**

This Agreement and the rights of the parties hereunder will be governed by, interpreted, and enforced in accordance with the laws of the Commonwealth of Kentucky.

### **Section 8.3 Terms**

Common nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular, plural, as the identity of the person or person, firm or corporation may in the context require. Any reference to the Code or other statute of laws will include all provisions concerned.

### **Section 8.4 Headings**

All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Operating Agreement.

### **Section 8.5 Severability**

Every provision of this Operating Agreement is intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this Operating Agreement.

### **Section 8.6 Amendments**

This Agreement may be amended or modified from time to time only by a written instrument adopted by the Managing Members and approved and executed by all Members of the Company.

### **Section 8.7 Heirs, Successors and Assigns**

Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors, and assigns.

### **Section 8.8 Execution and Additional Instruments**

Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules, or regulations.

### **Section 8.9 Waiver**


The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

### **Section 8.10 Rights and Remedies Cumulative**

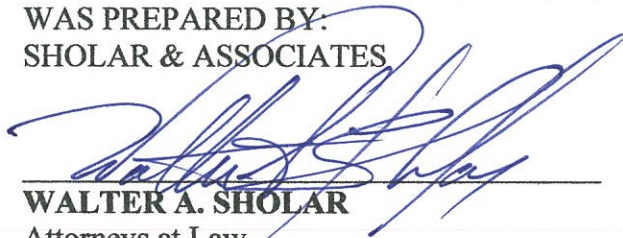
The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

### **Section 8.11 Counterpart Execution**

This Operating Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document. All counterparts shall be construed together and shall constitute one Agreement.

  
\_\_\_\_\_  
HUGH HARRIS

THIS OPERATING AGREEMENT  
OF HUGH HARRIS CONSTRUCTION, LLC  
WAS PREPARED BY:  
SHOLAR & ASSOCIATES

  
\_\_\_\_\_  
WALTER A. SHOLAR

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