

**OPERATING AGREEMENT
OF
SAILBOAT PARTNERS, LLC**

WHEREAS, the undersigned Members of the limited liability company established pursuant to the Articles of Organization are desirous of forming a limited liability company under the laws of the State of Maine for the purpose of co-ownership of a boat for the sole purpose of recreational activity; and

WHEREAS, said undersigned Members are desirous of setting forth their understanding and expectations concerning their respective obligations.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, said undersigned Members agree as follows:

1. PURPOSE; RESIDENT AGENT AND MANAGER'S ADDRESS.

- a. Purpose. The purpose of the company is to hold title to the vessel named Amazing Grace, a model year 1998 Catalina 42' sailboat, (hull identification number CTYTO601H798) for the use and enjoyment of the Members of the company.
- b. Registered Agent and Manager's Address:

Stephen A. O'Connor
Sailboat Partners, LLC
PO Box 1582
Scarborough, Maine 04070-1582

2. TERMS. The word "Company" refers to Sailboat Partners, LLC, a Maine limited liability company. The word "Member" or "Members" refers to the persons who own an interest in the Company after its formation, and the successors in interest thereof. The term "Original Member" shall mean the founders of the Company, as listed in paragraph 3, below. The terms, "vessel," "yacht," and "boat" refer to the water craft that is the subject of this Operating Agreement and includes all equipment on the boat as of the date of this Operating Agreement as well as any future equipment that is purchased jointly by the Members as replacement of existing equipment or additional equipment. The term "equipment" includes all machinery, dinghies, gear, sails, tackle, rigging, furniture, utensils, and anything else purchased jointly by the Members and used in connection with the boat.

3. OWNERSHIP. The Original Members of the Company established hereby, are as follows:

Stephen A. O'Connor
PO Box 1582
Scarborough, ME 04070-1582

steve@uchi.com
Tel: 809 878-0941
Tel: 207 831-9876

Susan M. O'Connor
PO Box 1582
Scarborough, ME 04070-1582

Tel: 809 878-0941
Tel: 207 831-9876

The Original Members shall initially and temporarily hold 24 of the 24 shares in the Company and convey interests in the Company as prospective Members purchase shares in the Company.

The Company shall hold title to a Catalina sloop built in the model year 1998 bearing the name Amazing Grace and the HID# CTYTO601H798

4. STATUS OF MEMBERS. It is specifically understood and agreed between the Members that this Operating Agreement extend only, and is limited to, the rights and obligations provided by and under this Operating Agreement, and nothing herein shall be construed to constitute any party the agent or general partner of any other, nor in any manner to limit the Members in the carrying on of their respective businesses or activities other than the activities included within the scope of this Operating Agreement.

5. LIEN PROHIBITION. Except where specifically contemplated by this Operating Agreement or with the unanimous consent of the Members, no Member shall permit or cause the transfer, pledge, assignment, or hypothecation of any interest in the vessel, nor shall allow any lien to attach to the vessel. Any Member violating this provision shall reimburse the other Members for any losses they may suffer as the result of the lien or obligation, including attorney fees, costs, and expenses, and shall immediately take steps to cause the lien or other obligation to be satisfied and released.

6. INSURANCE. The Manager shall at all times maintain insurance on the vessel as follows:

- a. Hull insurance covering the vessel in the amount of \$150,000 dollars with a two percent deductible (4 percent for named storms).
- b. Protection and indemnity insurance, with liability limits in the amount of \$500,000.

- c. Medical payments coverage of not less than Five Thousand Dollars (\$5,000) per person.
- d. The insurance policy shall name all Members to this Operating Agreement as insured and shall specify the Caribbean Sea as its navigational limits with coverage in effect during all time that the boat is in use. No Member shall make use of the vessel unless full coverage is in effect, nor shall the vessel be removed from the cruising area specified in the insurance coverage without policy coverage being extended. In the event of a loss, proceeds shall first be used to repair or replace the vessel, and in the case of a total loss, proceeds remaining after satisfaction of any outstanding liens, assessments and charges, shall be distributed to the Members, as their interests in this Operating Agreement shall appear.

7. UNINSURED DAMAGES. If the vessel suffers damage for which the Members are not fully indemnified, their liability shall be as follows:

- a. Damages due to wear and tear, hidden defects, unavoidable accidents, theft, vandalism, and the like, and through joint negligence of the Members shall be shared by the Members jointly in proportion to the ownership interests.
- b. For damages resulting from the negligence of a Member, that Member shall be liable for all or any part of damages not covered by insurance or not paid by insurance, including any deductible amounts.
- c. A Member shall be liable for all damages not covered by insurance resulting from the unauthorized use of the vessel permitted by that Member or from otherwise permitting a third party to use the vessel in violation of this Operating Agreement, including, but not limited to, damage to the vessel, loss of use costs associated with the damage, as well as all other damages permitted by law or this Operating Agreement.

8. UNAUTHORIZED USE. Members are authorized to allow guests to participate as volunteer crewmembers, but may not authorize operation of the vessel by a third party without the consent of a majority of Members. The vessel shall not be used nor shall a Member authorize its use when it is uninsured, during the lay-up period, outside the navigational limits specified in the insurance policy, or in any manner prohibited or excluded by the insurance policy.

9. PROHIBITION AGAINST CHARTERING. Except as set forth below, at no time shall any Member carry any passenger-for-hire. Violation of this provision constitutes an act of default under this Operating Agreement. No party shall be hired as a master or crewmember either on a temporary or permanent basis without the unanimous consent of the Members, and then only when insurance coverage is first secured providing general

liability coverage for paid crew, including maintenance and cure, Worker's Compensation (if required), Jones Act, and admiralty liability.

- a. The Manager may charter the boat during membership periods not yet sold by the Original Members until 12 shares are sold. Income from these charters shall be the property of the Original members, as only unsold shares will be chartered. This will help compensate the Original Members for expenses until 12 shares are sold.

10. BERTH. The vessel shall be berthed at Inner Harbor Marina, Road Town, Tortola, British Virgin Islands, unless another berth is agreed to with the consent of at least the majority of Members.

11. EQUIPMENT. All equipment contained on the attached Equipment List and made a part hereof as Exhibit "A," as well as any equipment purchased jointly by the Members to this Operating Agreement and used in conjunction with the vessel, shall be considered a part of the vessel, and shall be permanently stowed aboard the vessel, or stored at a mutually agreed-upon place.

12. MAINTENANCE AND DUTY OF CARE. The vessel shall be maintained at all times in a clean and working condition in compliance with the then-current Coast Guard regulations. Each Member agrees to exercise due care in safe and seamanlike use of the vessel, to exert due care in preservation of the value of the vessel and its equipment and to act in all other ways consistent with the goals of this Operating Agreement. Any work to be done shall either be done by a yard mutually agreed to by a majority of the Members or its Manager. Each Member, while using the vessel, shall be responsible for the maintenance and cleanliness of the vessel and shall return the vessel to her mooring in a clean and working condition.

13. USE SCHEDULE. The schedule of usage, see Exhibit C, shall be divided equally among the Members on the basis of two-week (12 days on board use) shares. Each Member shall be responsible for the proper care of the vessel during the periods he or she is entitled to its use. There will be four weeks scheduled lay-up for repairs and maintenance.

14. RULES. The Members agree to abide by the Rules, a copy of which is annexed hereto as Exhibit "B," as well as any additional rules that may be adopted by the Manager with consent of the majority of the Members following the adoption of this Operating Agreement.

15. SHIP'S LOG. Each Member agrees to maintain the log on board the vessel including engine running times, maintenance and repair items, and any significant matter affecting the other Members' use of the vessel.

16. FINANCIAL MATTERS.

- a. **Purchase Price.** Each Member shall pay for their share of ownership in accordance with the amount determined by the Original Members. When memberships are sold they will be listed in the table entitled “**Schedule of Amazing Grace, a Catalina 42’ model year 1998**”, Exhibit C. The price paid will be entered on the page titled “INDIVIDUAL ACCEPTANCE AND SIGNATURE PAGE” The vessel will be owned outright, with no liens or mortgages attached.

- b. **Assessments and estimated operating expenses.** Each Member, from the date of their purchase of a share of the Company, shall be obligated to pay Assessments to the Company to satisfy the Operating Expenses of the yacht. From the date hereof until December 31, 2004, the Member’s assessments shall not exceed US\$125 per month, which amounts shall be due quarterly and in advance. Assessments upon Members admitted between quarters shall be prorated. Equal installments in the amount twenty-five percent (25%) of the estimated annual operating expenses will be due on January 1, April 1, July 1 and October 1 of each year. These cost estimates include the marina fee, boat insurance, repairs and maintenance, on-site Caribbean management and a management fee of \$150.00 per year per share. The Original Members shall not be obligated to pay any Assessments, but shall pay all operating expenses, not covered by the Assessments until December 31, 2004. The Manager shall determine the need for Assessments (including the annual expenses set forth in this Operating Agreement) and make required payments of all obligations incurred by the vessel. Commencing January 1, 2005, the Members agree to pay Assessments as needed to meet the financial obligations of the vessel, including all reasonable charges and costs, within thirty days of notification of the Assessment. At the end of each year, the Manager will review the previous years’ expenses and establish the estimated annual expenses for the coming year. To the extent that a year’s estimated expenses exceeded the actual expenses for that year, the overage will be placed into a separate account to be used for significant maintenance, repair, replacement and overhaul costs, whether scheduled or otherwise until said account has a balance of US\$20,000. Whenever the aforementioned account balance falls below \$20,000, the overages will be applied to said account until the balance is again reached. Once said balance has been met, overages will be applied as a credit towards the next year’s expenses. No refunds will be allowed to any member for any installment once paid. All sums paid to the Company as Assessments, including the separate maintenance account, shall remain an asset of the Company until expended. Upon dissolution

of the Company, any remaining balance of the maintenance account shall be distributed equally to the Members

- c. **Record keeping and Assessments.** The Manager, will make purchases, keep financial records, determine the need for assessments, and make required payments of all obligations incurred by the vessel. The Members agree to pay assessments as needed to meet the financial obligations of the vessel, including all reasonable charges and costs, within thirty days of notification of the assessment. A Member's use of the boat shall be suspended if an assessment is not paid within thirty days and shall remain suspended until paid in full. A Membership disagreement as to the necessity or desirability of a particular improvement, purchase, or charge shall not be grounds for refusing to pay the assessment corresponding to the same.
- d. **Access to Records.** Each Member has the right to review the financial records of the Company at any time, subject only to the personal convenience of the keeper thereof, but not later than 30 days from date of request.
- e. **Loss of Ownership Interest.** If a Member fails to pay an assessment for a period of ninety (90) days after due, or otherwise commits an act of default hereunder, his or her share in the vessel, and the right to use the vessel, reverts to the other Members hereto. The defaulting Member's obligation to pay such sums remains in effect. This Operating Agreement shall serve as a Power of Attorney empowering the non-delinquent Member or Members to accomplish the things set out in this paragraph of this Operating Agreement. The delinquent Member agrees to execute all documents necessary and required to effectuate said things if requested to do so by the remaining Members. The non-delinquent Member or Members are hereby authorized to act as the delinquent Member's attorney in fact to execute any and all documents.

17. MANAGEMENT OF THE COMPANY.

- a. **Management of Company; Initial Manager.** The management of the Company shall be vested in a single Manager (the "Manager"). The Manager of the Company shall be Stephen A. O'Connor, an individual with a place of residence in Cape Elizabeth, Maine. Except as otherwise set forth herein, all managerial control of the business affairs of the Company shall be vested in the Manager for the entire duration of the existence of the Company. No appointment of a Manager other than Stephen A. O'Connor shall be effective as such, unless approved by a two-thirds (2/3) vote of the Members.
- b. **Management.** The Manager's duties are as follows:

1. Collect assessments on a quarterly basis.
 2. Make required payments of all obligations incurred by the vessel.
 3. Maintain working contact with the on-site Caribbean management to facilitate the prompt and efficient upkeep of the vessel.
 4. To schedule the usage of the boat by its Members.
 5. To make an annual financial report.
 6. Contract for insurance coverage and conduct other business as necessary.
- c. **Term of Manager; Termination.** The Manager shall serve in such capacity at the pleasure and in the sole discretion of the Members but the Manager's term shall terminate upon the occurrence of one or more of the following events:
1. The Manager dies or, in the case of a corporation or other non-natural person serving as Manager, the Manager is dissolved or ceases to exist as a discrete legal entity.
 2. The Manager becomes incompetent or is otherwise unable to exercise his or its management functions for a substantial period time.
 3. The Manager resigns from his or its role as Manager.
 4. The Manager is removed as Manager by a two-thirds (2/3) affirmative vote of the Members in their sole discretion, with or without good cause for such removal.
- d. **Qualification of Manager.** No person shall be a Manager unless duly appointed by two-thirds (2/3) vote of the Members.
- e. **Agency.** Only the Manager shall have the power, right and authority to act on Company management matters or to act as agent for the Company.
- f. **Voting procedure.** At the discretion of the Manager, all matters on which Members may vote may be decided by written consent without a meeting of the Members. Except as otherwise provided in the Act or in this Agreement, all such matters shall be decided by vote of Members holding a majority of shares in the Company. After 12 shares are sold the Original Members will vote only their period or periods of use and will not vote their unsold shares.
- g. **Meetings of the Members.** At least once each calendar year, after 30 day notice to all Members, the Members shall meet on a date, at a time and in a place that shall be reasonably convenient to Members holding a majority of Membership interests. The Manager shall conduct the meeting. The

quorum required for the holding of the meeting shall consist of Members holding a majority of Company Membership interests. The meeting may be conducted by conference call or other method so long as all Members can hear each other, cast votes and participate in the business conducted.

- h. **Temporary Manager** In the event that the Manager is not available due to temporary incapacitation or other cause, Roderick Landwehr (Owner of record for period 7) will serve in the capacity as Temporary Manager.
- i. **Changes to Operating Agreement** Changes to this operating agreement can be made by a 2/3rds vote of the Members.

18. SALE OF MEMBERSHIP INTERESTS.

- a. **Involuntary Sale.** If a Member fails to perform his or her obligations regarding maintenance, proper care and safe use of the vessel, or to act in any other way inconsistent with this Operating Agreement, including failure to exert due care in preservation of the value of the vessel and its equipment, 2/3rds of Members may elect to sell the delinquent Member's interest in the Company, at one twenty-fourth of 70% of the Fair Market Price of the vessel, which shall be determined by a survey by a marine surveyor of recognized competence, accounting for all unpaid assessments or other payments, so as to expedite the sale.
 - 1. The Involuntary Sale Procedure described herein shall be implemented only after written notice is given to the remaining Members. Such notice shall set forth the reasons that the Involuntary Sale Procedure is involved, and the price, terms, and conditions upon which the interest is to be sold. Such notice shall be supplemented with the survey data and the amount of the price when the survey is completed, and such notice shall be considered final and effective upon the delivery of such supplement. If the remaining Members are unable to sell the delinquent Member's share within ninety (90) days after notice, they shall purchase the same for 70% of the Fair Market Price, determined as above, and such purchase shall be completed within one hundred eighty (180) days after notice. Such purchase shall be exercised by delivering to the selling Member the appropriate payment and any promissory note.
 - 2. This Operating Agreement shall serve as a Power of Attorney empowering the non-delinquent Member or Members to accomplish the things set out in this paragraph of this Operating Agreement and to effectuate the sale of the interest as herein set forth. The delinquent Member agrees to execute all documents necessary and required to

effectuate said sale if requested to do so by the remaining Members. The non-delinquent Member or Members are hereby authorized to act as the delinquent Member or Member's attorney in fact to execute any and all required documents.

b. **Voluntary Sale.**

1. If any Member shall desire to sell, assign, hypothecate, or transfer his share in the Company, he shall first offer it to the other Members. The Member proposing to sell, assign, hypothecate, or transfer all or a portion of his interest is referred to herein as the "selling party." If mutually acceptable terms cannot be agreed upon within fifteen days, the selling party shall have the option to sell his share to a third party, subject to the acceptability of such third party to the Manager. The selling party shall notify the other Members or Manager in writing when he/she has received any bona fide offer for sale, assignment, hypothecation, or other transfer of all or any part of his/her interest in the Company that he/she proposes to accept. The notice shall set forth all of the terms of the offer. The Manager shall have fifteen days within which to accept or reject the offer by notice in writing. Such acceptance shall not be unreasonably withheld.
2. No third party shall be allowed to participate in Company except as provided in this paragraph or with the prior written consent of all Members.
3. No involuntary sale, assignment, hypothecation, or transfer of a Member's interest herein shall be binding upon the other Members. Any such involuntary sale, transfer, assignment or hypothecation without the consent of the other Members shall constitute an event of default hereunder.
4. Transfer of a Member's interest in the Company shall be effected by a writing referring to this Operating Agreement and signed by or on behalf of the selling Member and the other Members, evidencing their acceptance of the transfer.

19. DEATH OR DISABILITY. Should any of the Members die, his/her estate shall give written notice of such death to the remaining Members, and such notice shall commence the Voluntary Sale Procedure as described above as of the date of such notice as to the deceased Member's interests in this Operating Agreement on the date of his/her death. Should any of the Members become permanently disabled, or be unable because of such disability to use the boat for a period of one year, he/she shall give written notice of such disability to the remaining Members, and such notice shall commence the Voluntary Sale Procedure as of the date of such notice. In the event that any of the

Members becomes so disabled that he/she is not able to enjoy the active use of the vessel, but said disabled Member does not consider himself/herself to be permanently disabled as contemplated by the provisions of this Operating Agreement, the remaining Members may submit the questions of his/her disability to competent medical authority.

20. INDEMNIFICATION. Each Member shall be indemnified by the other and held harmless against and from all claims, demands, actions, and rights of action that shall or may arise by virtue of anything done or omitted to be done by the other Members (directly or through or by agents, employees, or other representatives) outside the scope of, or in breach of the terms of this Operating Agreement, provided that the other Members shall be promptly notified of the existence of the claim, demand, action, or right of action, and shall be given reasonable opportunity to participate in the defense thereof, and further provided that failure to give such notice shall not affect the other Member's obligations hereunder except to the extent of any actual prejudice resulting therefrom.

21. DISSOLUTION. The Company shall be dissolved only upon the occurrence of one or more of the following events:

- a. Members hold a 2/3rds interest of the Company vote to dissolve it.
- b. There is a judicial decree of dissolution under section 702 of the LLC Act.

22. DISTRIBUTION UPON DISSOLUTION. Upon the dissolution the Company, any proceeds from the winding up shall be applied and distributed in the following order:

- a. First, to the payment and discharge of all the Company's debts and liabilities to creditors, other than Members;
- b. Second, to the payment and discharge of all the Company's debts and liabilities to Members;
- c. Third, the Company shall fund the reserves for contingent liabilities to the extent deemed reasonable by the Manager or other person responsible for the winding up; and
- d. Fourth, the balance, if any, to the Members in proportion to the amount of their purchase price for their share bears to the purchase price of all salable shares.

23. DISPUTE RESOLUTION. In the event of a disagreement that cannot be settled through direct discussions, the Members agree to first attempt resolution of the dispute through mediation by and through the American Arbitration Association. Any controversy or dispute not settled through mediation shall be settled by arbitration. Such arbitration shall be effected by an arbitrator selected as hereinafter provided and shall be

conducted in accordance with the rules existing at the date thereof of the American Arbitration Association. The dispute shall be submitted to an arbitrator who shall be selected by the American Arbitration Association and who shall have had at least ten years experience of boating matters. The meetings of the arbitrator shall be held at such place or places as may be selected by the arbitrator. Judgment may be entered or any award rendered by the arbitrator in any state court having jurisdiction. Each Member shall bear equally the costs of the fees and expenses of the arbitrator.

24. WAIVER OF BREACH. A Member's waiver of a breach of any provision of this Operating Agreement committed by any other Member shall not operate or be construed as a waiver of any subsequent breach by the same or any other Member or Manager. No waiver shall be valid unless clearly identified as such in a writing signed by the Manager.

25. ASSIGNMENT. The Members acknowledge that this Operating Agreement is unique and personal. Accordingly, no Member may assign his rights or delegate his duties or obligations under this Operating Agreement absent agreement in writing by the other Members.

26. SEVERABILITY. Should any provision of the Agreement be or become invalid or unenforceable, the remaining provisions of the Agreement shall continue to be fully effective.

27. ENTIRE AGREEMENT. This Operating Agreement contains the entire understanding of the Members, and may not be changed orally but only by an agreement in writing signed by the Members.

28. GOVERNING LAWS. This Operating Agreement shall be deemed to have been made in the State of Maine, and shall be construed according to the laws of the State of Maine.

29. NOTICE. All notices required hereunder shall be delivered to the Members at the following addresses: Stephen A. O'Connor, 35 Broad Cove Road, Cape Elizabeth, Maine 04107.

30. SUCCESSOR MANAGER. In the event that Stephen A. O'Connor should die or become incapacitated to the extent that he is unable to perform the duties of a Manager, Susan M. O'Connor, a Member of the Amazing Grace LLC, will assume the duties of the Manager.

IN WITNESS THEREOF, THE PARTIES HEREBY EXECUTE THIS AGREEMENT.

Stephen A. O'Connor **Date** _____
Witness

Susan M. O'Connor **Date** _____
Witness

INDIVIDUAL ACCEPTANCE AND SIGNATURE PAGE

WE, XXXXXXXXXXXXXXXXXXXXXXXXXXXX, hereby certify that I have received a copy of the Articles of Organization and Operating Agreement of Sailboat Partners, LLC, a Maine limited liability company. I agree to be bound by all of the terms and conditions of these documents:

Membership Period Number: XXXXXXXX Price to be paid: XXXXXXXX

Witness: _____
Signature
Witness: _____
Signature
Witness: _____

Member: _____
Signature
Member: _____
Signature
Member: _____

Address: XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

The foregoing instrument was acknowledge before me on this _____ day of _____
20___. By _____

Witness my hand and seal.

Notary Public

My commission expires: _____

CO-ASSURED CLAUSE

Notwithstanding the fact that such parties as advised are hereby named in their capacity as advised as Co-Assured in this Policy, this cover will only extend insofar as they may be found liable to pay in the first instance for liabilities which are properly the responsibility of an Assured, and nothing herein contained shall be construed as extending cover in respect of any amount which would not have been recoverable hereunder by the Assured had such claim been made or enforced against him. Once indemnification hereunder has been made there shall be no further liability hereunder to make any further payment to any person or company whatsoever, including the Assured, in respect of that claim.

All rights granted to us together with all duties of an assured under the original insuring agreement shall also apply to any other named co-assured jointly in proportion to their ownership interest.

EXHIBIT A: EQUIPMENT

The boat's equipment includes the hull, the rigging, the sails, the roller furling unit, the Yanmar diesel and:

New Bimini (2002) with wrap around clear plastic windshield
120% Genoa with Schaefer Roller furler
Technautics engine driven refrigeration
Back-up battery operated refrigeration
Navico PH8000 below deck heavy duty autopilot
New cockpit cushions (2002)
New 200' 5/16 HT anchor chain (2002)
Fortress FX-23 anchor
Electric Windless (2002)
New main sail (2002)
Doyal Stack Pack (2002)
Weems & Plath barometer
Autohelm ST60 Plus depth instrument
Autohelm ST60 Plus Knot log instrument
Autohelm ST60 Plus wind and close-hauled instrument
Garmin color Chart Plotter / GPS (2002)
New batteries (2001)
11' Apex ridged bottom inflatable (2002)
Binoculars, charts, cruising guide and hand navigation tools
Toolbox for making minor repairs
1000 watt Inverter (2002)
Microwave oven (2002)
Seaward Gas stove with oven
Dishes, pots and pans, silverware, kitchen utensils
First-aid kit

Plus any equipment purchased in the future with the funds of Sailboat Partners, LLC.

EXHIBIT B: RULES

- a. A Member may give, swap, sell, or trade his time with another Member if both agree. The rotation of boat use otherwise continues uninterrupted.
- b. Each Member has an allotted period of usage of the boat, and during this period the boat is exclusively his. Non-scheduled owners may not use the boat without prior consent of the scheduled owner.
- c. Log entries will be made prior to the return of the vessel and a copy of any maintenance deficiencies recorded in the log will be emailed to the Manager within 48 hours.
- d. Members must fill the fuel tank prior to the return of the vessel.

**“Schedule of Amazing Grace, a Catalina 42’ model year 1998”
Exhibit C**

Period 1 (one) starts each year on the Saturday before Christmas at noon and each subsequent period begins on Saturday noon according to the period one date.
Each period ends on Thursday at noon 12 days later.