**OPERATING AGREEMENT**

**OF**

**PIEDMONT ORTHOPEDIC SOCIETY, LLC**

This OPERATING AGREEMENT (the “Agreement”) of Piedmont Orthopedic Society, LLC (the “Society”) is made as of June 8, 2016, by Piedmont Orthopedic Foundation, Incorporated, a North Carolina nonprofit corporation (the “Foundation”), and the Society.



**FORMATION, PURPOSES, LIMITATIONS, AND MEMBERS**

* 1. **Formation**. The Foundation acknowledges the formation of the Society under the North Carolina Limited Liability Company Act, as amended from time to time (the “Act”). The North Carolina Secretary of State issued the Certificate of Organization on May \_\_\_, 2016. The Foundation hereby consents, confirms, and agrees to its status as the sole Member of the Society within the meaning of the Act upon the terms and conditions set forth in this Agreement. The Foundation executes and adopts this Agreement as an operating agreement of the Society pursuant to sections 57D-2-30 et seq. of the Act.
  2. **Purpose**. The Society is organized and shall be operated for exclusively charitable and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended (which, together with the corresponding provision of any future United States Internal Revenue law, is hereinafter referred to as the “Code”) by benefiting, performing the functions of, or carrying out the exempt purposes of the Foundation, which is an organization described in section 501(c)(3) of the Code. Without limiting the foregoing, the Society shall benefit, perform, or carry out the exempt purposes of the Foundation by advancing the dissemination and interchange of information by and among the Society’s Fellows in order to advance the knowledge of musculoskeletal disorders and further develop the practice of orthopaedic surgery.
  3. **Limitations.**

(a) The Society is a charitable organization conducted not for profit, the total income from which is used exclusively for charitable or educational purposes within the meaning of section 501(c)(3) of the Code.

(b) No part of the net earnings of the Society shall inure to the benefit of, or be distributable to managers, directors, officers, Fellows, or other private persons, except that the Society shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its exempt purposes. No substantial part of the activities of the Society shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Society shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

(c) Notwithstanding any other provision of this Agreement, the Society shall not carry on any other activities not permitted to be carried on by (i) an organization exempt from federal income tax under section 501(c)(3) of the Code, or (ii) an organization contributions to which are deductible under section 170(c)(2) of the Code.

(d) The Society shall not transfer (directly or indirectly) any membership interest in the Society to a transferee other than an organization described in section 501(c)(3) of the Code or a governmental unit or wholly owned government instrumentality.

(e) Interests in the Society, or its assets (other than a membership interest), may only be availed of or transferred (whether directly or indirectly) to any nonmember other than an organization described in section 501(c)(3) of the Code or a governmental unit or wholly owned government instrumentality in exchange for fair market value.

(f) The Society shall not merge into a for profit entity.

(g) The Articles of Organization of the Society and this Agreement may not be amended in any manner inconsistent with the provisions of section 501(c)(3) of the Code.

(h) Upon dissolution of the Society, assets shall be distributed only to a member that is an exempt organization within the meaning of section 501(c)(3) of the Code and any assets devoted to charitable or educational purposes shall continue to be devoted to such purposes.

(i) In the event any member of the Society loses its tax-exempt status, its membership interest shall be expeditiously redeemed or sold to an organization exempt under section 501(c)(3) of the Code or to a governmental unit or wholly owned government instrumentality.

(j) All members of the Society will expeditiously and vigorously enforce all its rights in the Society and will pursue all legal and equitable remedies to protect its interest in the Society.

* 1. **Limited Liability**. Neither the Foundation nor any other member, director, officer, Fellow, or agent of the Society shall have any personal obligation for any liabilities of the Society solely by reason of being the sole owner of the membership interests in the Society or a director, officer, Fellow, or agent of the Society, except as provided by law.
  2. **Members**. The term “Foundation” means the undersigned Foundation, which is the sole owner of the membership interests of the Society. The term “person” includes entities as well as individuals. The name, business address, and membership interest of the Foundation are listed on Exhibit A. The Foundation represents that it is an organization described in section 501(c)(3) of the Code.
  3. **Tax Classification**. The Foundation intends that the Society be disregarded as an entity separate from the Foundation for federal income tax purposes for any such period of time that it is the sole owner of the membership interests of the Society, and this Agreement shall be interpreted accordingly.

**FELLOWS**

* 1. **Classes of Fellows; Qualifications**. The Society shall have four classes of Fellows: Active Fellows, Honorary Fellows, Senior Fellows, and Corresponding Fellows.

(a) **Active Fellows**. Active Fellows shall consist of those individuals who meet the criteria and requirements for admission as an Active Fellow and who are elected to be an Active Fellow by the Board of Directors. To be eligible for admission as an Active Fellow, an individual must meet one or more of the following requirements:

(i) Completed all or partial (at least one year) orthopaedic residency training at Duke University Medical Center with recommendation from the Orthopaedic Department Chairman and Director of the Residency Program.

(ii) Completed at least one year of orthopaedic fellowship training at Duke University Medical Center with recommendation from the Orthopaedic Department Chairman.

(iii) Affiliated with Duke University Medical Center Department of Orthopaedic Surgery and completed a non-Duke University Medical Center orthopaedic surgery residency training requirements or receipt of certification by the American Board of Orthopaedic Surgery or its counterpart in a foreign country as determined by the Board of Directors.

(iv) Affiliated with Duke University Medical Center for one or more years in orthopaedic-related research and completion of a non-Duke University Medical Center orthopaedic residency.

(v) Engaged as a Duke University Medical Center faculty member, who is also a non-orthopaedic physician with an acknowledged interest in the activities of the Society, involved in training Duke University Medical Center orthopaedic residents and fellows, and closely associated with Duke University Medical Center’s orthopaedic faculty and the Society’s Fellows.

(vi) Closely affiliated with Duke University Medical Center’s orthopaedic training program and related activities, such as research, regardless of whether or not a physician.

(b) **Honorary Fellows**. Honorary Fellows shall consist of those individuals, regardless of whether or not a physician or affiliated with Duke University Medical Center, who have demonstrated special orthopaedic-related qualities and who are elected to be an Honorary Fellow by the Board of Directors.

(c) **Senior Fellows**. Senior Fellows shall consist of those individuals who were Active Fellows and who have ceased practicing orthopaedic surgery or a related activity and who request a change of status from Active Fellow to Senior Fellow.

(d) **Corresponding Fellows**. Corresponding Fellows shall consist of those individuals, whether or not affiliated with Duke University Medical Center or a physician, who choose to affiliate with the Society by corresponding with the Society regarding orthopaedic-related activity or matters of interest to the Society, and who are elected to be a Corresponding Fellow by the Board of Directors.

* 1. **Number of Fellows**. The number of Fellows to be admitted in any class of Fellows shall be determined by the Board of Directors.
  2. **Election of Fellows**. Each candidate seeking to be an Active Fellow or a Corresponding Fellow shall apply on an application form specified by the Board of Directors. All completed applications shall be considered by the Board of Directors at its next regular meeting following submission of the application.
  3. **Initiation Fees and Dues**. The Board of Directors shall, from time to time, establish initiation fees or dues for Active Fellows. Honorary Fellows, Senior Fellows, and Corresponding Fellows shall not be required to pay any initiation fees or dues.
  4. **Meetings of Fellows**. Meetings of Fellows may be held at such place, either within or without the State of North Carolina, and at such time, as may be provided in the notice of the meeting and approved by either of the Co-Chairs or the Board of Directors. Ten percent of the Society’s Active Fellows shall constitute a quorum for the transaction of business at a meeting of the Fellows. The act of a majority of the Active Fellows present at a meeting at which a quorum is present shall be the act of the Active Fellows.
  5. **Voting Rights of Fellows**. Each Active Fellow shall have the right to elect officers and directors of the Society as specified in this Agreement but shall have no voting rights on any other matter pertaining to the Society and all other voting rights and powers shall be exercised by the Society’s Board of Directors or the Foundation as specified in this Agreement. Honorary Fellows, Senior Fellows, and Corresponding Fellows shall have no voting rights on any matter pertaining to the Society.

**BOARD OF DIRECTORS**

* 1. **Management by Board of Directors**. The Society shall be managed by a Board of Directors who shall have full responsibility for and all rights and powers relating to managing the business and affairs of the Society. The Board of Directors shall be the Manager of the Society within the meaning of the Act.
  2. **Powers of Board of Directors**. Except as otherwise expressly limited in this Agreement, the Board of Directors shall (a) exercise complete and exclusive control of the management of the Society’s business and affairs and (b) shall have the right, power, and authority on behalf of the Society, and in its name, to exercise all of the rights, powers, and authorities of the Society under the Act. Except as otherwise provided in this Agreement, the Board of Directors shall have no duty or obligation to consult with or seek the advice of the Foundation in connection with the conduct of the business of the Society. Third parties dealing with the Society shall be entitled to rely conclusively upon the power and authority of the Board of Directors as set forth in this Agreement, subject only to the express limitations set forth in this Agreement or by law. Notwithstanding the foregoing, the Board of Directors may not approve a plan of merger or consolidation, a plan of dissolution, or the sale, lease, or exchange, or the mortgage, pledge, or other disposition of all or substantially all of the assets of the Society, and such powers may only be exercised by the Foundation.
  3. **Election and Term of Directors**. Only individuals who are Active Fellows of the Society may serve a directors of the Society. The Board of Directors shall consist of the Co-Chairs, the Co-Chairs Elect, Immediate Past Co-Chairs, the Executive Secretary-Treasurer, the Co-Executive Secretary-Treasurer, the Historian-Librarian, and three Active Fellows who shall be elected by the Active Fellows at the annual meeting of the Fellows to serve for a term of three years, which terms shall be staggered so that one Active Fellow is elected as a director each year. No individual shall be a director without his or her prior consent.
  4. **Annual and Regular Meetings**. An annual meeting of the Fellows and the Board of Directors shall be held on a date selected by the Board of Directors each year for the purpose of electing officers and carrying on such other business as may properly come before the meeting. The Board of Directors may adopt a schedule of additional meetings, which shall be considered regular meetings, to be held at such times as the Board of Directors shall designate. Annual and regular meetings of the Fellows or Board of Directors shall be held at such places, either within or without the State of North Carolina, as may be determined by the Board of Directors. If no such place is designated, it shall be held at the principal office of the Society.
  5. **Special Meetings**. Special meetings of the Board of Directors may be called by either of the Co-Chairs or any three (3) directors and shall be held at such times and such places, either within or without the State of North Carolina, as the person or persons calling the meeting shall designate. If no such place is designated in the notice of a meeting, it shall be held at the principal office of the Society.
  6. **Notice of Meetings**. No notice need be given of regular meetings of the Board of Directors. Notice of special meetings of the Board of Directors shall be given to each director not less than forty-eight (48) hours before the meeting, by delivering the same to the director in person or to the director’s residence or business address (or such other place as the director may have directed in writing) by mail, electronic mail, messenger, telecopier, or other means of written communication or by telephoning such notice to the director. Any such notice shall set forth the time and place of the meeting.
  7. **Waiver of Notice**. A director may waive any notice required by law, the Articles of Organization, or this Agreement before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided in the next sentence of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or Society’s records. A director’s attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting or promptly upon arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.
  8. **Quorum; Voting**. A majority of the Society’s directors shall constitute a quorum for the transaction of business at a meeting of the Board of Directors. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. A director who is present at a meeting of the Board of Directors or a committee of the Board of Directors when corporate action is taken is deemed to have assented to the action taken unless the director (a) objects at the beginning of the meeting, or promptly upon arrival, to holding it or transacting specified business at the meeting, or (b) votes against, or abstains from, the action taken.
  9. **Telephonic Meetings**. The Board of Directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.
  10. **Action without Meeting**. Any action required or permitted to be taken at a meeting of directors may be taken without a meeting if such action is taken by all the directors then serving. The action shall be evidenced by one or more written consents stating the action taken, signed by each director either before or after the action is taken, and included in the minutes or filed with the Society’s records reflecting the action taken. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date and states the date of execution by each director in which case it shall be effective according to the terms of the consent.
  11. **Duties of the Directors**. The directors will devote such time, effort, and skill in the management of the Society’s business and affairs as each deems necessary and proper for the Society’s welfare and success. The Foundation expressly recognizes that the directors have substantial other business activities and agree that the directors shall not be bound to devote all of their business time to the affairs of the Society, and that directors may engage for their own account and for the account of others in other businesses or activities, including businesses or activities wherein a director’s interest may conflict with the interests of the Society, subject to the provisions of Article VII of this Agreement.
  12. **Compensation**. No director shall be entitled to any direct or indirect compensation related to that person’s services as a director.
  13. **Reporting to Foundation**. The Board of Directors, or its representative, shall furnish an annual report of the financial and other operations of the Society to the Foundation. In addition, the Board of Directors, or its representative, shall provide such additional financial and other reports as may be requested by the Foundation from time to time.

**COMMITTEES**

* 1. **Committees**. The Board of Directors may create one or more committees and appoint two or more members of the Board of Directors or Active Fellows to serve on them. The creation of a committee and appointment of members to it shall be approved by a majority of directors in office when the action is taken.
  2. **Committee Meetings; Miscellaneous**. The provisions of this Agreement that govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the Board of Directors shall apply to committees of directors and their members as well.



**OFFICERS**

* 1. **Officers**. The officers of the Society shall be two Co-Chairs, two Co-Chairs Elect, two Immediate Past Co-Chairs, an Executive Secretary-Treasurer, a Co-Executive Secretary-Treasurer, an Historian-Librarian, and, in the discretion of the Board of Directors, one or more other officers and assistant officers as may be deemed necessary or advisable to carry on the business of the Society. Any two or more offices may be held by the same person.
  2. **Election; Term**. Officers shall be elected by the Board of Directors, except that the Co-Chairs Elect shall succeed the Co-Chairs upon the termination of the terms of the Co-Chairs and the Immediate Past Co-Chairs shall be those individuals who were the immediately preceding Co-Chairs and whose terms have expired. The Executive Secretary-Treasurer shall hold office, unless removed, for a term of three years or until his or her successor is elected. Any other officer shall hold office, unless removed, for a term of one year or until his or her successor is elected. Any officer may resign at any time upon written notice to the Board of Directors, and no acceptance of a resignation shall be necessary to make it effective.
  3. **Removal of Officers**. The Board of Directors may remove any officer or assistant officer at any time, with or without cause.
  4. **Duties of Officers**. The Co-Chairs shall be Chief Executive Officers of the Society and, if present, shall chair all meetings of the Board of Directors. The Co-Chairs and other officers of the Society shall have such powers and duties as generally pertain to their respective offices as well as such powers and duties as may be delegated to them from time to time by the Board of Directors.

**REIMBURSEMENT OF EXPENSES**

The Society shall bear all expenses and liabilities incurred with respect to the organization, operation, and management of the Society. The Foundation shall be entitled to reimbursement from the Society for any Society expenses or liabilities incurred by the Foundation, provided that the expenses or liabilities did not arise as a result of the Foundation’s willful misconduct or a knowing violation of the criminal law.

**CONFLICTS OF INTEREST**

* 1. **Duty of Directors, Officers, and Employees**. The directors, officers, and employees of the Society shall exercise the utmost good faith in all transactions touching upon their duties to the Society and its property. In their dealings with and on behalf of the Society, they are held to a strict rule of honest and sincere dealing between themselves and the Society. They shall not use their positions, or knowledge gained therefrom, so that a conflict might arise between the Society’s interest and that of the director, officer, or employee.
  2. **Interest**. For purposes of this policy, a person shall be deemed to have an “interest” in a contract, transaction, or other arrangement, or in the same or related business as the Society, if the person is the party (or one of the parties) or is a director, manager, officer, or general partner of, or has a material financial or influential interest in, an entity that is the party (or one of the parties) contracting or dealing with the Society. Relationships and dealings of the Society with corporations, partnerships, joint ventures, or other entities owned, controlled, or managed by the Society shall not constitute interests under this Article.
  3. **Full Disclosure**. Any director, officer, or employee having an interest in a contract, transaction, or arrangement presented to the Board of Directors or a committee of the Board of Directors for consideration, authorization, approval, discussion, or ratification shall make a prompt, full, and frank disclosure of his or her interest to the Board of Directors at the first meeting of the Board in each year, or before the Board or committee takes action on such contract, transaction, or arrangement. Such disclosure shall include any relevant and material facts known to such person that might reasonably be construed to be adverse to or potentially adverse to the Society’s interest.
  4. **Standards and Procedures**.

(a) The Board of Directors shall determine, by majority vote, whether the disclosure shows that a conflict of interests exists, or can reasonably be construed to exist.

(b) The Board of Directors may request the person to provide factual information regarding the potential or actual conflict of interests and such proposed contract, transaction, or arrangement.

(c) If deemed appropriate, the Board of Directors may appoint a non-interested person, committee, or subcommittee to investigate alternatives to such proposed contract, transaction, or arrangement.

(d) If a conflict of interests is deemed to exist, the person having the conflict of interests shall not participate or attend, vote on, or use his or her personal influence in connection with the discussions, deliberations, or vote with respect to such contract, transaction, arrangement, or related matters affecting the Society.

(e) At any meeting of the Board of Directors where such contract, transaction, arrangement, or related matters are under discussion or are being voted upon, a quorum is present if a majority of directors who have no direct or indirect personal interest in such contract, transaction, or arrangement participate in the vote held to authorize, approve, or ratify such contract, transaction, or arrangement.

(f) In order to approve such contract, transaction, or arrangement, the Board of Directors must first find, by majority vote without counting the vote of the interested director or directors, that (i) the proposed contract, transaction, or arrangement is in the Society’s best interest and for its own benefit, and (ii) the proposed contract, transaction, or arrangement is fair and reasonable to the Society.

(g) The minutes of the meeting shall reflect the disclosure made, the persons present for the discussion and vote, the content of the discussion, the vote thereon (including any roll call), and, where applicable, the abstention from voting and participation, and that a quorum was present. The Society shall keep minutes of the discussions and deliberations as part of the minutes of the Society.

* 1. **Corrective and Disciplinary Action**. The violation of this conflicts of interest policy is a serious matter and may constitute “cause” for removal or termination of a director, officer, or employee.

**DISSOLUTION**

* 1. **Events of Dissolution**. The Society shall dissolve upon the first to occur of:
     1. The written election of the Foundation (or all the members, if more than one) to dissolve the Society;
     2. The sale, transfer, or other disposition of substantially all of the non-cash assets of the Society;
     3. The time when there is no member remaining; or
     4. The entry of a final decree of judicial dissolution by a court of competent jurisdiction.
  2. **Winding Up**. Upon the dissolution of the Society, the Board of Directors shall wind up the affairs of the Society. The Foundation shall determine the time, manner, and terms of any sale or sales of Society property pursuant to such winding up, having due regard to the activity and the condition of the Society and relevant market and economic conditions.
  3. **Certificate of Cancellation**. Upon completion of the winding up of the Society, the Society shall terminate and a Certificate of Cancellation shall be filed with the North Carolina Secretary of State, together with any other documents required to effectuate the termination.
  4. **Distribution of Assets upon Dissolution**.In the event of the dissolution of the Society, the assets of the Society, if any, shall be distributed to the Foundation if it is then an organization described in section 501(c)(3) of the Code, and if the Foundation is not then so described, the assets of the Society shall be distributed to one or more organizations, as selected by the Board of Directors in its sole discretion.

**ADMINISTRATIVE PROVISIONS**

* 1. **Offices**. The initial principal office, registered office, and registered agent shall be as set forth in the Articles of Organization. The Foundation may change the principal office, the registered office, or the registered agent at any time.
  2. **Information and Records**. The Board of Directors shall keep (or cause to be kept) full and accurate books of account, records, and supporting documents at the principal office of the Society. The Foundation or the Foundation’s designated representative shall have full access to the Society’s books, records, and documents and may inspect and make copies of them.
  3. **Tax Returns**. The Foundation is responsible for the preparation and filing of all tax returns, if any, and the proper reporting of the income of the Society.
  4. **Audits**. The Society shall not have a separate annual audit of its accounts and financial statements but instead will have a consolidated audit with the Foundation, which shall be performed by an independent certified public accountant as selected by the Audit Committee of the Foundation. The Foundation or its Audit Committee shall be responsible for the integrity of the financial statements, the Society’s financial reporting process, the Society’s systems of internal accounting and financial controls, the performance of the Society’s internal audit function and independent auditors, the independent auditor’s qualifications and independence, and the Society’s compliance with legal and regulatory requirements.



**MISCELLANEOUS**

* 1. **Amendment**. This Agreement may be amended at any time by the written consent of the Foundation, or, if additional members are admitted, by the unanimous written consent of the members, at any time.
  2. **Fiscal Year**. The Society’s fiscal year shall be the same as the fiscal year of the Foundation and shall be the calendar year.
  3. **Definitions**. Unless the context otherwise requires, the terms used in this Agreement shall have the same definitions set forth in the Act.
  4. **Governing Law**. This Agreement shall be governed by the Act and other applicable laws of the State of North Carolina.

**IN WITNESS WHEREOF**, the Foundation, as the sole member, and the Society have executed this Operating Agreement on the day and date indicated above.

**The Foundation: PIEDMONT ORTHOPEDIC FOUNDATION, INCORPORATED**

By:

Gary M. Lourie, President

**The Society: PIEDMONT ORTHOPEDIC SOCIETY, LLC**

By Piedmont Orthopedic Foundation, Incorporated, its sole Member

By:

Gary M. Lourie, President