

**FORT POINT CABINET MAKERS, LLC**  
**OPERATING AGREEMENT**

THIS OPERATING AGREEMENT of Fort Point Cabinet Makers, LLC (the “LLC”), dated as of February 17, 2006, is among xxx,xxx,xxx,xxx,, (collectively, the “Members,” and individually, a “Member”). The Members, intending to form a limited liability company pursuant to the Massachusetts Limited Liability Company Act (the “Act”), hereby agree as follows:

1. *Name of LLC.* The name of the LLC is **Fort Point Cabinet Makers, LLC**, (the “LLC”).

2. *Business of LLC; Purposes and Powers.*

(a) The general character of the business of the LLC is to engage in the business of designing, manufacturing, and marketing all types of furniture, cabinets, and various wood products; and to engage in any activities directly or indirectly related or incidental thereto.

(b) The LLC shall be Member-managed. All decisions respecting any matter set forth herein or otherwise affecting or arising out of the conduct of the business of the LLC shall be made by the Managing Members, or by action of Managing Members holding a majority of interest thereof.

The Managing Members shall have the exclusive right and full authority to manage, conduct and operate the LLC's business. Specifically, but not by way of limitation, the Managing Members shall be authorized, for and on behalf of the LLC to do the following:

(i) to borrow money, to issue evidences of indebtedness and to guarantee the debts of others for whatever purposes they may specify, whether or not related to the LLC or the LLC's assets, and, as security therefor, to mortgage, pledge or otherwise encumber the assets of the LLC;

(ii) to cause to be paid on or before the due date thereof all amounts due and payable by the LLC to any person or entity;

(iii) to employ such agents, employees, Managers, accountants, attorneys, consultants and other persons necessary or appropriate to carry out the business and affairs of the LLC, whether or not any such persons so employed are Members or are affiliated or related to any Member; and to pay such fees, expenses, salaries, wages and other compensation to such persons as the Members shall in their sole discretion determine;

(iv) to pay, extend, renew, modify, adjust, submit to arbitration, prosecute, defend or compromise, upon such terms as they may determine and upon such evidence as they may deem sufficient, any obligation, suit, liability, cause of action or claim, including taxes, either in favor of or against the LLC;

(v) to pay any and all fees and to make any and all expenditures that the Members, in their discretion, deem necessary or appropriate in connection with the organization of the LLC, and the carrying out of its obligations and responsibilities under this or any other Agreement;

(vi) to cause the LLC's property to be maintained and operated in a manner that satisfies in all respects the obligations imposed with respect to such maintenance and operation by law, by any mortgages encumbering such property from time to time, and by any lease, agreement or rental arrangement pertaining to such property;

(vii) to cause necessary and proper repairs to be made, and supplies necessary for the proper operation, maintenance and repair of the LLC's property to be obtained;

(viii) to lease, sell, finance or refinance all or any portion of the LLC's property; and

(ix) to exercise all powers and authority granted by the Act to Managing Members, except as otherwise specifically provided in this Agreement.

(c) Any two Managing Members of the LLC are authorized to execute on behalf of the LLC any documents to be filed with the Secretary of State of the Commonwealth of Massachusetts. Any two Managing Members are authorized to execute, acknowledge, deliver and record on behalf of the LLC any recordable instrument purporting to affect an interest in real property.

3. *Office of the Limited Liability Company.* The address of the office of the LLC for purposes of Section 5 of the Act is \_\_\_\_\_.

4. *Agent for Service of Process.* The name and address of the resident agent for service of process for the LLC is \_\_\_\_\_.

5. *Members' Names and Business Addresses.* The names and business addresses of the Members are set forth on *Schedule A*, attached hereto.

6. *Term of the LLC.*

(a) The term of the LLC commenced upon filing on the date hereof a Certificate of Organization in the Office of the Secretary of State of the Commonwealth of Massachusetts. The term shall continue until the LLC is terminated by agreement of the Members unless earlier dissolved upon the occurrence of an event of dissolution under Section 43 of the Act (subject to the right to continue the LLC contained in Section 6(b), below, or pursuant to the Act).

(b) The Members may continue the business of the LLC upon the occurrence of any event that constitutes an event of dissolution of an LLC under the Act by electing to do so within 90 days after the occurrence of any of such event.

*7. Capital Contributions, Capital Accounts and Liability of Members.*

(a) Each Member has contributed in cash to the capital of the LLC the amount set forth opposite such Member's name on Schedule A hereto. Additional capital contributions may be made by any Member if agreed to by all Members.

Except as otherwise provided in this Section 7, no Member shall be obligated or permitted to contribute any additional capital to the LLC. No interest shall accrue on any contributions to the capital of the LLC, and no Member shall have the right to withdraw or be repaid any capital contributed by it or to receive any other payment in respect of its interest in the LLC, including, without limitation, as a result of the withdrawal or resignation of such Member from the LLC, except as specifically provided in this Agreement.

(b) A "Capital Account" shall be maintained for each Member and adjusted in accordance with Regulations under Section 704 of the Internal Revenue Code of 1986, as amended (the "Code"). To the extent consistent with such Regulations, the adjustments to such Capital Accounts shall include the following: (i) there shall be credited to each Member's Capital Account the amount of any cash or the net fair market value of any property actually contributed by such Member to the capital of the LLC and such Member's share of the net profits of the LLC and of any items in the nature of income or gain separately allocated to the Members; and (ii) there shall be charged against each Member's Capital Account the amount of any cash and the net fair market value of any property distributed to such Member and such Member's share of the net losses of the LLC and of any items in the nature of losses or deductions separately allocated to the Members.

(c) The liability of the Members for the losses, debts and obligations of the LLC shall be limited to their capital contributions; provided, however, that under applicable law, the Members may under certain circumstances be liable to the LLC to the extent of previous distributions made to them in the event that the LLC does not have sufficient assets to discharge its liabilities. Without limiting the foregoing, (i) no Member, in his, her or its capacity as a Member shall have any liability to restore any negative balance in his, her or its Capital Account and (ii) the failure of the LLC to observe any formalities or requirements relating to exercise of its powers or management of its business or affairs under this Agreement or the Act shall not be grounds for imposing personal liability on the Members or Managers for liabilities of the LLC.

*8. Management of the LLC.*

The business and affairs of the LLC shall be managed by or under the direction of any two managing Members, who may exercise all of the powers of the LLC except as otherwise provided by law or this Agreement. In the event of a vacancy of one of the managing Members, the remaining Managing Member (except as otherwise provided by law) may exercise the powers of the managing until the vacancy is filled.

All management and other responsibilities not specifically reserved to the Members in this Agreement shall be vested in the managing Members, and the Members shall have no voting rights except as specifically provided below in Exhibit B.

Each Manager shall devote such time to the affairs of the LLC as may be reasonably necessary for performance by the Manager of his, her or its duties hereunder [*, provided that such persons shall not be required to devote full time to such affairs.*]

Specifically, but not by way of limitation, the Board of Managers shall be authorized in the name and on behalf of the LLC, to cause the LLC to do all things necessary or appropriate to carry on the business and purposes of the LLC, including, without limitation, the following:

(i) to acquire by purchase, lease, exchange or otherwise; and to sell, finance, refinance, encumber and otherwise deal with, any real or personal property;

(ii) to borrow money and issue evidences of indebtedness; or to guarantee loans and to secure the same by mortgage, deed of trust, pledge or other lien on any assets or property of the LLC; and to pay, prepay, extend, amend or otherwise modify the terms of any such borrowings;

(iii) to employ executive, administrative and support personnel in connection with the business of the LLC; and to pay salaries, expense reimbursement, employee benefits, fringe benefits, bonuses and any other form of compensation or employee benefit to such persons and entities, at such times and in such amounts as may be determined by the Board of Managers in its sole discretion to provide executive, administrative and support services in connection with the business of the LLC;

(iv) to hire or employ such agents, employees, Managers, accountants, attorneys, consultants and other persons necessary or appropriate to carry out the business and operations of the LLC, and to pay fees, expenses, salaries, wages and other compensation to such persons;

(v) to pay, extend, renew, modify, adjust, submit to arbitration, prosecute, defend or compromise, on such terms as it may determine and on such evidence as it may deem sufficient, any obligation, suit, liability, cause of action or claim, including taxes, either in favor of or against the LLC;

(vi) to determine the appropriate accounting method or methods to be used by the LLC;

(vii) to cause the LLC to make or revoke any of the elections referred to in I.R.C. §§ 108, 704, 709, 754 and 1017 or any similar provisions enacted in lieu thereof, and in any other section of the Code;

(viii) to establish and maintain reserves for such purposes and in such amounts as it deems appropriate from time to time;

(ix) to pay all organizational expenses, and general and administrative expenses of the LLC;

(x) to deal with, or otherwise engage in business with, or provide services to and receive compensation therefor from, any person who has provided or may in the future provide any services to, lend money to, sell property to, or purchase property from the LLC, including, without limitation, any Member or Manager;

(xi) to engage in any kind of activity, and to perform and carry out contracts of any kind necessary to, in connection with or incidental to the accomplishment of the purposes of the LLC;

(xii) to pay any and all fees and to make any and all expenditures that the Manager, in its sole discretion, deems necessary or appropriate in connection with the organization of the LLC, the management of the affairs of the LLC, and the carrying out of its obligations and responsibilities under this Agreement, including, without limitation, fees, reimbursements and expenditures payable to a Member or Manager;

(xiii) to exercise all powers and authority granted by the Act to Managers, except as otherwise provided in this Agreement;

(xiv) to cause the LLC and its properties and assets to be maintained and operated in such a manner as the managing Members may determine, subject, however, to obligations imposed by applicable laws or by any mortgage or security interest encumbering the LLC and such properties and assets from time to time, and by any lease, rental agreement or other agreement pertaining thereto;

(xv) to cause to be obtained and continued in force all policies of insurance required by any mortgage, lease or other agreement relating to the LLC's business or any part thereof, or determined by the managing Members to be in the best interests of the LLC;

(xvi) to cause to be paid any and all taxes, charges and assessments that may be levied, assessed or imposed on any of the assets of the LLC unless the same are contested by the LLC; and

(xvii) to perform any other act that the Board of Managers may deem necessary, convenient or desirable for the LLC or its business.

9. *Return of Contributions.* The contribution of each Member is to be returned to such Member only upon the termination and liquidation of the LLC, but contributions may be returned prior to such time if agreed upon by all Members.

10. *Share of Net Profits, Net Losses and Cash Distributions.*

(a) During the term of the LLC, the net cash flow, net proceeds of any sale or refinancing of any property of the LLC, and any other distributions of cash or other property of the LLC, shall be allocated among the Members in proportion to their respective capital contributions. Subject to the foregoing, distributions to the Members shall be made at such times and in such amounts as the Members shall determine.

Distributions of net proceeds of liquidation of the LLC (whether of cash or other assets) shall be distributed to all Members with positive Capital Account balances (after such balances have been adjusted to reflect the allocation of net profits or net losses and items thereof through the date of liquidation pursuant to Section 9(b)) in proportion to and to the extent of such positive balances.

A Member, regardless of the nature of his or her contribution to the LLC, shall have no right to demand or receive any distribution from the LLC in any form other than cash. The LLC may, at any time, and from time to time, make distributions in kind to the Members. If any assets of the LLC are distributed in kind, such assets shall be distributed on the basis of their fair market value as determined by the Members.

(b) Net profits and net losses shall, for both accounting and tax purposes, be net profits and net losses as determined for purposes of adjusting Capital Account balances as provided in Treasury Regulations Section 1.704-1(b)(2)(iv)(b). Net profits and net losses of the LLC shall be allocated among the Members in proportion to their respective capital contributions. For tax purposes, all items of depreciation, gain, loss, deduction or credit shall be determined in accordance with the Treasury Regulations under I.R.C. § 704(b), and, except to the extent otherwise required by the Code, allocated to and among the Members in the same percentages in which the Members share in net profits and net losses.

(c) \_\_\_\_\_ shall be the “tax matters partner” of the LLC for purposes of the Code.

(d) No Member shall have any right to distributions respecting his or her Membership interest (upon withdrawal or resignation from the LLC or otherwise) except as expressly set forth in this Agreement.

#### *11. Substitution and Assignment of a Member's Interest; Resignation; Additional Members.*

(a) No Member may sell, assign, give, pledge, hypothecate, encumber or otherwise transfer, including, without limitation, any assignment or transfer by operation of law or by order of court, such Member's interest in the LLC or any part thereof, or in all or any part of the assets of the LLC, without the unanimous written consent of all of the other Members, and any purported assignment without such consent shall be null and void and of no effect whatsoever.

(b) No assignee of the interest of a Member may be substituted as a Member of the LLC without the unanimous written consent of all other Members.

(c) Any Member may resign from or otherwise terminate his or her Membership in the LLC.

(d) Additional Members may be admitted to the LLC only if agreed to by Members holding at least 75% of the interest in the LLC.

(e) Upon the death or resignation of any member, that member's interest shall revert back to the LLC, and each remaining member's interest shall be increased by an amount equal to each remaining member's pro rata percentage interest multiplied by the deceased member's interest.

12. *Miscellaneous.*

(a) The Members shall cause the LLC to keep just and true books of account with respect to the operations of the LLC. Such books shall be maintained at the principal place of business of the LLC, or at such other place as the Members shall determine, and all Members, and their duly authorized representatives, shall at all reasonable times have access to such books.

(b) Such books shall be kept on the accrual method of accounting or on such other method of accounting as the Members may from time to time determine, and shall be closed and balanced as of December 31 each year. The same method of accounting shall be used for both LLC accounting and tax purposes. The fiscal year of the LLC shall be the calendar year.

(c) The Members shall cause the LLC to maintain one or more accounts in a bank (or banks) that is a Member of the Federal Deposit Insurance Corporation (FDIC), which accounts shall be used for the payment of the expenditures incurred by the Members in connection with the business of the LLC, and in which shall be deposited any and all cash receipts. All such amounts shall be and remain the property of the LLC, and shall be received, held and disbursed by the Members for the purposes specified in this Agreement.

(d) Subject to the restrictions on transfers set forth herein, this Agreement, and each and every provision hereof, shall be binding upon and shall inure to the benefit of the Members, their respective successors, successors in title, heirs and assigns, and each and every successor in interest to any Member, whether such successor acquires such interest by way of gift, purchase, foreclosure or any other method, and each party shall hold such interest subject to all of the terms and provisions of this Agreement.

(e) No change, modification or amendment of this Agreement shall be valid or binding unless such change, modification or amendment shall be in writing and duly executed by all of the Members.

(f) This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

(g) This Agreement may be executed in a number of counterparts, all of which together shall for all purposes constitute one Agreement, binding on all the Members, notwithstanding that all Members have not signed the same counterpart.



(h) None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of any Member, or any creditor of the LLC other than a Member who is such a creditor of the LLC.

(i) The Members hereby agree that no Member or any successor in interest to any Member shall have the right while this Agreement remains in effect to have the property of the LLC partitioned, or to file a complaint or institute any proceeding at law or in equity to have the property of the LLC partitioned, and that each Member, on behalf of himself or herself, his or her successors, representatives, heirs and assigns, hereby waives any such right. It is the intention of the Members that during the term of this Agreement, the rights of the Members and their successors in interest, as among themselves, shall be governed by the terms of this Agreement, and that the right of any Member or successor in interest to assign, transfer, sell or otherwise dispose of his or her interest in the LLC shall be subject to the limitations and restrictions of this Agreement.

(j) This Agreement constitutes the full and complete agreement of the parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Members have signed and sworn to this Agreement under penalties of perjury as of the date first above written.

**MANAGING MEMBERS:**

\_\_\_\_\_

**MEMBERS:**

\_\_\_\_\_

\_\_\_\_\_



For reference only – not a legal document – Richard Oedel and Fort Point Cabinetmakers  
[www.finefurnituremaster.com](http://www.finefurnituremaster.com) [roedel@finefurnituremaster.com](mailto:roedel@finefurnituremaster.com) March 30, 2009

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**SCHEDULE A**

**TO OPERATING AGREEMENT OF FORT POINT CABINET MAKERS, LLC**

**MEMBERS**

<b>Names of Members</b>	<b>Capital Contribution</b>	<b>Management Member Percentage</b>
		20%
		20%
		20%
		20%
		10%
		10%
<b>TOTAL</b>		<b>100%</b>