

Name and Address:

Brut, LLC
1 Liberty Plaza
165 Broadway
New York, NY 10006

Details of organization:

Organized under the Delaware Limited Liability Company Act on November 25, 1997, by the filing of a Certificate of Formation with the Secretary of State.

Affiliation:

Toll Associates, LLC and Brut, Inc. have membership interests of 99.7851% and 0.2149%, respectively, in Brut, LLC. Brut, Inc. is the manager of Brut, LLC.

Business or functions:

Brut, LLC is a registered broker-dealer that operates The Brut ECN, which will be operated as a facility of The NASDAQ Stock Market LLC.

Certificate of Formation:

Attached as Exhibit A.

Limited Liability Company Agreement:

Attached as Exhibit B.

Officers, Directors, and Standing Committee Members

Directors: Christopher Concannon, Brian Hyndman, David Warren

Officers: Christopher Concannon, President; Brian Hyndman, Vice President and Secretary; Manuel Alicandro, Chief Compliance Officer and Chief Financial Officer

A

Delaware

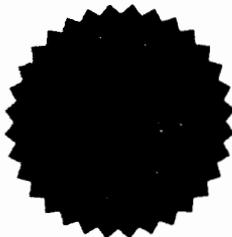
PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"SUNGARD ECN ACQUISITION LLC", A DELAWARE LIMITED LIABILITY COMPANY,

WITH AND INTO "BRUT, LLC" UNDER THE NAME OF "BRUT, LLC", A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTIETH DAY OF AUGUST, A.D. 2002, AT 4 O'CLOCK P.M.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

2825598 8100M

AUTHENTICATION: 2187769

030008442

DATE: 01-06-03

CERTIFICATE OF MERGER
OF
SUNGARD ECN ACQUISITION LLC
INTO
BRUT, LLC

Pursuant to Section 18-209 of the Delaware Limited Liability Company Act, the undersigned surviving limited liability company organized and existing under and by virtue of the Law of Delaware,

DOES HEREBY CERTIFY:

FIRST: That the name and jurisdiction of formation of each of the limited liability companies which are to merge is as follows:

Sungard ECN Acquisition LLC, a Delaware limited liability company
Brut, LLC, a Delaware limited liability company

SECOND: That an agreement of merger between the parties to the merger has been approved and executed by each of the domestic limited liability companies which are to merge.

THIRD: That the name of the surviving limited liability company of the merger is Brut, LLC.

FOURTH: That the Certificate of Formation of Brut, LLC, a Delaware limited liability company, shall be the Certificate of Formation of the surviving limited liability company.

FIFTH: That the executed agreement of merger is on file at an office of the surviving limited liability company, the address of which is 32 Old Slip, 10th Floor, New York, New York, 10005.

SIXTH: That a copy of the agreement of merger will be furnished by the surviving limited liability company, on request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge.

SEVENTH: That this Certificate of Merger shall be effective on August 20, 2002.

Dated: August 20, 2002

BRUT, LLC

By: /s/ Sara G. Armstrong
Sara G. Armstrong
Assistant Vice President
& Assistant Secretary

CERTIFICATE OF AMENDMENT

OF

THE BRUT ECN LLC

1. The name of the limited liability company is The Brut ECN LLC.

2. The Certificate of Formation of the limited liability company is hereby amended as follows:

"The name of the limited liability company is Brut, LLC."

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of Brut, LLC, this 12th day of November, 2001.

By: BRUT, Inc
Its: Manager

By: /s/ William O' Brien
Name: William O'Brien
Its: Secretary

CERTIFICATE OF MERGER

OF

**THE BRASS UTILITY, L.L.C.,
a Delaware limited liability company**

WITH AND INTO

**The BRUT ECN LLC,
a Delaware limited liability company**

(Filed pursuant to Section 18-209 of Delaware Limited Liability Company Law)

The undersigned, being an authorized officer of The BRUT ECN LLC, a limited liability company organized and existing under and by virtue of the Limited Liability Company Act of the State of Delaware, does hereby CERTIFY:

FIRST: That the name and state of organization of each of the constituent entities of the merger is as follows:

- The BRUT ECN LLC, a Delaware limited liability company
- The BRASS Utility, L.L.C., a Delaware limited liability company

SECOND: That the terms of this merger were initially agreed upon between the above-named constituent business entities and were authorized and approved by a majority of the representatives of the Board of Managers of The BRUT ECN LLC and by the sole member of The BRASS Utility, L.L.C. as of April 5, 2000. The agreement of merger ("Merger Agreement") has been approved and executed by the constituent business entities in accordance with Section 18-209 of the Delaware Limited Liability Company Act.

THIRD: That the name of the surviving entity is The BRUT ECN LLC

FOURTH: The merger shall be effective upon the filing of this Certificate of Merger with the Delaware Office of the Secretary of State.

FIFTH: The executed Merger Agreement is on file at the principal place of business of The BRUT ECN LLC during regular business hours, such address being 55 Broadway, 9th Floor, New York, NY 10006. A copy of such Merger Agreement will be furnished by The BRUT ECN LLC upon request and without cost to any member of The BRUT ECN LLC, any member of The BRASS Utility, L.L.C. or any member of a domestic limited liability company or any person holding an interest in any other business entity that is to merge or consolidate as provided herein.

IN WITNESS WHEREOF, The BRUT ECN LLC has caused this Certificate to be executed by the undersigned as of the 2nd day of May, 2000 and affirm that the statements made herein are true under penalties of perjury.

THE BRUT ECN LLC

By: 

Name: Jess L. Haberman

Title: Chief Compliance/ Financial Officer

CERTIFICATE OF AMENDMENT
OF
STRIKE TECHNOLOGIES LLC

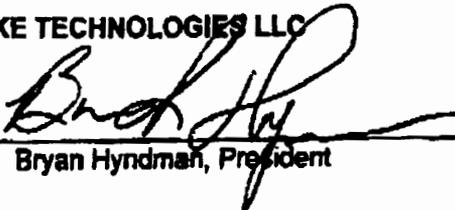
1. The name of the limited liability company is STRIKE TECHNOLOGIES LLC
2. The Certificate of Formation of the limited liability company is hereby amended as follows:

"The name of the limited liability company is changed to THE BRUT ECN LLC"
3. This Certificate of Amendment shall be effective upon filing with the Secretary of State of Delaware.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of STRIKE TECHNOLOGIES LLC this 24th day of March, 2000.

STRIKE TECHNOLOGIES LLC

By:


Bryan Hyndman, President

**CERTIFICATE OF AMENDMENT
 TO THE CERTIFICATE OF FORMATION
 OF
 STRIKE TECHNOLOGIES LLC**

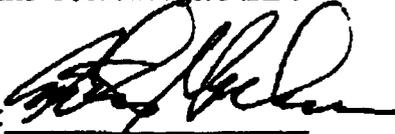
1. The name of the limited liability company is Strike Technologies LLC.

2. The Certificate of Formation of the limited liability company is hereby amended as follows:

"The address of the Company's registered office in the State of Delaware is c/o Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of Company's registered agent at that address is The Corporation Trust Company."

IN WITNESS WHEREOF, the undersigned executed this Certificate of Amendment of Strike Technologies LLC on this 10th day of July, 1998.

Strike Technologies LLC

By: 

Arthur J. Pacheco
 Authorized Person

**CERTIFICATE OF MERGER
MERGING BEAR STEARNS COMPUTER NETWORK INC.
AND STRIKE TECHNOLOGIES LLC**

The undersigned limited liability company, organized and existing under and by virtue of the Delaware Limited Liability Company Act, does hereby certify that:

FIRST: The name and state of domicile of each of the constituent entities in the merger are as follows:

<u>Name</u>	<u>State of Domicile</u>
Bear Stearns Computer Network Inc.	Delaware
Strike Technologies LLC	Delaware

SECOND: An Agreement and Plan of Merger between the parties to the merger has been adopted, approved, certified, executed and acknowledged by each of the constituent entities in accordance with the requirements of Section 264 of the General Corporation Law of the State of Delaware and Section 18-209 of the Delaware Limited Liability Company Act.

THIRD: The name of the surviving limited liability company is Strike Technologies LLC.

FOURTH: The merger shall be effective upon the filing of this Certificate of Merger in the Office of the Secretary of State of the State of Delaware.

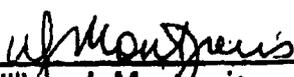
FIFTH: The executed Agreement and Plan of Merger is on file at the principal place of business of the surviving limited liability company. The address of the principal place of business of the surviving limited liability company is 115 South Jefferson Road, Whippany, New Jersey 07981; and

SIXTH: A copy of the Agreement and Plan of Merger will be furnished by the surviving limited liability company, on request and without cost, to any stockholder of the constituent corporation and any member of the constituent limited liability company.

IN WITNESS WHEREOF, Strike Technologies LLC, has caused this Certificate of Merger to be duly executed in its name this 24th day of December, 1997.

STRIKE TECHNOLOGIES LLC

By: Bear Stearns Securities Corp.
Sole Member



William J. Montgoris
Senior Managing Director

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CERTIFICATE OF FORMATION

OF

STRIKE TECHNOLOGIES LLC

The undersigned, an authorized natural person, for the purpose of forming a limited liability company, under the provisions and subject to the requirements of the State of Delaware (particularly Chapter 18, Title 6 of the Delaware Code and the acts amendatory thereof and supplemental thereto), hereby certifies that:

1. The name of the limited liability company is Strike Technologies LLC (the "Company").
2. The address of the Company's registered office in the State of Delaware is c/o Corporation Service Company, 1013 Centre Road, in the City of Wilmington, County of New Castle, 19805. The name of the Company's registered agent at such address is Corporation Service Company.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation of Strike Technologies LLC this 25th day of November, 1997.



Name: Stephen H. Cohen
Authorized Person

B

**FIFTH AMENDED AND RESTATED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
BRUT, LLC**

THIS FIFTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT (the "Agreement") of BRUT, LLC, formerly known as The BRUT ECN LLC (the "Company") is made and entered into to be effective as of August 20, 2002 (the "Effective Date"), by and among its Members.

RECITALS

The Company was organized as a Delaware limited liability company on November 25, 1997, by the filing of a Certificate of Formation in the office of the Secretary of State of the State of Delaware under and pursuant to the Delaware Limited Liability Company Act. Effective June 21, 1999, the Members of the Company entered into an Amended and Restated Operating Agreement concerning the affairs of the Company and the conduct of its business (the "Initial Operating Agreement"). Effective February 9, 2000, the Members of the Company entered into a Second Amended and Restated Limited Liability Company Operating Agreement (the "Second Operating Agreement"). Effective May 1, 2000, the Members of the Company entered into a Third Amended and Restated Limited Liability Company Operating Agreement (the "Third Operating Agreement"). Effective August 2, 2001, the Members of the Company entered into a Fourth Amended and Restated Limited Liability Company Operating Agreement (the "Fourth Operating Agreement," which, together with the Initial Operating Agreement, the Second Operating Agreement and the Third Operating Agreement is herein collectively referred to as the "Original Operating Agreement"). On the Effective Date, the existing Members of the Company have decided and agreed to amend the Original Operating Agreement on the terms and conditions set forth in this Fifth Amended and Restated Limited Liability Company Operating Agreement which shall replace and supersede the Original Operating Agreement in its entirety.

FOR AND IN CONSIDERATION OF and in reliance upon the mutual covenants, rights and obligations set forth herein, the benefits to be derived therefrom and other good and valuable consideration, the receipt and the sufficiency of which each Member acknowledges, the Members hereby agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the meanings set forth below:

Act - the Delaware Limited Liability Company Act and any successor statute, as amended from time to time.

Affiliate - (a) with respect to any Person who is a natural person: (i) each Entity that such Person controls; and (ii) each member of such Person's immediate family (spouse and children), and (b) with respect to any Entity: (i) each Entity that such Entity controls; (ii) each Person that controls such Entity; and (iii) each Entity that is under common control with such Entity.

Agreement - this Fifth Amended and Restated Limited Liability Company Operating Agreement as the same may be amended in writing from time to time in accordance with the terms hereof.

Business - the business of operating an ECN for trading equity securities on the New York Stock Exchange, the American Stock Exchange and the Nasdaq Stock Market, non-Nasdaq OTC securities, providing similar services with respect to foreign equity securities either inside or outside the United States, and acting as a registered broker-dealer or other registered entity in connection therewith, and any other business functionally interrelated to or incidental to the foregoing.

Business Day - any day other than a Saturday, a Sunday or a holiday on which national banking associations in New York City, are required or permitted by law to be closed.

Capital Account - the capital account maintained for a Member pursuant to Section 4.3.

Capital Contribution - any contribution by a Member to the capital of the Company.

Certificate - as defined in Section 2.1.

Code - the Internal Revenue Code of 1986, as amended from time to time.

Common Interest - the common limited liability company interest (expressed as a percentage) of a Member in the Company, including rights as a Common Unit holder to distributions (liquidating or otherwise), allocations of Net Income and Net Loss, information and to consent or approve. The Common Interest of each Member shall be

determined from time to time by dividing the number of Common Units held by such Member at that time by the aggregate number of Common Units then outstanding.

Common Units - units of the Company which in the aggregate constitute 100% of the Common Interest.

Company - Brut, LLC, a Delaware limited liability company.

Company Minimum Gain - shall have the same meaning as ascribed to the term "Partnership Minimum Gain" by Section 1.704-2(a) of the Treasury Regulations.

Company Nonrecourse Deductions - with respect to Company Nonrecourse Liabilities, the amount of deductions, losses and expenses equal to the net increase during the year in Minimum Gain attributable to Company Nonrecourse Liabilities, reduced (but not below zero) by proceeds of Company Nonrecourse Liabilities allocated to an increase in Minimum Gain distributed during the year, as determined in accordance with applicable Treasury Regulations.

Contract - any contract, agreement, lease, license, easement, servitude, right-of-way, mortgage, bond, note or other instrument.

Control, controls, controlling, controlled by or under common control with - the possession, directly or indirectly, through one or more intermediaries, of the power or authority, through ownership of voting securities, by Contract or otherwise, to elect a majority of the members of an Entity's board of directors or other governing body, or to direct the management, activities or policies of an Entity.

Conversion - as defined in Section 3.1.

ECN - an "electronic communications network," as defined in Rule 11Ac-1(a)(8) under the Securities Exchange Act of 1934, as amended.

Economic Risk of Loss - as defined in Treasury Regulation Section 1.752-2(a).

Effective Date - as defined in the Recitals.

Entity - any corporation, limited liability company, partnership, limited partnership, venture, trust, estate, governmental entity or other entity.

GAAP - generally accepted accounting principles consistently applied.

Indemnified Person - as defined in Section 6.4(a).

Liquidator - as defined in Section 9.2.

Majority Interest - means, with respect to the Interests generally, or any class or any subgroup of any class of Common Interests, as the case may be, members holding a majority of the Common Units or a majority of the Common Units comprised within such class or such subgroup.

Manager - Brut, Inc., or any successor thereto.

Member - each Person hereafter admitted to the Company as a Member as provided in this Agreement, but excluding any Person who has ceased to be a Member in the Company. As the context may require, in connection with the allocation of any item of income, gain, loss, deduction, profit or distribution, but not otherwise, the term "Member" shall include unadmitted transferees of Members who are treated as partners of the Company for federal income tax purposes.

Member Nonrecourse Debt - any nonrecourse debt of the Company for which any Member bears the Economic Risk of Loss.

Member Nonrecourse Deductions - with respect to a Member Nonrecourse Debt, the amount of deductions, losses and expenses equal to the net increase during the year in Minimum Gain attributable to Member Nonrecourse Debt, reduced (but not below zero) by proceeds of such Member Nonrecourse Debt allocated to an increase in Minimum Gain attributable to Member Nonrecourse Debt distributed during the year to the Members who bear the Economic Risk of Loss for such debt, as determined in accordance with applicable Treasury Regulations.

Minimum Gain - (a) with respect to Company Nonrecourse Liabilities, the amount of gain that would be realized by the Company if it Disposed of (in a taxable transaction) all Company properties that are subject to Company Nonrecourse Liabilities in full satisfaction of such liabilities, computed in accordance with applicable Treasury Regulations or (b) with respect to Member Nonrecourse Debt, the amount of gain that would be realized by the Company if it Disposed of (in a taxable transaction) the Company property that is subject to such Member Nonrecourse Debt in full satisfaction of such debt, computed in accordance with applicable Treasury Regulations.

Net Income - for any taxable period, the excess, if any, of the Company's items of income and gain for such taxable period over the Company's items of loss and deduction for such taxable period. The items included in the calculation of Net Income shall be determined in accordance with Section 4.3(b).

Net Loss - for any taxable period, the excess, if any, of the Company's items of loss and deduction for such taxable period over the Company's items of income and gain for such taxable period. The items included in the calculation of Net Loss shall be determined in accordance with Section 4.3(b).

New Common Units - additional Units issued by the Company after the date hereof.

Notices - as defined in Section 10.1.

Person - any natural person or Entity.

Sale - (a) a sale, transfer, exchange or other disposition by the Company of all or substantially all of its assets (or such part of its assets which prevents the Company from conducting its Business); (b) a merger, consolidation or combination of the Company and one or more Persons (other than a wholly owned subsidiary of the Company); and (c) a liquidation of the Company.

Secretary of State - the Secretary of State of the State of Delaware.

Third Party - any Person (including its Affiliates) except the Company, a Member or any of their respective Affiliates.

1.2 Directly or Indirectly; Without Limitation. Where any provision in this Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person, including actions taken by or on behalf of any Affiliate of such Person. Throughout this Agreement, the term "including" and words to the same or similar effect shall be interpreted and construed to mean "including without limitation."

1.3 References. All references herein to one gender shall include the others and the singular shall include the plural and vice versa as appropriate. All references to an Entity shall be deemed to include its successors and assigns, to the extent succession or assignment is not restricted by this Agreement. Unless otherwise expressly provided, all references to "Articles" or "Sections" are to Articles or Sections of this Agreement and all references to "Exhibit" are to the exhibit attached hereto, which is made a part hereof for all purposes.

ARTICLE II ORGANIZATION

2.1 Organization. On November 25, 1997, the Company was organized as a Delaware limited liability company by the filing of a Certificate of Formation in the office of the Secretary of State under and pursuant to the Act (as so amended, the "Certificate").

2.2 Name. The name of the Company is Brut, LLC; provided, however that the name of the Company may be changed at any time by the Manager, and the Manager shall have authority to execute and file amendments or restatements of the Certificate as necessary to reflect any such name change. All Company business shall be conducted under such name or

such other name or names that comply with applicable law and as the Manager may designate from time to time.

2.3 Registered Office; Registered Agent; Principal Office in the United States; Other Offices. The registered office of the Company in the State of Delaware shall be the initial registered office designated in the Certificate or such other office (which need not be a place of business of the Company) as the Manager may designate from time to time in the manner provided by law. The registered agent of the Company in the State of Delaware shall be the initial registered agent designated in the Certificate or such other Person or Persons as the Manager may designate from time to time in the manner provided by law. The principal office of the Company in the United States of America shall be at such place (which need not be within the State of Delaware) as the Manager may designate from time to time. The Company shall have such other offices (which need not be within the State of Delaware) as the Manager may determine to be appropriate.

2.4 Purposes. The purpose of the Company is to engage in and operate the Business and any other lawful business; provided, however, that the Company shall under no circumstances engage in any activity that is forbidden by the law of any jurisdiction in which the Company or its Affiliates engages in business.

2.5 Term. The Company commenced on the date the Certificate was filed with the Secretary of State and shall continue in existence until the date fixed in the Certificate as the latest date on which the Company is to dissolve or such earlier time as may be specified in or pursuant to this Agreement.

ARTICLE III RESTRUCTURING; DISPOSITIONS OF INTERESTS

3.1 Restructuring. As of the date of this Agreement, each existing Common Interest of each Member shall be converted (the "Conversion") such that each Member's previously existing Class A Units and Class B Units, as applicable, shall convert into an equal number of Common Units. As a result of such Conversion, each Member's Common Interest will not change. Exhibit A sets forth the number of Class A Units and Class B Units held by each Member immediately prior to the Conversion and the number of Common Units held by each Member immediately following the Conversion.

3.2 Issuance of Additional Common Interests.

(a) Additional New Common Units shall be issued for such consideration, and upon such other terms and conditions, as the Manager shall determine.

(b) No issuance of New Common Units shall be made by the Company to any Person under any provision of this Agreement unless such Person agrees in writing, in form and substance acceptable to the Company, to be bound by the provisions of this Agreement.

3.3 Liability to Third Parties.

(a) No Member or Manager shall have any personal obligation for any liabilities of the Company, whether such liabilities arise in contract, tort or otherwise, except to the extent that any such liabilities are expressly assumed in writing by such Member or Manager.

(b) It shall be the responsibility of the Manager of the Company to assure that the Company's activities comply and are in accordance with applicable laws, regulations and rules. The Members shall not be responsible for such compliance.

3.4 Removal. A Member may not be removed or expelled as a Member of the Company, except as expressly set forth in this Agreement.

**ARTICLE IV
CAPITAL CONTRIBUTIONS; UNITS**

4.1 Capital Contributions. In the event the Manager reasonably determines that additional Capital Contributions are required to conduct the Business of the Company, such Capital Contributions shall be requested of Members in proportion to the number of Common Units then held by such Member. The request for such contributions shall be made by written notice, specifying the amount of such additional Capital Contribution on such terms and conditions applicable to all Members as the Manager may prescribe, and the number of Common Units to be issued in consideration of such additional Capital Contribution. Nothing contained in this Section 4.1 shall be construed or interpreted as requiring any Member to contribute additional capital or limiting or otherwise restricting the Company from issuing New Common Units pursuant to Section 3.2(a).

4.2 Return of Contributions. A Member is not entitled (except as otherwise expressly provided by other provisions of this Agreement) to the return of any part of its Capital Contributions or to be paid interest in respect of either its Capital Account or its Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of the other Members. A Member is not required to contribute or to lend any cash or property to the Company to enable the Company to return any other Members' Capital Contributions.

4.3 Capital Accounts.

(a) The Company shall maintain for each Member owning an Interest a single, separate Capital Account with respect to such Interest in accordance with the rules of Treasury Regulation Section 1.704-1 (b)(2)(iv). Such Capital Account shall be increased by (i) the amount of cash and property transferred to the Company as Capital Contributions with respect to such Interest pursuant to this Agreement, and (ii) all items of Company income and gain (including, without limitation, income and gain exempt from tax) computed in accordance with Section 4.3(b) and allocated to such Interest pursuant to Section 5.1, and decreased by

(x) the amount of cash and the Net Agreed Value of all actual and deemed distributions of cash or property made with respect to such Interest pursuant to this Agreement, and (y) all items of Company deduction and loss computed in accordance with Section 4.3(b) and allocated to such Interest pursuant to Section 5.1.

(b) For purposes of computing the amount of any item of income, gain, loss or deduction to be reflected in the Members' Capital Accounts, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for federal income tax purposes (including, without limitation, any method of depreciation, cost recovery or amortization used for that purpose).

(c) A transferee of an Interest shall succeed to a *pro rata* portion of the Capital Account of the transferor relating to the Interest so transferred. If the transfer causes a termination of the Company under Section 708(b)(1)(B) of the Code, the Capital Accounts of the Company shall be maintained in accordance with the principles of this Section 4.3.

(d) Capital Accounts shall be adjusted, in a manner consistent with this Section 4.3, to reflect any adjustments in items of the Company's income, gain, loss or deduction that result from amended returns filed by the Company or pursuant to an agreement by the Company with the Internal Revenue Service or a final court decision.

ARTICLE V ALLOCATIONS AND DISTRIBUTIONS

5.1 Profits and Losses. Except as otherwise provided in Sections 5.2, 5.3, 5.4, 5.5 and 5.7 hereof, Profits and Losses shall be allocated among the Members in proportion to the number of Common Units owned by the Members.

5.2 Qualified Income Offset. If any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations, then items of Company income and gain (consisting of a pro rata portion of each item of income, including gross income and gain) shall be specially allocated to such Member in an amount and manner sufficient to eliminate the deficit balance (but only to the extent such deficit balance exceeds the sum of the Member's share of Company Minimum Gain and the amount of any deficiency that such Member is required to restore in its Capital Account upon the liquidation of the Company) in its Capital Account created by such adjustment, allocation, or distribution as quickly as possible to the extent required by the Treasury Regulations. Any special allocations of items of income or gain pursuant to this Section 5.2 shall be taken into account in computing subsequent allocations of Profits and Losses pursuant to this Article V, so that the net amount of any items so allocated and the Profits, Losses, and other items allocated to each Member pursuant to this Article V shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Article V if such unexpected adjustment, allocation, or distribution had not occurred.

5.3 Nonrecourse Deductions; Minimum Gain; Minimum Gain Chargeback.

(a) Allocation of Member Nonrecourse Deductions. Member Nonrecourse Deductions shall be allocated among the Members in proportion to the number of Units owned by the Members.

(b) Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain for a fiscal year of the Company, then each Member shall be allocated items of income and gain for such year (and, if necessary, for subsequent years) in accordance with Section 1.704-2(f) of the Treasury Regulations.

5.4 Member Nonrecourse Debt of the Company Where a Member Bears the Economic Risk of Loss.

(a) General Allocation. Any item of loss, deduction, or expenditure described in Code Section 705(a)(2)(B) that is attributable to a Member Nonrecourse Debt shall be allocated to the Member that bears the Economic Risk of Loss with respect to such Member Nonrecourse Debt, in accordance with this Section 5.4.

(b) Determination of Member Nonrecourse Deductions. The amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt shall be determined in accordance with Section 1.704-2(i) of the Treasury Regulations.

(c) Chargeback of Items of Income and Gain. If there is a net decrease during a fiscal year of the Company in the Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt, then any Member with a share of Member Nonrecourse Debt Minimum Gain attributable to such debt at the beginning of such year shall be allocated items of Company income and gain for such year (and, if necessary, for subsequent years) equal to that Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain.

(d) Member's Share of Minimum Gain Attributable to Member Nonrecourse Debt. A Member's share of Member Nonrecourse Debt Minimum Gain attributable to Member Nonrecourse Debt shall be determined in accordance with Section 1.704-2(i)(5) of the Treasury Regulations.

5.5 Tax Allocations: Code Section 704(c). In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take into account any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Value (or subsequent adjusted Value, as the case may be). Any elections or other decisions relating to such allocations shall be made by the Managers in any manner that reasonably reflects the purpose and intention of this Agreement.

5.6 Construction. The provisions of this Article V (and other related provisions in this Agreement) pertaining to the allocation of items of Company income, gain, loss, deductions, and credits shall be interpreted consistently with the Treasury Regulations, and to the extent unintentionally inconsistent with such Treasury Regulations, shall be deemed to be modified to the extent necessary to make such provisions consistent with the Treasury Regulations.

5.7 Gross Income Allocations. Notwithstanding Section 5.1 hereof, in the event that interest is imputed (as the result of an audit of the Company's tax return or otherwise) to a Member on a loan or an advance by such Member to the Company, an allocation of gross expense equal to such imputed interest shall be allocated to such Member. Such allocations of gross income and gross expense shall reduce Profits or increase Losses accordingly. In the event that a guaranteed payment to a Member is ultimately recharacterized (as the result of an audit of the Company's tax return or otherwise) as a distribution for federal income tax purposes, if such recharacterization has the effect of disallowing a deduction or reducing the adjusted basis of any asset of the Company, then an amount of Company gross income equal to such disallowance or reduction shall be allocated to the recipient of such payment. In the event that a distribution to a Member is ultimately recharacterized (as a result of an audit of the Company's tax return or otherwise) as a guaranteed payment for federal income tax purposes, and if any such recharacterization gives rise to a deduction, such deduction shall be allocated to the recipient of the distribution.

5.8 Distributions. Distributions (other than distributions described in Section 5.2 and 5.9) shall be made in proportion to the number of Common Units held by the Members, and shall be in such form and at such times as may be determined by the Manager.

5.9 Tax Distributions. The Company may make, but is not required to make, the following tax distributions to the Members, as determined by the Manager:

(a) first, within fifteen Business Days after March 31, June 30, September 30 and December 31 of each year, the Company shall distribute to each Member (the "Quarterly Tax Distributions") an amount equal to 50 percent of the Net Income of the Company for the preceding taxable quarter allocated to such Member under Section 5.1;

(b) second, at least three days prior to April 15 of each year, the Company shall distribute to each Member (the "Annual Makeup Tax Distribution") the amount, if any, by which 50 percent of the Net Income of the Company for the preceding taxable year allocable to such Member under Section 5.1 and exceeds the aggregate amount of Quarterly Tax Distributions to such Member under Section 5.9(a) with respect to income of the Company for such preceding year; and

(c) third, if the Company's Net Income for any year is increased above the amount used to compute the Annual Makeup Tax Distribution as a result of an adjustment

deemed necessary by the Company or as the result of a tax audit, the Company shall make an additional distribution in such amount as the Manager shall determine is appropriate, in its good faith discretion, taking into account the respective additional federal, state and local tax liability of the Members as a result of such increase and any related penalties and interest.

5.10 Amounts Withheld. All amounts withheld pursuant to the Code or any provision of any foreign, state or local tax law with respect to any payment or distribution to a Member, or with respect to a Member's share of Company income, shall be treated as amounts distributed to the Member pursuant to this Article V for all purposes under this Agreement.

ARTICLE VI MANAGEMENT PROVISIONS

6.1 The Manager. The business and affairs of the Company shall be managed under the direction of the Manager, who, except as limited by law, shall have the general power to manage or cause the management of the Company, including the full, exclusive and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company, and to take all such actions as it deems necessary or appropriate to accomplish the purposes of the Company as set forth herein and shall have all of the rights and powers which may be possessed by a "manager" under the Act. The Manager shall not be entitled to compensation for services rendered in its capacity as Manager.

6.2 Nature of Relationship. No Member shall take, or cause or permit its, or its Affiliates, officers, employees or agents to take, any action that would bind or obligate the Company in any manner not expressly authorized by this Agreement or by the Manager.

6.3 Officers. The Company shall have agents, referred to as "Officers" of the Company. The Officers shall at all times be identical to the then officers of Brut, Inc. Any changes in the officers of Brut, Inc., whether by election, resignation, removal, death or otherwise, shall automatically and concurrently take effect with respect to the Officers.

6.4 Indemnification.

(a) To the fullest extent permitted by law, the Company shall indemnify and hold harmless the Manager and all Officers (each, an "Indemnified Person"), made a party to any Third Party proceeding by reason of any act or omission, or alleged act or omission, arising out of any such Indemnified Person's activities as Manager, employee or agent of the Company, or by serving at the Company's request as a director, officer, partner, manager, trustee, employee, or agent of another Entity, from and against any and all liabilities incurred by the Indemnified Person in connection with any such Third Party proceeding; provided that:

(i) such Indemnified Person (A) was not guilty of fraud, gross negligence or willful misconduct and (B) in respect of any criminal action or proceeding, did not reasonably or in good faith, believe his conduct to be unlawful; and

(ii) such Indemnified Person, if otherwise entitled to indemnification from the Company hereunder, shall first seek recovery under any insurance policies by which such Person is covered and shall obtain the written consent of the Manager prior to entering into any compromise or settlement which would result in an obligation of the Company to indemnify such Person.

(b) Each Indemnified Person shall be entitled to rely in good faith on the records of the Company and on information, opinions, reports, statements or advice of counsel, public accountants or other independent individuals or Entities who have been selected with reasonable care and who are experienced in the matter at issue, and any act or omission of any Indemnified Person in reasonable reliance on such advice shall in no event subject him to liability to the Company or any Member. The Company may pay for or reimburse the reasonable expenses incurred by an Indemnified Person in connection with any such proceeding in advance of final disposition thereof; provided that if an Indemnified Person is advanced such expenses and it is later determined that such Indemnified Person was not entitled to indemnification with respect to such action, suit or proceeding, such Indemnified Person shall reimburse the Company for such advances. The provisions of this Section 6.4 shall survive any termination of this Agreement or any Member no longer being a Member of the Company (by reason of any voluntary or involuntary Disposition of its Common Interests or otherwise) until the expiration of the applicable statute of limitations.

(c) For purposes of this Section only:

(i) The term "expenses" includes all direct and indirect costs (including without limitation counsel fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or out-of-pocket expenses) actually incurred in connection with the investigation, defense, settlement or appeal of a proceeding or establishing or enforcing a right to indemnification under this Section, applicable law or otherwise;

(ii) The term "liability" means all claims, demands and obligations to pay a judgment, settlement, penalty, fine, excise tax (including an excise tax assessed with respect to the Employee Plans or any other employee benefit plan), and reasonable expenses incurred with respect to a proceeding;

(iii) The term "party" includes a Person who was, is or is threatened to be made, a named defendant or respondent in a proceeding; and

(iv) The term "proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal.

ARTICLE VII TAXES

7.1 "Tax Matters Member"; Tax Returns. Toll Associates LLC shall be the "tax matters partner" of the Company pursuant to section 6231(a)(7) of the Code. The "tax matters partner" shall take such action as may be necessary to cause the other Members to become "notice partners" within the meaning of Section 6231(a)(8) of the Code. The "tax matters partner" shall promptly inform the other Members of all significant matters that may come to its attention in its capacity as "tax matters partner" and shall forward to the other Members copies of all significant written communications it may receive or submit in such capacity, including, without limitation, any written adjustment by any taxing authority which would affect any Member's liability for taxes. The "tax matters partner" shall cause to be prepared and filed all necessary federal, state and local income tax returns for the Company, including making the elections described in Section 7.2, subject to the other Members right of review. Each other Member shall furnish to the "tax matters partner" all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed. Each Member shall have the right to participate in the defense of all pending tax proceedings involving the Company, including, without limitation, participation in any meeting with the Internal Revenue Service or other taxing authority. The Company shall reimburse the "tax matters partner" for any costs and expenses incurred in connection with such Person serving as the "tax matters partner," including costs and expenses incurred in the preparation or filing of any such income tax returns and the defense of any such tax proceedings. The "tax matters partner" shall not file any tax return (whether federal or state) with respect to the Company without the approval of the Manager, which approval shall not be unreasonably withheld. If the "tax matters partner" proposes that any adjustment to any tax return be approved, the "tax matters partner" shall not concede such adjustments without the Manager' prior written approval, which will not be unreasonably withheld.

7.2 Tax Elections. The Company shall make the following elections on the appropriate tax returns:

- (a) To adopt the fiscal year required by Section 706 of the Code;
- (b) to adopt the accrual method of accounting and to keep the Company's books and records on the accrual method;
- (c) If a distribution of Company property as described in Section 734 of the Code occurs or if a transfer of a Common Interest as described in Section 743 of the Code occurs, upon written request of any Member, to elect, pursuant to Section 754 of the Code, to adjust the basis of Company properties; and
- (d) to elect to amortize the organizational expenses of the Company under Section 709(b) of the Code and the startup expenditures of the Company under Section 195 of the Code, in each case ratably over the shortest period permitted by applicable law.

(e) It is the intent of the Members that the Company be treated as a partnership for federal income tax purposes and, to the extent permitted by applicable law, for state, local and foreign franchise and income tax purposes. None of the Manager, the Company or any Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of Chapter 1 of Subtitle A of the Code or any similar provisions of applicable state or local law, and no provision of this Agreement shall be construed to sanction or approve such an election.

ARTICLE VIII BOOKS, RECORDS AND BANK ACCOUNTS

8.1 Maintenance of Books. The books of account for the Company shall be maintained on an accrual basis in accordance with the terms of this Agreement. The fiscal year shall be the accounting year of the Company.

8.2 Accounting Principles. All accounting of the Company (and all other accounting done pursuant to this Agreement) shall be done in accordance with GAAP, to the extent applicable, except where GAAP is inconsistent with the requirements of this Agreement or with regulatory requirements to which the Company (or any of its subsidiaries) is bound; provided, however, Capital Accounts shall be maintained in accordance with Section 4.3.

8.3 Bank Accounts. The Manager shall cause the Company to establish, maintain and designate signatories on one or more separate bank and investment accounts for Company funds in the Company name with such financial institutions and firms as the Manager may select and designate signatories thereon. The Company's funds shall not be commingled with the funds of any other Person.

ARTICLE IX DISSOLUTION, LIQUIDATION AND TERMINATION

9.1 Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the first to occur of any of the following:

- (a) The affirmative vote or written consent of both the Manager and a Majority Interest of all other Members;
- (b) The entry of a decree of judicial dissolution under Section 18-802 of the Act;
- (c) The Disposition of all, or substantially all of the Common Interests held by all Members or the Disposition of all, or substantially all of the assets of the Company; or
- (d) The date fixed in the Certificate as the latest date on which the Company is to dissolve.

9.2 Liquidation and Termination. On dissolution of the Company, the Manager shall act as liquidator or may appoint one or more other Persons as liquidator of the Company (the "Liquidator"). The Liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act by the end of the taxable year of the company in which its liquidation (as such term is defined in Treas. Reg. §1.704-1(b)(2)(ii)(g)) occurs or, if later, within 90 Business Days of the date of such liquidation. The costs of liquidation shall be borne as a Company expense. Until final distribution, the Liquidator shall continue to operate the Company properties with all of the power and authority of the Members and the Manager. The steps to be accomplished by the Liquidator are as follows:

(a) As promptly as possible after dissolution and again after final liquidation, the Liquidator shall cause a proper accounting to be made by one of the "big four" accounting firms of the Company's assets, liabilities and operations through the last day of the calendar month in which the dissolution shall occur or the final liquidation shall be completed, as applicable;

(b) The Liquidator shall have full power and authority to sell, assign and encumber any or all of the Company's assets and to wind up and liquidate the affairs of the Company in an orderly and business-like manner. All proceeds from liquidation shall be distributed in the following order of priority:

(i) first, to the payment of the debts and liabilities of the Company, to persons other than Members (but, in the case of nonrecourse debts and liabilities, only to the extent required under the applicable credit and security agreement) and expenses of liquidation;

(ii) second, to the setting up of such reserves as the Liquidator may reasonably deem necessary for any contingent liability of the Company;

(iii) third, to the payment of any debts or liabilities of the Company to Members; and

(iv) thereafter, *pro rata* to the Members in accordance with the positive balances in their Capital Accounts (as determined after taking into account adjustments required under Treasury Regulation Section 1.704-1(b)(2)(ii)(b)(2) and after giving effect to all allocations provided by this Agreement for all periods ending at or prior to such liquidating distribution(s) to Members).

(c) Notwithstanding the provisions of this Section 9.2 which require the liquidation of the assets of the Company, but subject to the order of priorities set forth above, if prior to or upon dissolution of the Company the Liquidator determines that an immediate Sale of part or all of the Company's assets would be impractical or would cause undue loss to the Members, the Liquidator may, in its reasonable discretion, defer for a reasonable time the liquidation of any assets except those

necessary to satisfy liabilities of the Company (other than those to Members as creditors).

9.3 Distribution in Kind. If the Liquidator shall determine that all or a portion of creditors).the Company's assets should be distributed in kind to the Members, the Liquidator, on behalf of the Company, shall obtain an independent appraisal of the fair market value of each such asset as of a date reasonably close to the date of liquidation. Any unrealized appreciation or depreciation with respect to such assets shall be allocated among the Members' Capital Accounts (in accordance with Article IV, assuming that the assets of the Company were sold for such appraised fair market value) and distribution of any such assets in kind to a Member shall be considered a distribution of an amount equal to the assets' appraised fair market value for purposes of Section 9.2.

9.4 Deficit Capital Accounts. Notwithstanding any other provision hereof to the contrary, to the extent that a deficit, if any, exists in the Capital Account of any Member, such deficit shall not be an asset of the Company and such Member shall not be obligated to contribute such amount to the Company to bring the balance of such Member's Capital Account to zero.

9.5 Cancellation of Filings. Upon completion of the distribution of Company assets as provided herein, the Company is terminated, and the Liquidator shall file a certificate of cancellation with the Secretary of State, cancel any other filings made pursuant to Section 2.5 and take such other actions as may be necessary to terminate the Company.

ARTICLE X GENERAL PROVISIONS

10.1 Notices. All notices and other communications (collectively, "Notices") provided for or permitted to be given under this Agreement shall be in writing and shall be given by depositing the Notice in the United States mail, addressed to the Person to be notified, postage paid and registered or certified with return receipt requested, or by such notice being delivered in person or by facsimile communication, electronically confirmed, to such Person. Unless otherwise expressly set forth herein, Notices given or served pursuant hereto shall be effective upon receipt by the Person to be notified. All Notices to be sent to a Member shall be sent to, and all payments hereunder to a Member shall be made at, the address set forth on Exhibit A or such other address as that Member may specify by Notice to the Company. All Notices to be sent to the Company shall be sent to, and all payments hereunder to the Company shall be made at, the address set forth on Exhibit A or such other address as that Company may specify by Notice to the Members.

10.2 Amendment. The affirmative vote or written consent of both the Manager and a Majority Interest of all other Common Members shall be required in order for the Company to amend or modify this Agreement or the Certificate (except as otherwise provided in Section 2.2 with respect to name changes of the Company, which do not require any affirmative vote or other consent of the Members).

10.3 Entire Agreement; Waivers. This Agreement constitutes the entire agreement of the Members and their Affiliates relating to the Company and supersedes any and all prior Contracts, understandings, negotiations and agreements with respect to the Company and the subject matter hereof whether oral or written.

10.4 Binding Effect; No Third-Party Beneficiaries. This Agreement is binding on and inures to the benefit of the Members and their respective heirs, legal representatives, successors and assigns. Except for the indemnification provisions contained in Section 6.4, nothing in this Agreement shall provide any benefit to any Third Party or entitle any Third Party to any claim, cause of action, remedy or right of any kind, it being the intent of the parties that this Agreement shall not be construed as a third-party beneficiary Contract.

10.5 Governing Law. This agreement is governed by and shall be construed in accordance with the law of the state of Delaware, excluding any conflict-of-laws rule or principle that might refer the governance or construction of this agreement to the law of another jurisdiction. If any provision of this Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision shall be enforced to the greatest extent permitted by law.

10.6 Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

10.7 Multiple Counterparts. This Agreement may be executed in multiple with the same effect as if each of the signing parties had signed the same. All counterparts shall be construed together and constitute the same.

IN WITNESS WHEREOF, the undersigned Members, intending to be legally bound, have executed this Operating Agreement as of the date first above written.

TOLL ASSOCIATES LLC

By: 

Name: _____

Title: _____

BRUT, INC.

By: _____

Name: _____

Title: _____

10.3 Entire Agreement; Waivers. This Agreement constitutes the entire agreement of the Members and their Affiliates relating to the Company and supersedes any and all prior Contracts, understandings, negotiations and agreements with respect to the Company and the subject matter hereof whether oral or written.

10.4 Binding Effect; No Third-Party Beneficiaries. This Agreement is binding on and inures to the benefit of the Members and their respective heirs, legal representatives, successors and assigns. Except for the indemnification provisions contained in Section 6.4, nothing in this Agreement shall provide any benefit to any Third Party or entitle any Third Party to any claim, cause of action, remedy or right of any kind, it being the intent of the parties that this Agreement shall not be construed as a third-party beneficiary Contract.

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10.7 Multiple Counterparts. This Agreement may be executed in multiple with the same effect as if each of the signing parties had signed the same. All counterparts shall be construed together and constitute the same.

IN WITNESS WHEREOF, the undersigned Members, intending to be legally bound, have executed this Operating Agreement as of the date first above written.

TOLL ASSOCIATES LLC

BRUT, INC.

By: _____

By: Mark A. Minister

Name: _____

Name: MARK A. MINISTER

Title: _____

Title: _____

EXHIBIT A

Common Units, Interests and Member Addresses

MEMBER	<u>Prior to Conversion</u> CLASS A UNITS	<u>Prior to Conversion</u> CLASS B UNITS	<u>After Conversion</u> COMMON UNITS	COMMON INTEREST (%)	MEMBER ADDRESS
Toll Associates LLC	7,438.43	937,975.17	945,413.60	99.7851%	1285 Drummers Lane Suite 300 Wayne, PA 19087-1586 ATTN: General Counsel
Brut, Inc.	2,036.07	---	2,036.07	0.2149%	1285 Drummers Lane Suite 300 Wayne, PA 19087-1586 ATTN: General Counsel
TOTAL	9,474.50	937,975.17	947,449.67	100%	

AMENDMENT NO. 1
TO
FIFTH AMENDED AND RESTATED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
BRUT LLC

This AMENDMENT NO. 1, dated as of September 7, 2004 (this "Amendment"), to the Fifth Amended and Restated Limited Liability Company Operating Agreement, dated as of August 20, 2002 (the "Agreement"), of Brut, LLC, a Delaware limited liability company (the "Company"), by and between its Members (as defined in the Agreement).

W I T N E S S E T H:

WHEREAS, the undersigned are all of the Members of the Company.

NOW THEREFORE, in accordance with Section 10.2 of the Agreement and in consideration of the agreements contained herein, the parties intending to be legally bound, agree as follows:

1. Section 6.3 of the Agreement is hereby deleted in its entirety and replaced with the following:

"Section 6.3 Officers and Related Persons. The Manager shall have the authority to appoint and terminate officers of the Company ("Officers") and retain and terminate employees, agents and consultants of the Company and to delegate such duties to any such Officers, employees, agents and consultants as the Manager deems appropriate, including the power, acting individually or jointly, to represent and bind the Company in all matters, in accordance with the scope of their respective duties."

2. Except as set out herein, the Agreement shall continue in full force and effect, unamended.

3. This Amendment may be executed in several counterparts with the same effect as if the parties executing the several counterparts had all executed one counterpart.

4. This Amendment shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of law. In particular, this amendment shall be construed to the maximum extent possible to comply with all the terms and conditions of the Delaware Limited Liability Act.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above.

TOLL ASSOCIATES LLC

By: 
Name: William O'Brien
Title: Chief Operating Officer

BRUT INC.

By: 
Name: William O'Brien
Title: Chief Operating Officer

AMENDMENT NO. 1
TO
FIFTH AMENDED AND RESTATED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
BRUT LLC

This AMENDMENT NO. 1, dated as of September 7, 2004 (this "Amendment"), to the Fifth Amended and Restated Limited Liability Company Operating Agreement, dated as of August 20, 2002 (the "Agreement"), of Brut, LLC, a Delaware limited liability company (the "Company"), by and between its Members (as defined in the Agreement).

WITNESSETH:

WHEREAS, the undersigned are all of the Members of the Company.

NOW THEREFORE, in accordance with Section 10.2 of the Agreement and in consideration of the agreements contained herein, the parties intending to be legally bound, agree as follows:

1. Section 6.3 of the Agreement is hereby deleted in its entirety and replaced with the following:

"Section 6.3 Officers and Related Persons. The Manager shall have the authority to appoint and terminate officers of the Company ("Officers") and retain and terminate employees, agents and consultants of the Company and to delegate such duties to any such Officers, employees, agents and consultants as the Manager deems appropriate, including the power, acting individually or jointly, to represent and bind the Company in all matters, in accordance with the scope of their respective duties."

2. Except as set out herein, the Agreement shall continue in full force and effect, unamended.

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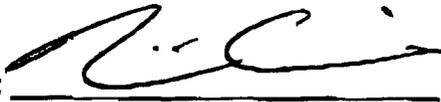
4. This Amendment shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of law. In particular, this amendment shall be construed to the maximum extent possible to comply with all the terms and conditions of the Delaware Limited Liability Act.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above.

TOLL ASSOCIATES LLC

By: 
Name: William O'Brien
Title: Chief Operating Officer

BRUT INC.

By: 
Name: William O'Brien
Title: Chief Operating Officer