

**ARTICLES OF ORGANIZATION  
OF  
Wilson Peak Properties, L.L.C.**

The undersigned, acting as the organizers of a limited liability company under the Alabama Limited Liability Company Act (the Act) hereby adopt the following Articles of Organization for Wilson Peak Properties, L.L.C. (the Company).

**ARTICLE ONE**

The name of the Company is Wilson Peak Properties Limited Liability Company (LLC).

**ARTICLE TWO**

The Company shall continue in existence until it is dissolved in accordance with the provisions of the operating agreement, or, if there is no operating agreement or no provision in the operating agreement governing the duration of the Company, then in accordance with the Alabama Limited Liability Act.

**ARTICLE THREE**

The Company is organized for the purpose of conducting the business of developing real estate.

**ARTICLE FOUR**

The mailing address of the initial registered office is 165 Cahaba Valley Parkway, Pelham, AL 35124, and the name of the initial registered agent of the Company at such address is D. Wayne Myrick.

**ARTICLE FIVE**

The names and mailing addresses of the initial members of the Company are:

Donald Wayne Myrick	Michael Scott Gurosky	Aubrey Clinton Folsom Jr.	Dr. Paul Howard
1061 Southlake Cove	1065 Southlake Cove	141 Deer Mountain Circle	2617 Poplar Post
Hoover, Al. 35244	Hoover, Al. 35244	Pelham, Al. 35124	Birmingham, Al. 35243

**ARTICLE SIX**

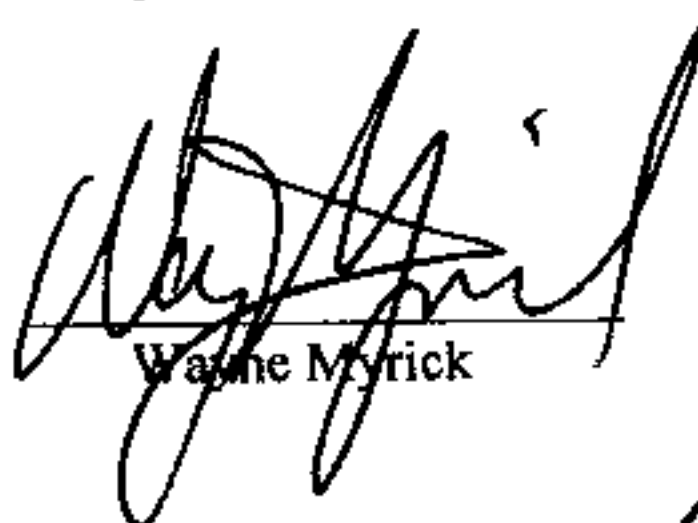
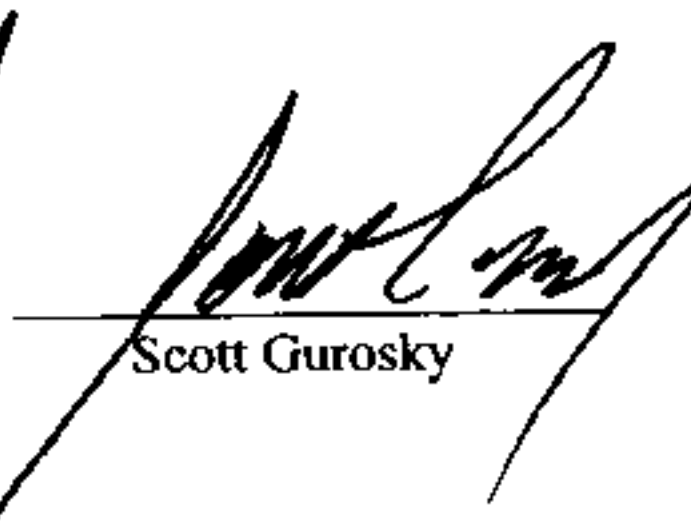
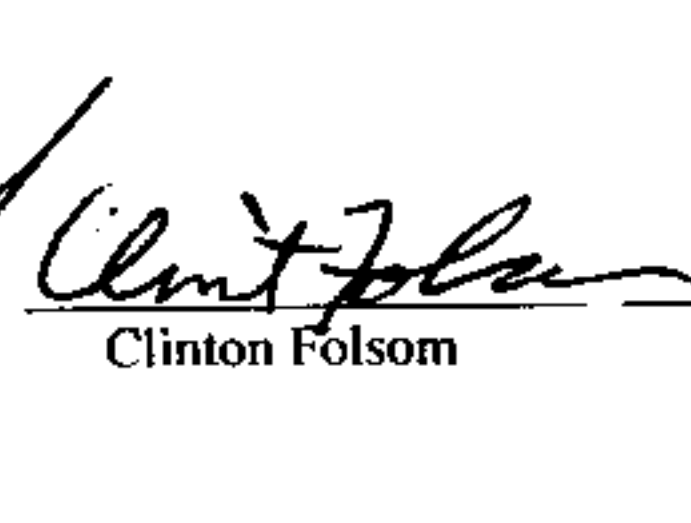
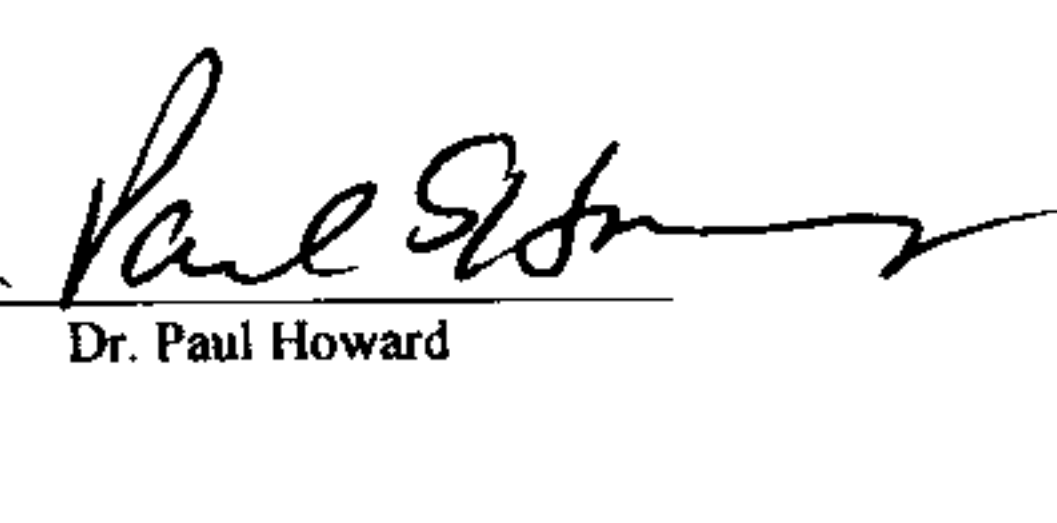
The initial members of the Company may admit additional members at such times and upon such terms and conditions as may be mutually agreed by the Company and the additional members.

**ARTICLE SEVEN**

The legal existence and business of the Company may be continued by the written consent of all the remaining members within 90 days after an event of dissociation of a member.

IN WITNESS WHEREOF, these Articles of Organization have been executed on

APRIL 30, 1996

			
Wayne Myrick	Scott Gurosky	Clinton Folsom	Dr. Paul Howard

State of ALABAMA County of \_\_\_\_\_  
Subscribed and sworn to before me this 27<sup>th</sup> day of April, 1996 - 17198  
Notary Public: SCOTT M. HANWICK  
My Commission Expires: 2/22/00

05/28/1996-17198  
03:26 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
036 SNA 80.00

OPERATING AGREEMENT  
OF  
Wilson Peak Properties, L.L.C.  
An Alabama Limited Liability Company

This operating agreement, dated April 30, 1996, of Wilson Peak Properties, L.L.C. Limited Liability Company (the Company) is hereby adopted and agreed to by all the Members.

ARTICLE I  
DEFINITIONS

1.01 As used in this operating agreement, the following terms mean:

"ABCA" means the Alabama Business Corporation Act, being Title 10, Chapter 2A of the Code of Alabama (1987 & Supp. 1993), and any successor statute, as amended from time to time.

"Act" means the Alabama Limited Liability Company Act, being Title 10, Chapter 12 of the Code of Alabama (Supp. 1993), and any successor statute, as amended from time to time.

"Articles" means the Articles of Organization, the proper filing of which brought the Company into existence.

"Bankruptcy Member" means any Member (a) that (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) is adjudicated bankrupt or insolvent; (iv) files a petition or answer seeking for the Member a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in a proceeding of the type described in subclause (iv) of this clause; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member's or of all or any substantial part of the Member's properties; or (b) (i) against which, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and 120 days have expired without dismissal thereof, or (ii) with respect to which,

without the Member's consent or acquiescence, a trustee, receiver or liquidator of the Member or of all or any substantial part of the Member's properties has been appointed and ninety days have expired without the appointment's having been vacated or stayed, or (iii) ninety days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

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

"Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

"Company Minimum Gain" means the amount determined by computing for each Company Nonrecourse Liability any gain the Company would realize if it disposed of the property subject to that liability for no consideration other than the full satisfaction of the liability and aggregating all such gains. The amount of Company Minimum Gain also includes minimum gain arising from a conversion, refinancing, or other change in a debt instrument, but only to the extent a Member of Financial Rights is allocated a share of such minimum gain. A Member's share of Company Minimum Gain at the end of any taxable year equals the sum of the Nonrecourse Deductions allocated to that Member of Financial Rights (and the Member's or predecessors in interest) up to that time of proceeds of a nonrecourse liability allocable to an increase in Company Minimum Gain minus the sum of that Members' (and that Member's or Holder's predecessors in interest) aggregate share of decreases resulting from revaluations of Company property subject to one or more Company Nonrecourse Liabilities.

"Company Nonrecourse Liability" means a liability of the Company to the extent that no Member or related person bears the economic risk of loss (as defined in Treasury Regulation section 1.752-2) with respect to the liability.

"Dispose," "Disposing" or "Disposition" means a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition or encumbrance (including, without limitation, any of the foregoing occurring by operation of law), and "Disposing" means engaging in any of the foregoing.



"Financial Rights" means rights to share in profits and losses as provided in Section 5.01, to receive distributions as provided in Section 5.02, and to receive terminating distributions as provided in Section 12.03.

"General Interest Rate" means a rate per annum equal to the lesser of (a) a varying rate per annum that is equal to the interest rate publicly quoted by the **Wall Street Journal** from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

"Governance Rights" means all a Member's rights as a member of the Company except Financial Rights, including without limitation, the rights to participate in the management of the Company, to participate in the election of Managers, and to bind the Company.

"Holder of Financial Rights" and "Holder" mean a Person who owns Financial Rights and no Governance Rights.

"Manager" means any person named in the Articles as an initial manager of the Company and any Person hereafter elected as a manager of the Company as provided in this operating agreement, but does not include any Person who has ceased to be a manager of the Company.

"Member" means any Person who owns Governance Rights in the Company and does not include any Person who owns only Financial Rights in the Company.

"Member Minimum Gain" means an amount determined by computing for each Member Nonrecourse Liability any gain the Company would realize if it disposed of the property subject to that liability for no consideration other than full satisfaction of the liability aggregating the separately computed gains. The amount of member Minimum Gain includes minimum gain arising from a conversion, refinancing, or other change to a debt instrument, but only to the extent a Member is allocated a share of that minimum gain. For any taxable year, the net increase or decrease in the Member Minimum Gain is determined by comparing the Member Minimum Gain on the last day of the immediately preceding taxable year with the Minimum Gain on the last day of the current taxable year.

"Member Nonrecourse Liability" means any liability of the Company to the extent the liability is nonrecourse under state law and on which the Member or a Related person bears the economic risk of loss (as defined by Treasury Regulation section 1.752-2).

"Membership Interest" means the interest of a Member in the Company, being the total of the Member's Financial Rights and Governance Rights. For purposes of voting, the amount of a Membership Interest shall be determined by dividing the Member's rights to share in distributions in liquidation by the total rights of all Members (but not Holders of Financial Interests) to share in distributions in liquidation.

"Person" means natural persons and organizations (whether created by the laws of Alabama or another state or country) including, without limitation, general partnerships, limited partnerships, limited liability companies, corporations, professional corporations, professional associations, trustees, personal representatives, fiduciaries or persons performing in any similar capacity, trusts, business trusts, estates, custodianships, and other associations.

"Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative, or investigative, any appeal in such a Proceeding, or any inquiry or investigation that could lead to such a Proceeding.

"Related Person" means a Person that bears a relationship to the Member that is described in Treasury Regulation section 1.752-4.

"Sharing Ratio" with respect to any Member or Holder of Financial Rights means the Member's or Holder's share of income, deduction, gain, loss, credit, distribution, or liquidating distribution.

1.02 Construction. Whenever the context requires, the gender of all words used in this operating agreement includes the masculine, feminine, and neuter. All references to Articles and Sections refer to articles and sections of this operating agreement, and all references to Exhibits are to Exhibits attached hereto, each of which is made a part hereof for all purposes.

## ARTICLE II ORGANIZATION

2.01 Formation. The Company is an Alabama limited liability company. This operating agreement shall become effective upon its execution by the Members, or, if later, the beginning of the existence of the Company as determined under section 14 of the Act.

2.02 Name. The name of the Company is "Myrick, L.L.C." and all Company business must be conducted in that name or other names that comply with applicable law selected by the Managers from time to time.

2.03 Registered Office: Registered Agent; Principal Office in the United States; Other Office. The registered office of the Company required by the Act to be maintained in the State of Alabama shall be the office of the initial registered agent named in the Articles or another office (which need not be a place of business of the Company) designated by the Managers from time to time in the manner provided by law. The registered agent of the Company in the State of Alabama shall be the initial registered agent named in the Articles or another Person or Persons designated by the Managers from time to time in the manner provided by law. The Managers shall designate the principal office of the Company in the United States, which need not be in the State of Alabama, and the Company shall maintain records there as required by the Act, section 10-12-16 of the Code of Alabama (Supp. 1993), and shall keep the street address of such principal office at the registered office of the Company in the State of Alabama. The Company may have other offices designated by the Managers from time to time.

2.04 Purposes. The purpose of the Company is to engage in the construction of single family residences and to engage in any other business or activity that now or hereafter may be necessary, incidental, proper, advisable, or convenient to accomplish the foregoing purpose (including, without limitation, obtaining financing therefor) and that is not forbidden by the law of the jurisdiction in which the Company engages in that business.

2.05 Foreign Qualification. Prior to the Company's conducting business in any jurisdiction other than Alabama, the Managers shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Managers, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Managers, each Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this operating agreement that are necessary or appropriate to qualify, continue, and terminate the



Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

2.06 Term. The Company shall continue in existence until dissolved in accordance with Section 12.01.

2.07 Mergers and Exchange. The Company may be a party to (a) a merger, or (b) an exchange or acquisition of the type described in articles 6 and 6A of the ABCA, sections 10-2A-160 to 171 of the Code of Alabama (1987 and Supp. 1993), subject to the requirements of Section 6.01(b)(ii).

2.08 No State-Law Partnership. The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member or Manager be a partner or joint venturer of any other Member or Manager, for any purposes other than federal and state tax purposes, and this operating agreement may not be construed to suggest otherwise.

### ARTICLE III MEMBERSHIP, DISPOSITIONS OF INTERESTS

3.01 Initial Members. The initial Members of the Company are the Persons executing the Articles of Organization of Myrick, L.L.C., as Members or this operating agreement as of the date of this operating agreement as Members. The membership of each initial Member is effective upon the execution of the Articles of Organization or this operating agreement, or, if later, the beginning of the existence of the Company as determined under section 14 of the Act.

3.02 Representations and Warranties. Each Member hereby represents and warrants to the Company and each other Member that (a) if that Member is a corporation, it is duly organized, validly existing, and in good standing under the law of the state of its incorporation and is duly qualified and in good standing as a foreign corporation in the jurisdiction of its principal place of business (if not incorporated therein); (b) if that Member is a limited liability company, it is duly organized, validly existing, and (if applicable) in good standing under the law of the state of its organization and is duly qualified and (if applicable) in good standing as a foreign limited liability company in the jurisdiction of its principal place of business (if not organized therein); (c) if that Member is a partnership trust, or other entity, it is duly formed, validly existing, and (if applicable) in good standing under the law of the state of its formation, and if required by law is duly qualified to do business and (if applicable) in good standing in the jurisdiction of its principal place of business (if not formed therein), and the representations and warranties in

clause (a), (b) or (c), as applicable, are true and correct with respect to each partner (other than limited partners), trustee, or other member thereof; (d) that Member has full corporate, limited liability company, partnership trust, and other applicable power and authority to execute and agree to this operating agreement and to perform its obligations hereunder and all necessary actions by the board of directors, shareholders, managers, members, partners, trustees, beneficiaries, or other Persons necessary for the due authorization, execution, delivery, and performance of this operating agreement by that Member have been duly taken; (e) that Member has duly executed and delivered this operating agreement; and (f) that Member's authorization, execution, delivery, and performance of this operating agreement do not conflict with any other agreement or arrangement to which that member is a party or by which it is bound.

### 3.03 Restrictions on the Disposition of an Interest.

(a) Except as specifically provided in this Section 3.03, a Disposition of an Interest in the Company is effective only to transfer the Member's Financial Rights to the transferee and the transferee shall not become a Member.

(b) Upon receiving consent of (i) a majority of the Managers who are Members (excluding any Manager who is making such Disposition), or (ii) if there are no Managers of the type described in clause (i), a majority of the Membership Interests (excluding the Membership interest of the Member who is making such Disposition), the transfer shall be given effect and the transferee shall become a Member possessing all the financial and Governance Rights transferred.

(c) The Company shall not recognize for any purpose any purported Disposition of all or part of a Membership Interest unless and until the other applicable provisions of this Section 3.03 have been satisfied and the Managers have received, on behalf of the Company, a document (i) executed by both the Members effecting the Disposition (or if the transfer is on account of the death, incapacity, or liquidation of the transferor, its representative) and the person to which the Membership Interest or part thereof is Disposed), (ii) including the notice address of any Person to be admitted to the Company as a Member and its agreement to be bound by this operating agreement in respect of the Membership Interest or part thereof being obtained, (iii) setting forth the Sharing Ratios after the Disposition of the Member effecting the Disposition and the Person to which the Membership Interest or part thereof is Disposed (which together must total the Sharing Ratio of the Member effecting the Disposition before the Disposition), and (iv) containing a representation and warranty that the Disposition was made in accordance with all applicable



laws and regulations (including securities laws) and, if the Person to which the membership Interest or part thereof is Disposed is to be admitted to the Company, its representation and warranty that the representations and warranties in Section 3.02 are true and correct with respect to that Person. Each Disposition and, if applicable, admission complying with the provisions of this Section is effective as of the first day of the calendar month immediately succeeding the month in which the Managers receive the notification of Disposition and the other requirements of this Section have been met.

(d) No Member shall have the power to Dispose of a Membership Interest or any part thereof and no Person shall be admitted to the Company unless, (i) either (A) the Membership Interest or part thereof subject to the Disposition or admission has been registered under the Securities Act of 1933, as amended, and any applicable state securities laws or (B) the Company has received a favorable opinion of the Company's legal counsel or of other legal counsel acceptable to the Managers to the effect that the Disposition or admission is exempt from registration under those laws and (ii) the Company has received a favorable opinion of the Company's legal counsel or of other legal counsel acceptable to the Managers to the effect that the Disposition or admission, when added to the total of all other sales, assignments, or other Dispositions within the preceding twelve months, will not result in the Company's being considered to have terminated within the meaning of Code Sec. 708. The Managers, however, may waive the requirements of this Section 3.03(d).

(e) The Member effecting a Disposition and any person admitted to the Company in connection therewith pay, or reimburse the Company for, all costs incurred by the Company in connection with the Disposition or admission (including, without limitation, the legal fees incurred in connection with the legal opinions referred to in Section 3.03(d) on or before the tenth day after the receipt by that Person of the Company's invoice for the amount due.

If payment is not made by the date due, the Person owing that amount shall pay interest on the unpaid amount from the date due until paid at the General Interest Rate.

3.04 Additional members. Additional Persons may be admitted to the Company as Members and Membership Interests may be created and issued to those Persons and to existing Members on such terms and conditions as the Members may determine at the time of admission. The terms of admission or issuance must specify the Sharing Ratios and the Capital Contributions applicable thereto and may provide for the creation of different classes or groups of Members and having different rights, powers, and duties. The Managers shall reflect the creation of any new class or group in an amendment to this operating agreement indicating the different

rights, powers, and duties. Each new Member must comply with the provisions of Section 3.03 and the admission of a new Member is effective only after the new Member has executed and delivered to the Manager's notice address, its agreement to be bound by this operating agreement, and its representation and warranty that the representation and warranties in Section 3.02 are true and correct with respect to the new Member. The provisions of this Section shall not apply to Dispositions or Membership Interests.

3.05 Interests in a Member. A Member that is not a natural person may not cause or permit an interest, direct or indirect, in itself to be Disposed of such that, after the Disposition, (a) the Company would be considered to have terminated within the meaning of Code Sect. 708 or (b) without the consent of the Managers and a Required Interest, that Member shall cease to be controlled by substantially the same Persons who control it as of the date of its admission to the Company. If any Member breaches the provisions of clause (b) of the immediately preceding sentence, the breach shall be treated as a notice of intention to withdraw and the Company shall proceed to value and pay for the Membership Interest of the breaching Member, all in accordance with Section 11.01.

### 3.06 Information

(a) In addition to the other rights specifically set forth in this operating agreement, each Member is entitled to all information to which that Member is entitled to have access pursuant to the Act, section 10-12-16 of the Code of Alabama (Supp. 1993), under the circumstances and subject to the conditions therein stated. The Members agree, however, that the Managers from time to time may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members, and that it is not just or reasonable for those Members or assignees or representatives thereto to examine or copy that information.

(b) The Members acknowledge that, from time to time, they may receive information from or regarding the Company in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Company or Persons with which it does business. Each member shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any Person other than another Member or a Manager, except for disclosures (i) compelled by law (but the Member must notify the Managers promptly of any request for that information, before disclosing it, if practicable), (ii) to advisers or representatives of the Member or



persons to which that Member's Membership Interest may be Disposed as permitted by this operating agreement, but only if the recipients have agreed to be bound by the provisions of this Section, or (iii) of information that Member also has received from a source independent of the Company that the Member reasonably believes obtained that information without breach of any obligation of confidentiality. The Members acknowledge that breach of the provisions of this Section may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Members agree that the provisions of this Section may be enforced by specific performance.

3.07 Liability to Third Parties. No Member, Manager or Holder of Financial Rights shall be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a court.

3.08 Lack of Authority. No Member who is not a Manager or an officer has the authority or power to act for or on behalf of the Company, to make any commitment that would be binding on the Company, or to incur any expenditures on behalf of the Company.

#### ARTICLE IV CAPITAL CONTRIBUTIONS

4.01 Initial Contributions and Sharing Ratios. Each Member made Capital Contributions at the time the Articles of Organization were executed. The amounts of the initial contributions and the initial sharing ratios are listed below:

##### Name, Address, and Initial Capital Contribution of Each Member

Donald Wayne Myrick  
1061 Southlake Cove  
Hoover, AL 35244 •

##### Initial Sharing Ratios

Income	25 %
Deduction	25 %
Gain	25 %
Loss	25 %
Credit	25 %
Distribution	25 %
Liquidation	25 %
Initial Capital Contribution:	\$0

Michael Scott Gurosky  
1065 Southlake Cove  
Hoover, AL 35244

Income	25 %
Deduction	25 %
Gain	25 %
Loss	25 %
Credit	25 %
Distribution	25 %
Liquidation	25 %
Initial Capital Contribution:	\$0

Initial Capital Contribution:



Aubrey Clinton Folsom Jr  
191 Deer Mountain Circle  
Pelham, AL 35124

Income	25 %
Deduction	25 %
Gain	25 %
Loss	25 %
Credit	25 %
Distribution	25 %
Liquidation	25 %
<b>\$25,000.00</b>	

Initial Capital Contribution:

Paul Howard  
2617 Poplar Post Road  
Birmingham, AL 35243

Income	25 %
Deduction	25 %
Gain	25 %
Loss	25 %
Credit	25 %
Distribution	25 %
Liquidation	25 %
<b>\$100,000.00</b>	

Initial Capital Contribution:

4.02 Return of Contributions. A Member is not entitled 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 any Member. No Member is required to contribute or to lend any cash or property to the Company to enable the Company to return any Member's Capital Contributions.

4.03 Advances by Members. If the Company does not have sufficient cash to pay its obligations, one or more Members may, with the Managers' consent, advance all or part of the needed funds to or on behalf of the Company. An advance described in this Section 4.03 constitutes a loan from the Member(s) to the Company, bears interest at the General Interest Rate from the date of the advance until the date of payment, and is not a Capital Contribution.

4.04 Capital Accounts. A capital account shall be established and maintained for each Member or Holder of Financial Rights. Each Member's or Holder's capital account (a) shall be increased by (i) the amount of money contributed by that Member or Holder to the Company, (ii) the fair market value of property contributed by that Member or Holder to the Company (net of liabilities secured by the contributed property that the Company is considered to assume or take subject to under Code Sec. 752), and (iii) allocations to that Member or Holder of Company income and gain (or items thereof), including income and gain exempt from tax and income and gain described in Treasury Regulation section 1.704-1(b)(2)(iv)(g), but excluding income and gain described in Treasury Regulation section 1.704-1(b)(4)(i), and (b) shall be

decreased by (i) the amount of money distributed to that Member or Holder by the Company, (ii) the fair market value of property distributed to that Member or Holder by the Company (net of liabilities secured by the distributed property that the Member or Holder is considered to assume or take subject to under Code Sec. 752, (iii) allocations to that Member or Holder of expenditures of the Company described in section 705(a)(2)(B) of the Code, and (iv) allocations of Company loss and deduction (or items thereof), including loss and deduction described in Treasury Regulation section 1.704-1(b)(2)(iv)(g), but excluding items described in clause (b)(iii) above and loss or deduction described in Treasury Regulation section 1.704-1(b)(4)(i) or section 1.704-1(b)(4)(iii).

The Members' and Holder's capital accounts also shall be maintained and adjusted as permitted by the provisions of Treasury Regulation section 1.704-1(b)(2)(iv)(f) and as required by the other provisions of Treasury Regulation sections 1.704-1(b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the Members and Holders of depreciation, depletion, amortization, and gain or loss as computed for book purposes rather than the allocation of the corresponding items as computed for tax purposes, as required by Treasury Regulation section 1.704-1(b)(2)(iv)(g). A Member that has more than one Membership Interest shall have a single capital account that reflects all its Membership Interests, regardless of the class of Membership interests owned by that Member and regardless of the time or manner in which those Membership Interests were acquired and a Holder of Financial Rights shall have a single capital account that reflects all its Financial Rights, regardless of the time or manner in which those Financial Rights were acquired. On the transfer of all or part of a Membership Interest or less than all of a Holder's Financial Rights, the capital account of the transferor that is attributable to the transferred membership Interest or Financial Rights or part thereof shall carry over to the transferee Member or Holder in accordance with the provisions of Treasury Regulation section 1.704-1(b)(2)(iv)(l).

4.05 Qualified Income Offset Allocations. No Member or Holder of Financial Rights shall have any obligation, upon dissolution or at any other time, to repay a deficit in the capital account maintained pursuant to Section 4.04. In the event a Member or Holder of Financial Rights unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulation section 1.704-1(b)(2)(ii)(d)(4), (5), or (6) that reduces the capital account of the Member or Holder of Financial Rights below zero or increases the deficit balance in the capital account, gross income and gain shall be allocated to such Member's or Holder's capital account in an amount and manner sufficient to eliminate such negative balance in the Member's capital account as quickly as possible in accordance with Treasury Regulation section 1.704-1(b)(2)(ii)(d). Any qualified income offset allocation pursuant to



this Section 4.05 shall be made to the capital account of each Member or Holder of Financial Right having a negative balance in the proportion the negative balance of the Member's or Holder's account bears to the total negative balances of all the capital accounts.

## ARTICLE V ALLOCATIONS AND DISTRIBUTIONS

### 5.01 Allocations.

(a) Except as may be required by Code Sect. 704(c) and Treasury Regulation sections 1.704-1(b)(2)(iv)(f)(4) and 1.704-3, all items of income, deduction, gain, loss, and credit of the Company shall be allocated among the Members and Holders of Financial Rights in accordance with their applicable Sharing Ratios.

(b) All items of income, deduction, gain, loss, and credit allocable to any Membership Interest or Financial Rights that may have been transferred shall be allocated between the transferor and the transferee based on the portion of the calendar year during which each was recognized as owning the Membership Interest or Financial Rights, without regard to the results of Company operations during any particular portion of that calendar year and without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; provided, however, that this allocation must be made in accordance with a method permissible under Code Sec. 706 and the regulations thereunder.

(c) If there is a net decrease in Company Minimum Gain for a taxable year, each Member and Holder of Financial Rights must be allocated items of income and gain for that taxable year equal to that Member's or Holder's share of the net decrease in Company Minimum Gain. A Member's or Holder's share of the net decrease in Minimum Gain is the amount of the total net decrease multiplied by the Member's or Holder's percentage share of the Company Minimum Gain at the end of the immediately preceding taxable year. A Member's or Holder's share of any decrease in Company Minimum Gain resulting from a revaluation of Company property equals the increase in the Member's or Holder's capital account attributable to the revaluation to the extent the reduction in minimum gain is caused by the revaluation. A Member or Holder of Financial Rights is not subject to the Minimum Gain chargeback requirement to the extent the Member's or Holder's share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a Recourse Liability or Member or Holder Nonrecourse



Liability and the Member or Holder bears the economic risk of loss (as defined in Treasury Regulation section 1.704-2(i) for the newly guaranteed, refinanced, or otherwise changed liability. The rule in this paragraph (c) is intended to implement the requirements of Treasury Regulation section 1.704-2 and shall be interpreted to carry out that intention.

(d) If there is a net decrease in Member Minimum Gain for a taxable year, any Member with a share of the Member Minimum Gain must be allocated items of income and gain for that taxable year equal to that Member's share of the net decrease in Member Minimum Gain. A Member's share of the net decrease in Minimum Gain is the amount of the total net decrease multiplied by the Member's percentage share of the Member Minimum Gain at the end of the immediately preceding taxable year. A Member is not subject to the Member Minimum Gain chargeback requirement to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be a Member Nonrecourse Liability due to a conversion, refinancing, or other change in the debt instrument causing it to become partially or wholly a Company Nonrecourse Liability, in which event the amount that would otherwise have been subject to the Member Minimum Gain chargeback shall be added to the Member's share of Company Minimum Gain under paragraph (c) of this Section.

The rule in this paragraph (d) is intended to implement the requirements of Treasury Regulation section 1.704-1 and shall be interpreted to carry out that intention.

(e) If a Member's contribution of property to the Company is credited on the books of the Company at a fair market value that differs from its federal income tax basis, then the following rules apply. To the extent of the built-in gain or loss (as defined in Treasury Regulation section 1.704-3(a)(3)(ii) at the time of sale or exchange of the property, any gain or loss recognized on the sale or exchange shall be allocated to the contributing Member. For federal income tax purposes, the amount of depreciation or other cost recovery allocated to each Member who did not contribute the property shall be the amount of depreciation or other cost recovery that such Member would have been allocated if the property's federal income tax basis had been equal to its fair market value if the amount of depreciation or other cost recovery required to be allocated to the Members who did not contribute the property under the preceding sentence exceeds the amount of depreciation or other cost recovery allowable with respect to the property for federal income tax purposes, then some other item of income shall be allocated to the contributing Member and the allocation of that item of income to the other Members shall be correspondingly reduced. The amount of income so allocated shall equal the difference between the depreciation or other cost recovery based on the fair market value of the property and the federal income tax depreciation allowable with respect to the property. The item of

income so allocated must have the same effect on the federal income tax liability of the Members that the depreciation or other cost recovery would have had. This section is intended to implement the requirements of section 704(c) and Treasury Regulation section 1.704-3 and to adopt the traditional method with curative allocations and shall be interpreted to carry out that intention.

#### 5.02 Distributions.

(a) From time to time (but at least once each calendar quarter) the Managers shall determine in their reasonable judgment to what extent (if any) the Company's cash on hand exceeds its current and anticipated needs, including, without limitation, for operating expenses, debt service, acquisitions, and a reasonable contingency reserve. If there is an excess, the Managers may/shall cause the Company to distribute to the Members, in accordance with the applicable Sharing Ratios, an amount in cash equal to that excess. No Member shall be entitled to receive distributions except as provided in this Section and no Member shall have priority over any other Member or Holder in receiving distributions.

(b) From time to time the Managers also may cause the Company to distribute property other than cash to the Members, which distribution must be made in accordance with the applicable Sharing Ratios and may be made subject to liabilities and obligations to which the distributed property is subject. Immediately prior to such a distribution, the capital accounts of the Members shall be adjusted as provided in Treasury Regulation section 1.704-1(b)(2)(iv)(f).

### ARTICLE VI MANAGERS

6.01 Management by Managers. (a) Except for situations in which the approval of the Members is required by this operating agreement or by nonwaivable provisions of applicable law, and subject to the provisions of Section 6.02, (i) the powers of the Company shall be exercised by or under the authority of the Managers, (ii) the business and affairs of the Company shall be managed by the Managers, and (iii) the Managers may make all decisions and take all actions for the Company not otherwise provided for in this operating agreement, including, without limitation, the following:

(i) entering into, making, and performing contracts, agreements, and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of

the purposes of the Company and making all decisions and waivers thereunder,

(ii) opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements,

(iii) maintaining the assets of the Company in good order,

(iv) collecting sums due the Company.

(v) to the extent that funds of the Company are available therefor, paying debts and obligations of the Company.

(vi) acquiring, utilizing for Company purposes, and Disposing of any asset of the Company.

(vii) borrowing money or otherwise committing the credit of the Company for Company activities and voluntary prepayments or extensions of debt.

(viii) selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants.

(ix) obtaining insurance for the Company.

(x) determining distributions of Company cash and other property as provided in Section 5.02;

(xi) establishing a seal for the Company; and

(b) Notwithstanding the provisions of Section 6.01(a), the Managers have a duty to protect the interests of the Members who are not Managers and the Holders of Financial Rights and may not cause the Company to do any of the following without complying with the applicable requirements set forth below:

(i) sell, lease, exchange or otherwise dispose of (other than by way of a pledge, mortgage, deed of trust or trust indenture) all or substantially all the Company's property and assets (with or without good will), other than in the usual and regular course of the Company's business, without complying with the applicable procedures set forth in the Act and the ABCA, including, without limitation, the requirement in section 10-2A-161 of the Code of Alabama (1987)



regarding approval by the Members (unless such provision is rendered inapplicable by another provision of applicable law);

(ii) be a party to (i) a member, or (ii) an exchange or acquisition of the type described in article 5 of the ABCA, without complying with the applicable procedures set forth in the Act and the ABCA, including, without limitation, the requirement in section 10-2A-142 of the Code of Alabama (1975) regarding approval by the Members (unless such provision is rendered inapplicable by another provision of applicable law); and

(iii) amend or restate the Articles, without complying with the applicable procedures set forth in the Act and the ABCA, including, without limitation, the requirement in section 10-2A-111 of the Alabama Code (1987) regarding approval by the Members (unless such provision is rendered inapplicable by another provision of applicable law); and

(iv) amend or restate this Operating Agreement.

#### 6.02 Actions by Managers; Committees; Delegation of Authority and Duties.

(a) In managing the business and affairs of the Company and exercising its powers, the Managers shall act (i) collectively through meetings and written consents pursuant to Sections 6.05 and 6.07; (ii) through committees pursuant to Section 6.02(b); and (iii) through Managers to whom authority and duties have been delegated pursuant to Section 6.02(c).

(b) The Managers may, from time to time, designate one or more committees, each of which shall include two or more Managers. Any such committee, to the extent provided in such resolution or in the Articles or this operating agreement, shall have and may exercise all of the authority of the Managers, subject to the limitations set forth in the Act and the ABCA. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum, and the affirmative vote of the majority of the members present shall be necessary for the adoption of any resolution. The Managers may dissolve any committee at any time, unless otherwise provided in the Articles or this operating agreement.

(c) The Managers may, from time to time, delegate to one or more Managers such authority and duties as the Managers may deem advisable. In addition, the Managers shall assign titles (including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer) to any such Managers. Unless the Managers decide otherwise, if the

title is one commonly used for officers of a business corporation formed under the ABCA, the assignment of such title shall constitute the delegation to such Manager of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made pursuant to the first sentence of this Section. Any number of titles may be held by the same Manager. Any delegation pursuant to this Section may be revoked at any time by the Managers.

(d) Any Person dealing with the Company, other than a Member, may rely on the authority of any Manager or officer in taking any action in the name of the Company without inquiry into the provisions of this operating agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provisions of this operating agreement, unless the person dealing with the company knows that the Manager or officer does not have the authority.

6.03 Number and Term of Office. The number and term of office of the Managers of the Company shall be determined from time to time by resolution of the Members. If the Managers make no such determination, the number of Managers shall be the number set forth in the Articles as the number of Managers constituting the initial Managers and the term of office shall be one year. Each Manager shall hold office for the term for which it is elected and thereafter until its successor has been elected and qualified, or until his earlier death, resignation or removal. Unless otherwise provided in the Articles, Managers need not be Members or residents of the State of Alabama.

6.04 Vacancies; Removal; Resignation. Any Manager position to be filled by reason of an increase in the number of Managers may be filled by election at an annual or special meeting of Members called for that purpose. Any vacancy occurring in the Managers other than by reason of an increase in the number of Managers may be filled by election at an annual or special meeting of the Members called for that purpose. A Manager elected to fill a vacancy occurring other than by reason of an increase in the number of Managers shall be elected for the unexpired term of his predecessor in office. At any meeting of Members at which a quorum of Members is present called expressly for that purpose, or pursuant to a written consent adopted pursuant to this operating agreement, any Manager may be removed, with or without cause, by a majority of the Membership interests. Any Manager may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the remaining Managers. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.



## 6.05 Meetings.

(a) Unless otherwise required by law or provided in the Articles or this operating agreement, a majority of the total number of Managers fixed by, or in the manner provided in, the Articles of this operating agreement shall constitute a quorum for the transaction of business of the Managers, and the act of a majority of the Managers present at a meeting at which a quorum is present shall be the act of the Managers. A Manager who is present at a meeting of the Managers at which action on any Company matter is taken shall be presumed to have assented to the action unless his dissent is entered in the minutes of the meeting or unless it files a written dissent to such action with the Person acting as secretary of the meeting before the meeting is adjourned or delivers such dissent to the Company immediately after the adjournment of the meeting. No Manager who voted in favor of such action shall have a right of dissent.

(b) Meetings of the Managers may be held at such place or places as shall be determined from time to time by resolution of the Managers. At all meetings of the Managers, business shall be transacted in such order as shall from time to time be determined by resolution of the Managers. Attendance of a Member at a meeting shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(c) In connection with any annual meeting of Members at which Managers were elected, the Managers may, if a quorum is present, hold its first meeting for the transaction of business immediately after and at the same place as such annual meeting of the Members. Notice of such meeting at such time and place shall not be required.

(d) Regular meetings of the Managers shall be held at such times and places as shall be designated from time to time by resolution of the Managers. Notice of such regular meetings shall not be required.

(e) Special meetings of the Managers may be called by any Manager on at least twenty-four hours notice to each other Manager. Such notice need not state the purpose or purposes of, nor the business to be transacted at, such meeting, except as may otherwise be required by law or provided for by the Articles or this operating agreement.

6.06 Approval or Ratification of Acts or Contracts by Members. The Managers in their discretion may submit any act or contract for approval or ratification at any annual meeting of the



Members, or any special meeting of the Members called for the purpose of considering any such act or contract, and any act or contract that is approved or ratified by a majority of the Membership Interests shall be as valid and as binding upon the Company and upon all the Members as if it had been approved or ratified by every Member of the Company.

6.07 Action by Written Consent or Telephone Conference. Any action permitted or required by the Act, the ABCA, the Articles or this operating agreement to be taken at a meeting of the Managers or any committee designed by the Managers may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by all the Managers or members of such committee, as the case may be. Such consent shall have the same force and effect as a unanimous vote at a meeting and may be stated as such in any document or instrument filed with the Secretary of State of Alabama, and the execution of such consent shall constitute attendance or presence in person at a meeting of the Managers or any such committee, as the case may be. Subject to the requirements of the Act, the ABCA, the Articles or this operating agreement for notice of meetings, unless otherwise restricted by the Articles, Managers, or members of any committee designated by the Managers, may participate in and hold a meeting of the Managers or any committee of Managers, as the case may be, by means of a conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in such meeting shall constitute attendance and presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

6.08 Compensation. The Manager shall receive such compensation, if any, for their services as may be designated from time to time by the Members acting at a meeting in accordance with Section 7.01. In addition, the Managers shall be entitled to be reimbursed for out-of-pocket costs and expenses incurred in the course of their service hereunder, including the portion of their overhead reasonably allocable to Company activities.

6.09 Conflicts of Interest. Subject to the other express provisions of this operating agreement, each Manager, Member, and officer of the Company at any time and from time to time may engage in and possess interests in other business ventures of any and every type and description, independently or with others, including ones in competition with the Company, with no obligation to offer to the Company or any other Member, Manager, or officer the right to participate therein. The Company may transact business with any Manager, Member, office or Affiliate thereof, provided the

terms of those transactions are no less favorable than those the Company could obtain from unrelated third parties.

#### 6.10 Officers.

(a) The Managers may, from time to time, designate one or more Persons who are not Managers to be officers of the Company. No officer need be a resident of the State of Alabama or a Member. Any officers so designated shall have such authority and perform such duties as the Managers may, from time to time, delegate to them. The Managers may assign titles to particular officers. Unless the Managers decide otherwise, if the title is one commonly used for officers of a business corporation formed under the ABCA, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to (i) any specific delegation of authority and duties made to such officer by the Managers pursuant to the third sentence of this Section, or (ii) any delegation of authority and duties made to one or more Managers pursuant to Section 6.02(a). Each officer shall hold office until the successor in the office has been designated or until the death or resignation or has been removed in the manner hereinafter provided. Any number of offices may be held by the same Person. The salaries or other compensation, if any, of the officers of the Company appointed pursuant to this Section shall be fixed from time to time by the Managers.

(b) Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Managers. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any officer may be removed as such, either with or without cause, by the Managers whenever in their judgment the best interests of the Company will be served thereby; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the Person so removed. Designation of an officer shall not of itself create contract rights. Any vacancy occurring in any office of the Company (other than Manager) may be filled by the Managers.

### ARTICLE VII MEETINGS OF MEMBERS

#### 7.01 Meetings.

(a) A quorum shall be present at a meeting of Members if the holders of 66 percent of the Membership Interests are represented at the meeting in person or by proxy. With respect to any matter,



other than a matter for which the affirmative vote of the holders of a specified portion of all the Membership Interests entitled to vote is required by the Act, the affirmative vote of a majority of the Membership Interests represented in person or by proxy at a meeting of Members at which a quorum is present shall be the act of the Members.

(b) All meetings of the Members shall be held at the principal place of business of the Company or at such other place within or without the State of Alabama as shall be specified or fixed in the notices or waivers of notice thereof; provided that any or all Members may participate in any such meeting by means of conference telephone or similar communications equipment pursuant to Section 7.05.

(c) Notwithstanding the other provisions of the Articles or this operating agreement, the chairman of the meeting or a majority of the Membership Interests in attendance may adjourn such meeting from time to time, without any notice other than announcement at the meeting of the time and place of the holding of the adjourned meeting. If such meeting is adjourned by the Members, such time and place shall be determined by a vote of the majority of the Membership Interests in attendance. Upon the resumption of such adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally called.

(d) An annual meeting of the Members, for the election of the Managers and for the transaction of such other business as may properly come before the meeting, shall be held at such place, within or without the State of Alabama, on such date and at such time as the Managers shall fix and set forth in the notice of the meeting, which date shall be within thirteen months after the date of organization of the Company or the last annual meeting of Members, whichever most recently occurred.

(e) Special meetings of the Members for any proper purpose or purposes may be called at any time by the members or the owners of at least ten percent of the Membership Interests of all members.

If not otherwise stated in or fixed in accordance with the remaining provisions hereof, the record date for determining Members entitled to call a special meeting is the date any Member first signs the notice of that meeting. Only business within the purpose or purposes described in the notice (or waiver thereof) required by this operating agreement may be conducted at a special meeting of the Members.

(f) Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the



date of the meeting, either personally or by mail, by or at the direction of the Managers or Person calling the meeting, to each Member entitled to vote at such meeting. If mailed any such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at the address provided for in Section 13.02, with postage thereon prepaid.

(g) The date on which notice of a meeting of Members is mailed or the date on which the resolution of the Managers declaring a distribution is adopted, as the case may be, shall be the record date for the determination of the Members entitled to notice of or to vote at such meeting, including any adjournment thereof, or the Members entitled to receive such distribution.

(h) The right of Members to cumulative voting in the election of Managers is expressly prohibited.

7.02 Voting List. The Managers shall make, at least ten days before each meeting of Members, a complete list of the Members entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the Membership interests held by each, which list, for a period of ten days prior to such meeting, shall be kept on file at the registered office or principal place of business of the Company and shall be subject to inspection by any Member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Member during the whole time of the meeting. The original membership records shall be prima facie evidence as to who are the Members entitled to examine such list or transfer records or to vote at any meeting of Members. Failure to comply with the requirements of this Section shall not affect the validity of any action taken at the meeting.

7.03 Proxies. A Member may vote either in person or by proxy executed in writing by the Member. A telegram, telex, cablegram or similar transmission by the Member, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the Member shall be treated as an execution in writing for purposes of this Section. Proxies for use at any meeting of Members or in connection with the taking of any action by written consent shall be filed with the Managers, before or at the time of the meeting or execution of the written consent, as the case may be. All proxies shall be received and taken charge of and all ballots shall be received and canvassed by the Managers, who shall decide all questions touching upon the qualification of voters, the validity of the proxies, and the acceptance or rejection of votes, unless an inspector or inspectors has been appointed by the chairman of the meeting, in which event such inspector or inspectors shall decide all such questions. No proxy shall be valid after eleven months

from the date of its execution unless otherwise provided in the proxy. A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest. If a proxy designates two or more Persons to act as proxies, unless that instrument provides to the contrary, a majority of such persons present at any meeting at which their powers thereunder are to be exercised shall have and may exercise all the powers of voting or giving consents thereby conferred, or if only one be present, then such powers may be exercised by that one; or, if an even number of such Persons attends and there is no majority in agreement on a particular issue, the proxy may not be exercised with respect to such issue.

7.04 Conduct of Meetings. All meetings of the Members shall be presided over by the chairman of the meeting, who shall be a Manager (or representative thereof) designated by a majority of the Managers. The chairman of any meeting of Members shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him in order.

7.05 Action by Written Consent or Telephone Conference.

(a) Any action required or permitted to be taken at any annual or special meeting of Members may be taken without a meeting, without prior notice, and without a vote, if written consents setting forth the action so taken are signed by Members owning Membership interests sufficient to take such action at a meeting at which the holders of all Membership Interests entitled to vote on the action were present and voted. Every written consent shall bear the date of signature of each Member who signs the consent. No written consent shall be effective to take the action that is the subject to the consent under this paragraph unless it is delivered within sixty days after the date of the earliest dated consent delivered to the Company. Delivery shall be by hand or certified or registered mail, return receipt requested.

Delivery to the Company's principal place of business shall be addressed to the Managers. A telegram, telex, cablegram, or similar transmission by a Member, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a Member, shall be regarded as signed by the Member for purposes of this Section. Prompt notice of the taking of any action by Members without a meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action.

(b) The record date for determining Members entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company by



delivery to its registered office, its principal place of business, or the Managers. Delivery shall be by hand or by certified or registered mail, return receipt requested. Delivery to the Company's principal place of business shall be addressed to the Managers.

(c) Members may participate in and hold a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such meeting shall constitute attendance and presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

## ARTICLE VIII INDEMNIFICATION

8.01 Right to Indemnification. Subject to the limitations and conditions as provided in this Article VIII, each Person who was or is made a party or is threatened to be make a party to any Proceeding by reason of the fact that the Person is or was a Manager of the Company shall be indemnified by the Company to the fullest extent permitted by the Act, as it exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said law permitted the Company to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements, and reasonable expenses (including without limitation, attorneys' fees) actually incurred by such Person in connection with such Proceeding. and indemnification under this Article VIII shall continue as to a Person who has ceased to serve in the capacity which initially entitled such Person to indemnity hereunder. The rights granted pursuant to this Article VIII shall be deemed contract rights, and no amendment, modification, or repeal of this Article VIII shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification, or repeal.

8.02 Advance Payment. The right to indemnification conferred in this Article VIII shall include the right of a Person described in Section 8.01 to be paid or reimbursed by the Company the reasonable expenses incurred before the final disposition of the Proceeding and without any determination as to the Person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such Person before the final disposition of a Proceeding, shall be made only upon delivery



to the Company of a written affirmation that the Manager in good faith believes that the standard of conduct necessary for indemnification under this Article has been met and a written undertaking, by or on behalf of such Person, to repay all amounts so advanced if it is ultimately determined that such indemnified Person is not entitled to be indemnified under this Article or otherwise.

8.03 Indemnification of Officers, Employees, and Agents. The Company, by adoption of a resolution of the Managers, may indemnify and advance expenses to an officer, employee, or agent of the Company to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Managers under this Article.

8.04 Appearance as a Witness. Notwithstanding any other provision of this Article, the Company may pay or reimburse expenses incurred by the Manager in connection with the Manager's appearance as a witness or other participation in a Proceeding at a time when the Manager is not a named defendant or respondent in the Proceeding.

8.05 Nonexclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred in this Article shall not be exclusive of any other right which a Manager or other Person indemnified pursuant to Section 8.03 may have or hereafter acquire under any law (common or statutory), provision of the Articles or this operating agreement, agreement, vote of Members or disinterested Managers or otherwise.

8.06 Insurance. The Company may purchase and maintain insurance, at its expense, to protect itself and any Person who is or was serving as a Manager, officer, employee, or agent of the Company whether or not the Company would have the power to indemnify such Person against such expense, liability, or loss under this Article.

8.07 Member Notification. To the extent required by law, any indemnification of or advance of expenses to a Manager in accordance with this Article VIII shall be reported in writing to the Members with or before the notice or waiver of notice of the next Members' meeting or with or before the next submission to Members of a consent to action without a meeting and, in any case, within the twelve-month period immediately following the date of the indemnification or advance.

8.08 Savings Clause. If this Article or any portion hereof is invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Manager or any other Person indemnified pursuant

to this Article for costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Article VIII that has not been invalidated and to the fullest extent permitted by applicable law.

## ARTICLE IX TAXES

9.01 Tax Returns. The Managers shall cause to be prepared and filed all necessary federal and state income tax returns for the Company, including making the elections described in Section 9.02. Each Member shall furnish to the Managers 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.

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

- (1) to adopt the **calendar year** as the Company's fiscal year;
- (2) to adopt the **cash method** of accounting;
- (3) if a distribution of Company property as described in Code Section 734 occurs or is a transfer of a Membership Interest as described in Code Section 743 occurs, on written request of any Member, to elect to adjust the basis of Company properties pursuant to Code Section 754;
- (4) to elect to amortize the organizational expenses of the Company as permitted by Code Section 709(b) and the startup expenditures of the Company as permitted by Code Section 195 ratably over a period of sixty months, and
- (5) any other election the Managers may deem appropriate and in the best interests of the Members.

Neither the Company nor any Manager or Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of the chapter 1 of subtitle A of the Code or any similar provisions of applicable state law, and no provision of the operating agreement (including, without limitation, Section 2.08) shall be construed to sanction or approve such an election.



9.03 Tax Matters Partner. If required under subchapter C of chapter 63 of the Code (sections 6221-6233), a majority of the Managers that are Members shall designate one Manager that is a Member to be the "tax matters partner" of the Company pursuant to Code Section 6231(a)(7); or, if there is no Manager that is a Member, the tax matters partner shall be a Member that is designated majority of the Membership interests. Any Member that is designated tax matters partner shall take any actions necessary to cause each other Member to become a notice partner within the meaning of Code Section 6223. Any Member that is designated tax matters partner shall inform each other Member of all significant matters that may come to its attention in its capacity as tax matters partner by giving notice thereof on or before the fifth business day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity. Any Member that is designated tax matters partner may not take any action contemplated by Code Sections 6222 through 6232 without the consent of the Members, but this sentence does not authorize such Manager (or any other Manager) to take any action left to the determination of an individual Member under Code Sections 6222 through 6232.

#### ARTICLE X BOOKS, RECORDS, REPORTS, AND BANK ACCOUNTS

10.01 Maintenance of Books. The Company shall keep books and records of accounts and shall keep minutes of the proceedings of its Members, its Managers, and each committee of the Managers. The books of account for the Company shall be maintained on a cash basis in accordance with the terms of this operating agreement, except that the capital accounts of the Members and Holders of Financial Rights shall be maintained in accordance with Section 4.04. The calendar year shall be the accounting year of the Company.

10.02 Reports. On or before the 120th day following the end of each fiscal year during the term of the Company, the Managers shall furnish each Member with a balance sheet, an income statement, and a statement of changes in the members' capital of the Company for, or as of the end of, that year certified by a firm of certified public accountants. These financial statements must be prepared in accordance with accounting principles generally employed for **cash-basis** records consistently applied (except as therein noted) and must be accompanied by a report of the certified public accountants certifying the statements and stating that (a) their examination was made in accordance with generally accepted auditing standards and, in their opinion, the financial statements fairly present the financial position, financial results of operations, and changes in Members' capital in accordance with



accounting principles generally employed for cash-basis records consistently applied (except as therein noted) and (b) in making the examination and reporting on the financial statements described above, nothing came to their attention that caused them to believe that (i) the income and revenues were not paid or credited in accordance with the financial and accounting provisions of this operating agreement, (ii) the costs and expenses were not charged in accordance with the financial and accounting provisions of this operating agreement, or (iii) the Managers or any Member failed to comply in any material respect with the financial and accounting principles of this operating agreement, or if they do conclude that the Managers or a Member so failed, specifying the nature and period of existence of the failure. The Managers also may cause to be prepared or delivered such other reports as they may deem appropriate. The Company shall bear the costs of all these reports.

10.03Accounts. Managers shall establish and maintain one or more separate bank and investment accounts and arrangements for Company funds in the Company name with financial institutions and firms that the Managers determine. The Managers may not commingle the Company's funds with the funds of any Member; however, Company funds may be invested in the same manner as the Managers; investment of their own funds.

## ARTICLE XI WITHDRAWAL OF MEMBERS

### 11.01Withdrawal of Members.

(a) A Member may withdraw at any time unless the withdrawal will cause the termination of the Company within the meaning of Code Section 708. A member shall notify the Managers of its intention to withdraw not less than 180 days prior to the date the Member desires its withdrawal to become effective. The withdrawing Member shall be entitled to receive any distributions to which is entitled at the time of the withdrawal. The withdrawing Member shall be entitled to receive the fair market value of its Membership Interest. This section shall also apply to a person who becomes a holder of a financial interest pursuant to Section 3.03(b).

(b) The fair market value shall be determined by agreement by the withdrawing Member or Holder and the Managers. If they do not agree on the fair market value on or before the 90th day following the notice of intention to withdraw, either the Member or the Holder or the Managers, by notice to the other, may require the determination of fair market value to be made by an independent appraiser specified in that notice. The withdrawing Member or

Holder and the Company each shall pay one-half of the costs of the appraisal.

(c) If the withdrawal of the Member or Holder of Financial Rights causes the Company to sustain damages, the Company may offset the amount of any such damages against the fair market value of the Member's Membership Interest or the Holder's Financial Rights in determining the amount to be paid to the withdrawing Member or Holder.

(d) The Company shall pay the fair market value, reduced by the amount described in Section 11.01(c) if applicable, in a lump sum or in installments as the Member or Holder and the Company may agree. If the Member or Holder and the Company do not agree, then the purchase price of the Membership Interest or Financial Rights shall be paid in four equal cash installments, the first due on the effective date of the withdrawal and the remaining installments (together with accumulated interest on the amount unpaid at the General Interest Rate) due on each of the first three anniversaries thereof. The payment to be made to the withdrawing Member or Holder pursuant to this Section 11.01 shall constitute the complete liquidation and satisfaction of all the rights and interest of the Member or Holder (and of all Persons claiming by, through, or under the Member or Holder) in and in respect of the Company, including, without limitation, any rights in specific Company property, and any rights against the Company and (insofar as the affairs of the Company are concerned) against the Managers or Members.

## ARTICLE XII DISSOLUTION, LIQUIDATION, AND TERMINATION

12.01 Dissolution. The Company shall dissolve and its affairs shall be wound up on the first to occur of the following:

(a) the written consent of a majority of the Membership Interests;

(b) any Member dies, withdraws, becomes a Bankrupt Member, or dissolves, or any other event occurs that terminates the continued membership in the Company of any Member provided, however, that if an event described in this Section 12.01(b) occurs and there are at least two other Members remaining (or another Member is admitted), the Company shall not be dissolved, and the business of the Company shall be continued, if all Members so agree, or

(c) entry of a decree of judicial dissolution of the Company under article 6.02 of the Act.

12.02 Articles of Dissolution. When the Company is dissolved pursuant to Section 12.01, the Managers (or such other Person or Persons as the Act may require or permit) shall file Articles of Dissolution with the office of the probate judge of the county where the Articles were filed, cancel any other filings made pursuant to Section 2.05, and take such other actions as may be necessary to terminate the Company.

12.03 Liquidation and Termination. On dissolution of the Company, the Managers shall act as liquidator or may appoint one or more Members as 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. 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 Managers. 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 a firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable.

(b) The liquidator shall cause a notice to be mailed to each known creditor of and claimant against the Company in accordance with section 10-12-43 of the Code of Alabama (Supp.1993).

(c) The liquidator shall cause a notice to be published for the benefit of any unknown claimants against the Company in accordance with section 10-12-44.

(d) The liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation and any advances described in Section 4.05) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine).

(e) All remaining assets of the Company shall be distributed to the Members and Holders as follows:

(i) The liquidator may sell any or all Company property, which may include sales to Members or Holders



of Financial Rights, and any resulting gain or loss from each sale shall be computed and allocated to the capital accounts of the Members and Holders.

(ii) With respect to all Company property that has not been sold, the fair market value of that property shall be determined and the capital accounts of the Members and Holders of Financial Rights shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the capital accounts previously would be allocated among the capital accounts if there were a taxable disposition of that property for the fair market value of that property on the date of distribution.

(iii) Company property shall be distributed among the Members and Holders of Financial Rights in accordance with their positive capital account balances, as determined after taking into account all capital account adjustments for the taxable year of the Company during which the liquidation of the Company occurs (other than those made by reason of this clause); and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, ninety days after the date of the liquidation).

All distributions in kind to the Members and Holders shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 12.02. To the extent that a Member or Holder returns funds to the Company, it has no claim against any other Member or Holder for those funds.

#### ARTICLE XIII GENERAL PROVISIONS

13.01 Offset. Whenever the Company is to pay any sum to any Member or Holder of Financial Rights, any amounts that the Member or Holder owes the Company may be deducted from that sum before payment.

13.02 Notices. Except as expressly set forth to the contrary in this operating agreement, all notices, requests, or consents provided for or permitted to be given under this operating

agreement must be in writing and must be given either by depositing that writing in the United States mail, addressed to the recipient, postage paid, and registered or certified with return receipt requested or by delivering that writing to the recipient in person, by courier, or by facsimile transmission; and a notice, request, or consent given under this operating agreement is effective on receipt by the Person to receive it. All notices, requests, and consents to be sent to a Member or Holder must be sent to or made at the addresses given for that Member or Holder on Exhibit A or in the instrument described in Section 3.03(c) or 3.04, or such other address as that Member or Holder may specify by notice to the other Members. Any notice, request, or consent to the Company or the Managers must be given to the Managers at the following address: 913 12th Avenue, Pleasant Grove, AL 35127. Whenever any notice is required to be given by law, the Articles or this operating agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

13.03 Entire Agreement; Supersedure. This operating agreement constitutes the entire agreement of the Members and Holders relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

13.04 Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

13.05 Amendment or Modification. This operating agreement may be amended or modified from time to time only by a written instrument adopted by the Managers and executed and agreed to by a majority of the Membership Interests; provided, however, that (a) an amendment or modification reducing a Member's Sharing Ratio or increasing its Capital Contribution (other than to reflect changes otherwise provided by this operating agreement) is effective only with that Member's consent, (b) an amendment or modification reducing the required Membership Interests for any consent or vote in this operating agreement is effective only with the consent or vote of members having the Membership Interests theretofore required, and (c) amendments of the type described in Section 3.04 may be adopted as therein provided.



13.06 Binding Effect. Subject to the restrictions on Dispositions set forth in this operating agreement, this operating agreement is binding on and inures to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns.

13.07 Governing Law; Severability. This operating agreement is governed by and shall be interpreted in accordance with the law of Alabama, excluding any conflict of laws rule or principle that might refer to the laws of another jurisdiction to interpret this agreement. In the event of a direct conflict between the provisions of this operating agreement and (a) any provision of the Articles, or (b) any mandatory provision of the Act or (to the extent such statutes are incorporated into the Act) the ABCA, the application provision of the Articles, the Act, or the ABCA shall control. If any provision of this operating agreement or its application to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this operating agreement and its application to other Persons or circumstances shall not be affected and that provision shall be enforced to the greatest extent permitted by law.

13.08 Further Assurances. In connection with this operating 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 operating agreement and those transactions.

13.09 Waiver of Certain Rights. Each Member and Holder of Financial Rights irrevocably waives any right it may have to maintain any action for dissolution of the Company or for partition of the property of the Company.

13.10 Indemnification. To the fullest extent permitted by law, each Member and Holder of Financial Rights shall indemnify the Company, each Manager and each other Member and hold them harmless from and against all losses, costs, liabilities, damages, and expenses (including, without limitation, costs of suit and attorney's fees) they may incur on account of any breach by that Member or Holder of this operating agreement.

13.11 Notice to Members of Provisions of this Agreement. By executing this operating agreement, each Member acknowledges that it has actual notice of (a) all of the provisions of this Agreement, including, without limitation, the restrictions on the transfer of Membership Interests set forth in Article III, and (b) all of the provisions of the Articles, including, without limitation, the fact that the Articles provide that no Member shall

have the preemptive right to acquire any Membership Interests or securities of any class that may at any time be issued, sold or offered for sale by the Company. Each Member hereby agrees that this operating agreement constitutes adequate notice of all such provisions and each Member hereby waives any requirement that any further notice thereunder be given.

13.12 Counterparts. This operating agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

IN WITNESS WHEREOF, the Members have executed this operating agreement as of the date first set forth above.

MEMBERS:

By: Donald Wayne Myrick  
Donald Wayne Myrick

DATE OF EXECUTION: April 30, 1996

By: Michael Scott Guposky  
Michael Scott Guposky

DATE OF EXECUTION: April 30, 1996

By: Aubrey Clinton Folsom Jr  
Aubrey Clinton Folsom Jr

DATE OF EXECUTION: April 30, 1996

By: Paul Howard  
Paul Howard

DATE OF EXECUTION: April 30, 1996



Inst # 1996-17198

05/28/1996-17198  
03:26 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
036 SNA 80.00