

Operating Agreement of

H & V Warehousing, LLC

A Kentucky Limited Liability Company

ARTICLE I

Company Formation

- 1.1 **FORMATION.** The Member(s) hereby form a Limited Liability Company ("Company") subject to the provisions of the Kentucky Limited Liability Company Act (the "Act") as set forth in Chapter 275 of the Kentucky Revised Statutes as currently in effect as of this date. Articles of Organization shall be filed with the Secretary of State.
- 1.2 **NAME.** The name of the Company shall be H & V Warehousing, LLC.
- 1.3 **REGISTERED AGENT.** The name and location of the registered agent of the Company shall be:

Mike Velotta

H & V Warehousing, LLC
2812 Kentronics Rd.
Owensboro, Kentucky 42301

- 1.4 **TERM.** The Company shall continue for a perpetual period unless,
- (a) Member(s) unanimously vote for dissolution; or
 - (b) Any event which makes it unlawful for the business of the Company to be carried on by the Member(s); or
 - (c) Any other event causing dissolution of this Limited Liability Company under the laws of the Commonwealth of Kentucky.
- 1.5 **CONTINUANCE OF COMPANY.** Notwithstanding the provisions of ARTICLE 1.4, in the event of an occurrence described in ARTICLE 1.4(c), if there is at least one remaining Member, said remaining Member shall have the right to continue the business of the Company. Such right can be exercised by the written vote of the remaining Member within ninety (90) days after the occurrence of an event described in ARTICLE 1.4(c). If not so exercised, the right of the Member to continue the business of the Company may expire if that member desires.
- 1.6 **BUSINESS PURPOSE.** The purpose of the Company is to engage in any lawful act or activity for which a Limited Liability Company may be formed within the Commonwealth of Kentucky.

- 1.7 **PRINCIPAL PLACE OF BUSINESS.** The location of the principal place of business of the Company shall be:

2812 Kentronics Rd.
Owensboro, Kentucky 42301

Principal place of business may be changed at a location the Member(s) from time to time select.

- 1.8 **THE MEMBER(S).** The name and place of residence of each member are contained in Exhibit 1 attached to this Agreement.
- 1.9 **ADMISSION OF ADDITIONAL MEMBER(S).** Except as otherwise expressly provided in the Agreement, no additional Member(s) may be admitted to the Company through issuance by the company of a new interest in the Company, without the prior unanimous written consent of the Member(s).

ARTICLE II

Capital Contributions

- 2.1 **INITIAL CONTRIBUTIONS.** The Member(s) initially shall equally contribute to the Company capital as described in Exhibit 2 attached to this Agreement. The agreed total value of such cash contribution is \$210,000.00, or \$105,000.00 each.
- 2.2 **ADDITIONAL CONTRIBUTIONS.** Except as provided in ARTICLE 6.2, no Member shall be obligated to make any additional contribution to the Company's capital.
- 2.3 **NO INTEREST ON CAPITAL CONTRIBUTIONS.** Member(s) are not entitled to interest or other compensation for or on account of their capital contributions to the Company except to the extent, if any, expressly provided in this Agreement.

SECTION 3

ARTICLE III

Profits, Losses and Distributions

- 3.1 **PROFITS/LOSSES.** For financial accounting and tax purposes the Company's net profits or net losses shall be determined on an annual basis and shall be allocated to the Member(s) in proportion to each Member's relative capital interest in the Company as set forth in Exhibit 2 as amended from time to time in accordance with Treasury Regulation 1.704-1.

- 3.2 **DISTRIBUTIONS.** The Member(s) shall determine and distribute available funds annually or at more frequent intervals as they see fit. Available funds, as referred to herein, shall mean the net cash of the Company available after appropriate provision for expenses and liabilities, as determined by the Member(s). Distributions in liquidation of the Company or in liquidation of a Member's interest shall be made in accordance with the positive capital account balances pursuant to Treasury Regulation 1.704-1(b)(2)(ii)(b)(2). To the extent a Member shall have a negative capital account balance, there shall be a qualified income offset, as set forth in Treasury Regulation 1.704-1(b)(2)(ii)(d).

ARTICLE IV

Management

- 4.1 **MANAGEMENT OF THE BUSINESS.** The Member(s), within the authority granted by the Act and the terms of this Agreement shall have the complete power and authority to manage and operate the Company and make all decisions affecting its business and affairs.
- 4.2 **EQUAL RIGHTS OF MEMBER(S).** The Member(s) shall have equal rights in the management of the Company. Without the consent of the other Member, neither Member shall on behalf of the Company borrow or lend money, or make, deliver, or accept any commercial paper, or execute any mortgage, security agreement, bond, or lease, or purchase or contract to purchase, or sell or contract to sell any property for or of the Company other than the type of property bought and sold in the regular course of its business.
- 4.3 **POWERS OF MEMBER(S).** Subject to Section 4.2, the Member(s) are authorized on the Company's behalf to make all decisions in accordance with ARTICLE 4.2 as to (a) the sale, development lease or other disposition of the Company's assets; (b) the purchase or other acquisition of other assets of all kinds; (c) the management of all or any part of the Company's assets; (d) the borrowing of money and the granting of security interests in the Company's assets; (e) the pre-payment, refinancing or extension of any loan affecting the Company's assets; (f) the compromise or release of any of the Company's claims or debts; and, (g) the employment of persons, firms or corporations for the operation and management of the company's business. In the exercise of their management powers, the Member(s) are authorized to execute and deliver (a) all contracts, conveyances, assignments leases, sub-leases, franchise agreements, licensing agreements, management contracts and maintenance contracts covering or affecting the Company's assets; (b) all checks, drafts and other orders for the payment of the Company's funds; (c) all promissory notes, loans, security agreements and other similar

documents; and, (d) all other instruments of any other kind relating to the Company's affairs, whether like or unlike the foregoing.

- 4.4 **DUTIES OF MEMBER(S) AND MANAGERS.** Each Member and Manager owes a fiduciary duty of good faith and reasonable care with regard to all actions taken on behalf of Company. Each Member and Manager must perform his or her duties in good faith in a manner that he or she reasonably believes to be in the best interests of the Company, using ordinary care and prudence.

With respect to any claim for breach of the duty of care, a Member or Manager shall not be liable, responsible or accountable in damages or otherwise to the Company or the Member(s) thereof for any action taken or failure to act on behalf of the Company unless the act or omission constitutes wanton or reckless misconduct.

- 4.5 **DISPUTES OF MEMBER(S).** Disputes among Member(s) that absolutely cannot be resolved by the Member(s) will be decided by a neutral mediator to be decided upon by the parties.

- 4.6 **NOMINEE.** Title to the Company's assets shall be held in the Company's name or in the name of any nominee that the Member(s) may designate. The Member(s) shall have power to enter into a nominee agreement with any such person, and such agreement may contain provisions indemnifying the nominee, except for his willful misconduct.

- 4.7 **COMPANY INFORMATION.** Each Member or his authorized representative shall, upon request, have access to and may inspect and copy all books, records and materials in the Company's possession regarding the Company or its activities.

- 4.8 **INDEMNIFICATION.** The Company shall indemnify any person who was or is a party defendant or is threatened to be made a party defendant, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Company) by reason of the fact that he is or was a Member of the Company, Manager, employee or agent of the Company, or is or was serving at the request of the Company, for instant expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if the Member(s) determine that he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Company, and with respect to any criminal action proceeding, has no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of "no lo Contendere" or its

equivalent, shall not in itself create a presumption that the person did or did not act in good faith and in a manner which he reasonably believed to be in the best interest of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was lawful.

4.9 **RECORDS.** The Member(s) shall cause the Company to keep at its principal place of business or other agreed location the following:

- (a) A current list in alphabetical order of the full name and the last known street address of each Member;
- (b) A copy of the Certificate of Formation and the Company Operating Agreement and all amendments;
- (c) Copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years;
- (d) Copies of any financial statements of the limited liability company for the three most recent years.

ARTICLE V

Compensation

5.1 **MEMBER MANAGEMENT FEE.** Any Member rendering services to the Company shall be entitled to compensation commensurate with the value of such services if Member(s) unanimously agree.

5.2 **REIMBURSEMENT.** The Company shall reimburse the Member(s) for all direct out-of-pocket expenses incurred by them in managing the Company if Member(s) unanimously agree.

ARTICLE VI

Bookkeeping

6.1 **BOOKS.** The Member(s) shall maintain complete and accurate books of account of the Company's affairs at the Company's principal place of business or other agreed location. Such books shall be kept on such method of accounting as the Member(s) shall select. The company's accounting period shall be the calendar year.

6.2 **MEMBER'S ACCOUNTS.** The Member(s) shall maintain separate capital and distribution accounts for each member. Each member's capital account shall be determined and maintained in the manner set forth in Treasury Regulation 1.704-1(b)(2)(iv) and shall consist of his initial capital contribution increased by:

- (a) Any additional capital contribution made by him/her;
- (b) Credit balances transferred from his distribution account to his capital account; and decreased by:
- (c) Distributions to him/her in reduction of Company capital;
- (d) The Member's share of Company losses if charged to his/her capital account.

6.3 **REPORTS.** The Member(s) shall close the books of account after the close of each calendar year, and shall prepare and send to each member a statement of such Member's distributive share of income and expense for income tax reporting purposes.

ARTICLE VII

Transfers

7.1 **ASSIGNMENT.** If at any time a Member proposes to sell, assign or otherwise dispose of all or any part of its interest in the Company, Member shall comply with the following procedures:

(a) First make a written offer to sell such interest to the other Member(s) at a price determined in writing. At this point exiting member may not make this intention publicly known. If such other Member(s) decline or fail to elect such interest within sixty (60) days, the exiting member may advertise its Member(s)hip interest for sale as it sees fit.

(b) If a member has a buyer of Member(s) interest, the other current member(s) have first right of refusal to purchase the exiting Member(s) interest for the agreed purchase price. If there are more than one current remaining member(s), remaining Member(s) may combine funds to purchase the exiting Member(s) interest. Exiting member must show that potential purchaser has full certified funds, or the ability to get full certified funds before the first right of refusal period starts. Current Member(s) have 60 days to buy exiting Member(s) interest if they so desire.

(c) Pursuant to the applicable law, current Member(s) may unanimously approve the sale of exiting Member(s)' interests to grant full Member(s)hip benefits and functionality to the new member. The current remaining Member(s) must unanimously approve the sale, or the purchaser or assignee will have no right to participate in the management of the business, affairs of the Company, or member voting rights. The purchaser or assignee shall only be entitled to receive the share of the profits or other compensation by way of income and the return of contributions to

which that Member would otherwise be entitled. Exiting member must disclose to buyer or assignee if current Member(s) will not approve the sale.

7.2 VALUATION OF EXITING MEMBER(S) INTEREST. If a member wants to exit the LLC, and does not have a buyer of its Member(s)hip interest, exiting member will assign its interest to current Member(s) according to the following set forth procedures:

(a) A value must be placed upon this Member(s)hip interest before assigned.

(b) If exiting member and current member(s) do not agree on the value of this Member(s)hip interest, exiting member must pay for a certified appraiser to appraise the LLC company value, and the exiting Member(s)' value will be assigned a value according to the exiting Member(s)' interest percentage.

(c) The current member(s) must approve the certified appraiser used by exiting member. Current Member(s) have 30 days to approve the exiting Member(s) certified appraiser. If current member(s) disapprove the certified appraiser, they must show evidence to support their disapproval of the certified appraiser as a vendor qualified to make the LLC business appraisal. Current Member(s) may not stall the process by disapproving all certified appraisers.

(d) Upon completion of a certified appraiser placing a value on the LLC, a value will be placed on exiting Member(s)' interest according to exiting Member(s)' percentage of Member(s)hip interest.

(e) If current Member(s) disagree with the value placed on exiting Member(s)' interest, current Member(s) must pay for a certified appraiser to value the LLC and exiting Member(s)' interest according to the same terms.

(f) Current Member(s)' appraiser must be completed within 60 days or right of current Member(s) to dispute the value of exiting Member(s) interest expires.

(g) Upon completion of current Member(s) certified appraiser, the exiting member must approve the value placed on exiting Member(s)' interest. Exiting member has 30 days to approve this value.

(h) If exiting member does not approve current Member(s)' appraiser value, the value of the LLC will be determined by adding both parties' values, then dividing that value in half, then creating the value of the

exiting Member(s)' interest according to the exiting Member(s)' percentage of Member(s)' interest.

7.3 DISTRIBUTION OF EXITING MEMBER(S) INTEREST. Upon determination of exiting Member(s)' interest value, the value will be a debt of the LLC. The exiting member will only be able to demand payment of this debt at dissolution of the LLC or the following method:

(a) LLC will make timely payments.

(b) LLC will only be required to make payments towards exiting Member(s)' debt if LLC is profitable and passed income to current Member(s).

(c) LLC must make a debt payment to exiting member if LLC passed income of 50% of the total determined value of the exiting Member(s)' interest in one taxable year. (Example: If exiting Member(s)' value was \$100,000 and current member(s) received \$50,000 taxable income in the taxable year, the LLC would owe a debt payment to exiting member. If current member(s) only received \$90,000 in passed income, there would be no payment due.)

(d) Debt payment must be at least 10% of the value of the passed income to current LLC Member(s).

(e) LLC must make payment to exiting member within 60 days of the end of the taxable year for the LLC.

(f) Payment schedule will continue until exiting Member(s) debt is paid by LLC.

(g) If LLC dissolves, exiting member will be a regular debtor and payment will follow normal LLC dissolution payment statutes.

(h) Exiting Member(s)' value of Member(s)' interest it assigned current Member(s) may NOT accrue interest.

(i) LLC can pay off amount owed to exiting member at any time if it so desires.

CERTIFICATE OF FORMATION

This Company Operating Agreement is entered into and shall become effective as of the Effective Date by and among the Company and the persons executing this Agreement as Member(s). It is the Member(s) express intention to create a limited liability company in accordance with Kentucky law, as currently written or subsequently amended or redrafted.


The undersigned hereby agree, acknowledge, and certify that the foregoing operating agreement is adopted and approved by each member, the agreement consisting of 12 pages, constitutes, together with Exhibit 1, Exhibit 2 and Exhibit 3 (if any), the Operating Agreement of H & V Warehousing, adopted by the Member(s) as of April, 3 2013.

Member(s):


Signature

Mike Veltan
Printed Name

Percent: 50 %


Signature

WILLIE HUDSON
Printed Name

Percent: 50 %

EXHIBIT 1

LISTING OF MEMBER(S)

As of the 3 day of April, 20 13 the following is a list of Member(s) of the Company:

Name: Mike Velotta **Percent:** 50%

Address: 2812 Kentronics Rd., Owensboro, Kentucky 42301

Duties: Member/Manager having any duties and all power necessary to provide all needed services with respect to the operation and management of the Company

Name: Willie Hudson **Percent:** 50%

Address: 2812 Kentronics Rd., Owensboro, Kentucky 42301

Duties: Member/Manager having any duties and all power necessary to provide all needed services with respect to the operation and management of the Company

Authorized by Member(s) to provide Member Listing as of this 3 day of April, 20 13.


Mike Velotta - Member


Willie Hudson - Member

EXHIBIT 2

CAPITAL CONTRIBUTIONS

Pursuant to ARTICLE 2, the Member(s)' initial contribution to the Company capital is stated to be \$210,000.00. The description and each individual portion of this initial contribution are as follows:

Mike Velotta cash in the amount \$105,000.00

Willie Hudson cash in the amount of \$105,000.00

SIGNED AND AGREED this 3 day of April, 2013.



Mike Velotta - Member



Willie Hudson - Member