

**SECOND AMENDED AND RESTATED
OPERATING AGREEMENT
OF
ISE LLC**

**A NEW YORK LIMITED LIABILITY
COMPANY**

Second Amended and Restated Operating Agreement, dated as of January 1, 1999 by and among the persons who have executed the signature page(s) hereto as Members and who from time to time hereafter agree to be bound by this Agreement as Members of ISE LLC (the "Company") in accordance with the terms of this Agreement.

WITNESSETH:

WHEREAS, the Company has heretofore been formed as a limited liability company under the New York Limited Liability Company Law pursuant to Articles of Organization filed with the Secretary of State of New York on September 29, 1997, and pursuant to an Operating Agreement dated December 31, 1997, entered into among the Members, as amended by an Amended and Restated Operating Agreement dated as of August 1, 1998 (the "Amended Operating Agreement"); and

WHEREAS, the Members of the Company wish hereby to amend and restate the Amended Initial Operating Agreement in order to adopt provisions appropriate for a registered national securities exchange under the Securities Exchange Act of 1934 and to make such other changes as incorporated herein; and

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**ARTICLE I
FORMATION AND BUSINESS OF THE COMPANY**

1.1 **Formation.** The Company was organized on December 31, 1997, in accordance with and pursuant to the New York Limited Liability Company Law.

1.2 **Name.** The name of the Company is the ISE LLC. The Company may do business under that name, the name "International Securities Exchange" and, as permitted by applicable law, under any other name determined from time to time by the Board.

1.3 **Purpose of the Company.** The purpose of the Company shall be to conduct the operations of an "exchange" within the meaning of the Securities Exchange Act of 1934, as amended; and to conduct any lawful business or activity whatsoever, as permitted by applicable law and as determined from time to time by the Board of Directors. The Company may exercise all powers necessary to or reasonably

connected with the Company's business from time to time, and may engage in all activities necessary, customary, related or incidental to any of the foregoing.

1.4 **Principal Office**. The Company's principal place of business shall be located at 110 Wall Street, New York, New York 10005 or such other place determined from time to time by the Board. The Company may have such other business offices within or without the State of New York as determined from time to time by the Board.

1.5 **Registered Agent**. The name and address of the Company's registered agent in the State of New York is CT Corporation System, 1633 Broadway, New York, NY 10019. The registered agent may be changed from time to time by the Board upon the filing of the name and address of the new registered agent with the New York Secretary of State pursuant to the LLC Act.

1.6 **Term**. The term of the Company shall commence on the date hereof and continue until December 2099 unless the Company is earlier dissolved in accordance herewith and with the LLC Act.

1.7 **Members**. The Company shall maintain a record of the name, address, facsimile number, and taxpayer identification number of each Member, and such record shall be available to the Members.

ARTICLE II DEFINITIONS

The following terms shall have the meaning set forth below when used in this Agreement, unless such meaning is expressly limited to this Agreement:

2.1 The term "**Agreement**" shall mean this **Second** Amended and Restated Operating Agreement, as originally executed and as amended from time to time in accordance herewith and with the LLC Act.

2.2 The term "**Articles of Organization**" shall mean the Articles of Organization of the Company, as filed with the New York Secretary of State, as amended from time to time in accordance herewith and with the LLC Act.

2.3 The term "**Bankruptcy**" of a Member shall mean (a) the entry of an order for relief with respect to that Member in a proceeding under the United States Bankruptcy Code, as amended from time to time, or (b) the Member's initiation, whether by filing a petition, beginning a proceeding or in answer to a proceeding commenced by another person, of any action for liquidation, dissolution, receivership or other similar relief, or the Member's application for, or consent to the appointment of, a trustee, receiver or custodian for its assets. For purposes of this definition, a Member's consent shall be deemed to have been given if an order appointing a trustee, receiver or custodian is entered by a court of competent jurisdiction and is not dismissed within ninety (90) days after its entry.

2.4 The term “**Board of Directors**” or “**Board**” shall have the meaning set forth in Article V of this Agreement.

2.5 The term “**Capital Account**” of a Member, as of any date, shall mean the account maintained for such Member pursuant to Section 3.3 of this Agreement, as adjusted through such date.

2.6 The term “**Capital Contribution**” of, or attributed to, a Member shall mean the total contributions to the capital of the Company, whether in cash, property (net of liabilities) or services, made, performed or to be performed by, or attributed to, such Member, valued on the date of contribution in the Company’s books and records.

2.7 The term “**Capital Interest**” shall mean a Class A Member Capital Interest or a Class B Member Capital Interest, as the case may be.

2.8 The term “**Capital Transaction**” shall mean any transaction not in the ordinary course of the Company’s business, in respect of which the Company receives cash or other consideration (but not Capital Contributions), including, without limitation, proceeds from sales or exchanges not in the ordinary course, financing and refinancing, condemnations or insurance policies.

2.9 The term “**Cash Available for Distribution**” as of any date, shall mean, except as otherwise determined by the Board, the excess of (a) all revenues received by the Company from its operations and investments over (b) total current operating expenses and reasonable reserves for future such expenses, including payments in respect of indebtedness of the Company, capital improvements and contingencies, as determined from time to time by the Board. Cash Available for Distribution shall not be reduced by noncash charges, including, without limitation, depreciation and amortization, and shall not include proceeds from Capital Transactions.

2.10 The term “**Class A Member**” shall mean the owner of one or more Class A Membership Units.

2.11 The term “**Class B Member**” shall mean the owner of one or more Class C Membership Units.

2.12 The term “**Class C Member**” shall have the meaning set forth in Article I of the Constitution.

2.13 The term “**Class A Member Capital Interest**” shall mean for a Class A Member as of a date of determination, a percentage equal to (a) the number of Class A Membership Units owned by such Class A Member, divided by (b) the aggregate number of Class A Membership Units owned by all Class A Members.

2.14 The term “**Class B Member Capital Interest**” shall mean for a Class B Member as of a date of determination, a percentage equal to (a) the number of

Class B Membership Units owned by such Class B Member, divided by (b) the aggregate number of Class B Membership Units owned by all Class B Members.

2.15 The term “**Class A Membership Interest**” shall mean a Class A Member’s entire interest in the Company, including such Member’s Economic Interest (to the extent not Transferred) and Management Interest.

2.16 The term “**Class B Membership Interest**” shall mean a Class B Member’s entire interest in the Company, including such Member’s Economic Interest (to the extent not Transferred) and Management Interest.

2.17 The term “**Class C Membership Interest**” shall mean a Class C Member’s entire interest in the Company, including such Member’s Management Interest.

2.18 The term “**Class A Membership Unit**” shall mean a unit of a Class A Membership Interest issued in accordance with this Agreement.

2.19 The term “**Class B Membership Unit**” shall mean a unit of a Class B Membership Interest issued in accordance with this Agreement.

2.20 The term “**Class C Membership Unit**” shall mean a unit of a Class C Membership Interest issued in accordance with this Agreement.

2.21 The term “**Code**” shall mean the Internal Revenue Code of 1986, as amended, in effect as of the date hereof and as amended from time to time hereafter.

2.22 The term “**Company**” shall have the meaning set forth in the preamble to this Agreement.

2.23 The term “**Company Minimum Gain**” shall mean the amount determined under Treas. Reg. Sections 1.704-2(i)(3) and 1.704-2(d), and shall be computed separately for each Member in a manner consistent with Code Section 704(b) and the Treasury Regulations thereunder.

2.24 The term “**Constitution**” shall mean the Constitution of the Company, initially in the form attached hereto as Exhibit B and thereafter such Constitution as it may hereafter be amended from time to time in accordance with its terms.

2.25 The term “**Director**” shall have the meaning set forth in Article V of this Agreement.

2.26 The term “**Economic Interest**” shall mean the right to share in the allocation of one or more of the Company’s allocable items, including, without limitation, Net Profits and Net Losses, and/or in distributions of the Company’s assets, in each

case pursuant to this Agreement or the LLC Act, but shall not include any Management Interest.

2.27 The term “**Exchange**” shall mean the ISE LLC and shall have the same meaning as the “Company” as set forth in this Agreement.

2.28 The term “**Fiscal Year**” shall mean the Company’s accounting, tax and fiscal year, which shall be the calendar year.

2.29 The term “**Fiscal Quarter**” shall mean one quarter of the Company’s Fiscal Year.

2.30 The term “**Indemnitee**” shall mean a Director, officer, agent or employee of the Company who may be indemnified by the Company as set forth in Article XI of this Agreement and Article X of the Constitution.

2.31 The term “**Interest**” shall mean any of an Economic Interest, Management Interest and/or Membership Interest.

2.32 The term “**LLC Act**” shall mean the New York Limited Liability Company Law, as amended from time to time.

2.33 The term “**Management Interest**” of a Member shall mean such Member’s right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in, any decision or action of or by the Members hereunder or under the LLC Act.

2.34 The term “**Member**” shall mean a Class A Member, Class B Member or Class C Member.

2.35 The term “**Member Nonrecourse Debt**” shall mean nonrecourse debt of the Company under Treas. Reg. Section 1.704-2(b)(4).

2.36 The term “**Negative Capital Account**” shall mean a Capital Account with a balance less than zero and, where the context requires, the negative balance thereof, in each case as of the end of a Fiscal Year, after giving effect to the following:

(a) a credit for any amount required to be restored under Treas. Reg. Section 1.704-1(b)(2)(ii)(c), as well as any amounts in addition thereto pursuant to Treas. Reg. Sections 1.704-2(g)(1) and (i)(5), after taking into account any changes during such Fiscal Year in Company Minimum Gain and Member Nonrecourse Debt Minimum Gain; and

(b) a debit of the items described in Treas. Reg. Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

2.37 The terms “**Net Profits**” and “**Net Losses**” shall mean, for each Fiscal Year (or other period for which they are determined), the income and gain, and the losses, deductions and credits of the Company, respectively, in the aggregate or separately stated, as appropriate, determined in accordance with generally accepted accounting principles consistently applied, but not including any items that are specially allocated pursuant to Section 4.4 of this Agreement.

2.38 The term “**officer**” shall have the meaning set forth in Article VIII of this Agreement.

2.39 The term “**person**” shall mean any individual, partnership, limited liability company, corporation, joint venture, trust, association or any other entity, domestic or foreign, and its respective heirs, executors, administrators, legal representatives, successors and assigns where the context of this Agreement so permits.

2.40 The term “**Rules**” shall mean the rules of the Exchange, as amended from time to time.

2.41 The term “**Transfer**” shall mean any sale, assignment, transfer, gift, exchange, bequest or other disposition of an Interest, in any manner, voluntary or involuntary, by operation of law or otherwise.

2.42 The term “**Transferee**” shall mean the person to whom a Member Transfers, or proposes to Transfer, an Interest.

2.43 The term “**Transferor**” shall mean any Member which Transfers, or proposes to Transfer, an Interest.

2.44 The term “**Treasury Regulations**” or “**Treas. Reg.**” shall mean regulations promulgated under the Code in effect as of the date hereof or hereafter amended or adopted.

ARTICLE III CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS

3.1 **Initial Capital Contributions; Additional Capital Contributions.**
The Company is authorized to accept a Capital Contribution in respect of each of ten (10) Class A Membership Units and Capital Contributions in respect of each of one hundred (100) Class B Membership Units, and as the Board may otherwise determine.

3.2 **Number of Members; Additional Members.**

(a) Initially there shall be ten (10) Class A Membership Units, one hundred (100) Class B Membership Units and an unlimited number of Class C Membership Units.

(b) The maximum numbers of Class A Membership Units, Class B Membership Units or Class C Membership Units may be changed only with the approval of the Members.

3.3 **Capital Accounts.**

(a) The Company shall establish and maintain a Capital Account for each Class A and each Class B Member. The Company shall not establish Capital Accounts for Class C Members.

(b) The Capital Accounts of each Member shall be increased by the amount of the income and gain allocated to such Member, and shall be decreased by any losses and deductions allocated, or distributions made, to such Member pursuant to the terms of this Agreement. It is the intention of the Members that Capital Accounts be maintained strictly in accordance with Treas. Reg. Section 1.704-1(b)(2)(iv).

(c) Notwithstanding anything contained herein to the contrary, the manner in which Capital Accounts are maintained shall be modified, if necessary, in the opinion of the Company's accountants, to comply with applicable law, provided that no such change shall materially alter the economic agreement between or among the Members.

(d) Except as otherwise required by the LLC Act or permitted under this Agreement, the Constitution or the Rules, no Member shall have any liability to restore all or any portion of any Negative Capital Account.

(e) No Member shall be paid interest on the balance of its Capital Account, unless otherwise determined by the Board.

3.4 **Adjustments to Capital Accounts.**

(a) The Board may, in its discretion, adjust the Capital Accounts to reflect a revaluation of the Company's assets upon the occurrence of any of the following events:

(i) a Capital Contribution by a new or existing Member as consideration for the issuance of an Interest;

(ii) the distribution of cash or other property by the Company to a retiring or continuing Member as consideration for the repurchase or redemption of an Interest; or

(iii) events described in Treas. Reg. Section 1.704-1(b)(2)(iv)(f).

(b) Any adjustment pursuant to Section 3.4(a) of this Agreement shall be based on the fair market value of Company property on the date of

adjustment, and shall reflect the manner in which the unrealized income, gain, loss or deduction inherent in the property, not previously reflected in Capital Accounts, would be allocated among the Members if there were a taxable disposition of the property for fair market value on that date.

(c) If the book value of a Company asset differs from the adjusted tax basis of that asset, the Capital Accounts shall be adjusted in accordance with Treas. Reg. Section 1.704-1(b)(2)(iv)(g) for allocations of depreciation, depletion, amortization and gain or loss computed for book purposes rather than tax purposes.

(d) If there is any basis adjustment pursuant to an election under Code Section 754, the Capital Accounts shall be adjusted to the extent required by Treas. Reg. Section 1.704-1(b)(2)(iv)(m).

3.5 **Return of Capital Contributions**. Except as otherwise provided in this Agreement, no Member shall have any right to demand or receive (a) any cash or property of the Company in return of its Capital Contribution or in respect of its Interest until the dissolution of the Company or (b) any distribution from the Company in any form other than cash.

3.6 **Transfer of Interest**. If an Interest is Transferred as permitted by this Agreement, the Transferee shall succeed to the Capital Account of the Transferor to the extent the Capital Account relates to the Transferred Interest in accordance with Treas. Reg. Section 1.704-1(b)(2)(iv)(l).

ARTICLE IV DISTRIBUTIONS AND ALLOCATIONS

4.1 **Distributions**. Class A Members and Class B Members will be entitled to receive distributions, if any, approved by the Board; Class C Members shall not be entitled to receive any distributions from the Company. Except as otherwise required by law or as provided in this Agreement, all distributions approved by the Board shall be allocated fifty percent (50%) to the Class A Members as a class, and fifty percent (50%) to the Class B Members as a class. The distributions allocated to the Class A Members shall be distributed to those Class A Members in accordance with their respective Class A Member Capital Interests, and the distributions allocated to the Class B Members shall be distributed to those Class B Members in accordance with their respective Class B Member Capital Interests; provided, however, that mandatory distributions shall be made to the extent of Cash Available for Distributions and in proportion to such respective Capital Interests, as determined from time to time by the Board, to each Class A Member and Class B Member in amounts sufficient to allow them to pay federal, state and local income taxes (determined at the highest applicable marginal tax rates applicable to single persons) on the income of the Company deemed to be taxable income of the Members under Section 702 of the Code.

4.2 **Limitation on Distributions.** No distribution shall be declared and paid unless, after giving effect thereto, the assets of the Company exceed the Company's liabilities.

4.3 **Allocations of Net Profits and Net Losses.** Taxable income or loss and all items thereof shall be allocated among the Member in accordance with Section 704 of the Code and Treasury Regulations thereunder as determined by the Company's accountants.

4.4 **Distributions In Kind.** All distributions of Company property in kind shall be valued at their fair market value as of the date of distribution, and the amount of any gain or loss that would be realized by the Company if it were to sell such property at such fair market value shall be allocated to the Members in accordance with Section 4.3 of this Agreement.

4.5 **Tax Returns and Other Elections.** The Board shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all applicable laws of each jurisdiction in which the Company does business. Copies of all such returns, or summaries thereof, shall be furnished to the Members within a reasonable time after the end of each Fiscal Year. All elections permitted to be made by the Company under federal or state laws shall be made by the Board, in its sole discretion.

4.6 **Transfers of Interest.** If an Interest is Transferred during the Fiscal Year as permitted by this Agreement,

(a) Net Profits and Net Losses allocable to such Interest shall be proportioned between the Transferor and Transferee as of the date of Transfer of the Interest on the last day of the Fiscal Quarter in which the Transfer occurred, and the portion of Net Profits and Net Losses allocated to the Transferor shall be determined by multiplying the Net Profits and Net Losses allocable to such Interest by a fraction, the numerator of which is the number of calendar days the Transferor owned the Interest (not including the day the Transfer was effected) and the denominator of which is the total number of calendar days in the Fiscal Quarter, and the portion of Net Profits and Net Losses allocated to the Transferee shall be the remainder of the Net Profits and Net Losses; and

(b) tax credits, if any, shall be allocated among the Interest holders as determined at the time the property with respect to which the credit is claimed is placed in service.

ARTICLE V BOARD OF DIRECTORS

5.1 **Number; Management and Authority.** The Company shall have one or more managers as prescribed in Exhibit A to this Agreement and in the Constitution, which manager or managers shall be referred to herein and in the Constitution and the Rules individually as a "Director" and collectively as the "Board of

Directors” or the “Board.” The Board of Directors shall have the powers and duties provided in Article IV of the Constitution.

5.2 **Election and Tenure of Directors.** Each Director shall be elected in the manner, and shall serve for a term, as provided under Article IV of the Constitution.

5.3 **Resignation or Removal.** A Director may resign or be removed in accordance with Article IV of the Constitution.

5.4 **Meetings of Board.** Meetings of the Board shall be conducted as provided under Article IV of the Constitution.

5.5 **Vacancies.** A vacancy on the Board may be filled in accordance with the requirements set forth in Article IV of the Constitution.

5.6 **Limitation of Liability.** Notwithstanding anything contained herein to the contrary, to the fullest extent permitted by applicable law from time to time, the Directors shall not have any liability to the Company or any Member by reason of being or having been a Director or for any breach of their duties in such capacity, as provided in Article X of the Constitution. This Section 5.6 shall not affect the Directors’ liability:

(a) if an adverse judgment or other final adjudication establishes that (i) his acts or omissions were in bad faith or involved intentional misconduct, (ii) he gained financial or other advantages to which he was not entitled, or (iii) he did not perform his duties as required under the LLC Act with respect to a distribution made in violation of the LLC Act; or

(b) for any act or omission prior to the adoption of this Section 5.6.

5.7 **Reliance on Information.** In performing their duties, the Directors shall be entitled to rely on information, opinions, reports or statements, including financial statements, in each case prepared or presented by:

(a) one or more agents or employees of the Company; or

(b) counsel, public accountants or other persons, as to matters that the Board believes to be within their respective professional or expert competence.

5.8 **No Exclusive Duty.** The Directors may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of the Directors or in any income or revenues derived therefrom.

5.9 **Execution of Documents.**

(a) Except as otherwise determined by the Board or the Members or as set forth herein or in the LLC Act, any document or instrument may be executed and delivered on behalf of the Company by any Director, including, without limitation, any deed, mortgage, note or other evidence of indebtedness, lease, security agreement, financing statement, contract of sale or other instrument purporting to convey or encumber, in whole or in part, any or all of the assets of the Company at any time held in its name, or any compromise or settlement with respect to accounts receivable or claims of the Company; and, subject to the authorization requirements set forth herein or in the LLC Act, no other signature shall be required for any such instrument to bind the Company.

(b) Any third person dealing with the Company, the Board or the Members may rely upon a certificate signed by the Board as to (i) the identity of the Members or the Board, (ii) acts by the Members or the Board, (iii) any act or failure to act by the Company, or (iv) any other matter involving the Company or any Director.

5.10 **Powers of the Board in Bankruptcy.** Subject to any limitations on the powers of the Board that may be contained in the Constitution, the Board shall have the power and authority, on behalf of the Company and any Controlled Subsidiary, to:

(a) represent the Company or a Controlled Subsidiary in any Bankruptcy or insolvency proceedings to which it is a party, in whatever capacity;

(b) determine whether the Company or a Controlled Subsidiary shall file any petition under the United States Bankruptcy Code or other applicable insolvency law; and

(c) execute and deliver, in the name of the Company or otherwise, any and all documents and instruments, including, without limitation, petitions and requests for relief, necessary or desirable in connection with actions under Section 5.10(a) or (b) of this Agreement, as determined by the Board.

5.11 **Compensation and Expenses.** The compensation of the Directors shall be fixed from time to time by the Board.

5.12 **Other Duties of the Board.** In addition to its other duties set forth herein and in the Constitution, the Board:

(a) shall determine, from time to time, the method of accounting and the independent accountants for the Company;

(b) may make, on behalf of the Company, the election permitted by Code Section 754 with respect to adjustments to the basis of the Company property; and

(c) shall, promptly following receipt thereof, give notice to the Members of any proposed audit or adjustment of any Company tax return.

ARTICLE VI MEMBERS

6.1 **Rights of Members**. Each Class of Members shall have such voting rights and powers as may be provided in the Constitution.

6.2 **Meetings of Members**. Meetings of Members shall be conducted as provided under Article III of the Constitution.

6.3 **Qualifications**. Each of the Members shall satisfy such requirements for Membership as may be specified in the Constitution or the Rules.

6.4 **Liability for Wrongful Distributions**. A Member who receives a distribution from the Company which the Member knows to be in violation of this Agreement or the LLC Act shall be liable to the Company for the amount of such distribution for a period of three years after it was made.

6.5 **No Preemptive Rights**. No Member shall have any preemptive, preferential or other right with respect to (a) making additional Capital Contributions, (b) the issuance or sale of Interests by the Company, (c) the issuance of any obligations, evidences of indebtedness or securities of the Company convertible into, exchangeable for, or accompanied by, any rights to receive, purchase or subscribe to, any Interests, (d) the issuance of any right of, subscription to or right to receive, or any warrant or option for the purchase of, any of the foregoing, or (e) the issuance or sale of any other interests or securities by the Company.

ARTICLE VII COMMITTEES

The Board may designate such Committees of the Board, and such Committees shall have such powers and consist of such persons, or shall consist of persons selected in such manner, as may be prescribed under Article VI of the Constitution.

ARTICLE VIII OFFICERS

8.1 **General**. The Company shall have such officers, and such officers shall have such duties, powers, responsibilities and authority, as may be provided in Exhibit A to this Agreement and in Article V of the Constitution.

8.2 **Appointment, Removal and Resignation**. Officers shall be appointed and removed, and may resign, as provided under Article V of the Constitution.

ARTICLE IX TRANSFERABILITY AND WITHDRAWAL OF MEMBERSHIPS

9.1 **Transferability**. A Member may offer for sale and Transfer all or any portion of, or any rights in, its Interest, as provided under Article II of the Constitution, provided that the Transfer will not result in the termination of the Company pursuant to Code Section 708.

9.2 **Withdrawal**. A Member, other than a Class C Member, shall have no right or power to surrender such Member's Interest voluntarily or otherwise take, or permit to be taken, any action to such effect, and a Class C Member shall have no right to payment of any amounts upon withdrawal.

ARTICLE X DISSOLUTION AND TERMINATION

10.1 **Events Causing Dissolution and Winding-up**. The Company shall be dissolved and wound up upon the first to occur of the following events:

- (a) the approval of such action by the Members;
- (b) the sale or other disposition of all or substantially all of the business or assets of the Company;
- (c) the expiration of the term of the Company; or
- (d) the entry of a decree of judicial dissolution under Section 702 of the LLC Act.

10.2 **Winding up of the Company**.

(a) If the Company is to be dissolved in accordance with Section 10.1 of this Agreement, then the Board shall wind up the affairs of the Company, including by selling or otherwise liquidating the Company assets in a bona fide sale or sales to third persons at such prices and upon such terms as they may determine. If the Board determines that an immediate sale would be financially inadvisable, it may defer sale of the Company assets for a reasonable time, or distribute the assets in kind.

(b) The proceeds of any liquidation of the Company shall be distributed in the following order of priority (to the extent that such order of priority is consistent with the laws of the State of New York):

(i) first, to the payment of the debts and liabilities of the Company and the expenses of dissolution and liquidation;

(ii) then, to the establishment of any reserves which the Board shall deem reasonably necessary for payment of such other debts and liabilities of the Company (contingent or otherwise), as are specified by the Board, such reserves to be held in escrow by a bank or trust company selected by the Board, and, to be disbursed as directed by the

Board in payment of any of the specified debts and liabilities or, at the expiration of such period as the Board may deem advisable, to be distributed in the manner hereinafter provided; and

(iii) then, to the Members as set forth in Article IV of this Agreement.

(c) Notwithstanding anything contained herein to the contrary, no Member shall be entitled to receive, upon liquidation, distributions in excess of the positive balance of such Member's Capital Account, except to the extent all Members receive such distributions in proportion to their respective Capital Interests.

(d) If any assets are distributed in kind, they shall be distributed on the basis of the fair market value thereof, and shall be deemed to have been sold at fair market value for purposes of the allocations under Article IV of this Agreement.

(e) If the Company is liquidated under Treas. Reg. Section 1.704-1(b)(2)(ii)(G), the liquidating distribution shall be made by the later of (i) the end of the Fiscal Year in which liquidation occurs, or (ii) ninety (90) days after the date of liquidation.

(f) The Company shall terminate when all assets of the Company have been sold and/or distributed and all affairs of the Company have been wound up.

10.3 **Articles of Dissolution.** Within ninety (90) days following the dissolution and the commencement of winding up of the Company, or at any other time when there are no Members, Articles of Dissolution shall be prepared, executed and filed in accordance with the LLC Act.

ARTICLE XI INDEMNIFICATION

11.1 **Indemnification.** The Company shall indemnify and hold harmless such persons provided for under Article X of the Constitution against all costs, liabilities, claims, expenses, including reasonable attorneys' fees, and damages (collectively, "Losses") paid or incurred by any such person in connection with the conduct of the Company's business.

11.2 **Source of Payment.** Notwithstanding anything contained in this Agreement or the Constitution to the contrary, any amount to which an Indemnitee may be entitled under this Article XI shall be paid only out of the assets of the Company and any insurance proceeds available to the Company for such purposes. No Member shall be personally liable for any amount payable pursuant to this Article XI, or to make any Capital Contribution, return any distribution made to it by the Company, or restore any Negative Capital Account balance to enable the company to make any such payment.

ARTICLE XII MISCELLANEOUS PROVISIONS

12.1 **Notices.** Except as otherwise set forth herein, any notice, demand or communication required or permitted to be given under this Agreement shall be (a) in writing, (b) delivered by hand, nationally recognized overnight courier service, facsimile or registered or certified mail, postage prepaid, addressed to a party at its mailing address or facsimile number set forth in the books and records of the Company, and (c) deemed to have been given on the date delivered by hand or sent by facsimile, one business day after deposit with such courier service, and three business days after being deposited in the United States mail.

12.2 **Books of Accounts and Records.**

(a) At the expense of the Company, the Board shall maintain at the Company's principal place of business, records and accounts of all operations and expenditures of the Company, including, without limitation, the following records:

(i) a current list in alphabetical order of the name and mailing address of each Member, Director, and officer, their respective facsimile numbers and, with respect to the Members, their respective shares of Net Profits and Net Losses, or information from which such shares can be derived;

(ii) a copy of the Articles of Organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any such amendment has been executed;

(iii) copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent Fiscal Years;

(iv) copies of this Agreement, the Constitution and the Rules, as in effect from time to time;

(v) any writings or other information with respect to each Member's obligation to contribute cash, property or services to the Company, including, without limitation, the amount of cash so contributed and a description and statement of the agreed-upon fair market value of property or services so contributed or to be contributed;

(vi) any financial statements of the Company for the three most recent Fiscal Years;

(vii) minutes of every annual, special and court-ordered meeting of the Members; and

(viii) any written consents obtained from the Members or Directors for actions taken by Members or Directors without a meeting.

(b) Upon reasonable advance notice, during normal business hours, any Member or its representatives may, at its expense, inspect and copy the records described in Section 12.2(a) for any purpose reasonably related to such person's Membership Interest.

12.3 **Arbitration**. This Agreement, and the application or interpretation hereof, shall be governed by and in accordance with the laws of the State of New York applicable to agreements made and fully to be performed therein, and specifically the LLC Act. Except as otherwise provided in this Agreement, any controversy between the parties arising out of this Agreement shall be arbitrated pursuant to the Constitution and the Rules.

12.4 **Amendment of Articles of Organization, Agreement and Constitution**. This Agreement and the Constitution may only be amended with the approval of the Board and the Members as provided in the Constitution.

12.5 **Execution of Additional Instruments**. Each Member hereby agrees to execute such other and further documents and instruments, including, without limitation, statements of their Interests and powers of attorney, as necessary to comply with applicable law or otherwise as reasonably requested by the Board.

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

12.7 **Headings**. The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.

12.8 **Waivers; Rights and Remedies Cumulative**. The failure of any party to pursue any remedy for breach, or to insist upon the strict performance, of any covenant or condition contained in this Agreement shall not constitute a waiver of any such right with respect to any subsequent breach. Except as otherwise expressly set forth herein, rights and remedies under this Agreement are cumulative, and the pursuit of any one right or remedy by any party shall not preclude, or constitute a waiver of, the right to pursue any or all other remedies. All rights and remedies provided under this Agreement are in addition to any other rights the parties may have by law, in equity or otherwise.

12.9 **Severability**. If any provision, or portion thereof, of this Agreement, or its application to any person or circumstance, shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement, such provision and their application shall not be affected thereby, but shall be interpreted without such unenforceable provision or portion thereof so as to give effect, insofar as is possible, to

the original intent of the parties, and shall otherwise be enforceable to the fullest extent permitted by law.

12.10 **Successors and Assigns**. All of the covenants, terms, provisions and agreements contained in this Agreement 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.

12.11 **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

12.12 **Investment Representations**. Each Member hereby represents and warrants to the Company and each other Member as follows:

(a) Such Member acknowledges that:

(i) the Interest owned by it has not been registered under the Securities Act of 1933, 15 U.S.C. §15b et seq., the New York State securities act or any other state securities laws (collectively, the "Securities Acts") because the Company is issuing (or a Member has Transferred) such Interest in reliance upon exemptions from the registration requirements contained in the Securities Acts for issuances not involving a public offering;

(ii) the Company (or the Transferor) has relied upon the fact that the Interest is to be held by such Member for investment purposes only, and not with a view to any resale or distribution thereof except as contemplated in the Constitution and Rules; and

(iii) the Company is under no obligation to register or qualify the Interest or to assist any Member in complying with any exemption from registration under the Securities Acts if such Member wishes to dispose of the Interest.

(b) Each Member is acquiring the Interest for such Member's own account, for investment purposes only, and not with a view to the resale or distribution thereof, except as contemplated in the Constitution and the Rules.

(c) Before acquiring the Interest, each Member investigated the Company and its business, and the Company made available to it all information necessary to make an informed decision to acquire the Interest.

12.13 **No Right to Petition for Dissolution**. The Members agree that irreparable harm would be done to the business and goodwill of the Company if any Member were to bring an action in Court under the LLC Act for the judicial dissolution of the Company. Accordingly, each Member, in his capacity as such, hereby irrevocably waives any such right to petition for dissolution of the Company under the LLC Act, and

all similar rights under other applicable law, except to the extent such relief may be sought by the Company itself as authorized by the Members in accordance with this Agreement.

12.14 **No Third Party Beneficiaries.** The covenants, obligations and rights set forth in this Agreement are not intended to benefit any creditor of the Company or of any Member, or any other third person, and except as permitted by applicable law after the obligation to make an additional Capital Contribution has been fixed, or in connection with certain wrongful distributions, no such creditor or other third person shall, under any circumstances, have any right to compel any actions or payments by the Board and/or the Members or shall, by reason of any provision contained herein, be entitled to make any claim in respect of any debt, liability, obligation or otherwise against the Company or any Member.

12.15 **Directors as Attorneys-in-Fact for Members.**

(a) Each Member hereby irrevocably constitutes and appoints, with full power of substitution, each Director, its true and lawful attorney-in-fact, with full power and authority in its name, place and stead, to execute, certify, acknowledge, deliver, file and record at the appropriate public offices:

(i) all certificates and other instruments, and any amendment thereto, which the Board deems appropriate to form, qualify or continue the business of the Company as a limited liability company;

(ii) any other instrument or document which may be required to be filed by the Company under the laws of any state, or which the Board deems advisable to file; and

(iii) any instrument or document, including amendments to this Agreement, which may be required to continue the business of the Company, admit a Member, or dissolve and liquidate the Company (provided that such continuation, admission or dissolution are in accordance with this Agreement), or to reflect any reductions in the amount of Members' capital.

(b) Each Member's appointment of the Directors as its attorneys-in-fact shall be deemed to be a power coupled with an interest and shall survive the incompetency, Bankruptcy or dissolution of the Member giving such power, except that, in the event of a Member's Transfer of an Interest in accordance with this Agreement, this power of attorney shall survive such Transfer only until such time, if any, as the Transferee shall have been admitted to the Company as a Member and all required documents and instruments shall have been duly executed, filed and recorded to effect such substitution.

12.16 **Entire Agreement.** By agreeing to be bound by this Agreement, each Member pledges to abide by the Constitution and the Rules. The Articles of Organization, this Agreement, the Constitution and the Rules embody the entire

understanding and agreement between the Members concerning the subject matter hereof and thereof and supersede any and all prior negotiations, understandings or agreements with respect thereto. To the extent the LLC Act addresses a matter not otherwise addressed by this Agreement, the Constitution or the Rules, it is the intention of the Members that the provisions of the LLC Act shall apply, but no such application shall otherwise affect any provision of this Agreement, the Constitution or the Rules.

EXHIBIT A
ISE LLC OPERATING AGREEMENT

INTERIM MANAGEMENT PROVISIONS

1. **Managers**. Pursuant to Section 5.1 of the Operating Agreement, the Company shall have two Managers (the “Initial Directors”) until such time as the Directors described in Article IV, Section 1(a) of the Constitution are elected at the Initial Election Meeting described in Article IV, Section 1(d) of the Constitution. The Managers shall be William A. Porter and David Krell. Each Manager shall have the authority to take any action which the Board would be authorized to take under the Operating Agreement and Constitution, without any requirement for meetings, notices thereof, quorums, adoption of resolutions or any other procedural requirements imposed under the Operating Agreement. The name of the Company shall be ISE, LLC until such time as a change of name is approved by the Managers of the Company.

2. **Officers**. Pursuant to Section 8.1 of the Operating Agreement, Mr. Porter shall serve as the Chairman of the Company and Mr. Krell shall serve as the President of the Company. Messrs. Porter and Krell shall manage the affairs of the Company and shall be the representatives of the Company in all public matters. Mr. Porter shall serve as the “tax matters partner” of the Company.

**EXHIBIT B
ISE LLC OPERATING AGREEMENT**

INTERNATIONAL SECURITIES EXCHANGE CONSTITUTION