


STATE OF ALABAMA )  
COUNTY OF SHELBY )

  
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**ARTICLES OF ORGANIZATION**  
**OF**  
**THREE NOTCH WHITETAIL FARMS, LLC**

The undersigned, for the purpose of forming a limited liability company under Title 10, Chapter 12 of the Code of Alabama (1975), as amended (the “Alabama Limited Liability Company Act”), hereby file the following Articles of Organization with the probate judge of the county in which the initial registered agent of the limited liability company will be located and affirm that the facts stated in these Articles of Organization are true and correct:

ARTICLE I

The name of the limited liability company is THREE NOTCH WHITETAIL FARMS, LLC (hereinafter referred to as the “Company”).

ARTICLE II

The period of duration of the Company shall be from the date of filing of these Articles of Organization with the Office of the Probate Judge for Shelby County, Alabama until the first to occur of the following:

- (a) Dissolution of the Company pursuant to the laws of the State of Alabama or the Operating Agreement of the Company, as in effect from time to time; or
- (b) Upon the written unanimous consent of all the members of the Company.

ARTICLE III

The purpose for which the Company is organized is to engage in the transaction of any or all lawful business for which limited liability companies may be organized under the laws of the State of Alabama.



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ARTICLE IV

The location and mailing address of the initial registered office of the Company shall be 130 Inverness Parkway, Suite 140, Birmingham, Alabama 35242. The initial registered agent for service of process at the foregoing address shall be R. Scott Parker.

ARTICLE V

The name and mailing address of the initial member of the Company is as follows:

<u>NAME</u>	<u>MAILING ADDRESS</u>
R. Scott Parker	130 Inverness Parkway, Suite 140 Birmingham, Alabama 35242
Valerie S. Anderson	130 Inverness Parkway, Suite 140 Birmingham, Alabama 35242

ARTICLE VI

The name and mailing address of the Organizer of the Company is R. Scott Parker, 130 Inverness Parkway, Suite 140, Birmingham, Alabama 35242.

ARTICLE VII

The members of the Company shall have the right to admit additional members to the Company pursuant to the terms and provisions of the Operating Agreement of the Company.

ARTICLE VIII

The members of the Company shall have the right to continue the business of the Company upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of a member or the occurrence of any other event which terminates the continued membership of a member of the Company if there is at least one remaining member.

ARTICLE IX

The Company shall be managed by one or more managers. The name and mailing address of the manager who is to serve as manager until his successors are elected and begin serving is as follows:

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NAME

MAILING ADDRESS

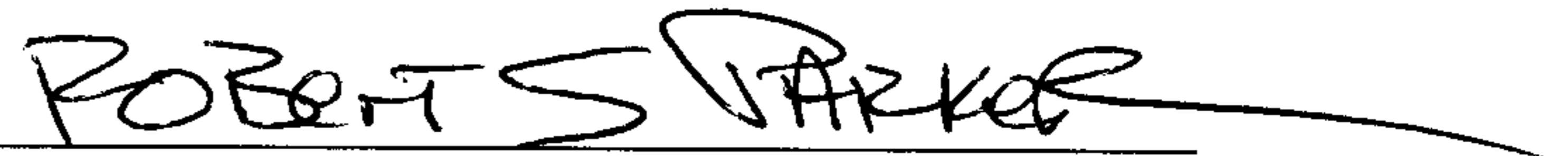
R. Scott Parker

130 Inverness Parkway, Suite 140  
Birmingham, Alabama 35242

ARTICLE X

The members of the Company shall have no liability for any debt, obligation, or liability of the Company, as provided in the Alabama Limited Liability Company Act.

IN WITNESS WHEREOF, the undersigned, constituting the Organizer of the Company, has executed these Articles of Organization this the 3<sup>rd</sup> day of March, 2010.



R. Scott Parker, Organizer

This instrument prepared by:

George M. Vaughn, Esq.  
Weaver Tidmore  
300 Cahaba Park Circle, Suite 200  
Birmingham, Alabama 35242  
(205) 980-6065



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# **OPERATING AGREEMENT**

**of**

# **THREE NOTCH WHITETAIL FARMS, LLC (Manager Managed)**

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**OPERATING AGREEMENT OF THREE NOTCH WHITETAIL FARMS, LLC  
(Manager-Managed)**

This Operating Agreement of **THREE NOTCH WHITETAIL FARMS, LLC**, a limited liability company organized pursuant to the Alabama Limited Liability Company Act, is entered into and shall be effective as of the Effective Date, by and among the Company and the Persons executing this Agreement as Members.

**ARTICLE I  
DEFINITIONS**

For purposes of this Operating Agreement, unless the context clearly indicates otherwise, the following terms shall have the meanings set forth below:

**Section 1.1** "**Act**" means the Alabama Limited Liability Company Act and all amendments to the Act.

**Section 1.2** "**Adjusted Capital Account Deficit**" means with respect to any Member as of a particular date the deficit balance, if any, in such Member's Capital Account as of such date, as determined in the manner provided in Section 9.5 hereof and by then adjusting such Capital Account as so determined as follows:

- (a) such Capital Account shall be increased to reflect that amount, if any, of such Member's share of the Company's Minimum Gain which such Member is deemed to be obligated to restore to the Company pursuant to Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(l) and 1.704-2(i)(5) of the Regulations;
- (b) such Capital Account shall be reduced to reflect any items described in Sections 1.704 1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations;
- (c) if such Adjusted Capital Account Deficit is being determined as of the last day of a Fiscal Year for purposes of Article X hereof, then such Capital Account shall be adjusted to reflect the allocation to such Member of all amounts required to be allocated to such Member for such Fiscal Year under Article X hereof;
- (d) if such Adjusted Capital Account Deficit is being determined as of the last day of a Fiscal Year for purposes of Section 10.3(c) hereof, then such Capital Account shall be adjusted to reflect the tentative allocation to such Member of all amounts that would be required to be allocated to such member for such Fiscal Year if neither subparagraph (c) nor subparagraph (d) of Section 10.3 were a part of this Agreement; and
- (e) if such Adjusted Capital Account Deficit is being determined as of the last day of a Fiscal Year for purposes of Section 10.3(d) hereof, then such Capital Account shall be adjusted to reflect the tentative allocation to such Member of all amounts that would be required to be allocated to such Member for such Fiscal Year if neither subparagraph (c) nor subparagraph (d) of Section 10.3 were a part of this Agreement.

**Section 1.3** "**Admission Agreement**" means the Agreement between a Person and the Company described in Article XV.

**Section 1.4** "**Affiliate**" means, when used with reference to a specified Person any Person that directly or indirectly controls or is controlled by or is under common control with the specified Person. Control

shall be presumed to exist if (a) any Person is an officer of, partner in, or trustee of, or serves in a similar capacity with respect to, a specified Person or of which a specified Person is an officer, partner, or trustee, or with respect to which a specified Person serves in a similar capacity, and (b) any Person, directly or indirectly, is the beneficial owner of more than fifty percent (50%) of any class of voting security of or interest in the specified Person or of which the specified Person is directly or indirectly the owner of more than fifty percent (50%) of any class of voting security or any interest therein.

**Section 1.5 "Agreement" or "Operating Agreement"** means the Operating Agreement including all Admission Agreements and amendments adopted in accordance with the Operating Agreement and the Act.

**Section 1.6 "Articles"** means the Articles of Organization of the Company as properly adopted and amended from time to time by the Members and filed with the Probate Judge of the county in which the initial registered office of the Company is located.

**Section 1.7 "Assignee"** means a transferee of a Unit, transferred in compliance with Article XIII, who has not been admitted as a Substitute Member and who has no rights to participate as a member of the Company, including without limitation, the rights to information and to consent to or approve actions of the Company or to bind the Company.

**Section 1.8 "Bankrupt Member"** means a Member who: (1) has become the subject of an Order for Relief under the United States Bankruptcy Code, or (2) has initiated, either in an original Proceeding or by way of answer in any state insolvency or receivership proceeding, an action for liquidation arrangement, composition, readjustment, dissolution, or similar relief.

**Section 1.9 "Base Interest Rate"** means the "prime" rate of interest as published in The Wall Street Journal.

**Section 1.10 "Book Depreciation"** for each Fiscal Year means the amount of depreciation, depletion or amortization computed for such Fiscal Year in the manner provided in Section 1.704-1(b)(2)(iv)(g)(3) of the Regulations.

**Section 1.11 "Book Gain" or "Book Loss"** means the gain or loss recognized by the Company for book purposes in any Fiscal Year by reason of a sale or other disposition of all or part of the Company's Property other than is the ordinary course of business. Such Book Gain and Book Loss shall be computed by reference to the Book Value of the Company's Property as of the date of such sale or other disposition, rather than by reference to the tax basis of the Company's Property as of such date, in accordance with Section 1.704-1(b)(2)(iv)(g) of the Regulations.

**Section 1.12 "Book Value"** means, as of any particular date, the value at which the Company's Property, or any part thereof, is properly reflected as of such date on the books of the Company in accordance with the provisions of Section 1.704-1(b) of the Regulations. The initial Book Value of the Company's Property shall be the amount by which the agreed upon fair market value of the Company's Property exceeds the outstanding principal of any loan secured by the Property, and such Book Value shall be adjusted for Book Depreciation with respect to the Company's Property, rather than for the cost recovery deductions to which the Company is entitled for income tax purposes with respect to the Company's Property.

**Section 1.13 "Business Day"** means any day other than Saturday, Sunday or any legal holiday observed in the State of Alabama.

**Section 1.14 "Capital Account"** means the account maintained for a Member or Assignee determined in



accordance with Article IX.

**Section 1.15 "Capital Contribution"** means the amount of money and the value of any Property (other than money) contributed to the Company by or on behalf of a Member or Assignee pursuant to Article IX.

**Section 1.16 "Code"** means the Internal Revenue Code of 1986, as amended.

**Section 1.17 "Company"** means **THREE NOTCH WHITETAIL FARMS, LLC**, a limited liability company formed under the laws of the State of Alabama, and any successor limited liability company.

**Section 1.18 "Damages"** means any and all costs, fees (including attorneys' fees), expenses, damages, losses, tax liabilities and the like caused by or resulting from a Member's breach of this Agreement or incurred in successfully enforcing this Agreement.

**Section 1.19 "Default Interest Rate"** means the Base Interest Rate plus two percent (2%) percent.

**Section 1.20 "Disposition" or "Dispose"** means any sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation, or other transfer, absolute or as security or encumbrance (including dispositions by operation of law). "Disposition" or "Dispose" does not mean a gift, devise or other testamentary transfer.

**Section 1.21 "Dissolution Event"** means an event, the occurrence of which will result in the dissolution of the Company under Article XVI.

**Section 1.22 "Distribution"** means a transfer of Property to a Member on account of a Unit as described in Article XI.

**Section 1.23 "Effective Date"** means the date of the filing and acceptance of the Articles with the Probate Judge of the county in which the initial registered office of the Company is located.

**Section 1.24 "Fair Market Value"** means the value for Unit(s) at which the parties can mutually agree to in writing, or in the alternative, if the parties are unable to mutually agree to a value, then each of the parties shall appoint an independent licensed appraiser at their respective expense to appraise and determine the value of the applicable Unit(s), and the Fair Value shall be the average of the appraised values; provided however, that if one of the appraisers has a value in excess of one hundred twenty percent (120%) of the average value of the other appraisals, the appraisers shall select another independent appraiser at the equal expense of the parties and the Fair Value shall be the average of the Two (2) appraisals closest in value. An appraiser shall value a Unit(s) by determining the amount the Unit(s) would receive in the event all of the Company's Property were sold at its fair market value and the net proceeds thereof, after the payment of all debts of the Company, were distributed in dissolution of the Company.

**Section 1.25 "Fiscal Year"** means the fiscal year of the Company. The first Fiscal Year shall commence on the Effective Date and shall end on December 31 of that year. Each succeeding Fiscal Year shall commence on the day immediately following the last day of the immediately preceding Fiscal Year. Each Fiscal Year shall end on the earliest to occur after the commencement of such Fiscal Year of (i) December 31, (ii) the day immediately preceding the date of the "liquidation" of the Member's Unit (within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations), or (iii) the date on which the Company's existence is terminated under Article XVI.

**Section 1.26 "Initial Capital Contribution"** means the Capital Contribution agreed to be made by the

Members as described in Article IX.

**Section 1.27 "Majority of the Members"** means the affirmative vote or consent of Members who have, in the aggregate, more than fifty percent (50%) of the Sharing Ratios of the Members entitled to vote thereon.

**Section 1.28 "Manager" or "Managers"** means the Person or Persons selected to manage the affairs of the Company under Article VIII hereof.

**Section 1.29 "Member"** means a Person who at the time of reference thereto has been admitted as herein provided as a Member or Substitute Member. "Member" does not include an Assignee.

**Section 1.30 "Minimum Gain"** means the excess of the outstanding principal balance of the Company's non-recourse indebtedness (but excluding the amount of any such indebtedness which would not be taken into account as an amount realized under the Code upon foreclosure of such indebtedness) over the Company's adjusted basis in the Company's Property as determined in accordance with Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

**Section 1.31 "Net Cash Flow"** means for any Fiscal Year or portion thereof the amount by which (a) the cash received by the Company during such period from all sources (other than a Sale), including, without limitation, capital contributions, proceeds from loans from Members or others, and funds released from Reserves, exceeds (b) the sum of (i) expenditures and costs that are paid during such period in connection with the operation of the Company's business, including without limitation, compensation of employees, purchase of inventory and supplies, taxes, management fees, insurance premiums, capital expenditures, and reimbursable expenses, (ii) capital expenditures, (iii) payments which are due and payable during such period on any indebtedness or lease of the Company, and (iv) the Reserves funded during such period. In determining Net Cash Flow, there shall be no deduction for depreciation or other non-cash expenses.

**Section 1.32 "Net Profit" or "Net Loss"** means, for each Fiscal Year, the Company's taxable income or taxable loss for such Fiscal Year, as determined under Section 703(a) of the Code and Section 1.703-1 of the Regulations (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or taxable loss), but with the following adjustments:

- (a) any tax-exempt income, as described in Section 705(a)(1)(B) of the Code, realized by the Company during such Fiscal Year shall be taken into account in computing such taxable income or taxable loss as if it were taxable income;
- (b) any expenditures of the Company described in Section 705(a)(2)(B) of the Code for such Fiscal Year, including any items treated under Section 1.704-1(b)(2)(iv)(i) of the Regulations as items described in Section 705(a)(2)(B) of the Code, shall be taken into account in computing such taxable income or taxable loss as if they were deductible items;
- (c) Book Depreciation for such Fiscal Year shall be taken into account in computing such taxable income or taxable loss in lieu of any amortization, depreciation or cost recovery deduction to which the Company is entitled for such Fiscal Year with respect to the Company's Property;
- (d) any Book Gain or Book Loss recognized by the Company during such Fiscal Year by reason of a sale or other disposition of all or any part of the Company's Property shall not be taken into account in computing such taxable income or taxable loss; and
- (e) any item of income, gain, loss or deduction that is required to be allocated specially to the Members under Section 10.3 hereof shall not be taken into account in computing such taxable

income or taxable loss.

If the Company's taxable income or taxable loss for such Fiscal Year, as adjusted in the manner provided in subparagraphs (a) through (e) above, is a positive amount, such amount shall be the Company's Net Profit for such Fiscal Year; and if negative, such amount shall be the Company's Net Loss for such Fiscal Year.

**Section 1.33 "Notice"** means notice in writing, and shall be deemed given when delivered personally, or three (3) days after being mailed by certified or registered mail, return receipt requested, with proper first class postage prepaid, or two (2) days after being sent by overnight commercial courier, addressed to the Managers in care of the Company at the address of the Principal Office. Notice to a Member shall be considered given when in writing, and when personally delivered, or three (3) days after being mailed by certified or registered mail, return receipt requested, with proper first class postage prepaid, or two (2) days after being sent by overnight commercial courier, addressed to the Member at the address reflected in the Agreement unless the Member has given the Company Notice of a different address.

**Section 1.34 "Organization"** means a Person other than a natural person. Organization includes, without limitation, general partnerships, limited partnerships, limited liability companies, corporations, professional corporations, professional associations, trustees, personal representatives, fiduciaries, trusts, business trusts, estates, custodianships, and other associations.

**Section 1.35 "Person"** means natural persons and organizations (whether created by the laws of Alabama or another state or foreign country).

**Section 1.36 "Principal Office"** shall have the meaning subscribed to such term in Section 2.7 hereof.

**Section 1.37 "Proceeding"** means any judicial or administrative trial, hearing or other activity, civil, criminal or investigative, the result of which may be that a court, arbitrator, or governmental agency may enter a judgment, order, decree, or other determination which, if not appealed and reversed, would be binding upon the Company, a Member or other Person subject to the jurisdiction of such court, arbitrator, or governmental agency.

**Section 1.38 "Property"** means any property real or personal, tangible or intangible, including money and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

**Section 1.39 "Regulations"** means except where the context indicates otherwise, the permanent, temporary, or proposed regulations of United States Treasury under the Code as such regulations may be lawfully changed from time to time.

**Section 1.40 "Reserves"** means all Company reserves established by the Managers in their sole discretion, for Company purposes including, but not limited to, debt service, lease payments, accrued or deferred expenses, and other working capital needs, contingent liabilities, taxes and purchases.

**Section 1.41 "Sale"** means any transaction (other than Capital Contributions or loans) not in the ordinary course of business, including, without limitation, sales, exchanges or other dispositions of real or personal property, condemnation, recovery of damage awards, and insurance proceeds.

**Section 1.42 "Sale Proceeds"** means all cash receipts arising from a Sale less the following: (i) the amount of cash required to be paid in connection with such Sale (which shall include with regard to damage recoveries or insurance or condemnation proceeds, cash paid or to be paid in connection with repairs, replacements, or renewals, in the discretion of the Managers, relating to damage or partial condemnation of the Property); (ii) the amount necessary for the payment of all debts and obligations of



the Company due or becoming due as a result of such Sale; and (iii) the amount considered appropriate by the Managers to provide reserves to pay taxes, insurance, Company indebtedness, repairs, replacements, or renewals or other costs and expenses of the Company (including costs of improvements or additions in connection with the Property).

**Section 1.43 "Sharing Ratio"** means with respect to any Member, the percentage interest allocated to such Member which percentage interest will be determined by using a fraction in which the number of Units owned by a Member is the numerator and the aggregate number of Units that are then outstanding is the denominator.

**Section 1.44 "Substitute Member"** means an Assignee who has been admitted to all of the rights of membership pursuant to Section 15.2 of this Agreement.

**Section 1.45 "Taxing Jurisdiction"** means any state, local, or foreign government that collects tax, interest or penalties, however designated, on any Member's share of the income or gain attributable to the Company.

**Section 1.46 "Units"** means one or more of the twenty (20) units, or fractional portions thereof, representing the ownership interests of Members in the Company.

## **ARTICLE II FORMATION**

**Section 2.1 Organization.** The Members hereby organize the Company as an Alabama limited liability company pursuant to the provisions of the Act.

**Section 2.2 Agreement.** For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members executing this Operating Agreement hereby agree to the terms and conditions of the Operating Agreement, as it may from time to time be amended according to its terms. It is the express intention of the Members that the Operating Agreement shall be the sole source of agreement of the parties, and, except to the extent a provision of the Operating Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Regulations or is expressly prohibited or ineffective under the Act, the Operating Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law or rule. To the extent any provision of the Operating Agreement is prohibited or ineffective under the Act, the Operating Agreement shall be considered amended to the smallest degree possible in order to make the Agreement effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to make any provision of the Operating Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

**Section 2.3 Name.** The name of the Company is **THREE NOTCH WHITETAIL FARMS, LLC**, and all business of the Company shall be conducted under that name.

**Section 2.4 Effective Date.** The Company's existence shall become effective upon the filing and acceptance of the Articles with the Probate Judge of the county in which the initial registered office of the Company is located.

**Section 2.5 Term.** The Company shall be dissolved and its affairs wound up in accordance with the Act and the Operating Agreement at midnight on December 31, 2040, unless the term shall be extended by amendment to the Operating Agreement and the Articles, or unless the Company shall be sooner dissolved and its affairs wound up in accordance with the Act or the Operating Agreement.

**Section 2.6 Registered Agent and Office.** The registered agent for the service of process and the

registered office shall be that Person and location reflected in the Articles. The Manager, may, from time to time, change the registered agent or office upon filing a statement of change with the Office of the Secretary of State of Alabama designating the name of a new agent for service of process together with the new agent's street address; provided that any change in registered agent shall not be effective until the statement of change is so filed with the Office of the Secretary of State of Alabama.

**Section 2.7 Principal Office.** The Principal Office of the Company shall be located at

130 Inverness Parkway, Suite 140  
Birmingham, Alabama 35242

or at such other locations as may from time to time be designated by the Manager.

### ARTICLE III **NATURE OF BUSINESS**

The Company may engage in any lawful business permitted by the Act or the laws of any jurisdiction in which the Company may do business. The Company shall have the authority to do all things necessary or convenient to accomplish its purposes and operate its business as described in this Article III.

### ARTICLE IV **ACCOUNTING AND RECORDS**

**Section 4.1 Records to be Maintained.** The Company shall maintain the following records at the Principal Office:

- (a) A current list of the full name and last known business or residence address of each Member and each Manager;
- (b) A copy of the Articles and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any documents have been executed;
- (c) Copies of the Company's federal, foreign, state and local income tax returns and reports, if any, for the three most recent years;
- (d) Copies of the Operating Agreement including all amendments thereto; and
- (e) Any financial statements of the Company for the three most recent years;

**Section 4.2 Reports to Members.**

- (a) The Managers shall provide reports to the Members at such time and in such manner in accordance with the provisions of Article XII.


**Section 4.3 Accounts.** The Managers shall maintain a record of the Capital Account of each Member in accordance with Article IX.

### ARTICLE V **NAMES AND ADDRESSES OF MEMBERS**

The names and addresses of the Members are as contained in Exhibit "A" attached hereto and by this



reference made a part hereof as if set forth fully herein.

  
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ARTICLE VI  
**RIGHTS AND DUTIES OF MEMBERS**

**Section 6.1 Management.** Except as provided in this Agreement, during the continuance of this Company, the Members shall take no part in the conduct or control of the Company business, shall have no authority or power to act for or to bind the Company, shall be liable only to make capital contributions in accordance with the provisions hereof, shall not be required to lend any funds to the Company, and shall not be liable for the debts, liabilities, contracts or any other obligations of the Company. The Members shall have no rights other than those provided for herein and shall have no right to vote on any matter concerning the management and affairs of the Company other than those matters specifically identified in Section 6.2 below.

**Section 6.2 Voting Rights.**

- (a) The Members shall not be entitled to vote on any matters relating to the business or affairs of the Company except for the following matters:
- (i) The actions requiring the approval or consent of the Members under Sections 8.4 and 8.10 hereof;
  - (ii) The removal of a Manager in accordance with Section 8.12 hereof;
  - (iii) The approval of a successor to a Manager in accordance with Section 8.12 hereof;
  - (iv) The admission of additional Members in accordance with Section 15.3 hereof;
  - (v) The requirement for additional Capital Contributions in accordance with Section 9.2 hereof;
  - (vi) The admission of a Substitute Member in accordance with Section 15.2 hereof;
  - (vii) The dissolution or continuation of the business of the Company in accordance with Section 16.1 hereof;
  - (viii) The amendment of this Agreement or the Articles of Organization in accordance with Article XVII hereof; and
  - (ix) The removal of a Member pursuant to Section 13.4 hereof.

**Section 6.3 Liability of Members.** No Member shall be liable as such for the liabilities of the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under the Operating Agreement or the Act shall not be grounds for imposing personal liability on the Members or Managers for liabilities of the Company.

**Section 6.4 Representations and Warranties.** Each Member, and in the case of any Member that is an Organization, the Person(s) executing the Operating Agreement on behalf of the Organization, hereby represents and warrants to the Company and each other Member that: (a) if such Member is an Organization, that it is duly organized, validly existing, and in good standing under the law of its state of organization and that it has full organizational power to execute and agree to the Operating Agreement and to perform its obligations hereunder; (b) the Member is acquiring its, his or her interest in the Company for the Member's own account as an investment and without an intent to sell, transfer or distribute the interest; (c) the Member acknowledges that the interests have not been registered under the

Securities Act of 1933 or any state securities laws, and may not be resold or transferred by the Member (i) without appropriate registration or the availability of an exemption from such registration requirements, and (ii) without conforming to the requirements of this Operating Agreement.

## ARTICLE VII MEETINGS OF MEMBERS

**Section 7.1 Place of Meetings.** All meetings of the Members shall be held at such reasonably convenient places within the United States of America as the Member(s) or Manager(s) who called the meeting shall designate; in the absence of such a designation, the meeting shall be held at the Principal Office of the Company.

**Section 7.2 Time of Meetings.**

- (a) An annual meeting of Members shall be held within four (4) months following the close of each Fiscal Year of the Company; provided, however, a failure to hold such meeting shall not be deemed a violation of this Agreement.
- (b) Special meetings of the Members may be called at any time by any Manager or by a Majority of the Members.

**Section 7.3 Members' Action by Consent in Lieu of Meeting.** Any action which may be taken at a meeting of all Members may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken is signed by the Members having not less than the minimum number of votes that would be necessary to authorize or take such an action at a meeting at which all Members were present and voted. Such consents shall be filed with the minutes of the meetings of the Members.

**Section 7.4 Notice of Meetings.**

- (a) Whenever Members are required or permitted to take any action at a meeting and the optional procedure of Section 7.3 above is not followed, Notice of the meeting, stating the place, date and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than five (5) nor more than thirty (30) days before the date of the meeting, by or at the direction of the Persons(s) calling the meeting, to each Member. When a meeting is adjourned to another time or place, Notice of the adjourned meeting need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken.
- (b) Any Notice required to be given by any provision of this Agreement, the Articles, or any law may be waived in writing signed by the Member entitled to such Notice, whether before, at or after the time stated therein, and such waiver shall be deemed equivalent to Notice. Attendance of a Member at a meeting shall constitute a waiver of Notice of such meeting, except where a Member attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

**Section 7.5 Presiding Officials.** Each meeting of the Members shall be convened by any of the Persons who called the meeting by giving Notice as provided above; provided, however, that the Members may, notwithstanding anything herein to the contrary, select any Person to preside at a meeting and any Person to act as the secretary of such meeting.

**Section 7.6 Business Which May be Transacted at Meetings.**

- (a) At each annual meeting, the Members may transact any proper business as may be desired, whether or not the same was specified in the notice of the meeting, unless prohibited by law.
- (b) Special meetings may be called for any purpose or purposes, but business transacted at any

special meeting shall be confined to the purposes stated in the Notice of such meeting.

**Section 7.7 Quorum; Company Action.** Unless otherwise provided in this Agreement or the Articles, a Majority of Members who are entitled to vote and who are present in person or by proxy at any meeting of the Members shall constitute a quorum at a meeting of the Members. At each meeting of the Members, every decision of a Majority of Members (not merely a majority of the quorum) shall be valid as the act of the Members except in those specific instances in which a larger vote is required by law, by this Agreement, or by the Articles. If a quorum is not present at any meeting, the Members present shall have the right to adjourn the meeting to a specified date not longer than ninety (90) days after such adjournment. At such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting which was adjourned, without further notice.

**Section 7.8 Method of Voting; Proxies.** At all meetings of the Members, any Member who is entitled to vote on the subject matter thereof may vote or express its, his or her written consent or dissent in person or by proxy executed in writing by such Member. Such proxy shall be filed with the secretary of the Meeting prior to or at the time of the meeting. Any proxy may be revoked by written notice to the Managers of the Company notwithstanding any contrary statement contained in the proxy. No proxy shall be valid for more than eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

**Section 7.9 Member List.** If any Member makes a request in writing to the Managers at least twenty (20) days prior to any meeting of the Members, the Managers shall prepare and make a complete list of the Members entitled to vote at the meeting, arranged in alphabetical order and showing the address of each Member, the value of its, his or her Capital Account and such Member's Sharing Ratio. Such list shall be open to the examination of any Member for any purpose germane to the meeting, during ordinary business hours, for a period of ten (10) days prior to the meeting, at the Principal Office of the Company. Such list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any Member who is present.

## ARTICLE VIII **MANAGERS**

**Section 8.1 Managers.** There shall be one (1) Manager. A Manager may or may not be a Member of the Company and may or may not be a natural person. As of the Effective Date, the Manager shall be: R. Scott Parker.

**Section 8.2 Term of Office as Manager.** Each Manager shall serve until the earliest of:

- (a) the cessation of such Manager as a Member (if a Member); or
- (b) the removal of such Manager as provided in Section 8.12 below; or
- (c) the resignation of such Manager as a Manager; or
- (d) in the case of a Manager who is a natural person, the death of such Manager or the entry of a judgment by a court of competent jurisdiction adjudicating such Manager to be incompetent to manage his or her personal estate; or
- (e) in the case of a Manager that is an Organization other than a corporation, the dissolution and commencement of winding up of the Organization; or
- (f) in the case of a Manager that is a corporation, the filing of Articles of Dissolution or its equivalent for the corporation or the revocation of its charter; or

(g) its, his or her successor has been elected and qualified.

**Section 8.3 Authority to Bind the Company.** The Members hereby agree that only the Managers and authorized agents of the Company (as designated and approved by the Managers) shall have the authority to bind the Company. No Member other than a Manager shall take any action as a Member to bind the Company, and shall indemnify the Company for any Damages incurred by the Company as a result of the unauthorized action of such Member. Subject to the provisions and limitations of this Agreement, the Managers have the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company, including, without limitation:

- (i) engage in any kind of activity and perform and carry out contracts of any kind necessary to, or in connection with, or incidental to the accomplishment of, the purposes of the Company, as may be lawfully carried on or performed by a limited liability company formed under the laws of the State of Alabama;
- (ii) acquire by purchase, lease or otherwise any property which may be necessary, convenient or incidental to the accomplishment of the purposes of the Company, and to operate, manage, improve, maintain, sell, lease and service property; to form corporations or acquire shares of stock in corporations to carry out any of the purposes of the Company and to acquire title to Property in the name of such corporation(s) and to guarantee or otherwise secure the obligations of such corporation(s) in the furtherance of Company purposes;
- (iii) borrow money from itself or others (including Affiliates of the Managers) and, if security is required therefore, to mortgage or subject to any other security device all or any portion of any Company Property, to obtain replacements of any mortgage or other security device, and to prepay, in whole or in part, refinance, increase, modify, and consolidate such indebtedness as determined in its absolute discretion to be in the best interests of the Company;
- (iv) and to enter into any contract of liability and other insurance that the Managers deem necessary and proper for the protection of the Managers, Members and Company for the conservation of its Property or for any purpose convenient or beneficial to the Company;
- (v) employ from time to time Persons, firms, or corporations for the operation and management of the Company business, including, but not limited to, the Managers, attorneys, accountants, advisors, financial consultants, and loan brokers on such terms and for such compensation as the Managers may determine. The Managers are hereby specifically authorized in their sole and absolute discretion to engage Affiliates of the Managers as described in Section 8.13 and are authorized to enter into contracts with the Managers or Affiliates so long as the prices charged and terms thereof are fair, reasonable, and competitive;
- (vi) pay and to be reimbursed by the Company for expenses and fees incurred by the Managers and their Affiliates in connection with the organization and formation of the Company, the admission and substitution of Members, the preparation of this Agreement and amendments hereto, the holding of meetings of Members, and the obtaining of action by Members without a meeting;
- (vii) compromise, arbitrate, or otherwise adjust claims in favor of or against the Company, and to commence or defend litigation with respect to the Company or any Property of the company as the Managers may deem advisable, all or any of the above matters being at the expense of the Company;
- (viii) make any and all elections for federal, state, and local tax purposes, including, without

limitation, any election, if permitted by applicable law, to adjust the basis of Company Property pursuant to Code Sections 754, 734(b), and 743(b) or comparable provisions of state or local law in connection with transfers of Units and Company distributions;

- (ix) determine Net Cash Flow and Sale Proceeds of the Company and to make Distributions to the Members;
- (x) amend this Agreement to reflect the admission of Members and Substitute Members as herein authorized;
- (xi) execute any and all agreements, contracts, documents, certifications, and instruments necessary or convenient in connection with the exercise of the Managers' rights and powers, including, but not limited to, any contract or other instrument purporting to convey or encumber any or all of the Company Property;
- (xii) take such actions (including, but not limited to, amending this Agreement) as the Managers determine are advisable or necessary, based upon advice of counsel to the Company, and will not result in any material adverse effect on the economic position of a Majority of the Members to (A) preserve the tax status of the Company as a partnership for federal income tax purposes, (B) to conform this Agreement to (I) the Company Act for the purpose of preserving the tax status of the Company as a partnership for federal income tax purposes, or (II) provisions of the Code or the Treasury Regulations relating to taxation of partners and partnerships, to modify this Agreement in a manner designed to ameliorate such difference;
- (xiii) to establish, maintain, deposit into, sign checks or otherwise draw upon Company bank accounts and execute or accept any instrument or agreement incident to the Company business and in furtherance of its purposes; without limiting the foregoing, the Managers may cause cash funds of the Company to be deposited in bank accounts selected by the Managers; and
- (xiv) perform any and all other acts or activities customary or incidental to the Company purposes and the foregoing powers.

**Section 8.4 Actions of the Managers.**

- (a) The Managers have the power to bind the Company as provided in this Article VIII. If the Company has more than one Manager, any difference arising as to any matter within the authority of the Managers, and any deadlock between the Managers, shall be resolved by the vote of the Majority of the Members. No act of a Manager or Member in contravention of such determination shall bind the Company to Persons having knowledge of such determination. Notwithstanding such determination, the act of the Managers for the purpose of apparently carrying on in the usual way the business or affairs of the Company, including the exercise of the authority indicated in this Article VIII, is binding on the Company, and no Person dealing with the Company shall have any obligation to inquire into the power or authority of the Manager acting on behalf of the Company.
- (b) The Managers shall not sell or exchange substantially all of the Property of the Company at a single sale or exchange which takes place at one time or in multiple sales at one time, without the consent of a Majority of the Members or Majority of the remaining Members, as the case may be.
- (c) Anything to the contrary set forth herein notwithstanding, without the unanimous consent of all of the Members, the Managers shall not have authority on behalf of the Company to:
  - (i) do any act that is unrelated to the purpose of the Company or that is in contravention of this Agreement;

- (ii) convert Property of the Company to their own use or possess or assign any rights in specific Property of the Company for other than a purpose of the Company;
- (iii) perform any act that would subject any Member to personal liability;
- (iv) confess a judgment against the Company; or
- (v) do any act that would make it impossible to carry on the ordinary course of business of the Company.

**Section 8.5 Regular Meetings.** If the Company has more than one Manager, a regular meeting of the Managers may be held without Notice immediately after and at the same place as the annual meeting of the Members; provided, however, that the Managers may designate that the regular meeting be held at such different time or place as shall be consented to by the Managers in writing, except that it shall not be necessary to state the purposes of the meeting in such Notice. Any business may be transacted at a regular meeting of the Managers.

- (a) If the Company has more than one Manager, additional regular meetings of the Managers may be held without Notice at such times and places either within or without the State of Alabama as shall from time to time be fixed by resolution adopted by the Managers.
- (b) If the Company should have more than one Manager, the Managers may and shall have the right to participate in any meeting of the Managers by means of telephone conference or similar communications equipment whereby all Persons participating in the meeting can hear each other. Participation in a meeting in this manner shall constitute presence in person at the meeting.

**Section 8.6 Special Meetings.** Special meetings of the Managers may be called by or at the request of any Manager (if more than one), by giving or delivering Notice of such meeting to each Manager at least three (3) Business Days before the day on which the meeting is to be held, stating the place, day and hour of the meeting and the purpose or purposes for which it was called.

**Section 8.7 Action by Consent in Lieu of Meeting.** Any action which is required to be or which may be taken at a meeting of the Managers may be taken without a meeting if all the Managers consent thereto in writing and the writing or writings are filed with the minutes of the meetings of the Managers.

**Section 8.8 Quorum.** The total number of Managers shall constitute a quorum for the transaction of business. The unanimous vote of the Managers shall be the act of the Managers, unless otherwise specifically provided by law, the Articles or this Agreement. If there is more than one Manager, less than a quorum may adjourn a meeting successively until a quorum is present.

**Section 8.9 Waiver.** Any Notice required to be given to a Manager by any provision of this Agreement, the Articles or any law may be waived in writing signed by such Manager, whether before or after the time stated therein, and such waiver shall be deemed equivalent to Notice. Attendance of a Manager at any meeting shall constitute a waiver of Notice of such meeting, except where such Manager attends the meeting for the express purpose, and so states at the opening of the meeting, of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the Managers need be specified in any written waiver of Notice unless so required by the Articles.

**Section 8.10 Compensation of Manager.** Each Manager shall be reimbursed for all reasonable expenses incurred in managing the Company, and shall be entitled to compensation in an amount to be determined from time to time by the affirmative vote of a Majority of the Members.

**Section 8.11 Managers' Standard of Care.** A Manager's duty of care in the discharge of its, his or her

duties for the Company and the Members is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of the law. In discharging its, his or her duties, a Manager shall be fully protected in relying in good faith upon the records required to be maintained under Article IV and upon such information, opinions, reports or statements by any of the Company's other Managers, Members, or agents, or by any other Person, as to matters the Manager reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or any other facts pertinent to the existence or amount of assets from which Distributions to Members might properly be paid.

**Section 8.12 Appointment and Removal of a Manager.** Replacement Managers may be appointed and any Manager may be removed at any time by the affirmative written vote of a Majority of the Members.

**Section 8.13 Transactions with the Managers and Their Affiliates.** The Company is authorized to enter into transactions, contracts, agreements, or arrangements with the Managers and their Affiliates only in accordance with this Agreement.

## ARTICLE IX **CONTRIBUTIONS AND CAPITAL ACCOUNTS**

**Section 9.1 Initial Contributions.** Each Initial Member shall make its, his or her Capital Contribution in the amount and at the time and on the terms specified on Exhibit "A". If no time for contribution is specified, the Capital Contributions shall be made within ten (10) Business Days of the Effective Date. The value of the Capital Contributions shall be as set forth on Exhibit "A". No interest shall accrue on any Capital Contribution and no Member shall have the right to withdraw or be repaid any Capital Contribution except as provided in the Operating Agreement. Each Additional Member shall make the Capital Contribution described in its, his or her Admission Agreement. The value of the Additional Member's Capital Contribution and the time for making such contribution shall be set forth in the Admission Agreement.

**Section 9.2 Additional Contributions.** In no event shall any Member be obligated under any circumstances to make any additional contributions to the capital of the Company for the purpose of eliminating a negative balance in a Capital Account, or for any other purpose whatsoever.

**Section 9.3 Withdrawal.** No Member shall be entitled to withdraw from the Company or become entitled to a return of any portion of his or her Capital Account or to receive any Distributions from the Company except as specifically provided herein. No loan or advance made to the Company by any Member or Assignee shall constitute a Capital Contribution except as may be expressly provided in this Agreement.

**Section 9.4 Maintenance of Capital Accounts.** A separate Capital Account shall be maintained for each Member, and the amount of the balance of each Member's Capital Account, as of any particular date, shall be an amount equal to the sum of the following: (i) the cumulative amount of cash that has been contributed to the capital of the Company by such Member as of such date; plus (ii) the agreed upon net fair market value (as of the date of contribution) of any property other than cash that has been contributed to the capital of the Company by such Member as of such date; plus (iii) the cumulative amount of the Company's Net Profit, Book Gain and other items of income and gain for all Fiscal Years ending prior to such date that has been, or is required to be, allocated to such Member under Article X hereof; plus (iv) any loans and accrued interest converted to capital; minus (i) the cumulative amount of the Company's Net Loss, Book Loss, and other items of loss or deductions for all Fiscal Years ending prior to such date that has been, or is required to be, allocated to such Member under Article X hereof; minus (ii) the cumulative amount of cash and the agreed upon net fair market value (as of the date of distribution) of all Distributions to such Member. A Member's Capital Account shall also be increased or

decreased as of such date to reflect any items in Section 1.704-1(b)(2)(iv) of the Regulations that are required to be reflected in such Member's Capital Account under such Regulations and which are not otherwise taken into account in computing such Capital Account under this Section 9.4.

**Section 9.5 Sale or Exchange of Interest.** In the event of an authorized Disposition of some or all of a Unit, the Capital Account of the Disposing Member shall become the Capital Account of the Assignee and/or Substituted Member, as the case may be, to the extent it relates to the portion of the Unit disposed.

## ARTICLE X ALLOCATIONS

### **Section 10.1 Allocation of Profits and Losses.**

- (a) Net Profits shall be allocated to the Members in accordance with their Sharing Ratios.
- (b) Net Losses shall be allocated among the Members in accordance with their Sharing Ratios.

### **Section 10.2 Allocation of Book Gain and Book Loss.**

- (a) Any Book Gain recognized by the Company in any Fiscal Year shall be allocated to the Members in the following manner and in the following order of priority:
  - (i) to the Members in proportion to, and to the extent of, the negative balance in their respective Capital Accounts, if any, as of the last day of such Fiscal Year; then
  - (ii) to the Members in accordance with their Sharing Ratios.

For purposes of this Section 10.2(a), the amount of each Member's Capital Account as of the last day of any Fiscal Year shall be computed as of such last day in the manner provided in Section 9.4 hereof but shall be adjusted to reflect the allocation to such Member of all amounts required to be allocated to such Member for such Fiscal Year under Sections 10.1 and 10.2 hereof.

- (b) Any Book Loss recognized by the Company in any Fiscal Year shall be allocated to the Members in the following manner and in the following order of priority:
  - (i) to the Members in proportion to, and to the extent of, positive balances, if any, in their respective Capital Accounts as of the last day of such Fiscal Year; then
  - (ii) to the Members in accordance with their Sharing Ratios.

For purposes of this Section 10.2(b), the amount of each Member's Capital Account as of the last day of any Fiscal Year shall be computed as of such last day in the manner provided in Section 9.4 hereof but shall be adjusted to reflect the allocation to such Member of all amounts required to be allocated to such Member for such Fiscal Year under Sections 10.1 and 10.2 hereof.

**Section 10.3 Certain Special Allocations.** Notwithstanding the provisions of Sections 10.1 and 10.2 above, the following allocations shall be made to the Members:

- (a) **Limitation on Allocation of Losses.** If the amount of Net Loss, Book Depreciation and Book Loss for any Fiscal Year that would otherwise be allocated to a Member under Sections 10.1 and 10.2 hereof would cause or increase an Adjusted Capital Account Deficit of such Member as of the last day of such Fiscal Year, then a proportionate part of such Net Loss, Book Depreciation and Book Loss equal to the amount which would cause or increase such Member's Adjusted Capital Account Deficit shall be allocated first to the other Members, in proportion to and to the extent that, such allocation will not cause or increase an Adjusted Capital Account Deficit of such



other Members as of the last day of such Fiscal Year, and then to the Members in proportion to their respective Sharing Ratios as of the last day of such Fiscal Year.

- (b) **Minimum Gain Chargeback.** Any item of Company income or gain for any Fiscal Year (or any portion of any such item) that is required to be allocated to the Members pursuant to a minimum gain chargeback under Section 1.704-2(f) of the Regulations shall be allocated to the Members for such Fiscal Year in the manner so required by such Regulations.
- (c) **Qualified Income Offset.** If any Member unexpectedly receives in any Fiscal Year any adjustment, allocation or distribution described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations and if such Member has an Adjusted Capital Account Deficit as of the last day of such Fiscal Year, then all items of income and gain (including Book Gain) of the Company (consisting of a pro rata portion of each item of Company income and gain, including gross income and Book Gain) for such Fiscal Year (and, if necessary, for subsequent Fiscal Years) shall be allocated to all such Members in proportion to, to the extent of, and in the manner sufficient to eliminate as quickly as possible such Adjusted Capital Account Deficit.
- (d) **Gross Income Allocation.** If any Member has an Adjusted Capital Account Deficit as of the last day of any Fiscal Year, then all items of income and gain (including Book Gain) of the Company (consisting of a pro rata portion of each item of Company income and gain, including gross income and Book Gain) for such Fiscal Year shall be allocated to all such Members in proportion to, to the extent of, and in the manner sufficient to eliminate as quickly as possible, such Adjusted Capital Account Deficit.

**Section 704(c) Allocations.** Notwithstanding the provisions of this Section 10.3, any item of income, gain, loss and deduction with respect to any Property (other than cash) that has been contributed by a Member to the capital of the Company and which is required or permitted to be allocated to the Members for income tax purposes under Section 704(c) of the Code so as to take into account the variation between the tax basis of such Property and its agreed upon fair market value at the time of its contribution shall be allocated to the Members solely for income tax purposes in the manner so required or permitted.

- (f) **Curative Allocations.** The allocations set forth in this Section 10.3 (the "Regulatory Allocations") are intended to comply with certain requirements of Sections 1.704-1 and 1.704-2 of the Regulations. The Members do hereby acknowledge and agree that the Regulatory Allocations may not be consistent with the manner in which the Members intend to divide Distributions. Accordingly, the Company is hereby authorized and directed to divide other allocations of Net Profit, Net Loss, Book Depreciation, Book Gain, and Book Loss among the Members in any reasonable manner so as to prevent the Regulatory Allocations from distorting the manner in which the Distributions would otherwise be divided among the Members pursuant to Sections 10.1 and 10.2 hereof. In general, the Members anticipate that this will be accomplished by specially allocating other Net Profit, Net Loss, Book Depreciation, Book Gain, and Book Loss among the Members so that, after such offsetting special allocations are made, the amount of each Member's Capital Account will be, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not a part of this Agreement and all Company items had been allocated to the Members solely pursuant to Sections 10.1 and 10.2 hereof.

## ARTICLE XI DISTRIBUTIONS

### Section 11.1 Distributions of Net Cash Flow.

The Company shall make distributions from the Net Cash Flow, if available, only at such times and in such amounts as the Managers shall agree; provided, however, the Managers shall cause

the Company to make cash Distributions to the Members from the Net Cash Flow, if available, from the operations of the Company, in an amount sufficient to pay the federal and state income taxes attributable to income that passes through the Company to the Members pursuant to the Code, calculated on the assumption that such income is subject to tax at the maximum marginal combined federal and Alabama income tax rate, and all such distributee Members covenant that they shall pay over such portion of their Distribution as is necessary to satisfy their federal and state liability attributable to the income of the Company. The amount of Net Cash Flow to be distributed, if any, shall be calculated as of the last day of the period in which the Distribution is made and distributed to the Members of record as of the next to the last day of such period. The Managers may invest amounts set aside as Reserves in such short-term investments as the Managers shall deem prudent. The Managers may, in their discretion, distribute from time to time as a component of Net Cash Flow such portion of the Reserves which the Managers determine to be in excess of the amounts required by the Company.

Net Cash flow shall be distributed in the following order of priority:

- (i) First, to repay accrued interest on any loans made by the Members to the Company, and if funds are insufficient therefore, then to such Members proportionately in the ratio that the amount of accrued interest on each Member's loan bears to the amount of all such accrued interest.
- (ii) Second, to repay the outstanding principal on any loans made by the Members to the Company, and if funds are insufficient therefore, then to such Members proportionately in the ratio that the outstanding balance of each Member's loan bears to the outstanding principal balance of all such loans.
- (iii) Third, the balance to the Members in accordance with their Sharing Ratios.

**Section 11.2 Distribution of Sale Proceeds.** All Sale Proceeds shall be distributed as follows after giving effect to the allocation of Book Gain or Book Loss with respect to such Sale as provided in Article X:

- (i) First, to repay accrued interest on any loans made by the Members to the Company, and if funds are insufficient therefore, then to such members proportionately in the ratio that the amount of accrued interest on each Member's loan bears to the amount of all such accrued interest.
- (ii) Second, to repay the outstanding principal on any loans made by the Members of the Company, and if funds are insufficient therefore, then to such Members proportionately in the ratio that the outstanding balance of each Member's loan bears to the outstanding principal balance of all such loans.
- (iii) Third, the balance to the Members in accordance with their Sharing Ratios.

**Section 11.3 No Right to Capital.** No Member has a right to Distributions except as provided in this Agreement.

**Section 11.4 Amounts Withheld for Taxes.** All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment or distribution to the Company or the Members shall be treated as amounts distributed to the Members pursuant to this Article XI for all purposes under this Agreement. The Managers may allocate any such amounts among the Members in any manner that is in accordance with applicable law.

ARTICLE XII  
**BOOKS, RECORDS, ACCOUNTING, TAX ELECTIONS, APPRAISALS**

**Section 12.1 Tax Status and Reports: Tax Elections**

- (a) To the extent that the laws of any Taxing Jurisdiction require, each Member requested to do so by the Managers will submit an agreement indicating that the Member will make timely income tax payments to the Taxing Jurisdiction and that the Member accepts personal jurisdiction of the Taxing Jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest, and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such Taxing Jurisdiction the amount of tax, penalty and interest determined under the laws of the Taxing jurisdiction with respect to such income. Any such payments with respect to the income of a Member shall be treated as a Distribution for purposes of Article XI. The Managers may, where permitted by the rules of any Taxing Jurisdiction, file a composite, combined or aggregate tax return reflecting the income of the Company and pay the tax, interest and penalties of some or all of the Members on such income to the Taxing Jurisdiction, in which case the Company shall inform the Members of the amount of such tax, interest and penalties so paid.
- (b) A Manager shall serve as the tax matters partner (the "TMP") as that term is defined in Code Section 6231, and the rules and regulations promulgated thereunder. Alternatively, a Member selected by the Managers may serve as the TMP if permitted by applicable law. Each Member hereby approves of such designation and agrees to execute, certify, acknowledge, deliver, swear to, file, and record at the appropriate public offices such documents as may be deemed necessary or appropriate to evidence such approval. To the extent and in the manner provided by applicable Code sections and Regulations, the TMP shall furnish the name, address, profits, interest, and taxpayer identification number of each Member to the Internal Revenue Service. The taking of any action and the incurring of any expense by the TMP in connection with any Proceeding, except to the extent required by law, is a matter in the sole discretion of the TMP, and the provisions on limitations of liability of the Manager and indemnification set forth in Article XVIII shall be fully applicable to the TMP in his or her capacity as such.
- (c) The TMP shall, in its, his or her sole discretion, determine whether to make any available election pursuant to the Code, including, but not limited to, the elections under Code Sections 108, 168, 709, 754 and 1017.
- (d) The TMP may resign at any time. The TMP may be removed and replaced at any time by a Majority of the Members.
- (e) The TMP shall have all the powers of a TMP under Code Section 6221 et seq., and Regulations thereunder, provided that:
- (i) the TMP shall not have the power or authority to extend the period for assessing any tax as set forth in Code Section 6229(b)(1)(B) except with the approval of a Majority of the Members;
  - (ii) the TMP may file a petition for readjustment of Company items, after receipt of notice of the final administrative adjustment, in the United States Tax Court, but in no event shall such petition be filed in another court of jurisdiction without approval of a Majority of the Members.
- (f) The TMP shall be entitled to a reimbursement from the Company for all reasonable costs and expenses incurred by the TMP in complying with and carrying out its, his or her responsibilities as TMP, including the costs of bringing any petition and proceedings in the United States Tax Court or other courts having jurisdiction over Company tax matters.

**Section 12.2 Accounting.**

- (a) The taxable year of the Company shall be the calendar year, unless the Managers elect another Fiscal Year and obtain the approval of the Internal Revenue Service thereto.

- (b) The books of account of the Company, together with copies of the Operating Agreement and all amendments thereto, shall be kept and maintained at all times at the Company's Principal Office. The books of account shall be maintained on a cash or accrual basis as the Managers shall determine. The books of account shall be in accordance with generally accepted accounting principles or practices with respect to the basis of accounting so selected, in accordance with generally accepted principles of tax basis accounting, consistently applied, and shall show all items of income and expense.
- (c) The Managers shall cause the Company to deliver to each Member, within one hundred twenty (120) days after the close of the each Fiscal Year of the Company, financial statements of the Company for the Fiscal Year, including a balance sheet for the Company at the end of the year and a statement of operations, statement of changes in financial position, and a statement of changes in Members' equity for the year then ended. At the expense of the Company, the Managers may cause the Company to engage independent accountants to conduct an annual review or audit of the Company's financial statements. The Company shall provide to the Members the report of such accountants with respect to the Company's financial statements, if applicable.
- (d) Each Member shall have the right at all reasonable times, during the usual business hours to audit, examine and make copies of or extracts from the books of account of the Company. Such right may be exercised through any agent or employee of such Member or by an independent certified public accountant designated by such Member. Each Member shall bear all expenses incurred in any examination made for such Member's account.

ARTICLE XIII  
**DISPOSITION OF UNITS**

**Section 13.1 Disposition, Gift or Devise.** Except as provided in this Agreement, no Member may Dispose of, gift or devise all or a portion of a Unit unless the conditions of this Article XIII are satisfied:

- (a) such Disposition, gift or devise, whether voluntary or involuntary, by operation of law or otherwise shall require the prior written consent of the Managers;
- (b) if a Disposition, such Disposition, alone or when combined with other transactions, shall not result in a termination of the Company within the meaning of Section 708 of the Code;
- (c) if a Disposition, the Company shall receive an opinion of counsel, satisfactory to the Managers, that such Disposition will not violate registration requirements of the applicable state and federal securities laws;
- (d) the Company shall receive from the Assignee under such proposed Disposition, gift or devise the information and agreements that the Managers may reasonably require, including but not limited to, any taxpayer identification number and any agreement that may be required by any Taxing Jurisdiction; and
- (e) if a Disposition, the Member shall comply with the provisions of Section 13.2 below in making such Disposition.

Each transferee of a Unit(s) who is already a Member shall be deemed to be a Substitute Member with respect to said Unit(s). Each transferee of a Unit or any portion thereof who is not already a Member shall be an Assignee and not a Substitute Member, unless the remaining Members consent to the admission of the transferee as a Substitute Member pursuant to Section 15.2 hereof. The rights and obligations of Assignees are set forth in Section 15.1 hereof.

**Section 13.2 Purchase Option.** If at any time a Member (the "Seller") shall desire to Dispose of all or any part of its, his or her Unit(s) in the Company and the Seller has a bona fide offer to do so, the Seller shall have no right to Dispose of such Unit(s) without first giving Notice to the other Members of its, his or her desire to Dispose of such Unit(s). The Notice shall contain the name and address of the proposed transferee and, if applicable, the price and the terms of payment for the Unit(s), and shall constitute an offer by the Seller to sell all the Seller's Unit(s) to the other Members at the price and on the terms stated in the Notice. Each of the other Members shall have the right to purchase a proportionate share of the Unit(s) of the Seller determined according to each of the other Member's Sharing Ratios. Should any Member other than the Seller not desire to purchase its, his or her proportionate share of the Seller's Unit(s), then each Member which intends to purchase its, his or her proportionate share of such interest (the "Purchasing Member" or "Purchasing Members") may purchase its, his or her proportionate share of the unsold Seller's Unit(s), until all of the Seller's Unit(s) are sold. Each Purchasing Member may exercise its, his or her rights under this section by delivering written Notice of acceptance within thirty (30) days of its, his or her receipt of the Seller's Notice of intent to Dispose. The closing of the purchase by the Purchasing Members of the Seller's Unit(s) shall take place at the Principal Office of the Company within sixty (60) days after the receipt by the Seller of the written notices of acceptance by the Purchasing Member(s). Should the remaining or Purchasing Member(s) decline to purchase any portion of the Seller's Unit(s), such portion may be Disposed of to that Person named in the Seller's Notice as the prospective transferee, but only in accordance with those terms and conditions specified in the Notice. If such Disposition is not closed within ninety (90) days after the remaining or Purchasing Member(s) decline to purchase any portion of the Seller's Unit(s), the right of the Seller to Dispose of its, his or her Unit(s) to such other party shall lapse and any further attempt to Dispose of the Unit(s) shall again be subject to the terms and conditions hereof. All Purchasing Members shall be deemed to be Substituted Members to the extent of the Unit(s) purchased from the Seller. Each transferee of Seller's Unit(s) or any portion thereof who is not a Member shall be an Assignee, and not a Substitute Member, unless the remaining Members admit the transferee as a Substitute Member pursuant to Section 15.2 hereof.

**Section 13.3 Dispositions Not in Compliance With This Article Void.** Any attempted Disposition, gift or devise of a Unit, or any part thereof, not in compliance with this Article XIII shall not be binding upon the Company, and the Managers shall not be required to recognize any transferee of a Unit as an Assignee unless the Disposition, gift or devise is in compliance with this Article XIII.

**Section 13.4 Termination of a Member's Employment.** Upon the termination of a Member's employment with the Company for any reason whatsoever other than as set forth in Section 13.5, the remaining Members shall have the option to purchase at the purchase price of the Book Value of the terminated Member's Units, a proportionate share of such terminated Member's Units determined according to each of the other Members' Sharing Ratios. Such purchase, if any, shall be consummated within thirty (30) days after the determination of the Book Value of the terminated Member's Units or such option shall cease. Should any Member not desire to purchase its, his or her proportionate share of the terminated Member's Units, then each Member which intends to purchase its, his or her proportionate share of the terminated Member's Units may purchase its, his or her proportionate share of the unsold terminated Member Unit(s) that were not purchased by the other Members until all of the Member's Units are sold. The purchasing Members may elect to pay the purchase price for the interest of the Member in cash or in installments pursuant to the terms and provisions of a Promissory Note. If the purchasing Members elect to pay the purchase price pursuant to the terms and provisions of a Promissory Note, the initial payment shall be an amount equal to ten percent (10%) of the purchase price and the balance shall be paid in eighty-four (84) equal monthly installments on the first (1<sup>st</sup>) day of each month commencing on the first (1<sup>st</sup>) day of the second (2<sup>nd</sup>) monthly immediately following the initial payment with interest on the unpaid balance accruing at the rate of seven percent (7%) per annum. Such unpaid balance shall be evidenced by a Promissory Note executed by the Purchasing Members delivered to the terminated Member.

**Section 13.5 Death of a Member.** Upon the death of a Member, the remaining Members shall have the option to purchase at the purchase price of the Fair Market Value of the deceased Member's Units, a proportionate share of such deceased Member's Units determined according to each of the surviving Member's Sharing Ratios. Such purchase, if any, shall be consummated within thirty (30) days after the determination of the Fair Market Value of the deceased Member's Units or such option shall terminate. Should any Member not desire to purchase its, his or her proportionate share of the deceased Member's Unit(s), then each Member which intends to purchase its, his or her proportionate share of the deceased Member's Units may purchase its, his or her proportionate share of the unsold deceased Member's Unit(s) that were not purchased by the other Members until all of the deceased Member's Unit(s) are sold. The purchasing Members may elect to pay the purchase price for the interest of the deceased Member in cash or in installments pursuant to the terms and provisions of a Promissory Note. If the purchasing Members elect to pay the purchase price pursuant to the terms and provisions of a Promissory Note, the initial payment shall be an amount equal to ten percent (10%) of the purchase price and the balance shall be paid in eighty-four (84) equal monthly installments on the first day of each month commencing on the first (1<sup>st</sup>) day of the second (2<sup>nd</sup>) month immediately following the initial payment with interest on the unpaid balance accruing at the rate of seven percent (7%) per annum. Such unpaid balance shall be evidenced by a Promissory Note executed by the purchasing Members delivered to the personal representative of the deceased Member.

ARTICLE XIV  
**CESSATION OF MEMBERSHIP**

**Section 14.1 No Power to Voluntarily Cease Being a Member.** A member shall have no power to cease being a Member of the Company, voluntarily or otherwise; except upon the occurrence of the events specified in Section 14.2 below or the written consent of a majority of the Members.

**Section 14.2 Cessation as a Member.** A Person shall cease to be a Member upon the occurrence of any of the following events:

- (a) The withdrawal of a Member with the written consent of all of the Members;
- (b) The Member (1) makes an assignment for the benefit of creditors, (2) files a voluntary petition in bankruptcy, (3) is adjudicated bankrupt or insolvent, (4) files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation, (5) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any Proceeding in the nature of the proceedings in clause (4) above, or (6) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties;
- (c) Any of the following time periods have lapsed: (1) One Hundred Twenty (120) days have elapsed after the commencement of any Proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, unless the Proceeding has been dismissed; (2) Ninety (90) days have elapsed after the appointment, without the consent of the Member, of a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties, unless the appointment is vacated or stayed; or (3) Ninety (90) days have elapsed after the expiration of any stay, unless the appointment is vacated;
- (d) In the case of a Member who is a natural Person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's personal estate;
- (e) A Disposition, gift or devise of all of a Member's Units to an Assignee in compliance with this

Agreement and the Assignee's admission as a Substitute Member. The transferor Member's cessation shall be effective as of the date of the Assignee's admission as a Substitute Member.

- (f) A Disposition, gift or devise of all of a Member's Units to another Member(s) in compliance with this Agreement.
- (g) In the case of a Member that is a separate Organization other than a corporation, (1) the dissolution and commencement of winding up of the separate Organization, or (2) a change of more than fifty percent (50%) in the direct or indirect ownership of such Organization unless the transferee of the ownership interest in such Organization is an Affiliate of the Member.
- (h) In the case of a Member that is a corporation, (1) the filing of a certificate of dissolution or its equivalent for the corporation, or (2) the revocation of its charter and the lapse of ninety (90) days after notice to the corporation of revocation without a reinstatement of its charter or (3) a change of fifty percent (50%) or more in the direct or indirect ownership of the stock of the corporation unless the transferee of the ownership interest in such corporation is an Affiliate of the Member.
- (i) The purchase by the remaining Members of a Member's Units in accordance with **Section 13.4** hereof.

**Section 14.3 Rights of Cessating Member and the Company.** In the event any Member ceases to be a Member prior to the expiration of the term set forth in **Section 2.5** (other than by subparagraphs 14.2(e) and (h)), such cessation shall not cause a Dissolution Event and winding up of the Company under Article XVI, the cessating Member (and/or its, his or her successor, personal or legal representatives or assigns) shall cease to have any rights as a Member (including voting rights) except only the right to receive Distributions to the same extent as a permitted Assignee in the Company in accordance with the terms of this Agreement, until such time as the Company is wound up and terminated. The amount of Distributions to be paid with regard to the cessating Member's Units and the value of the cessating Member's Units shall be reduced by any Damages, if any, sustained by the Company as a result of such Member's cessation as a Member.

Cessation of a Member under subparagraphs **14.2(e)** and **(h)** shall not cause a Dissolution Event and winding up of the Company under Article XVI and such cessating events shall terminate said Member's entire interest in the Company except as provided in **Section 13.4(b)**.

## ARTICLE XV **ADMISSION OF ASSIGNEES AND ADDITIONAL MEMBERS**

**Section 15.1 Rights of Assignee.** The Assignee of a Unit(s) has no right to participate in the management of the business and affairs of the Company or to become a Member. The Assignee is only entitled to receive the Distributions and return of capital, and to be allocated the Net Profits and Net Losses and other allocations attributable to the assigned Units. Units held by an Assignee shall be subject to the same restrictions on transfer as are Units held by Members. The Assignee shall have the same obligations to the Company as a Member holding the same interest would have, including any obligation to contribute additional capital as provided in Article IX.

**Section 15.2 Admission of Substitute Members.** An Assignee of a Unit(s) shall be admitted as a Substitute Member and admitted to all the rights of the Member who initially assigned the Units only upon satisfaction of the following conditions:

- (a) A majority of the remaining Members shall consent in writing to such substitution; and
- (b) the Assignee of such Units shall consent in writing to be bound by the Articles and Operating Agreement as theretofore amended.

Any Member may grant or withhold consent to such admission for any Substitute Member in its, his or her sole and absolute discretion. If so admitted, the Substitute Member has all the rights and powers and is subject to all the restrictions and liabilities of the Member originally assigning the Unit. The admission of a Substitute Member shall not release the Member originally assigning the Unit from any liability to the Company that may have existed prior to the consent.

**Section 15.3 Admission of Additional Members.** Upon the written consent of a Majority of the Members, the Company may permit the admission of Additional Members and determine the Capital Contributions of such additional Members by the execution of an Admission Agreement. Upon such admission, the existing Members' ownership of Units shall be ratably reduced to provide for the additional Member's ownership of Unit(s).

ARTICLE XVI  
**DISSOLUTION AND WINDING UP**

**Section 16.1 Dissolution.** The Company shall be dissolved and its affairs wound up, upon the first to occur of the following events, each of which shall constitute a Dissolution Event:

- (a) the expiration of the term set forth in Section 2.5, unless the business of the Company is continued with the written consent of a Majority of the Members; or
- (b) the unanimous written consent of the Members to dissolve.

**Section 16.2 Effect of Dissolution.** Upon the occurrence of a Dissolution Event, the Company shall cease carrying on its business, except insofar as may be necessary for the winding up thereof. The existence of the Company shall continue until the winding up of the affairs of the Company is completed and a certificate of dissolution has been issued by the probate judge in the county where the Articles were filed.

**Section 16.3 Distribution of Assets on Dissolution.** Upon the winding up of the Company, the Company's Property shall be liquidated and sold and any Net Profits, Net Losses, Book Gains, and Book Losses shall be allocated among the Members in accordance with Article X above. After such allocation, the liquidation proceeds shall be distributed as follows:

- (a) first, to creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of the Company's liabilities;
- (b) second, to the setting up of any reserves which the Managers may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the Company;
- (c) third, to the Members to discharge their positive Capital Accounts, after giving effect to the allocations set forth above; and
- (d) fourth, to the Members in accordance with their Sharing Ratios.

At the election of the Managers, the Managers may distribute part or all of the Company's Property to the Members in kind in lieu of selling the Property, provided that all such in kind distributions are made in accordance with subparagraphs (a), (b) and (c) above as if such distributed in kind Property were hypothetically liquidated and sold at fair market value and the proper allocations of hypothetical Net Profits, Net Losses, Book Gains and Book Losses made.

**Section 16.4 Winding Up and Certificate of Dissolution.** The winding up of the Company shall be completed when all debts, liabilities, and obligations of the Company have been paid and discharged or





reasonably adequate provision therefore has been made, and all of the remaining Property and assets of the Company have been distributed to the Members. Upon the completion of the winding up of the Company, a certificate of dissolution shall be delivered to the probate judge in the county where Articles were filed. The certificate of dissolution shall set forth the information required by the Act.

## ARTICLE XVII AMENDMENT

**Section 17.1 Amendment by Managers.** The Managers shall have the right to amend the Articles and this Agreement without the consent of any Members for the following purposes: (i) to signify the admission of a Person as a Member or Substituted Member of the Company as authorized herein; or (ii) to change the name or address of a Member; or (iii) to change the name of the registered office or registered agent of the Company; or (iv) in the opinion of the Managers, there is an inconsistent, ambiguous, false or erroneous provision in this Agreement provided the amendment does not adversely affect the rights of the Members under this Agreement; or (v) in the opinion of counsel for the Company, it is necessary or appropriate to satisfy a requirement of the Code with respect to partnerships or of any federal or state securities laws or regulations, provided such amendments do not adversely affect the interests of the Members.

**Section 17.2 Amendment by Unanimous Consent of the Members.** Without the approval of all the Members, no amendment may be made to the Articles or this Agreement which shall: (i) change the limited liability of the Members; (ii) modify the provisions relating to the amount or character of the Capital Contribution of any Member or the obligation of a Member to make any type of contributions to the capital of the Company; (iii) modify the provisions of the Agreement relating to the allocation for the sharing of Net Profits or Net Losses or Book Gain or Book Losses of the Company unless specifically authorized hereunder; (iv) change the manner in which distributions of Net Cash Flow and Sale Proceeds are to be distributed to the Members unless specifically authorized hereunder; or (v) change the term set forth in Section 2.5 above.

**Section 17.3 Amendment by Majority Approval.** Other than as set forth in Sections 17.1 and 17.2 above, the Articles and the Agreement may be amended by adoption of an amendment hereto by the Managers and the approval of such amendment by the affirmative vote of a Majority of the Members.

## ARTICLE XVIII INDEMNIFICATION: CONFLICT OF INTEREST

**Section 18.1 Indemnification.** The Company shall indemnify any present or former Member, Manager, or agent of the Company (including any employee, officer, director, member or partner thereof), and any present or former employee of the Company (individually "Indemnified Party" and collectively "indemnified Parties"), against expenses actually and reasonably incurred in connection with the defense of an action, suit, or proceeding, civil or criminal, in which any of the Indemnified Parties is made a party by reason of being or having been a Member, Manager, or agent of the Company (or an employee, officer, director, member or partner thereof), or an employee of the Company, except in relation to matters as to which the Indemnified Party is determined in the action, suit, or proceeding to be liable for gross negligence, willful or reckless conduct in the performance of duty, or a knowing violation of the law. Additionally, the Company may purchase and maintain insurance on behalf of any of the Indemnified Parties against any liability asserted against and incurred by the Indemnified Party in any capacity arising out of his, her or its status as a Member, Manager, or employee of the Company, whether or not the Company would have the power to indemnify the Indemnified Party against that liability under this subsection.

**Section 18.2 Conflict of Interest.**

- (a) The Members or Managers, or their respective Affiliates, or any shareholder, officer, director, or employee thereof, may engage in or possess an interest in other business ventures of every

nature and description, independently or with others, including, but not limited to, the ownership, operation, management, and syndication of businesses the same or similar to that of the Company. Neither the Company nor the Members shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived therefrom. Neither a Member nor a Manager nor any of their respective Affiliates shall be obligated to present any particular opportunity to the Company, even if such opportunity is of a character which, if presented to the Company, could be taken by the Company and each of the Members and the Managers and any of their respective Affiliates shall have the right to take for its own account (individually or as a trustee, partner, or fiduciary) or to recommend to others any such particular opportunity.

- (b) Neither a Member nor a Manager will violate a duty or obligation owed to the Company merely because the conduct of the Member or Manager furthers its own interest. A Member or Manager may lend money to and transact other business with the Company. The rights and obligations of a Member or Manager who lends money to or transacts business with the Company are the same as those of a Person who is not a Member or Manager, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member or Manager has a direct or indirect interest in the transaction if the material facts of the transaction and the Member's or Manager's interests have been disclosed to all Members and the Managers and either (a) the transaction is fair to the Company, or (b) disinterested Members or Managers authorize, approve, or ratify the transaction.
- (c) A Manager or an Affiliate of a Manager may acquire, and own a Unit as a Member.
- (d) The Managers, as such, shall devote only such time to the Company as they, in their sole discretion, shall deem to be necessary to manage and supervise the Company business.

#### ARTICLE XIX MISCELLANEOUS PROVISIONS

**Section 19.1 Entire Agreement.** The Operating Agreement represents the entire agreement among all the Members and between the Members and the Company.

**Section 19.2 No Partnership Intended for Nontax Purposes.** The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership under either the Alabama Uniform Partnership Act or the Alabama Uniform Limited Partnership Act. The Members do not intend to be partners one to another, or partners as to any third party. To the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

**Section 19.3 Rights of Creditors and Third Parties under Company Agreement.** The Operating Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members, and their successors and assigns. The Operating Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under the Operating Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

**Section 19.4 Gender.** As used in this Agreement, the neuter gender shall include the masculine and the feminine, the masculine and feminine genders shall be interchangeable, the singular number shall include the plural, and the plural the singular.

**Section 19.5 Headings.** The headings and titles in this Operating Agreement are intended for convenience only and do not have and shall not be ascribed any weight in the interpretation hereof.

**Section 19.6 Assurances.** Each Member shall execute all certificates and other documents and shall do all such filing, recording, publishing, and other acts as the Manager deems appropriate to comply with the requirements of law for the formation and operation of the Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the property of the Company.

**Section 19.7 Applicable Law.** All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of Alabama.

**Section 19.8 Binding Provisions.** This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

**Section 19.9 Separability of Provisions.** Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are deemed to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

**Section 19.10 Arbitration.** The following shall be resolved by arbitration in accordance with the terms of this Section: (i) any disagreement, dispute or claim arising out of or relating to this Agreement or any exhibit or schedule hereto, between or among the Members and/or Assignees, and (ii) any "Company Deadlock", as defined below. Provisions for arbitration shall be as follows:

- (a) **Disputes Covered.** The agreement of the parties to arbitrate covers all disputes of every kind relating to this Agreement or to any dispute arising out of this Agreement. Disputes include actions for breach of contract with respect to this Agreement, as well as any claim based on tort or any other causes of action relating to the Agreement, such as claims based on an allegation of fraud or misrepresentation and claims based on a federal or state statute. In addition, upon the occurrence of any "Company Deadlock", as defined below, arbitration may be invoked by any Manager or Member to end said deadlock and to make such decisions as are necessary to continue the business and affairs of the Company. In resolving Company Deadlock, the arbitrator shall not only have the power to resolve any existing controversy or dispute but also the power to make such decisions as he or they in their sole discretion deem appropriate for furthering the business and objectives of the Company. In addition, the arbitrator selected according to procedures set forth below shall determine the arbitrability of any matter brought to him, and his decision shall be binding on the parties and on the courts.
- (b) **Forum.** Forum for arbitration shall be Birmingham, Alabama.
- (c) **Law.** Governing law shall be the law of the State of Alabama.
- (d) **Selection.** Unless the parties hereto are able to agree on a single arbitrator within ten (10) days after the initiation of an arbitration proceeding, the arbitrator shall be appointed by the commercial panel of the American Arbitration Association. The decision in writing of the arbitrator shall be final and binding upon the parties
- (e) **Administration.** Arbitration shall be administered by the American Arbitration Association.
- (f) **Rules.** Rules of arbitration shall be the Commercial Arbitration Rules of the American Arbitration Association, as modified by any other instructions that the parties hereto may agree upon at the



time, except that each party hereto shall have the right to conduct discovery in any manner and to the extent authorized by the Federal Rules of Civil Procedure as interpreted by the federal courts but only within such time period and to such degree as shall be permitted by the arbitrator. In the event of any conflict between those Rules and the provisions of this Section, the provisions of this Section shall prevail. The arbitrator shall not modify the terms of this Agreement.

- (g) **Remedies; Award.** The arbitrator shall give a written explanation of the reasons for his award. The arbitrator shall have power and authority to award any remedy or judgment that could be awarded by a court of law in the jurisdiction. The award rendered by arbitration shall be final and binding upon the parties hereto, and judgment upon the award may be entered in any court of competent jurisdiction in the United States.
- (h) **Costs.** The arbitrator shall have discretion to impose the costs of the arbitration, including the expense of the arbitrator, fees of the arbitrator, hearing expenses and related costs and expenses, upon the losing party, or to divide it between the parties on any terms which may appear just.
- (i) **Company Deadlock.** For purposes of this Agreement, "Company Deadlock" shall occur if the Managers are deadlocked in the management of the Company, the Members are unable to break the deadlock, and the business and affairs of the Company can no longer be conducted to the advantage of the Members generally because of the deadlock or (ii) if any decision considered by a Manager or Member to be critical to the future business or prospects of the Company is unable to be made because of the inability of the Managers to agree as to the outcome of the decision and the Members are unable to break the deadlock. The arbitrator shall have full power and authority to determine whether or not Company Deadlock exists, and if it does occur, to require the Company, the Managers, and/or the Members, to take such steps as shall be necessary to resolve the deadlock or to take action appropriate to furthering the business and affairs of the Company.

IN WITNESS WHEREOF, the undersigned have hereunto set our hands and seals on the date set forth beside our names.

MEMBERS:

MANAGER:

Valerie S Anderson

R S JARVIS

Date: 3/3/2010

Date: 3/3/2010

Valerie S Anderson

\_\_\_\_\_

Date: 3/3/2010

Date: \_\_\_\_\_



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**EXHIBIT "A"**

**MEMBERS**

<u>Name</u>	<u>Address</u>	<u>Capital Contribution</u>	<u>Units</u>
R. Scott Parker	130 Inverness Parkway, Ste. 140 Birmingham, Alabama 35242	\$10.00	10
Valerie S. Anderson	130 Inverness Parkway, Suite 140 Birmingham, Alabama 35242	\$10.00	10