

Paul Fata & Sons, L.L.C.

a Michigan Limited Liability Company

THIS RESTATED OPERATING AGREEMENT is made and entered into as of July 1, 2022, between Paul Fata & Sons, L.L.C. (the "Company"), a Michigan limited liability company, and each of those Persons executing this Restated Operating Agreement as a member, all of whom agree as follows:

ARTICLE I ORGANIZATION

- 1.1 **Formation.** The Company has been organized as a member managed Michigan limited liability company by the filing of articles of organization (the "Articles") as required by the Michigan Limited Liability Company Act (the "Act"), MCL 450.4101 *et seq.*
- 1.2 **Name.** The name of the Company is "Paul Fata & Sons, L.L.C."
- 1.3 **Purpose.** The Company has been formed for the purposes of engaging in any activity for which a limited liability company may be formed under the Limited Liability Act of Michigan.
- 1.4 **Duration.** The Company commenced on October 5, 2006, the date of filing of the Articles and shall continue in perpetuity until the Company dissolves and its affairs are wound up in accordance with the Act or this Operating Agreement.
- 1.5 **Registered Office and Resident Agent.** The Registered Office and the Resident Agent of the Company shall be as designated in the initial or amended Articles. The Registered Office and the Resident Agent may be changed from time to time. Any such change shall be made in accordance with the requirements of the Act. If the Resident Agent resigns, the Company shall promptly appoint a successor.
- 1.6 **No Liability of Managers and Members.** Unless otherwise provided by law or in this Operating Agreement, a person who is a Member of the Company is not liable for the acts, debts, or obligations of the Company.
- 1.7 **Management.** The business of the Company shall be managed by its Members as provided in Article VII of this Operating Agreement.
- 1.8 **Admission of New Members.** No person shall be admitted as a Member of the Company, except upon the unanimous consent of the Membership Shares. A prospective new member to the Company must become a party to this Operating Agreement as a condition of becoming a Member.

1.9 No Right of Withdrawal. The Members shall not have any right of withdrawal or any right to receive any payment or distribution from the Company on any actual or purported withdrawal, except as provided in Section 5.3 below.

ARTICLE II ADMINISTRATIVE PROVISIONS

2.1 Books of Account. At all times during the continuance of the Company, the Company shall keep or cause to be kept full and true books of account reflecting each of the Company's transactions. These books of account, together with a list of the name and address of each Member; a copy of the Articles; copies of the Company's financial statements and federal, state, and local tax returns and reports for the three most recent fiscal years; a copy of this Operating Agreement; and copies of records that would enable a Member to determine the Member's Shares shall be maintained at all times at the Company's registered office. These books shall be open to reasonable inspection and examination by the Members at the Company's registered office, during reasonable business hours, on reasonable notice to the Company.

2.3 Fiscal Year and Accounting Method. The fiscal year of the Company is the calendar year. The Company's books and records shall be kept on the cash or accrual method as determined by the Members.

2.4 Checks. All checks, drafts, orders for the payment of money, notes, or evidences of indebtedness issued in the name of the Company shall be signed in accordance with Article VII.

2.5 Tax Matters Member; Member Tax Returns. As used in this Operating Agreement, the Tax Matters Member shall be the person designated as the Company's Tax Matters Member by the Members. The initial Tax Matters Member shall be Lawrence Fata, who shall serve in this capacity until he resigns or is replaced by the Members. The Tax Matters Member shall consult with all other Members before taking any action in the capacity of Tax Matters Member. Each Member shall reflect on his or her individual income tax returns all items of income, gain, loss, deduction, or credit relating to the Company, its property, or its business in a manner that is consistent with the treatment of those items on the Company returns.

ARTICLE III CAPITAL CONTRIBUTIONS, MEMBERSHIP SHARES, AND CAPITAL ACCOUNTS

3.1 Capital Contributions and Membership Interests. By executing this Restated Operating Agreement, the Members agree to make the capital contributions set forth in the attached **Exhibit A**. Each Member owns a membership interest in the Company, represented by the Member's Shares in the Company set forth in **Exhibit 3.1** (the "Membership Shares").

3.2 Additional Contributions. In addition to the initial capital contributions, the Members may determine from time to time that additional capital is needed to enable the Company to conduct its business and affairs. After making such a determination, notice of it shall be

given to all Members in writing at least 30 days before the date on which the additional contributions are due. The notice shall describe, in reasonable detail, the purposes and uses of the additional capital, the amounts of additional capital required, and the date by which payment of the additional capital is due. Each Member's percentage of the total additional capital due shall equal the percentage of each Member's Shares to the total Shares in the Company.

3.3 Failure to Contribute. If a Member is unable to make a capital contribution when required, one or more of the remaining Members may elect to contribute the required capital themselves, according to their respective Shares. The Members who make such contributions shall be entitled to treat these amounts as an extension of credit to the Members who are unable to make the contribution (a "Debtor Member"), payable in installments, with interest accruing on the extension at the rate of prime plus 1% per year until paid, amortized over not more than fifteen (15) years. This extension of credit shall be secured by the Debtor Member's interest in the Company. Each Debtor Member grants to each Member who may later make an extension of credit a security interest in the Debtor Member's interest in the Company.

3.4 Capital Accounts. The Company shall maintain a separate capital account for each Member (the "Capital Accounts"). Each Capital Account shall be:

- a. Increased (i) for the amount of cash and the fair market value of any property (net of any liabilities secured by the property that the Company assumes or takes subject to) that the Member contributes; and; (ii) for the Member's Share of any of the Company's income or gain and;
- b. Decreased (i) for the amount of any cash and the fair market value of any property (net of any liabilities secured by the property that the Company assumes or takes subject to) distributed to the Member; (ii) for the Member's Share of any losses and deductions of the Company; and, (iii) for any expenditures under IRC 705(a)(2)(B).

If a Member's Shares, or any portion of them, are transferred in accordance with this Restated Operating Agreement, the transferee shall succeed to the Capital Account of the transferring Member or to any portion that is transferred. All of the provisions of this section regarding the establishment and maintenance of Capital Accounts are intended to comply with Treasury Regulation 1.704-1(b)(2)(iv) and shall be interpreted and applied to comply with the Treasury Regulation. The Members agree to make any adjustment to the Capital Accounts that may be necessary or appropriate to comply with the Treasury Regulation.

ARTICLE IV **ALLOCATIONS AND DISTRIBUTIONS**

4.1 Allocations. Except as may be required by the Internal Revenue Code ("IRC") or by this Restated Operating Agreement, the Company's net profits, net losses, and other items of income, gain, loss, deduction, and credit shall be allocated among the Members first, so their Capital Account balances are, as nearly as possible, in the same ratios as their respective Shares, and then, pro rata, in accordance with the Shares held by each Member.

Notwithstanding the foregoing, all allocations are to be in accordance as required by and consistent with the applicable Treasury Regulations.

4.2 Distributions. The Company may make distributions to the Members from time to time. Distributions may be made only after the Members determine, in their reasonable judgment, that the Company has cash on hand exceeding the Company's current and anticipated needs (including operating expenses, debt service, acquisitions, reserves, and mandatory distributions, if any). All distributions shall be made to the Members in accordance with each Member's Shares or as may be otherwise agreed upon by two-thirds (2/3) of the Members' votes. Distributions shall be in cash, property, or both, as the Members determine. No distribution shall be declared or made if, after giving it effect, (a) the Company would not be able to pay its debts as they became due in the usual course of business; or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the Company were to be dissolved at the time of the distribution, to satisfy on dissolution the preferential rights of other Members that are superior to the rights of the Members receiving the distribution. The Members shall endeavor to make distributions in cash to the Members at times and in amounts that enable the Members to pay the tax due on the income of the Company before its due date.

ARTICLE V **DISPOSITION OF MEMBERSHIP SHARES**

5.1 General Prohibition. The Members shall not sell, assign, pledge or otherwise transfer or encumber in any manner or by any means whatsoever, voluntarily or involuntarily, any interest in all or any part of the capital interest of the Company now owned or hereafter acquired by them without having first obtained the written consent of the Company, or in accordance with the terms and conditions of this Restated Operating Agreement. Any sale, assignment, pledge, transfer, encumbrance or other disposition contrary to this Restated Operating Agreement is void.

5.2 New Member Bound to Restated Operating Agreement. All Members, as a condition to owning Membership Shares of the Company, shall execute and deliver to the Company an Admission Agreement, in form and substance satisfactory to the Company, by which the new Member agrees to be bound by all of the terms and provisions of this Restated Operating Agreement and agrees that the capital interest acquired by the new Member shall be subject to all of the transfer restrictions under Article V of this Restated Operating Agreement. The purchaser of a membership interest shall reimburse the Company for all reasonable costs and expenses the Company incurs in connection with the transfer of the Membership Shares.

5.3 Withdrawal. A Member may withdraw from the Company upon a three (3) month advance written notice to the Company. The Company may elect to purchase the withdrawing Member's interest in the Company for an amount determined in Section 5.4 below. If the Company does not elect to purchase the withdrawing Member's interest in the Company, the Company shall be dissolved as provided in Article IX.

5.4 Purchase Price. In the event the Company redeems or otherwise acquires a Member's ownership interest in the Company, the amount to be paid by the Company to the Member shall be calculated by multiplying the withdrawing Member's sharing ratio by the value of the Company's assets, calculated by multiplying the withdrawing Member's share ratio by the value of the Company's assets determined as of not more than thirty (30) days from the date the notice is received, less Company liabilities (sharing ratio x [value of assets - Company liabilities]). In determining the value of the Company, a reduction shall not be applied for the lack of marketability of a minority ownership interest in the Company. If the Members cannot agree as to the value of the Company, a mutually agreeable appraiser shall be appointed to determine the value, the cost of which shall be paid by the Members in proportion to their respective Membership Shares. The Company shall subtract from the purchase price any amount owing by the withdrawing Member to the Company. The Company shall pay the withdrawing Member for the ownership interest within sixty (60) days from the effective date of the withdrawal. Notwithstanding the foregoing, the Company may, at its election, withhold amounts reasonably anticipated to reflect the withdrawing Member's share of Company expenses incurred or expected but not calculated to certainty.

5.5 Redemption. Upon the affirmative vote of unanimous consent of all Membership Shares, the Company may elect to purchase the entire membership of any Member at any time. The Company shall purchase, and the withdrawing Member shall sell, the membership interest for the purchase price and upon the terms set forth in Section 5.4 above, or as may be agreed upon by the Company and all Members.

5.6 Transfer of Membership Interest. Members shall not transfer any membership interest in the Company without the express written consent of all other Members. Notwithstanding the foregoing, an individual Member may transfer membership interests to immediate family members without the consent of the other Members. For purposes of this Section the term "immediate family member" means a spouse or child of the Member. A transfer to immediate family members may occur either during the lifetime or upon the death of the Member. A new Member must become a party to this Operating Agreement as a condition to becoming a Member of this Company.

ARTICLE VI **VOTING OF MEMBERS**

6.1 Voting. All Members shall be entitled to vote on any matter submitted to a vote of the Members. Each Member shall have one vote for each Membership Share owned. The Members shall have the right to vote on all matters involving the Company and its business.

6.2 Required Vote. Unless a greater vote is required by the Act or the Articles, the affirmative vote or consent of a majority of the Shares of all the Members entitled to vote on a matter is required.

6.3 Deadlock. If any matter submitted to a vote of the Members fails to be approved by the Members and results in a 50% voting in favor and 50% voting against (a "Deadlock"), the Members shall then engage in good-faith discussions to resolve the issue. If after thirty (30) days the Deadlock is still not resolved by the required vote of the Members, the Deadlock

shall be submitted to the one or more mediators as agreed upon by the Members. If the Members cannot agree upon one or more mediators, or if the deadlock is not resolved after thirty (30) days from the date of appointment of the mediator or mediators, either party may have the Company dissolved.

6.4 Meetings. An annual meeting of the Members for the transaction of whatever business properly comes before the meeting shall be held at the time, date, and place that the Managers shall determine. Special meetings of Members for any proper purpose or purposes may be called at any time by the Members entitled to vote. For special meetings outside the ordinary course of business, the Company shall deliver or mail written notice of the special meeting stating the date, time, place, and purposes of the meeting to each Member entitled to vote at the meeting unless waived by all Members. The notice of special meeting outside of the ordinary course of business shall be given not less than 10 nor more than 60 days before the meeting date. All meetings of Members shall be presided over by a chairperson, designated by the Members from among themselves.

6.5 Consent. Any action required or permitted to be taken at an annual or special meeting of the Members may be taken by consent or approval without a meeting or prior notice. The consent or approval must be in writing, setting forth the action to be taken, and be signed by the Members having at least the minimum number of votes necessary to authorize or take the action at a meeting at which all membership interests entitled to vote on the action are present and voting. Every written consent or approval shall also bear the date of when each Member signed the consent. Prompt notice of the taking of action without meeting by less than unanimous written consent of the Members entitled to vote shall be given to all Members who did not consent to or approve the action

ARTICLE VII MANAGEMENT

7.1 Management by Members. The Company has been organized as a member-managed Michigan limited liability company. As provided in the Act, the business and affairs of the Company shall be managed by the Members, subject to the provisions in this Restated Operating Agreement restricting or enlarging the rights and duties of any Member.

7.2 Actions, Decisions, and Approvals of Members. Any and all actions, decisions, and approvals of the Members shall be made and given in accordance with Section 6.1 of this Restated Operating Agreement.

7.3 Restrictions on Individual Authority. Notwithstanding the agency authority of the Members, the Members agree with the Company and each other that no Member, acting individually, shall have the power or authority to act on behalf of or bind the Company, to authorize any action to be taken by the Company, to act as agent for the Company, or to incur any liability or expense on behalf of the Company, unless such power or authority has been delegated to such Member by a resolution adopted by the Members in accordance with the provisions of this Restated Operating Agreement and then, only to the extent expressly provided for in such resolution, or as set forth in Section 7.4 below.

7.4 **Day-to-Day Business and Affairs.** Except as otherwise provided in this Restated Operating Agreement or required under the Act, the Members agree among themselves that the ordinary day-to-day business affairs of the Company shall be carried out by the Members or employees of the Company.

7.5 **Power and Authority.** The Managing Members may exercise any power or authority permitted by the Act, this Restated Operating Agreement, or the Articles that is not otherwise required to be exercised by the Members.

7.6 **Standard of Care; Liability.** Every Member shall discharge his or her duties as a manager in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Member reasonably believes to be in the Company's best interests. A Member shall not be liable for monetary damages to the Company for any breach of management duties except for (a) receipt of a financial benefit to which the Member is not entitled; (b) voting for or assenting to a distribution to Members in violation of this Restated Operating Agreement or the Act; or, (c) a knowing violation of the law.

7.7 **Reimbursement.** Members shall be entitled to reimbursement from the Company for all Company expenses reasonably incurred and paid for by the Member on the Company's behalf.

ARTICLE VIII INDEMNIFICATION

8.1 **Exculpation of Liability.** Unless otherwise provided by law or expressly assumed, a person who is a Member shall not be liable for the acts, debts, or liabilities of the Company.

8.2 **Indemnification.** The Company shall indemnify, defend, and hold each Member harmless from and against any losses, claims, costs, damages, and liabilities, including, without limitation, judgments, fines, amounts paid in settlement, and expenses (including, without limitation, attorney fees and expenses, court costs, investigation costs, and litigation costs) incurred by any Member in any civil, criminal, or investigative proceeding in which it is involved or threatened to be involved by reason of the party being a Member of the Company provided that the Member acted in good faith, within what he or she reasonably believed to be the scope of his or her authority, for a purpose that he or she reasonably believed to be in the best interests of the Company, and in compliance with the provisions of this Restated Operating Agreement. However, (a) the Company shall not be required to indemnify the Member for any loss, expense, or damage that the Company may suffer as a result of (i) the Member's willful misconduct, knowing violation of law, gross negligence, or bad faith; (ii) actions taken by the Member in violation of this Restated Operating Agreement; (iii) the receipt by the Member of a financial benefit to which the Member is not entitled to pursuant to this Restated Operating Agreement or the Act; or (iv) any vote by the Member for a distribution of funds of the Company in violation of this Restated Operating Agreement or the Act; and (b) any liability under this Agreement shall be limited solely to the assets of the Company, and no Member shall have any liability or obligation under this Agreement.

ARTICLE IX DISSOLUTION AND WINDING UP

- 9.1** **Dissolution.** The Company shall be dissolved and its affairs wound up on the occurrence of (a) the affirmative unanimous vote of the Members to dissolve the Company; or (b) as provided in Section 5.3 above, or (c) the entry of a decree of judicial dissolution. All Company assets remaining after payment to creditors of the Company (including any Members who are creditors) shall be distributed to the Members in accordance with Article IV.
- 9.2** **Winding Up.** On the winding up of the Company, its assets shall be distributed first to creditors, to the extent permitted by law, in satisfaction of Company debts, liabilities, and obligations (including those owed to Members). The remaining assets shall be distributed as a liquidating distribution to the Members in accordance with Article IV.

ARTICLE X MISCELLANEOUS PROVISIONS

- 10.1** **Entire Agreement.** This Restated Operating Agreement constitutes the entire agreement among the parties and contains all of the agreements between the parties with respect to the subject matter. This Restated Operating Agreement supersedes all other agreements, either oral or written, between the parties with respect to the subject matter.
- 10.2** **Conflicts of Interest.** THE PARTIES ACKNOWLEDGE THAT LEGAL COUNSEL PREPARING THIS AGREEMENT WAS REPRESENTING THE MEMBERS AND THE COMPANY AND THAT THE MEMBERS (A) HAVE BEEN ADVISED THAT A CONFLICT EXISTS AMONG THEIR INDIVIDUAL INTERESTS; (B) HAVE BEEN ADVISED THAT THEY SHOULD EACH SEEK THE ADVICE OF INDEPENDENT COUNSEL, INCLUDING TAX COUNSEL; AND (C) HAVE EACH HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT COUNSEL. BY SIGNING THIS RESTATED OPERATING AGREEMENT, EACH PARTY WAIVES ANY CLAIMS REGARDING ANY POSSIBLE CONFLICT OF INTEREST WITH REGARD TO THIS AGREEMENT OR ITS PREPARATION.
- 10.3** **Governing Law.** This Restated Operating Agreement has been executed and delivered in the State of Michigan and shall be governed by and construed and enforced in accordance with the laws of the State of Michigan.

The parties have executed this Restated Operating Agreement on the dates set below their names, to be effective on the date listed on the first page of this Restated Operating Agreement.

PAUL FATA & SONS, L.L.C.

COPY MEMBERS

By: _____

Its: Lawrence Fata
 Authorized Member

Lawrence Fata

COPY

By: _____

Its: Teresa Fata
 Authorized Member

Teresa Fata

FRANK FATA & SONS, L.L.C.

COPY

By: _____

Its: Gerard Fata
 Authorized Member

EXHIBIT 3.1

MEMBER	INITIAL CAPITAL CONTRIBUTION	SHARES
Lawrence Fata		33.3333%
Teresa Fata		33.3333%
Frank Fata & Sons, LLC		33.3333%