

# DIVIDEND CAPTURE OPERATING AGREEMENT

This OPERATING AGREEMENT entered into by and between Institute of Wealth Management Inc., a Florida company (hereinafter the "Manager") as the Manager, and those Members (the "Members") whose subscription agreements in the form attached to the private offering memorandum dated February 15, 2010 have been accepted by the Manager.

## I GENERAL PROVISIONS

**1.1 Organization.** This Company is organized pursuant to the provisions of the Limited Liability Company Act of Florida Corporations Code ("Act") and the rights liabilities of the Manager and Members shall be provided in that law except as otherwise expressed herein.

**1.2 Name.** The name of the Company shall be Dividend Capture Fund, LLC, (the "Company").

**1.3 Business.** The Company is a Limited Liability Company which will buy, hold and sell securities.

**1.4 Offices.** The address of the principal place of business for the Company shall be 2385 Executive Center Drive, Suite 100, Boca Raton, FL 33431 or such other place as the Manager may determine.

**1.5 Filing of Articles of Organization.** Promptly following the execution of this Operating Agreement (the "Agreement") the Manager shall execute all such Certificates and other documents conforming hereto and to do all such filing, recording, publishing and other acts as may be appropriate to comply with the requirements of law for the formation and operation of a Company in Florida and all other jurisdictions where the Company shall conduct business.

**1.6 Title to Company Property.** Title to any assets acquired to affect the purposes of the Company shall be held in the name of the Company. The Manager shall execute and record such documents as may be necessary.

## II MEMBERS

**2.1 Manager.** Institute of Wealth Management Inc.

**2.2 Initial Member.** The Manager shall be the Initial Member at the formation of the Company and he shall contribute the sum of fifty dollars (\$50.00) cash to the capital of the Company. The contribution of fifty dollars (\$50.00) cash will be returned upon acceptance of the first new member, and the Manager will relinquish its position as the Initial Member.

**2.3 Additional Members.** The value of the Interests will be determined monthly based on changes in the net value of the assets held. The maximum number of Members is limited to one hundred (100). Interests are issued and a subscriber becomes a Member simultaneously when all of the following have occurred:

2.3.1 The Manager has received full payment of the subscriber Interests prior to end of the month preceding investment: and

2.3.2 The subscriber has delivered to the Manager a signed and completed Subscription Agreement and any other instruments requested by the Manager prior to end of the month preceding investment.

**2.4 Time for Admission.** Until the Closing Date of the Offering, which will be determined at the discretion of the Manager or when all Member positions have been subscribed to, the Manager shall admit as Members those subscribers who have been accepted.

**2.5 Brokerage and Bank Accounts.** All invested capital will be deposited in the name of the Dividend Capture Fund, LLC at a brokerage clearing company chosen by the Manager. At the end of each month upon the receipt of original invested capital from each subscriber, the Company will admit subscribers as Members.

**2.6 Management of Company Affairs.** The Manager shall be responsible for the formation and administration of the Company. The Members consent to the exercise by the Manager of the powers conferred on him by this agreement.

### **III CAPITAL**

**3.1 Initial Capital Contributions.** For each Interest subscribed to by each Member accepted by the Manager, such Member shall:

3.1.1 Contribute cash in the amount per Interest at the time of acceptance (the "Initial Cash Capital Contribution"). The value of each Interest will vary from month to month once the Company commences operation as the Net Asset Value changes.

**3.2 Manager's Capital Interest.** The Manager may contribute to the Company a Capital contribution and in that case will be treated as a Member.

**3.3 Capital Accounts.** A capital account shall be maintained for each Member. Such account shall be credited with all contributions by the Member and the Members share of Company profits. Such account shall be debited for all distributions to the Member and the Members share of Company losses. A Company Percentage will be determined for each Member for each month by dividing his or its Capital Account as of the beginning of such month by the aggregate Capital Accounts of all Members as of the

beginning of such month. The Company Percentages will be subject to adjustment by the Manager to reflect interim monthly additions and withdrawals, if any.

**3.4 Additional Contributions.** Additional contributions may be made by Members upon ten days prior written notice to the Manager (subject to the discretion of the Manager to waive such notice) as of the first day of any quarter (also subject to the discretion of the Manager to waive any holding periods to the end of the quarter) and subject to the approval of the Manager.

**3.5 Withdrawal from Capital Accounts.** Except as provided in Paragraph 4.8 hereof or in the event of dissolution and liquidation of the Company no Member shall be entitled without the written consent of the Manager to withdraw any part of his Capital Account or to receive any Distribution from the Company.

#### **IV DISTRIBUTIONS AND ALLOCATION OF PROFITS AND LOSSES**

**4.1 Determination of Profits Gains Losses Deduction and Credits.** The profits, gains, losses, deductions and credits of the Company shall be determined for each accounting year in accordance with the accounting principles and procedures applied in a consistent manner.

**4.2 Allocation of Profits, Gains, Losses, Deductions and Credits.** The profits, gains, losses, deductions and credits of the Company shall be allocated among the Members (including the Manager in his capacity as Member under section 3.2) in Proportion to the number of Interests held by each.

**4.3 Retroactive Allocations Not Permitted.** The profits gains losses deductions and credits of the Company are allocable to a Member only if they are paid or incurred by the Company during the portion of the year such Member is a member of the Company. As between a Member and that Member's transferee, the Manager may in its discretion allocate all Company profit and loss among such Members ratably on a daily basis.

**4.4 Interest on Indebtedness.** In the event that any indebtedness of the Company including loans by the Members should be deemed for Federal or State income tax purposes to be a contribution to the capital of the Company the amounts of interest and the points or commitment fees paid with respect thereto shall for Federal or for such State income tax purposes be treated as guaranteed payments for the use of capital and shall be determined without regard to the income of the Company. No other interest in the profits and losses of the Company shall be allocable to such contribution.

**4.5 Distributions.** The Manager may in its discretion make cash distributions at any time to the Members on a pro rata basis.

**4.6 Distribution of Assets in Kind.** The Manager does not anticipate making distributions. If

any assets of the Company shall be distributed in kind such assets shall be distributed to the Members entitled thereto as tenants-in-common in the same proportions as such Member would have been entitled to cash distributions if (i) such assets had been sold for cash by the Company for an amount equal to the fair market value of such assets (taking Code Section 7701(g) into account)(ii) any taxable gain or loss that would be realized by the Company from such sale were allocated among the Members in accordance with Article 421 and (iii) the cash proceeds were distributed to the Members in accordance with this Article IV. The Capital Accounts of the Members shall be increased by the amount of any gain or decreased by the amount of any loss that would be allocable to them and shall be reduced by the fair market value of the assets distributed to them under the preceding sentence

**4.7 Demand for Distribution.** No Member shall be entitled to demand and receive distribution of Company property in return for his capital contribution to the Company except as specifically provided in this Agreement.

#### **4.8 Redemption of Interests**

(a) All members shall have the right to redeem a portion or all of their investment at the anniversary calendar year of the Member and thereafter at the next calendar quarter determination of Net Asset Value. Written notice must be provided by the 15<sup>th</sup> day of month preceding the month end of the withdrawal (approximately 45 days notice).

(b) Withdrawal as a Member. Generally each Member has the right, upon 90 days prior written notice to the Manager (subject to the discretion of the Manager to waive such notice) to withdraw from the Company in any month following the anniversary of the Member's investment.

The Manager may withhold from such balance the legal, accounting and administrative costs associated with the Member's withdrawal if it determines that such costs should not be borne by the Company.

(c) Required Withdrawals. The Manager may terminate the interest of any Member in the Company at the end of any Fiscal Year upon at least 10 days' prior written notice. If the Manager determines that continued participation of any Member would cause the Company or any Member to violate any law or any litigation is, commenced or threatened against the Company or any of its Members arising out of such Member's participation in the Company, such Member's interest may be discontinued at any time upon five days' prior notice.

(d) Death, Disability, etc of Member. In the event of the death, disability, incompetence, termination, bankruptcy, insolvency or dissolution of a Member, the interest of such Member will continue at the risk of the Company business until such Member (or his or its legal representatives upon his or its death, disability, adjudication of incompetency, termination or bankruptcy insolvency or dissolution) withdraws from the Company in

accordance with the Operating Agreement (See Withdrawal as a Member). The legal representative of a Member who has died, become disabled, been adjudicated incompetent, been terminated or declared bankrupt, become insolvent, or been dissolved will succeed to such Member's interest in the Company, but will not be substituted as a Member without the consent of the Manager.

(e) Limitations on Withdrawals. The right of any Member to receive amounts withdrawn is subject to the provision by the Manager for all Company liabilities in accordance with Florida law and for reserves for contingencies.

## V

### THE MANAGERS DUTIES AND COMPENSATION

**5.1 Powers of Manager.** Manager shall have exclusive authority to administer the operations and affairs of the Company and to make all decisions regarding the business of the Company. In addition to any other rights and powers which he may possess under law, the Manager shall have, subject to the provisions of Sections 5.2 and 5.3, all specific right and powers required for or appropriate to its management of the Company business including but not limited to the following rights and powers, to the extent they are in furtherance of the best interests of the Company.

**5.1.1** To accept subscriptions from investors and pay respective agents of registered broker-dealers sales commissions out of the subscribed amount;

**5.1.2** To prepare or cause to be prepared reports or statements including financial statements and tax returns and other relevant information for distribution to Members and Federal and State regulatory agencies;

**5.1.3** To open accounts and deposits and maintain funds in the name of the Company in banks or savings and loan associations; provided however that monies of the Company shall not be commingled with the monies of any other person or entity;

**5.1.4** To cause the Company to make or revoke any of the elections referred to in the Code;

**5.1.5** To select as the Company's accounting year a calendar year or such fiscal year as may be approved by the Internal Revenue Service;

**5.1.6** To determine the appropriate accounting method or methods to be used by the Company for the purpose of preparing financial statements and tax returns;

**5.1.7** To require in any or all the Company contracts that the Manager or their Affiliates shall not have any personal liability thereon and that the person or entity contracting with the Company is to look solely to the Company and its assets for satisfaction;

**5.1.8** To permit the Manager or persons or entities related to or affiliated with the Manager to purchase investments on behalf of the Company from affiliates of the Manager;

**5.1.9** Except as expressly provided elsewhere in this Agreement to amend this Agreement without the consent or vote of any of the Members;

(i) To reflect the addition or substitution of Members or the reduction of the Capital Accounts upon the return of capital to Members;

(ii) To add to the representations, duties or obligations of the Manager or surrender any right or power granted to the Manager herein, for the benefit of the Members;

(iii) To cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to add any other provisions with respect to matters or questions arising under this Agreement which will not be inconsistent with the provisions of this Agreement; and

(iv) To amend this Agreement or to delete or add any provision from or to this Agreement at the request of a Federal or state securities commissioner or other regulatory agency or as may be required due to changes applicable law, the amendment, deletion or addition of which provision is deemed by such regulatory agency or the Manager to be for the benefit or protection of the Members;

**5.1.10** To prepare, file and publish all instruments or documents necessary to enable the Company to transact business or otherwise to exist;

**5.1.11** To elect to have the Company governed by laws enacted or made effective subsequent to the date the Company was formed and to make any supplements or amendments to this Agreement or other instruments or documents filed by the Company, including the Memorandum, and to take such other actions as may be deemed by the Manager to be necessary or desirable to effect such election and to comply with such laws;

**5.1.12** To execute, acknowledge and deliver any and all instruments necessary or appropriate to effectuate the foregoing, and to take all such action in connection therewith as the Manager shall deem necessary or appropriate;

**5.1.13** The Manager shall cause the Company to pay expenses limited to the following; sales commissions, taxes and fees associated with the purchase, ownership, and sale of securities, legal expense (not associated with organizational), accounting, direct administrative costs, subscriptions, printing, postage & delivery, bank charges, certified audit, and tax return preparation, taxes and fees imposed by any government agency, and extraordinary expenses as follows;

Any extraordinary expenses or other expenses which the Manager reasonably deter-

mines are not properly considered operating expenses of the Company shall be paid by the Company. This would include but not be limited to the costs arising from any litigation or from any appellate court proceedings arbitrations or settlement negotiations.

**5.2 Sale of Company Assets.** Notwithstanding the foregoing, the Manager shall have no authority to, and he covenants and agrees that he will not, sell or otherwise dispose of all or substantially all of the assets of the Company without the vote or written consent of a majority in interest of the Members.

**5.3 Limitations on Managers Authority.** Notwithstanding anything to the contrary herein contained without in each instance receiving the prior written consent of all of the Members, the Manager shall not have authority to, and he covenants and agrees that he will not:

**5.3.1** Do any act in contravention of this Agreement;

**5.3.2** Confess a judgment against the Company;

**5.3.3** Execute or deliver a general assignment for the benefit of creditors of the Company;

**5.3.4** Possess Company property or assign rights in specific Company property for other than a Company purpose.

**5.4 Performance of Company Activities.** The Manager may engage one or more entities to perform Company activities for a fee, which fee shall be an expense of the Company. The Manager or any of its shareholders or affiliates may be engaged for such services, providing the Manager, its shareholder(s) or affiliate(s) has priced such services on a competitive basis, and that the fees charged do not exceed the range established in this Agreement.

**5.5 Compensation.** The Manager shall be entitled to receive a fee for his expenses and services for the initial organization of the Company and for other various advice and consulting services provided to the Company during its organization and for operating the Company.

**5.6 Organizational Expense.** Each Member shall bear his/her personal expenses incurred in connection with the acquisition of his/her Company interest. See Confidential Private Placement Memorandum Section 3.

**5.7 Independent Activities.** The Manager or any of his Affiliates may engage in whatever activities they choose, whether the same be competitive with the Company or any party hereto. Neither this Agreement nor any activity undertaken pursuant hereto shall prevent the Manager from engaging in such activities, or require the Manager to permit the Company or any Member to participate in any such activities and as a material part of the consideration for the Manager's execution hereof and admission of such

Member, each Member hereby waives, relinquishes and renounces any such right or claim of participation. Nevertheless, if Interests are equally suitable for investment by the Company and the Manager or his affiliates for their own accounts, the Manager and such affiliates will have the discretion to allocate such Interests among themselves in such manner as they deem fair and reasonable.

**5.8 Limitation of Managers Liability.** Neither the Manager shall be liable, responsible or accountable in damages or otherwise to the Company or to any Member for action taken or failure to act (even if such action or failure to act constituted the simple negligence of the Manager or such officer, director, or shareholder) on behalf of the Company within the scope of the authority conferred on the Manager by this Agreement or by law unless such act or omission was performed or omitted fraudulently or in bad faith or constituted gross negligence.

**5.9 Indemnity.** The Company shall indemnify and hold harmless the Manager and his agents and if the Manager is not a natural person its officers directors and employees from and against any loss expense damage or injury suffered or sustained by it by reason of any acts omission or alleged acts or omission (even if such act or omissions constituted the simple negligence of the Manager or such officer, director, or shareholder arising out of its activities on behalf of the Company or in furtherance of the interests of the Company including but not limited to any judgment, award, settlement, reasonable attorneys fees, and other costs or expenses incurred in connection with the defense or alleged acts or omissions upon which such actual or threatened action proceeding or claim is based were for a purpose reasonably believed by the Manager to be in the best interests of the Company and were not performed or omitted fraudulently or in bad faith or as a result of gross negligence by such indemnified party and were not in violation of the Manager's fiduciary obligation to the Company.

Notwithstanding the above, the Manager and their affiliates shall not be indemnified for any losses, liabilities or expenses arising from or out of an alleged violation of Federal or State securities laws unless (1) there has been successful adjudication on the merits or each count involving alleged securities law violations as to the particular indemnity, or (2) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnity, or (3) a court of competent jurisdiction approves a settlement of the claims against a particular indemnity.

## **VI RIGHTS AND LIABILITIES OF MEMBERS**

**6.1 Control.** A Member shall take no part in the control of the Company's business but shall have the right to vote (1) to amend this Agreement as provided in Section 12.3 hereof, (2) to dissolve the Company as provided in Section 8.1. hereof, and 3) to approve or disapprove the sale of all or substantially all of the assets of the Company as provided in Section 5.2 hereof.

**6.2 Liability of Members.** No Member shall be liable for any of the losses, debts or obligations of the Company or be required to contribute any capital beyond its Capital Contribution or to lend any funds to the Company, except that a Member may be required by law to return any or all of that portion of its Capital Contribution which has been distributed to it, with interest if necessary, to meet obligations of the Company which are incurred during the period the Company held such Capital contributions.

**6.3 Meetings.** Meetings of the Members may be called by the Manager or Members holding twenty five percent (25%) or more of the then outstanding Company Interests for any matters for which the Members may vote as set forth herein. A list of the names and addresses of all Members shall be maintained as part of the books and records of the Company and shall be available upon request to any Member or his/ her representative at his cost. Upon receipt of a written request either in person or by first class mail stating the purposes of the meeting, the Manager shall provide all Members, within ten days after receipt of such request written notice (either in person or by first class mail) of a meeting and the purpose of such meeting to be held on a date neither less than fifteen (15) nor more than sixty (60) days after receipt of such request at a time and place convenient to participants.

**6.4 Access to Records.** A Member shall have the right at all times to inspect and copy the Company books and to have, on demand, true and full information of all things affecting the Company. Such rights may be exercised in person or by an agent or attorney who shall, on request of the Manager, furnish reasonable evidence of his authority to act on behalf of a Member. Costs associated with inspection and copying of the Company books will be born by the Member.

**6.5 Removal, Death, or Incompetence of the Manager.** The Manager may be removed for any reason upon the agreement in writing and by vote of Members holding at least a majority of the Interests then held by Members. A substitute Manager who shall have and succeed to all the rights powers and duties of the original Manager shall be appointed by vote of a majority in interest of the Members evidenced by written appointment and acceptance. The death, removal, or incompetence of the Manager will cause the Company to find and vote for a new Manager. Members will be polled to vote within one hundred and twenty (120) days after the event provided there are at least two (2) remaining Members. A majority will decide.

## VII ACCOUNTING

**7.1 Books of Account.** The Company shall keep at its principle place of business at all times of its continuance, proper and complete books of account in accordance with the generally accepted accounting practice, and such books shall be open for inspection and copying by any Member at any time during reasonable business hours. Such books shall be kept on a cash basis, provided, however, that the Manager may from time to time change the accounting basis on which such books are kept as may be required or permitted by law.

**7.2 Quarterly Statements.** As soon as reasonably practical after the end of each fiscal quarter, and in no event later than thirty (30) days thereafter, each Member shall be furnished with an unaudited statement of revenues and expenses and a balance sheet for the quarter then ended.

**7.3 Annual Report.** As soon as reasonably practical after the end of each fiscal year and in no event later than seventy five (75), days thereafter each Member shall be furnished with an annual report containing:

- (1) balance sheet as of the end of its fiscal year and statements of income, Members' equity, and cash flows for the year then ended which shall be prepared in accordance with generally accepted accounting principles, and (2) a report of the activities of the program covered during the period covered by the annual report.

An independent audit to be performed by a Certified Public Accountant each full year that the Company is in business, if the Company has a minimum of ten million dollars (\$10,000,000) in Net Asset Value.

**7.4 Tax Statement.** As soon as reasonably practical after the end of each fiscal year, and in no event later than seventy-five (75) days thereafter, each Member shall be furnished with a copy of Schedule K-1 of the Company's Return of Income on IRS Form 1065 showing the amount allocated to said Member pursuant to this Agreement during or in respect to such year, and any items of income, expense or credit allocated to him/her pursuant to this Agreement for purposes of the Internal Revenue Code.

**7.5 Accounting Year.** The Accounting year of the Company shall be the calendar year.

**7.6 Income Tax Elections.** The Manager shall elect on behalf of the Company the cash method of accounting for Federal and State Income tax purposes or any appropriate method required by governmental or independent auditors. All elections required or permitted to be made by the Company under the Internal Revenue Code and State revenue laws shall be made by the Manager in such manner as will in its opinion, be most advantageous to a majority in Interest of the Members.

**7.7 Elections to Adjust Basis.** In the event of a distribution of property to a Member or the transfer of an interest in the Company by sale, exchange or upon the death of a Member, the Manager may, in its discretion cause the Company to file an election under Section 754 of the Internal Revenue Code in accordance with the Regulations thereunder to adjust the basis of Company property in the manner provided in Section 734 and 743 of the Internal Revenue Code.

**7.8 Bank Accounts.** All Member invested capital funds will be deposited in the Dividend Capture Fund, LLC held at a brokerage clearing company as may be designated by the Manager and shall not be co-mingled with any other funds.

## VIII DISSOLUTION AND LIQUIDATION

**8.1 Events of Dissolution.** The happening of any one of the following events shall dissolve the Company and commence liquidation;

**8.1.1** The agreement by the Manager and a majority in interest of the Members to dissolve, or the agreement of Members alone with a Member Percentage interest of 70% or more; or

**8.1.2** The happening of any event that makes it unlawful or impossible to carry on the business of the company.

## IX LIQUIDATION AND TERMINATION OF THE COMPANY

**9.1 Manner of Liquidation.** If the Company is dissolved for any reason the Manager or in the event that the Manager has died, retired or resigned, a liquidator shall commence to wind up the affairs of the Company and liquidate and sell its assets. The Manager or other person or entity charged with such responsibility is referred to herein as the "Liquidator." The position of Liquidator will first be offered first to the attorney representing the Company at that time, second to the attorney representing the Manager or estate of the Manager, or third to a liquidation committee selected by a majority in interest of the Members. The Liquidator shall have sufficient business expertise and competence to conduct the winding up and termination of the Company and in the course thereof to cause the Company to perform any contracts which the Company has thereto after entered into.

The Liquidator shall be instructed to proceed with such liquidation in as expeditious a manner as is reasonably practical. The holders of interest in the Company shall continue to share distributions, profits and losses during the period of liquidation in accordance with Article IV above. The Liquidator shall have full right and unlimited discretion to determine the time manner and terms of any sale or sales of Company property pursuant to such liquidation having due regard to the activity and condition of the relevant market and general financial and economic conditions.

The Liquidator (if other than the Manager) appointed as provided herein shall be entitled to receive such compensation for its services as shall be agreed upon by the Liquidator and a majority in interest of the Members. The Liquidator may resign at any time by forty-five (45) days prior written notice and (other than the Manager) may be removed at any time, with or without cause, by written notice of removal signed by a majority in interest of the Liquidator, a successor or substitute Liquidator who shall have and succeed to all the rights, powers, and duties of the original Liquidator shall, within thirty (30) days thereafter, be appointed by vote of a majority in interest of the Members evidenced by written appointment and acceptance. The right to appoint a successor or sub-

stitute Liquidator in the manner provided herein shall be recurring and continuing for so long as the functions and services of the Liquidator are authorized to continue under the provision hereof, and every reference herein to the "liquidator" will be deemed to refer also to any such successor or substitute Liquidator appointed in the manner herein provided

Except as expressly provided in this Article IX, the Liquidator appointed in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto or their legal representatives or successors in interest, all of the power conferred upon the Manager under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers other than the limitation on sale set forth in Section 5.2 above) to the extent necessary or desirable in the good faith judgment of Liquidator to carry out the duties and functions of the Liquidator hereunder for and during the Liquidation Period. The "Liquidation Period" is defined as such period of time, not to exceed 3 months after the date of dissolution of the Company, as shall be reasonably required in the good faith judgment of the Liquidator to complete the liquidation and dissolution of the Company as provided for herein.

The powers of the Liquidator include, without limitation, the following specific powers:

**9.1.1** The power to continue to manage and operate any business of the Company during the period of such liquidation or dissolution and proceedings.

**9.1.2** The power to make sales and incident thereto to make deeds, bills of sale, assignments, and transfers of assets and proceeds of the Company, provided that the Liquidator may not impose personal liability upon any of the Members under any such instrument.

**9.1.3** The power to settle, release, compromise or adjust any claims asserted to be owing by or to the Company, and the right to file, prosecute or defend lawsuits and legal proceedings in connection with any such matters.

**9.2 Judicial Winding Up.** If the Company is dissolved for any reason, and if within ninety (90) days following the date of dissolution or other time period provided in Section 9.1 above, a Liquidator or successor Liquidator has not been appointed in the manner provided therein, any interested party shall have the right to seek judicial supervision of the winding up of the Company as may be contemplated in the Act.

**9.3 Reserves on Liquidation.** After making payment or provision for payment of all debts and liabilities of the Company and all expenses of liquidation, the Liquidator may set up, for a period not to exceed the Liquidation Period, such cash reserves as the Liquidator may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company.

**9.4 Allocations.** Upon the winding up and termination of the business and affairs of

the Company, its assets (other than cash) shall be sold, its liabilities and obligations to creditors and all expenses incurred in its liquidation shall be paid, and all resulting items of Company income, gain, loss or deduction shall be allocated among the Members in accordance with the principles of Section 4.2 and 4.3 of this Agreement. The net proceeds from such sales (after deducting all selling costs and expenses in connection therewith), together with (at the expiration of the Liquidation Period) the balance in the reserve account referred to in Section 9.3 above, shall be distributed among the Members as provided in Section 4.5.

**9.5 Statement on Liquidation.** Within a reasonable time following the completion of the liquidation of the Company properties, the Liquidator shall supply to each of the Members a statement by the Company's independent accountants which shall set forth the assets and liabilities of the Company as of the date of complete liquidation, each Member's pro rata portion of distributions pursuant to Section 9.4, and the amount retained as reserves by the Liquidator pursuant to Section 9.3.

**9.6 Source of Distributions.** Each holder of an interest in the Company shall look solely to the assets of the Company for the return of his capital contribution and his share of profits or losses, and shall not have upon dissolution or otherwise any personal claim against the Company, the Manager or the Liquidator. No holder of an interest in the Company shall have any right to demand or receive property other than cash upon dissolution and termination of the Company. All Company property shall be sold upon liquidation of the Company and no Company property shall be distributed in kind to the Members.

**9.7 Termination.** Upon the completion of the liquidation of the Company and the distribution of all Company funds, the Company shall terminate the Liquidator and shall execute and record all documents required to effectuate the dissolution and termination of the Company and the cancellation of the Certificate.

## X

### ASSIGNMENT AND SUBSTITUTION

**10.1 Assignability of interest.** A Member's interest is assignable only with the consent of the Manager, whose consent shall not unreasonably be withheld. An assignee who does not become a Substituted Member hereunder has no right to require any information or account of the Company transactions, to inspect the Company books or to vote on any of the matters as to which a Member would be entitled to vote hereunder. An assignee who does not become a Substitute Member is only entitled to receive the share of the profits or other compensation by way of income, or the return of his/her capital contribution, to which his/her assignor would otherwise be entitled.

**10.2 Substituted Member.** A Substituted Member is a person admitted to all the rights of a Member who has died or has assigned his/her interest in the Company. An

assignee shall have the right to become a Substituted Member only if the Manager consents thereto.

**10.3 Death of Member.** On the death of a Member his/her executor or administrator shall have all the rights of a Member for the purpose of settling his/her estate and such power as the deceased had to assign his/her interest to or constitute his/her assignee a Substituted Member.

**10.4 Method of Substitution.** Any Member who desires to substitute a new Member for all or any part of his/her Company interest shall arrange for his/her transferee to be bound by the provisions of this Agreement, as it may then be amended, by having such transferee execute two counterparts of an instrument of assignment satisfactory in form to the Manager and by delivering the same to the Manager together with any such other information that may be required by the counsel to the Manager to determine whether the proposed transfer is in compliance with the applicable Federal or State securities or other laws or regulations. It is understood that the proposed transferee shall be required to pay any and all reasonable filing and recording fees, legal fees, accounting fees, and other charges and fees incurred by the Company and its counsel as a result of any such transfer. If and when the consent of the Manager provided for in Section 10.1 and 10.2 hereof is secured, and the other requirements of this Article X are satisfied, the transferee shall become a Substituted Member as to the Company interest thus transferred, and each Member hereby consents to such substitution.

**10.5 Continuity of Company.** Anything contained herein to the contrary notwithstanding, no Member may assign the whole or any part of his/her interest in the Company and no attempted or purported transfer or assignment of a Company interest, whether or not such assignee or transferee becomes a Substituted Member shall be affective if it would cause the termination of the Company for Federal income tax purposes under Section 708 of the Internal Revenue Code. The Manager is expressly authorized to enforce this provision by notifying the Members that all transfers or assignments will be suspended for a period of up to twelve (12) months.

Prior to any transfer or assignment becoming effective, the Manager may require an opinion of counsel to the effect that the transfer or assignment will not cause adverse tax consequences to the Company or any of the non-transferring Members, and such transferor or assignor shall be responsible for paying said counsels fee for the opinion.

**10.6 Prohibited Voluntary Resignation by Manager.** The Manager does hereby covenant and agree that he shall not voluntarily take any action which constitutes resignation from the Company, except as otherwise provided herein, without the prior consent of a majority interest of the Members.

**10.7 Accounting on Resignation.** If the resignation or death of a Manager does not result in the dissolution and winding up of the Company's business, the continuing

or successor Manager shall promptly after such succession have an accounting (not an audit) prepared by independent certified public accountants (which may be the Company's accountants) covering the transactions of the Company since the end of the immediately preceding fiscal year through the date of such withdrawal or removal.

**10.8 Investment Intent.** The Manager and Members hereby represent and warrant that their respective interest in the Company are being acquired for investment purposes and that they are not acquiring the same with a view toward the sale or distribution thereof. In furtherance of this representation, all Members acknowledge that the Company interest has not been registered under the Securities Act of 1933, as amended (the "1933 Act") in reliance on the exemptions afforded by Section 4(2) of the 1933 Act and similar exemptions therefrom, and in compliance with the applicable state securities laws and rules and regulations promulgated thereunder, and any attempted or purported transfer or assignment in additional condition precedent to any assignment or other transfer of any interest in the Company, the Manager may require an opinion of its counsel that such assignment or transfer will be made in compliance with the registration provisions of the 1933 Act or exemption therefrom, and in compliance with or exemption from applicable state securities laws and rules and regulations promulgated thereunder, and such transferor or assignor shall be responsible for paying said counsel's fee for the opinion. The foregoing shall not limit the restrictive legend set forth at the beginning of this Agreement.

## **XI ARBITRATION**

**11.1** Any dispute or controversy arising out of or relating to this Agreement but not relating to any other agreement entered into by or made for the benefit of the Company shall be determined and settled by Arbitration in Palm Beach County, Florida, in accordance with the Commercial Rules of the American Arbitration Association then in effect and judgment upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction.

## **XII MISCELLANEOUS**

**12.1 Notices.** Whenever any notice is required or permitted to be given under any provision of this Agreement such notice shall be in writing signed, addressed, in the case of the Company or the Manager, to the principal place of business of the Company and, if to a Member, to the address set forth in this Agreement or the Certificate or to such other address as such Member may from time to time specify by written notice to the Company.

**12.2 Representatives.** This Agreement shall be binding upon the parties hereto and their respective executors administrators and assigns.

**12.3 Amendment.** This Agreement may be amended at any time or from time to time by vote in person or by proxy or written consent of a majority in interest of the Members and the Manager, provided that no such amendment may be made which will constitute the Company as a

partnership or company in which the Members have unlimited liability, and in no event shall this Agreement be amended to change without full and adequate consideration therefore, the participation in profits, loss or distributions of any Member. Amendments may be proposed by the Manager or by Members having at least twenty-five percent (25%) of the interests then held by Members. Following such proposal, the Manager shall submit to the Members a verbatim statement of any proposed amendment, provided that counsel for the Company may make such changes in form thereto as may be necessary, and the Manager shall include in any such submission its recommendation as to the proposed amendment. This agreement shall be amended without the prior agreement of the Members whenever required by law or necessary to effect changes of a ministerial nature which do not adversely affect the rights or increase the obligations of the Members.

**12.4 Entire Agreement.** This Agreement contains the entire understanding between the parties with respect to the subject matter hereof and supersedes any prior understandings and agreements between them with respect thereof.

**12.5 Recovery of Attorneys Fees.** In any action between the parties to enforce any of the terms of this Agreement, or any action between the parties hereto in any other way pertaining to Company affairs, the prevailing party shall be entitled to recover the costs or suit and reasonable attorneys fees and expenses of investigation.

**12.6 Titles and Captions.** Section titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference purposes and in no way define, limit, extend or describe the scope of this agreement or the intent of any provisions thereof.

**12.7 Counterparts.** This Agreement may be executed in several counterparts and as executed shall constitute one Agreement, binding on all parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart. Those persons becoming Members by purchasing Interests in the nonpublic offering referred to in Section 2.4 shall become parties to the agreement upon acceptance by the Manager of their subscription.

**12.8 Terms.** Whenever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural and pronouns stated in the masculine, the feminine or the neuter gender shall include the masculine, feminine and neuter. The term "person" means any individual, corporation, company, trust or other entity.

**12.9 Severability.** If any provision of this Agreement or application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

**12.10 Additional Documents.** Each party hereto agrees to execute, with acknowledgment or affidavit, if required, any and all documents, and writings which may be expedient in connec-

tion with the creation of the Company and the achievement of its purposes specifically including (1) all future amendments of the Agreement or cancellation thereof, (2) any amendments to this Agreement and such certificates and other documents as the Manager deems necessary or appropriate to form, qualify or continue the Company as a Limited Liability Company or a Company in which the Members have limited liability in all other jurisdictions in which the Company or its Members by the laws of the United States of Americas, the State of Florida, or any other state in which the Company conducts or plans to conduct business, or any political subdivision or agency thereof.

### **XIII DEFINITIONS AND CROSS REFERENCES**

**13.1 The "Act"** The term "Act" shall have reference to the Limited Liability Company Act of the Florida as amended from time to time.

**13.2 "Majority in Interest"** Unless otherwise more specifically defined, the term "majority in interest" shall mean Members holding in the aggregate more than fifty; percent (50%) of the outstanding Interests.

**13.3 "Pro rata share"** The portion of the whole that the number of Interests held by a Member bears to the total number of Interests held by all Member.

**13.4 "Affiliate"** means any person or entity directly or indirectly controlling, controlled by or under common control with a person or entity; or any person, entity owning or controlling ten percent (10%) or more of the outstanding voting securities of such person or entity; or any person who is an officer, director, Member or employee of a person or entity and any other entity for which such person acts in any such capacity.

**13.5 Manager** means Institute of Wealth Management, Inc. **IN WITNESS WHEREOF**, the parties hereto have hereunto set their respective hands as of the date first written above.

Manager:

Peter Bruno \_\_\_\_\_  
Institute of Wealth Management Inc.

AL/PB 10/07/09  
BR/PB 01/21/10