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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough
Master in Equity

Appellate Case No. 2025-001384

John Kachmarsky, individually, as Manager of K&T Group, LLC, and as Trustee of the Revocable Trust of John Kachmarsky dated November 30, 2007, as member of K&T Group, LLC, Appellant,

v.

David G. Taylor, individually and as Manager of K&T Group, LLC; Taylor Capital, LLC, as member of K&T Group, LLC; and K&T Group, LLC, and Foley Bullock, LLC, Respondents.

RECORD ON APPEAL
VOLUME VI

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INDEX
VOLUME I

I. ORDERS

1. Referral to Master-in-Equity, filed July 18, 2023	1
2. Order Denying Plaintiff’s Motion for Summary Judgment, filed January 4, 2024	4
3. Scheduling Order, filed January 4, 2024.....	7
4. Trial Order, filed November 26, 2024.....	9
5. Order Granting Rule 60(b) Relief and Intervention, filed April 24, 2025	23
6. Order Granting Intervention, filed May 2, 2025.....	26
7. Order Granting Defendant’s Motion to Reconsider, filed June 17, 2025	28
8. Order Denying Plaintiff’s Motion to Reconsider, filed August 1, 2025	32

II. PLEADINGS

9. Summons and Complaint, filed June 8, 2022	35
10. Defendants’ Answer and Counterclaim, filed August 19, 2022.....	85
11. Plaintiff’s Reply to Counterclaim, filed September 6, 2022.....	93
12. Defendants’ Amended Answer and Counterclaim, filed October 10, 2024.....	96

III. MOTIONS, MEMORANDA, AND RELATED DOCUMENTS

13. Plaintiff’s Motion for Summary Judgment as to Defendants’ Counterclaim, filed August 23, 2023.....	104
14. Plaintiff’s Memorandum in Support of Motion for Summary Judgment as to Counterclaim, filed December 28, 2023.....	106
15. Defendants’ Memorandum in Opposition to Motion for Summary Judgment, filed January 4, 2024.....	111
16. Plaintiff’s Pretrial Brief, filed September 2024	151
17. Defendants’ Motion to Amend Answer and Counterclaim, filed September 16, 2024.....	155

18. Plaintiff’s Motion for Reconsideration, filed December 6, 2024	167
19. Defendants’ Affidavit of Costs and Attorney’s Fees, filed December 11, 2024	386
20. Plaintiff’s Rule 60(b)(2) Motion for Relief from Judgment Due to Newly Discovered Evidence, filed January 17, 2025	388
21. Motion to Intervene, filed January 22, 2025	452
22. Defendants’ Response to Plaintiff’s Motion for Reconsideration, filed January 21, 2025	479

VOLUME II

23. Defendants’ Response to Plaintiff’s Motion for Relief from Judgment, filed January 24, 2025	493
24. Plaintiff’s Reply on Memorandum in Support of Rule 60(b), filed January 27, 2025	528
25. Plaintiff’s Memorandum in Support of Rule 60(b) Motion, filed March 24, 2025	531
26. Exhibits to Plaintiff’s Memorandum in Support of Rule 60(b) Motion, filed March 25, 2025	568

VOLUME III

26 (Cont’d). Exhibits to Plaintiff’s Memorandum in Support of Rule 60(b) Motion, filed March 25, 2025	987
27. Defendants’ Response to Plaintiff’s Motion for Relief from Judgment, filed March 31, 2025	1082
28. Plaintiff’s Reply to Defendant’s Memorandum in Opposition to Rule 60(b) Relief, filed April 4, 2025	1266
29. Defendants’ Motion to Reconsider, filed May 2, 2025	1284

VOLUME IV

29 (Cont’d). Defendants’ Motion to Reconsider, filed May 2, 2025	1481
30. Plaintiff’s Email to Court re: Motion to Reconsider, dated May 9, 2025	1504
31. Proof of ADR, filed June 25, 2025	1505

32. Plaintiff’s Email to Court re: Plaintiff’s Outstanding Motion for Reconsideration, dated June 20, 2025.....	1506
33. Plaintiff’s Memorandum Distinguishing Boathouse in Support of Motion to Reconsider, filed July 10, 2025.....	1507
34. Defendants’ Supplemental Memorandum in Opposition to Motion to Reconsider, filed July 17, 2025.....	1520
35. Plaintiff’s Reply on Memorandum in Support to Motion to Reconsider, filed July 23, 2025.....	1571

IV. TRANSCRIPTS

36. Trial Transcript, September 17, 2024.....	1584
Witness Testimony:	
John Kachmarsky – Direct Examination by Mr. Slotchiver	1616
John Kachmarsky – Cross Examination by Mr. Duffy	1660
John Kachmarsky – Redirect Examination by Mr. Slotchiver.....	1700
John Kachmarsky – Recross Examination by Mr. Duffy	1707
Linda Kennedy – Direct Examination by Mr. Slotchiver	1710
Linda Kennedy – Cross Examination by Mr. Daniel.....	1714
Linda Kennedy – Redirect Examination by Mr. Slotchiver.....	1716
Edward Lapine – Direct Examination by Mr. Slotchiver	1718
Edward Lapine – Cross Examination by Mr. Duffy	1722
Edward Lapine – Redirect Examination by Mr. Slotchiver.....	1726
Edward Lapine – Recross Examination by Mr. Duffy.....	1727
David Taylor – Direct Examination by Mr. Duffy.....	1732
David Taylor – Cross Examination by Mr. Slotchiver.....	1748
David Taylor – Redirect Examination by Mr. Duffy	1785
David Taylor – Recross Examination by Mr. Slotchiver	1787
David Taylor – Redirect Examination by Mr. Duffy	1787
37. Rule 60(b) Hearing Transcript, January 27, 2025.....	1792
38. Status Conference Transcript, February 20, 2025.....	1833
39. Rule 60(b) Evidentiary Hearing Transcript, March 10, 2025	1860
Witness Testimony:	
David Taylor – Direct Examination by Mr. Slotchiver	1865
David Taylor – Cross Examination by Mr. Duffy.....	1894
David Taylor – Redirect Examination by Mr. Slotchiver	1913

David Taylor – Recross Examination by Mr. Duffy	1920
David Taylor – Redirect Examination by Mr. Slotchiver	1921
David Taylor – Recross Examination by Mr. Duffy	1924
Brent Bullock – Direct Examination by Mr. Slotchiver	1925
Brent Bullock – Cross Examination by Mr. Duffy	1931
Brent Bullock – Redirect Examination by Mr. Slotchiver	1940
Brent Bullock – Recross Examination by Mr. Duffy	1948
Brent Bullock – Redirect Examination by Mr. Slotchiver	1949
April Shores – Direct Examination by Mr. Slotchiver	1950
April Shores – Cross Examination by Mr. Duffy	1957
April Shores – Redirect Examination by Mr. Slotchiver	1961
John Kachmarsky – Direct Examination by Mr. Slotchiver	1966

VOLUME V

John Kachmarsky – Cross Examination by Mr. Duffy	1976
John Kachmarsky – Redirect Examination by Mr. Slotchiver	1987
John Kachmarsky – Recross Examination by Mr. Duffy	1990
40. Rule 60 (b) and Motion to Intervene Hearing Transcript, April 24, 2025	2014
41. Plaintiff’s Motion to Reconsider Hearing Transcript, June 30, 2025	2034

V. EXHIBITS

42. Plaintiff’s Trial Exhibits (as admitted), filed September 23, 2024	2072
43. Defendants’ Trial Exhibits (as admitted), filed September 23, 2024	2326
44. Plaintiff’s Evidentiary Hearing Exhibits (as admitted), filed March 11, 2025	2420
45. Defendants’ Evidentiary Hearing Exhibits (as admitted), filed March 11, 2025	2423

VI. NOTICES OF APPEAL

46. Notice of Appeal, filed July 11, 2025	2460
47. Amended Notice of Appeal, filed August 6, 2025	2463

VOLUME VI

VII. OTHER RELEVANT DOCUMENTS

48. Operating Agreement of K&T Group, LLC	2467
49. CERTIFICATE OF COUNSEL	2505

**FIRST AMENDED AND RESTATED
OPERATING AGREEMENT
OF
K&T GROUP, LLC**

TAYLOR & ASSOCIATES, PA
Attorneys & Counselors at Law
171 Church Street – Suite 330
Charleston, South Carolina 29401
Telephone 843.723.2000

OFFICIAL COMPANY NAME: **K&T Group, LLC**
 PLACE OF ORGANIZATION: **Charleston County, South Carolina**
 DATE OF ORGANIZATION: **November 11, 2003**
 DATE BEGIN BUSINESS: **November 11, 2003**
 MEMBERS:

<u>MEMBER'S NAME AND ADDRESS</u>	<u>CAPITAL CONTRIBUTION</u>	<u>FINANCIAL RIGHTS</u>	<u>VOTING RIGHTS</u>
Taylor Capital, LLC 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
John Kachmarsky <i>Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007</i> 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
TOTALS	\$_____.00	100.00%	100.00%

ANNUAL MEETING: **Not Required**
 ADDRESS: **171 Church Street, Suite 330
Charleston, South Carolina 29401**
 REGISTERED AGENT: **John Kachmarsky**
 MANAGEMENT COMMITTEE: **David Glenn Taylor
John Kachmarsky**
 COMPANY PROPERTY: **171 Church Street, Suites 318, 320 & 330
Charleston, South Carolina 29401**
 FEIN: XXXXXXXXXX

**FIRST AMENDED AND RESTATED
OPERATING AGREEMENT
FOR
K&T GROUP, LLC**

THIS FIRST AMENDED AND RESTATED OPERATING AGREEMENT (“Agreement”) is made and entered into to be effective as of the 1st day of January, 2009, by and among Taylor Capital, LLC and John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007 (collectively referred to as the “Members” and individually as a “Member”).

WITNESSETH:

WHEREAS, the Company was originally formed on the 11th day of November, 2003, with David Glenn Taylor and John Kachmarsky each owning a Fifty (50%) percent of the Membership Interests for the Company; and

WHEREAS, pursuant to that certain Transfer and Assignment of Membership Interests dated to be effective as of the 1st day of January, 2009, David Glenn Taylor transferred One Hundred (100%) percent of his said Membership Interests in the Company to Taylor Capital, LLC; and

WHEREAS, David Glenn Taylor and John Kachmarsky each give their approval to the transfer of Membership Interests in the Company from David Glenn Taylor to Taylor Capital, LLC; and

WHEREAS, pursuant to that certain Transfer and Assignment of Membership Interests dated to be effective as of the 1st day of January, 2009, John Kachmarsky transferred One Hundred (100%) percent of his said Membership Interests in the Company to John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007; and

WHEREAS, David Glenn Taylor and John Kachmarsky each give their approval to the transfer of Membership Interests in the Company from John Kachmarsky to John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007.

NOW, THEREFORE, BE IT KNOWN that the parties hereto, do hereby amend the Operating Agreement for K&T Group, LLC by striking all Articles of said indenture in their entirety and restating said Articles as set forth herein. This indenture, as amended, shall be referred to and known as the First Amended and Restated Operating Agreement for K&T Group, LLC.

NOW, THEREFORE, the parties hereto have agreed and do hereby agree as follows:

ARTICLE I
Formation, Purposes and Powers

1.1 Formation. The parties to this Agreement have heretofore formed a limited liability company under the laws of the State of South Carolina, and agree to and adopt the terms and conditions set forth in this Agreement. The limited liability company (“Company”) shall exist under and be governed by the provisions of the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 *et. seq.* of the Code of Laws of South Carolina (1976), as amended (the “Act”), except as otherwise provided or modified by this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.

1.2 Name. The name of the Company shall be K&T Group, LLC.

1.3 Articles of Organization. The Company has filed Articles of Organization with the South Carolina Secretary of State, and shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.

1.4 Annual Report. The Company shall not be required to file an Annual Report with the South Carolina Secretary of State.

1.5 Designated Office. The Company shall maintain a designated office in South Carolina in accordance with Section 33-44-108(a) of the Act. The initial designated office shall be at 171 Church Street - Suite 330 - Charleston - 29401. The Management Committee may from time to time change the location of the Company’s designated office.

1.6 Registered Agent and Address. The registered agent for service of process on the Company in South Carolina shall be John Kachmarsky. The street address of the registered agent for service of process on the Company in South Carolina shall be 171 Church Street - Suite 330 - Charleston - 29401. The Management Committee may change the registered agent’s street address or designate a new agent for service of process by filing with the Secretary of State a Statement of Change, in compliance with Section 33-44-109 of the Act.

1.7 Term Company. The Company shall be term Company. The Company commenced on the date the Articles were filed with the Secretary of State of South Carolina for the Company and shall continue in existence for the period fixed in the Articles for the duration of the Company, or such earlier time as this Operating Agreement may specify.

1.8 Statement of Company & Fictitious Name Certificates. The Members shall execute and file in the proper offices such statement of the Company and such assumed or fictitious name certificates as may be required by law.

1.9 Income Tax Election. The Company shall be taxed as a partnership for state and federal income tax purposes, and the Management Committee shall make all elections necessary and file all documents and forms required to obtain and maintain such income tax treatment for the Company and the Members.

1.10 Purposes. The character of business and purposes of the Company shall be to hold and manage the Company Property, including but not limited to servicing, managing, improving, operating, leasing, mortgaging, refinancing, pledging, selling or otherwise dealing with the Company Property and engaging in such other activities as the Management Committee deems necessary or appropriate to the foregoing purposes. The purposes of the Company shall also be to engage in any other business or activity which is allowed by law, common, statutory or otherwise.

1.11 Powers. Subject to the provisions of this Agreement, the Company shall have the same powers as an individual to do all things necessary or convenient to carry on its business and affairs, including the power to:

- (a) Sue and be sued, and defend in its name;
- (b) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, maintain, manage, operate and otherwise deal with property of any kind, real, personal, tangible and intangible, or any legal or equitable interest in property, wherever located;
- (c) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (d) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (e) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;
- (f) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (g) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (h) Conduct its business, locate offices, and exercise the powers granted by this Agreement and the Act within or without the State of South Carolina;

- (i) Appoint officers, employees, and agents of the Company, define their duties, fix their compensation, and lend them money and credit;
- (j) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former Members, officers, employees, and agents;
- (k) Make donations for the public welfare or for charitable, scientific, or educational purposes;
- (l) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the Company;
- (m) Perform any act and execute and deliver any documents required by any governmental authority; and
- (n) Perform any and all other acts or activities customary, incidental, necessary or convenient to the purposes and powers enumerated herein.

1.12 Company Accounts. The Company shall maintain such separate bank accounts as appropriate for the conduct of the Company's business, in the name of the Company, at such bank or banks as from time to time may be designated by the Management Committee.

1.13 Foreign Qualification. Prior to the Company doing any business in a state other than South Carolina, the Management Committee shall determine if the Company is required to "qualify to do business" in that state, and if so, the Management Committee shall take all steps necessary to qualify the Company in that state before conducting any business there.

1.14 Construction. If and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

1.15 Minimum Insurance Requirements. Unless otherwise determined by the Management Committee, the Company shall carry and maintain in force, or cause to be carried and maintained in force, insurance insuring the Company for the fair market value of the Company Property (other than land), including without limitation, insurance for all insurable improvements owned or leased by the Company against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, and public liability insurance against claims for bodily injury, death or property damage. All such insurance shall be effected under policies issued by insurers and be in forms and for amounts approved by the Management Committee. If the Company renders professional services within the meaning of Section 33-19-103(7) of the Code of Laws of South Carolina (1976), as amended, the Company shall acquire and maintain such additional insurance or segregated funds as may be required by the applicable licensing authority.

ARTICLE II

Definitions

2.1 Definitions. Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

(a) “**Act**” shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et. seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(b) “**Action of the Company**” and any reference to an action taken, or to be taken, by the Company shall mean any action properly approved by the Management Committee in accordance with ARTICLES V and VI.

(c) “**Agreement**” shall mean this Operating Agreement and any amendments made thereto from time to time.

(d) “**Articles of Organization**” shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act.

(e) “**Capital Account**” shall mean the account established and maintained for each Member on the books of the Company pursuant to ARTICLES VII and VIII hereof.

(f) “**Capital Contribution**” or “**Contribution to Capital**” shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of each Member.

(g) “**Code**” shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.

(h) “**Company**” shall mean K&T Group, LLC a South Carolina limited liability company.

(i) “**Company Liability**” shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

(j) “**Company Property**” shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company, including, but not limited to, the property described on EXHIBIT A attached hereto.

(k) **“Disinterested”** shall mean with respect to any Member or Manager, a Member or Manager who (1) is not a party to a particular transaction or other undertaking, (2) has no material financial interest in any organization that is a party to that undertaking, and (3) is not a Family member of any person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.

(l) **“Family”** shall mean the spouse, lineal descendants and ancestors of a Member.

(m) **“Financial Rights”** shall mean the right of a Member, or any other person, to share in the Profits and Losses of the Company and the right to share in distributions. The phrase “Financial Rights” shall have the same meaning, and describe the same rights, as the phrase “Distributional Interest” as used in the Act.

(n) **“Losses”** shall mean the losses of the Company as determined under SECTION 8.3 hereof.

(o) **“Management Committee”** shall mean the Management Committee elected from time to time pursuant to ARTICLE V.

(p) **“Manager”** shall mean any Person elected to the Management Committee from time to time pursuant to ARTICLE V. The initial Managers shall be David Glenn Taylor and John Kachmarsky.

(q) **“Member”** shall mean the parties to this Agreement from time to time. For purposes of ARTICLES IX, X and XI, the term “Member” includes any Member who has withdrawn or otherwise dissociated from the Company.

(r) **“Membership Share”** shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member’s Financial Rights and Voting Rights.

(s) **“Person”** shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.

(t) **“Profits”** shall mean the profits of the Company as determined under SECTION 8.3 hereof.

(u) **“S.C. Code”** shall mean the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(v) **“Voting Rights”** shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Any reference to a Member’s Voting Rights shall mean the percentage of Voting Rights in the Company held by the Member.

(w) “**Voting Rights in the Company**” shall mean the Voting Rights held by the Members, collectively. Unless otherwise specifically provided for herein, reference to a percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members, or the total Voting Rights represented at a meeting of the Members at which a quorum exists.

ARTICLE III **Membership and Capitalization**

3.1 Initial Members. Upon transfer of the property and/or cash constituting each Member’s initial Capital Contribution to the Company, the Financial Rights and Voting Rights of the Members shall be in the percentages shown on EXHIBIT B attached hereto.

3.2 Admission of New Members. Except in the case of transferees of all or any part of a Membership Share, who shall be subject to SECTION 3.3, additional Members may be admitted to the Company only with the unanimous consent of all Members who own one hundred (100%) percent of the Voting Rights in the Company. Members shall indicate their consent to the admission of a new Member by executing a memorandum to be attached to this Agreement setting forth the names and addresses of all the Members, the amount of cash or fair market value of property being contributed by the new Member (if applicable), and the percentage ownership of Financial Rights and Voting Rights of all the Members as a result of the new Member’s admission. In addition, no Person shall become a Member unless such Person:

(a) Agrees in writing to assume and to be bound by all the obligations and subject to all the restrictions of this Agreement and any further agreement with respect to the Company;

(b) Executes and acknowledges, as required, a certificate amending the fictitious name certificate or assumed name certificate of the Company in order to reflect the Member’s admittance and to take any other action that may be required in connection therewith;

(c) Notifies the Company of his current address and provides his federal and state tax identification numbers and such other information as the Management Committee may deem appropriate.

3.3 Effect of Transfer of Membership Share - Transferee Admitted as a Member. A transferee of all or any part of a Membership Share who is not already a Member may only become a Member if (a) the Members who own the percentage of Voting Rights in the Company required by SECTION 3.2 consent to the transferee’s admission (without regard to the Voting Rights of the transferor or transferee) and (b) such transferee meets all the qualification requirements for Members contained in this Agreement, including but not limited to, all requirements of SECTION 3.2. If the transferee becomes a Member, he shall be entitled to all rights and powers and subject to all restrictions and liabilities of a Member, including the transferor’s obligations to make contributions to the Company.

Notwithstanding anything herein to the contrary, no creditor of a Member who obtains any portion of a Membership Share, including any Financial Rights, by charging order pursuant to Section 33-44-504 of the Act, or otherwise, or any person or entity, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure, bankruptcy, receivership, divorce, or any similar proceeding may become a full Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

3.4 Transferee not Admitted as a Member. If the transferee of all or any part of a Member's Membership Share is not admitted as a Member, he shall be entitled to receive only the distributions to which the transferor would otherwise be entitled. The transferee shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any rights of a Member. The transferee takes all Financial Rights subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change a Member's rights and consequently affect the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under Section 33-44-801(b)(6) of the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred.

Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Company written notice of the transfer, proof of the transfer deemed sufficient by the Management Committee, the transferee's federal and state tax identification numbers, current legal address and telephone number, and such other information as the Management Committee may reasonably require.

3.5 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under Section 33-44-504 of the Act, the Management Committee may cause the Company to redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with Section 33-44-504(c) of the Act. Nothing in this SECTION 3.5 shall be construed as affecting or limiting the rights of the judgment debtor and the other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with Section 33-44-504(c) of the Act.

3.6 Ceasing to be a Member. A Member shall cease to be a Member and shall have no power to exercise any rights of a Member if such Member:

- (a) Transfers his entire Membership Share; or
- (b) Is expelled from the Company by judicial determination under Section 33-44-601(6) of the Act.

3.7 Power of Attorney. Any Member may give another Member power of attorney to act for or to execute documents in the name of such Member and any action taken pursuant to such power of attorney shall be valid for all purposes as if done or executed by the Member giving such a power of attorney, provided the Member giving such power of attorney delivers a copy of the power of attorney to the Company. Any such power of attorney may be general or may be limited to certain acts or instruments, may contain conditions and restrictions, and may be changed or revoked at any time by the Member who gave such power giving notice of its change or revocation to the Company.

3.8 Additional Capital Contributions. The Company may make a mandatory capital call, in whatever amount it deems appropriate, by giving notice to all the Members of the amount each is required to contribute to the Company's capital. Any additional capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this SECTION 3.8, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

(a) If any Member fails to make his proportionate Capital Contribution within thirty (30) days after receiving notice of a mandatory capital call ("Defaulting Member"), each Member who has made his required Capital Contribution pursuant to this SECTION 3.8 may make an additional Contribution to Capital equal to such Member's proportionate share of the Defaulting Member's required contribution. If any Member fails to make any such additional Capital Contributions within thirty (30) days after expiration of the original thirty (30) day period, the other Members may make further contributions in proportion to their Financial Rights until either the entire amount of the Defaulting Member's obligation is paid, or until no Member wishes to make any additional Capital Contributions. The Members shall have thirty (30) days to make such additional Contributions to Capital. Any Member that contributes additional capital to the Company shall have his Membership Share increased so that it is equal to a fraction, the numerator of which is the sum of all such Member's Capital Contributions to the Company and the denominator of which is the sum of all Capital Contributions to the Company made by each Member. The Financial Rights and Voting Rights of the Defaulting Member and each Member that elects not to make an additional Capital Contribution to the Company shall be reduced accordingly. To the extent a Defaulting Member's obligation to make Capital Contributions remains unsatisfied, such obligation of the Defaulting Member shall be a personal debt obligation of the Defaulting Member enforceable by the Company and the other Members as provided herein.

(b) The Defaulting Member hereby grants to the Company a security interest in his Membership Share to the extent of the Defaulting Member's unpaid obligation under this SECTION 3.8. If the Defaulting Member fails to satisfy his obligation hereunder by making Capital Contributions to the Company in the amount required within ninety (90) days after receiving notice of a mandatory capital call, the Defaulting Member shall forfeit his Membership Share, to the extent of any unpaid obligation. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture.

ARTICLE IV

Member Meetings

4.1 Place of Meetings. All meetings of the Members shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by those Members who own more than fifty (50%) percent of the Voting Rights in the Company.

4.2 Time of Meeting. Meetings of the Members may be called at any time by any Member by delivery to all Members of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

4.3 Quorum & Voting Requirement. Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. More than fifty (50%) percent of the Voting Rights in the Company constitutes a quorum. Except as an action is permitted to be accomplished without a meeting as provided in SECTION 4.5, in order for any vote of the Members to be valid, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative and unanimous vote of those Members who own one hundred (100%) percent of the Voting Rights represented at the meeting shall constitute a valid decision of the Members, unless the matter being voted on is one which requires a different vote pursuant to the Act or this Agreement.

4.4 Proxies. Members may vote by proxy appointed by an instrument in writing.

4.5 Action without Meeting. The Members may take action without notice and a meeting if all the Members consent to such action by signing a Consent of the Members which sets forth the action to be taken and contains the signature of each Member.

4.6 Waiver of Notice. A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

4.7 Ratification. Under the quorum and voting requirements of SECTION 4.3, the Members may ratify and adopt any and all acts done on behalf of the Company.

ARTICLE V

Management and Control

5.1 General Authority. Except as otherwise expressly provided by this Agreement or required by any nonwaivable provisions of applicable law, the business and affairs of the Company shall be managed by the Management Committee. The Management Committee shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. Without limiting the generality of the foregoing, the Management Committee shall have the power and authority on behalf of the Company to:

- (a) Acquire property, real, personal, tangible and intangible;
- (b) Borrow money for the Company from banks, other lending institutions, and other persons on such terms as the Company deems appropriate and to hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums;
- (c) Purchase liability and other insurance to protect the Company Property and business;
- (d) Hold and own any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, interests in general partnerships, limited partnerships, limited liability companies, common trust funds, mutual funds, stocks, options, warrants, rights, puts, calls, contracts, futures, bonds, debentures, securities (public and private), and other debt and equity interests of any kind or nature;
- (e) Invest and reinvest any Company funds in time deposits, short-term governmental obligations, commercial paper or other investments including real estate, stocks, options, general and limited partnerships, limited liability companies, common trust funds, mutual funds, futures, rights, warrants, puts, calls, contracts, public and private bonds, debentures, securities, and other debt and equity interests and to actively trade, speculate on and manage the same;
- (f) Enter into, make, and perform contracts, agreements, and other undertakings binding on the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and make all decisions and waivers thereunder;
- (g) Employ accountants, legal counsel, managing agents money managers, property managers, investment advisors and other advisors to perform services for the Company and to compensate them from Company funds;
- (h) Screen, interview, and examine staff and personnel to be employed by the Company;
- (i) Open and maintain bank and investment accounts and arrangements, draw checks, letters of credit, and other orders for payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (j) Maintain the assets of the Company in good order;
- (k) Collect sums due the Company;
- (l) Pay debts and obligations of the Company to the extent that Company funds are available;

(m) Sell, purchase, lease, loan, borrow, rent, repair, partition, mortgage, pledge, encumber, develop, improve, subdivide, or otherwise deal with any property, including Company Property;

(n) Bring suit on the Company's behalf or defend the Company in any such action, and compromise, settle, collect, and otherwise represent, prosecute and defend the legal rights and interests of the Company;

(o) File on behalf of the Company a voluntary petition for bankruptcy, or to bring an action on behalf of the Company for receivership, insolvency or other similar relief in any court of competent jurisdiction, and to defend, answer, respond and otherwise represent the Company in any such action or proceeding;

(p) Invest and reinvest in any kind of property, real, personal, tangible and intangible, including, but not limited to, common trust funds, stocks, bonds, notes, mortgages, general or limited partnerships, limited liability companies, savings accounts and certificates of deposit, mutual funds, and real estate; and

(q) Perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and to execute, acknowledge, verify and deliver any or all instruments desirable to effectuate any of the foregoing.

5.2 Members' Approval Required for Certain Major Decisions. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

(a) Any amendment to this Agreement or the Articles of Organization shall require the unanimous approval of the Members of the Company who own one hundred (100%) percent of the Voting Rights in the Company.

(b) The Company shall not compromise, settle, waive or limit the obligation of any Member to make a Capital Contribution to the Company without the unanimous consent of those Disinterested Members in the Company who own one hundred (100%) percent of the Voting Rights of all Disinterested Members in the Company.

(c) The Company shall not sell, or contract to sell, or otherwise dispose of substantially all of the Company Property without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company. For purposes of this paragraph, all or substantially all of the Company Property shall mean more than seventy-five (75%) percent of such property by value.

(d) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

(e) The Company shall not open any additional offices or additional locations without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

(f) The Company shall not close any existing office without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

(g) The Company shall not hire anyone who is a member of a Member's or Manager's Family without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

5.3 Liability for Certain Acts. A Manager who performs his duties in good faith and in a manner he reasonably believes to be in the best interests of the Company shall not have any liability solely by reason of being or having been a Manager of the Company. A Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of such Manager's fraud, deceit, gross negligence, willful misconduct, breach of this Agreement or a knowing violation of the law.

5.4 Compensation. The Managers shall be entitled to reasonable compensation for the performance of their duties. The amount of such compensation shall be determined by the Management Committee, subject to the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

5.5 Management Committee Meetings - Place, Time and Notice. All meetings of the Management Committee shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by more than fifty (50%) percent of the Managers. Meetings of the Management Committee may be called at any time by any Manager of the Company, by delivery to all Managers of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting. Each Manager shall be entitled to one (1) vote. Fifty (50%) percent of the Managers constitutes a quorum. Except as provided in SECTION 5.7, in order for any vote of the Managers to be valid and constitute an action of the Management Committee, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative vote of more than fifty (50%) percent of the Managers represented at the meeting shall constitute a valid decision of the Management Committee. Managers may vote by proxy appointed by an instrument in writing.

5.6 Waiver of Notice. A Manager may waive notice of any meeting by a signed writing. In addition, a Manager who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

5.7 Action without Meeting. The Management Committee may take action without notice and a meeting if all of the Managers consent to such action by signing a Consent of the Managers which sets forth the action to be taken and contains the signature of each Manager.

5.8 Managers: Number, Election, Tenure and Qualifications. The Company shall initially have two (2) Managers. The initial Managers shall be David Glenn Taylor and John Kachmarsky. The Managers need not be Members in the Company. Each Manager shall agree to be bound by the provisions of this Agreement as they relate to Managers. The number of Managers on the Management Committee may be changed from time to time by the affirmative and unanimous vote of those Members who own one hundred (100%) percent of the Voting Rights in the Company. The Managers shall be elected by the affirmative and unanimous vote of those Members who own one hundred (100%) of the Voting Rights in the Company. Following his election, each Manager will serve until (a) his removal, (b) his resignation, or (c) the election of a successor, whichever occurs first.

5.9 Removal of Managers. A Manager may be removed at any time, with or without cause, by those Members who own more than fifty (50%) percent of the Voting Rights in the Company.

5.10 Resignation of Managers. Any Manager may resign at any time by giving written notice to all Members (other than the Manager so resigning should such Manager also be a Member). The resignation shall be effective upon receipt of such written notice by the last Member receiving such notice. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal from the Company by the Member.

5.11 No Authority of Members. Except as otherwise provided in this Agreement, or as authorized by the Management Committee, no Member is an agent of the Company or has the authority to make any contracts, enter into any transactions, or make any commitments on behalf the Company.

5.12 Ratification. The Management Committee may ratify and adopt any and all acts of a Member or Manager done on behalf of the Company.

5.13 Delegation of Powers. From time to time, the Management Committee may authorize, or delegate any of its authority to a subcommittee of Persons, or a single Person, whom it shall name, to act on its behalf regarding any matter over which the Management Committee has authority.

ARTICLE VI
Fiduciary Duties, Right to Rely, Indemnification

6.1 Duties of Members. A Member who is not also a Manager owes no duties to the Company or to the Members solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement, exercises some or all of the rights of a Manager in the management and conduct of the Company's business is held to the standards of conduct applicable to Managers under this Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Manager by this Agreement or the Act.

6.2 Duty of Loyalty. A Manager's duty of loyalty to the Company and the Members is limited to the following:

(a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Manager in the conduct or winding up of the Company's business or derived from a use by the Manager of the Company's property, including the appropriation of a Company opportunity;

(b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and

(c) To refrain from competing with the Company in the conduct of the Company's business before dissolution of the Company.

6.3 Duty of Care. A Manager's duty of care to the Company and the Members in the conduct of and winding up of the Company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

6.4 Fiduciary Duties. Each Manager shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the Members. A Manager does not violate a duty or obligation to the Company merely because the Manager's conduct furthers the Manager's own interest. A Manager may lend money to and transact other business with the Company. As to each loan or transaction, the rights and obligations of the Manager are the same as those of a Person who is not a Manager, subject to other applicable law.

6.5 Duty of Confidentiality. Each Manager hereby warrants, covenants and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company or use for the business of any other Person, any of the Company's confidential information, including but not limited to pricing information, data, sales methods, know how, processes, licenses, trade secrets, names of customers, customer lists, names of Members, or the partners, shareholders, members or other principals of any Member, future plans, accounting, marketing, financial data, or contract information.

6.6 Right to Rely. The Managers shall not be held liable to the Company, or to the Members, for relying in good faith upon the records required to be maintained by this Agreement and upon such information, opinions, reports or statements by any of the Managers, Members, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the Company, as to matters the Managers reasonably believe are within such other Person's professional or expert competence, 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 relevant to the existence or amount of assets from which distributions to Members might properly be made.

6.7 Indemnification of Managers. To the fullest extent allowed by law, the Managers shall be indemnified and held harmless by the Company for any liability resulting from any act performed or omission made by them in good faith on behalf of the Company, except for acts or omissions of gross negligence, intentional misconduct, or knowing violation of the law.

6.8 Remedies. Each Manager acknowledges and represents that irreparable damage and harm could be done to the Company if there is a breach of the covenants contained herein, and that in the event of a breach, each Manager agrees that the Company shall be entitled to injunctive relief (both temporary and/or permanent), without posting bond, as well as monetary damages and reasonable attorney's fees for the enforcement of this Agreement. Each Manager agrees to return all documents and copies of documents upon request by the Company.

6.9 Scope of Duties. A Manager is relieved of liability imposed by law or this Agreement for violation of the standards prescribed by this ARTICLE VI to the extent of the managerial authority delegated to the Members by this Agreement.

ARTICLE VII

Capital Accounts and Accounting

7.1 Capital Accounts. The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).

- (a) Each Member's Capital Account shall be credited with the following:
- (1) Such Member's Capital Contributions;
 - (2) Such Member's distributive share of Profits;
 - (3) The amount of any Company Liabilities that are assumed by such Member or that are secured by any property distributed to such Member; and
 - (4) With respect to a transferee Member, a pro rata portion of the Capital Account of the transferor Member.

(b) Each Member's Capital Account shall be debited by the following:

- (1) The amount of cash and the net fair market value of any property distributed to such Member (as of the date of the distribution);
- (2) Such Member's distributive share of Losses;
- (3) The amount of any liabilities of such Member assumed by the Company or that are secured by any property contributed by such Member to the Company; and
- (4) With respect to a transferor Member, a pro rata portion of the Capital Account of the transferee Member.

7.2 Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the Management Committee.

7.3 Taxable Year and Tax Accounting Methods. Unless otherwise required by the Code, Treasury Regulations or the Internal Revenue Service, the Company's taxable and fiscal years shall be the calendar year, and the books of account of the Company shall be maintained on a cash basis consistently applied and shall show all items of income and expense. Subject to SECTION 7.6 hereof, all elections required or permitted to be made by the Company under the Code shall be made by the Management Committee.

7.4 Tax Returns. Not later than the time required by law, the Management Committee shall prepare and file or cause to be prepared and filed for each fiscal year, all federal, state, and local income tax returns required of the Company.

7.5 Tax Elections.

(a) The Company shall make the following elections for federal income tax purposes:

- (1) To treat as an expense for federal income tax purposes all amounts incurred for real estate taxes, interest and other charges that may, in accordance with applicable law and regulations, be considered as an expense;
- (2) To deduct expenses incurred in organizing the Company ratably over a sixty (60) month period as provided in Section 709 of the Code; and
- (3) To elect to be excluded from the provisions of Subchapter K of the Internal Revenue Code pursuant to Treasury Regulation Section 301.7701-3(a).

(b) In the event of a distribution of Company Property to a Member or a transfer, whether during life or at death, by a Member of all or any part of his Membership Share, the Company shall determine whether to elect pursuant to Section 754 of the Code, and in accordance with applicable law and regulations, to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code.

7.6 Compliance with Section 704(b) of the Code. The provisions of this Agreement as they relate to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocations of Profits, Losses, income, gain, deductions, credit and other items pursuant to ARTICLE VIII to have substantial economic effect within the meaning of the Treasury Regulations promulgated under Section 704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.

7.7 Tax Matters Partner. John Kachmarsky is designated the tax matters partner of the Company, as defined in Section 6231(a)(7) of the Code. The Management Committee may designate a new tax matters partner from time to time.

ARTICLE VIII

Interim Distributions and Allocations

8.1 Interim Distributions. From time to time the Management Committee shall determine to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the business, including, but not limited to, operating expenses, debt service, acquisitions, reserves, amounts owed as payments under Section 707(c) of the Code, and all amounts necessary to preserve, maintain and repair any Company Property. Company Cash shall be applied first to payment of all Company Liabilities and expenses that are due and owing, retention of all amounts necessary for the aforementioned Company Liabilities, expenses or reserves, and the Company shall retain all amounts deemed necessary for the conduct of the Company's business. Subject to SECTION 8.2, any remaining Company Cash may be distributed to the Members. All such distributions to the Members must be made simultaneously to each of the Members and must be made in proportion to the Members' Financial Rights. Such distributions may be in cash or Company Property or partly in both. Items of Company Property need not be distributed proportionately, provided the Members agree upon the value of the property being distributed and the value of the property and the cash received by each Member is proportionate to his Financial Rights with respect to the property and cash distributed to all the Members. Any Person who holds Financial Rights in the Company but who is not otherwise a Member shall be allocated distributions only if such Person has provided a current address to the Management Committee, and has given notice and proof of his Financial Rights satisfactory to the Management Committee.

8.2 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this SECTION 8.2.

8.3 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) (organizational expenditures which the Company elects not to amortize under Code Section 709(b)) and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the “adjusted book value” (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the “adjusted book value” (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

8.4 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. Upon termination of the Company or upon liquidation of any Member’s Membership Share, distributions shall be made in accordance with the positive Capital Account balances of the Members after taking into account all Capital Account adjustments for the year during which such termination or liquidation occurs.

8.5 Tax Item Allocation. Unless otherwise specially allocated herein, whenever a proportionate part of Profits or Losses is charged or credited to the Capital Account of a Member, every item of income, gain, loss, deduction, credit, allowance or tax preference entering into the computation of such Profits or Losses or applicable to the period during which such Profits or Losses were realized shall be considered credited or charged, as the case may be, to such Capital Account in the same proportion. In the event of a transfer of Financial Rights in the Company at any time other than at the end of the Company’s tax year, the distributive share of Profits and Losses and any items of Company income, gain, loss, deduction, credit or tax preference attributable to the transferred Financial Rights shall be apportioned for income tax purposes between the transferor and transferee in accordance with the number of days in the taxable year of the Company that each was the owner of such Financial Rights.

8.6 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the fair market value at the time of contribution. In the event the Company uses the “Traditional Method with Curative Allocations” under Treasury Regulations Section 1.704-3(c) to correct for distortions caused by the “ceiling rule” (as defined therein) in making allocations pursuant to Section 704(c) of the Code, the Company may make curative allocations in any given year to offset the effects of the “ceiling rule” for prior taxable years. Any such allocations shall be made over a reasonable period of time, such as over the property’s economic life, in compliance with Treasury Regulations Section 1.704-3(c)(3)(ii). If cost recovery deductions with respect to an item of contributed property have been limited by the “ceiling rule”, the general limitation on the character of any curative allocation, contained in Treasury Regulations Section 1.704-3(c)(3)(iii)(A), shall not apply to income from disposition of the contributed property.

8.7 Nonrecourse Deductions. Notwithstanding anything herein to the contrary, beginning in the first taxable year of the Company in which there are nonrecourse deductions, all nonrecourse deductions and distributions of proceeds attributable to nonrecourse borrowing (as defined in Treasury Regulations Section 1.704-2) shall be allocated in accordance with the Members’ Financial Rights or in any other manner that is reasonably consistent with allocations that have substantial economic effect of some other significant Company item attributable to the property securing the nonrecourse liabilities. Items attributable to a particular Member’s Nonrecourse Liability (as defined in Treasury Regulations Section 1.704-2(b)(4)) shall be allocated to the Member that bears the economic risk of loss for the liability.

8.8 Minimum Gain Chargeback Requirements. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), if there is a net decrease in Company Minimum Gain (as determined under Treasury Regulations Section 1.704-2(d)) for the Company’s taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member’s share of the net decrease in Company Minimum Gain. A Member’s share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member’s percentage share of Company Minimum Gain at the end of the immediately preceding taxable year (as determined in Treasury Regulations Section 1.704-2(g)). A Member is not subject to this minimum gain chargeback requirement to the extent the Member’s share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability.

If during a taxable year there is a net decrease in Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(2)), any Member with a share of that Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(5)) as of the beginning of that taxable year must be allocated

items of income and gain for that taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Member Nonrecourse Debt Minimum Gain. A Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain is determined in a manner consistent with the provisions of Treasury Regulations Section 1.704-2(g)(2). A Member is not subject to this minimum gain chargeback requirement, however, to the extent the net decrease in Member Nonrecourse Debt Minimum Gain arises because the liability ceases to be Member Nonrecourse Debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a nonrecourse liability. The amount that would otherwise be subject to the Member Nonrecourse Minimum Gain chargeback is added to the Member's share of Company Minimum Gain under Treasury Regulations Section 1.704-2(g)(3).

8.9 Qualified Income Offset. Unless otherwise agreed, a Member is not required to fund any deficit in the Member's Capital Account at any time. However, if a Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and the unexpected adjustment, allocation, or distribution results in a deficit balance in the Capital Account for the Member (or a deficit balance in excess of any limited dollar amount the Member is obligated to restore), the Member will be allocated items of income and gain consisting of a pro rata portion of each item of Company income and gain for such year in an amount and manner sufficient to eliminate the deficit balance or the increase in the deficit balance as quickly as possible. This SECTION 8.9 will be interpreted, applied, and if necessary modified to constitute a "qualified income offset" as defined in Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

8.10 Distributions Subject to Set-Off. Subject to SECTIONS 3.3 and 3.4, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE IX

Dissolution, Winding Up, Termination

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

(a) The unanimous written consent of the Members who own one hundred (100%) percent of the Voting Rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this section;

(c) On application by a Member or a dissociated Member, upon entry of a judicial decree that:

(1) The economic purpose of the Company is likely to be unreasonably frustrated;

(2) Another Member has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the Company's business with that Member;

(3) It is not otherwise reasonably practical to carry on the Company's business in conformity with the Articles of Organization and this Agreement;

(4) The Company failed to purchase the petitioner's Financial Rights as required by Section 33-44-701 of the Act; or

(5) The Members in control of the Company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial the petitioner.

(d) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to Section 33-44-810 of the Act.

(e) The expiration of the period fixed for the duration of the Company, as set forth in the Articles of Organization, unless those Members who own one hundred percent (100%) of the Voting Rights in the Company extend the term of the Company.

9.2 Waiver of Right to Wind Up. Notwithstanding anything herein to the contrary, at any time after the dissolution of the Company and before the winding up of its business is completed, the Members, including a dissociated Member whose dissociation caused the dissolution, may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (a) the Company shall resume carrying on its business as if dissolution had never occurred and any liability incurred by the Company or a Member after the dissolution and before the waiver is determined as if the dissolution had never occurred, and (b) the rights of a third party accruing under Section 33-44-804(a) of the Act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

9.3 Winding Up: Powers and Duties of Liquidator. Following the dissolution of the Company, if the Members do not continue the Company's business under SECTION 9.1 or SECTION 9.2, the Management Committee shall appoint one or more Members or Managers or an independent third party to serve as liquidator. The liquidator shall have full authority in winding up the Company's affairs, and may preserve the Company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the Company's business, dispose of and transfer the Company's property, discharge the Company's liabilities, distribute the assets of the Company pursuant to SECTION 9.6, settle disputes by mediation or arbitration, and perform other necessary acts. In winding up the Company's affairs, the liquidator shall:

(a) Deliver notice of the Company's dissolution to all of the Company's known claimants and creditors in the form and manner described in Section 33-44-807 of the Act;

(b) Publish notice of the Company's dissolution as provided in Section 33-44-808 of the Act;

(c) Make final liquidating distributions as provided in SECTION 9.6, and distribute any Company Property discovered after any such final liquidating distributions in accordance with SECTION 9.6; and

(d) After dissolution and the completion of winding up, file Articles of Termination with the South Carolina Secretary of State to terminate the legal existence of the Company in accordance with Section 33-44-805 of the Act.

9.4 Sale of Company Property. Unless otherwise determined by the Management Committee, the liquidator shall first attempt to sell all or any part of the Company's business as a going concern. If any such sale or partial sale is not consummated within six (6) months after the date of the dissolution, or such other period of time determined by the Management Committee, the liquidator shall publish notice that all unsold Company assets are for sale and solicit bids for such assets. Any Company assets which remain unsold six (6) months after the date of the first publication of such notice shall be marshaled and auctioned by the liquidator. All assets unsold after the auction shall be distributed in kind in accordance with SECTION 9.5.

9.5 Distribution In Kind. The Company may distribute assets in kind to satisfy any or all of its obligations. If the Company will distribute assets in kind, the Members shall have thirty (30) days to agree upon the fair market value of such assets. If the Members cannot agree on the fair market value of any asset, the liquidator shall hire two (2) independent appraisers to appraise the asset(s) in question. The fair market value of each asset or group of assets appraised shall be the average of the two appraisals. Any property distributed in kind shall be treated in accordance with Sections 721, 736, 737 and 751 of the Code. The liquidator shall adjust the Members' Capital Accounts to reflect any gain or loss which would have been allocated had such property been sold for its fair market value.

9.6 Final Liquidating Distributions. After the sale of all Company assets, or the determination of fair market value for distribution in kind of Company assets, the liquidator shall apply the proceeds of the sale or the Company assets as follows:

(a) Payment or adequate provision for payment shall be made to creditors including the liquidator if the liquidator is not a Member for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company, and to the extent permitted by law, Members who are creditors in satisfaction of liabilities of the Company;

(b) If the liquidator is a Member, to the liquidator for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company;

(c) All remaining cash and other assets shall be distributed to the Members in accordance with their positive Capital Account balances, determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the distribution occurs, including adjustments for distributions made under this SECTION 9.6.

9.7 Deficit Capital Account Balances. Notwithstanding anything herein to the contrary, and notwithstanding any custom or rule of law to the contrary, any deficit in a Member's Capital Account upon dissolution of the Company shall not be an asset of the Company and such Member shall not be obligated to contribute any amount to the Company in excess of any limited dollar amount the Member has otherwise agreed to restore.

9.8 Final and Complete Distribution. The distributions provided for in this ARTICLE IX shall constitute a complete return of the Members' Contributions to Capital, and a final and complete distribution to the Members in satisfaction of all of their rights in the Company.

ARTICLE X **Dissociation**

10.1 Events of Proper Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a proper dissociation:

(a) The death of the Member;

(b) Entry of an order by a court of competent jurisdiction adjudicating the Member to be insane, the appointment of a guardian or general conservator for the Member, or a judicial determination that the Member has otherwise become incapable of performing his duties under this Agreement;

(c) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him which is not dismissed within ninety (90) days; and

(d) Withdrawing, retiring or resigning from the Company with the consent of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company (without regard to the Voting Rights of the withdrawing, retiring or resigning Member).

10.2 Effect of Member's Proper Dissociation. Unless otherwise agreed between the Company and the other Members, the rights of a properly dissociating Member shall be governed by ARTICLE XI.

10.3 Events of Wrongful Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a wrongful dissociation:

(a) The voluntary withdrawal, retirement or resignation of any Member other than as permitted in SECTION 10.1; or

(b) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:

(1) Engaged in wrongful conduct that adversely and materially affected the Company's business; or

(2) Willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or

(3) Engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member.

10.4 Effect of Member's Wrongful Dissociation. A wrongfully dissociating Member is liable to the Company and to the other Members for all costs, expenses (including reasonable attorneys' fees) and damages caused by the wrongful dissociation, including the reasonable costs of obtaining replacement of the services the wrongfully dissociating Member was obligated to perform. The Company may offset such costs, expenses and damages against any distributions to which the wrongfully dissociating Member may be entitled in addition to pursuing any remedies provided for in this Agreement or otherwise available under applicable law. The parties to this Agreement agree that a wrongfully dissociating Member's sole entitlement upon wrongfully dissociating from the Company shall be as determined under SECTION 11.2(a). The parties to this Agreement agree that any purchase price determined and reduced under the provisions of this Agreement shall constitute fair value for the Membership Share of a wrongfully dissociating Member within the meaning of Sections 33-44-701 and 33-44-702 of the Act, and that payment of any purchase price upon the terms contained in SECTION 11.4 is permissible, authorized and in compliance with all provisions of the Act. The parties waive any right they may have to assert that the provisions of this Agreement regarding the rights of a wrongfully dissociating Member are inconsistent with, or in contravention of the Act.

10.5 Character of Payments. To the extent permitted by the Code and all applicable Treasury Regulations, all payments made to any dissociating Member (whether proper or wrongful), including those which relate to unrealized receivables and the goodwill of the Company, shall be treated as payments described in Section 736(a) of the Code.

10.6 Statement of Dissociation. A dissociated Member or the Company may file a Statement of Dissociation in accordance with Section 33-44-704 of the Act.

ARTICLE XI
Restrictions on Transfer and Buy-Sell Provisions

11.1 Restrictions on Transfer. No Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior unanimous written consent of those Members who own one hundred (100%) percent of the Voting Rights in the Company (without regard to the transferor Member). If such consent is obtained, no provision of this ARTICLE XI shall apply, and the provisions of ARTICLE III shall govern the rights of the transferor and transferee. With regard to all other transfers, ARTICLE XI shall control, and any attempted conveyance or encumbrance of all or a portion of a Membership Share in contravention of this ARTICLE XI shall be null, void and without effect.

11.2 Right to Buy.

(a) **Wrongful Dissociation of a Member.** If a Member wrongfully dissociates from the Company within the meaning of SECTION 10.3 (the “Withdrawing Member”), such Withdrawing Member shall be deemed to have immediately offered to sell to the Company all of the Withdrawing Member’s Membership Share at the price determined under SECTION 11.3 and on the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys’ fees) and damages incurred by the Company as a result of the Withdrawing Member’s wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, any purchase price to be paid for a wrongfully dissociating Member’s Membership Share shall equal seventy-five (75%) percent of the “Appraised Value” of such Member’s Membership Share as determined pursuant to SECTION 11.3. If the Company does not accept said offer within sixty (60) days after receiving written notice of the dissociation by the Withdrawing Member and the determination of the purchase price, the Withdrawing Member’s Membership Share shall be deemed to have been immediately thereon offered to the other Members (the “Remaining Members”) at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys’ fees) and damages incurred by the Company as a result of the Withdrawing Member’s wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, any purchase price to be paid for a wrongfully dissociating Member’s Membership Share shall equal seventy-five (75%) percent of the “Appraised Value” of such Member’s Membership Share as determined pursuant to SECTION 11.3. If any one or more of the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by such one or more Remaining Members. In the event more than one of the Remaining Members accept the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If the Remaining Members do not purchase the Withdrawing Member's Membership Share within sixty (60) days after such deemed offer, the Company and the Remaining Members shall have no obligation to purchase the Withdrawing Member's Membership Share until the date of the expiration of the specified term of the Company that existed on the date of such wrongful dissociation if the expiration of the specific term does not result in the dissolution and winding up of the Company's business under Section 33-44-801 of the Act. The purchase price on such date, if any, shall be determined under SECTION 11.3 and on the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys' fees) and damages incurred by the Company as a result of the Withdrawing Member's wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, any purchase price to be paid for a wrongfully dissociating Member's Membership Share shall equal seventy-five (75%) percent of the "Appraised Value" of such Member's Membership Share as determined pursuant to SECTION 11.3.

(b) Transfers Other Than Death or Disability. If a Member attempts to transfer all or a portion of his Membership Share without obtaining the other Members' consent as required in SECTION 11.1, or if a Member properly dissociates, other than by reason of death or disability, from the Company within the meaning of ARTICLE X (the "Dissolving Member"), such Dissolving Member is deemed to have offered to the Company all of such Dissolving Member's Membership Share at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. If the Company does not accept said offer within sixty (60) days after receiving written notice of the attempted transfer or dissociation by the Dissolving Member and the determination of the purchase price, the Dissolving Member's Membership Share shall be offered in writing to the other Members (the "Remaining Members") at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. If any one or more of the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by such one or more Remaining Members. In the event more than one of the Remaining Members accept the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If the Remaining Members do not purchase the Dissolving Member's Membership Share within sixty (60) days after receipt of such offer in writing, then a Dissolving Member may offer such Dissolving Member's Membership Share for sale to any other Person, provided that such Membership Share shall be sold for at least the same price and upon the same terms at which it was offered to the Company and the Remaining Members. The rights of the transferee of such Membership Share shall be determined in accordance with ARTICLE III.

In the event any sale of a Membership Share to a third person shall not be consummated within sixty (60) days after the expiration of the Remaining Members' option to purchase, the Dissolving Member shall have no right to sell said Membership Share or any portion thereof unless the same shall be offered again to the Company and the Remaining Members in the manner and in accordance with the terms provided in subsection (b) of this SECTION 11.2.

(c) **Dissociation by Death or Disability.** If a Member dissociates by reason of death or disability (meaning a Member is disabled continuously for more than twelve (12) months), such Member (the “Dissolving Member”) is deemed to have offered to the Company all of such Dissolving Member’s Membership Share at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. The definition of disability shall mean totally and permanently disabled so that a Member is unable to engage in his usual duties of employment as determined by a doctor selected and paid by the Company. If the Company does not accept said offer within sixty (60) days after receiving written notice of the attempted transfer or dissociation by the Dissolving Member (or his estate) and the determination of the purchase price, the Dissolving Member’s Membership Share shall be offered in writing to the other Members (the “Remaining Members”) at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. If any one or more of the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by such one or more Remaining Members. In the event more than one of the Remaining Members accept the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If no Remaining Members purchase the Dissolving Member’s Membership Share within sixty (60) days after receipt of such offer in writing, then the Company shall purchase, and the Dissolving Member, the estate of the Dissolving Member, or such Dissolving Member’s successor in interest by operation of law shall sell all of the Dissolving Member’s Membership Share in the Company at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4.

11.3 Purchase Price. Subject to SECTION 11.2(a), the price to be paid for a Withdrawing or Dissolving Member’s Membership Share shall be the purchase price agreed upon by the Withdrawing or Dissolving Member and the Company, or the Remaining Members who have elected to buy, as the case may be. If the parties do not agree upon the purchase price of the Membership Share within thirty (30) days following the death, disability, attempted transfer or the event of dissociation, then the purchase price shall be the “Appraised Value” (as defined in the next sentence) of the Membership Share. Appraised Value shall mean the value obtained, taking into account all applicable minority, lack of marketability and other discounts, by agreement of two (2) appraisers, one appointed by the Management Committee, or a majority of the Remaining Members who wish to purchase the offered Membership Share and who have not previously agreed upon the purchase price, and one appointed by the Withdrawing or Dissolving Member. Such appointments shall be made by the respective parties within forty-five (45) days following the death, disability, attempted transfer or the event of dissociation. Both appraisers must have at least five (5) years experience valuing businesses similar to the business of the Company. Should any party fail to so appoint a qualified appraiser within such prescribed time period, such failing party shall lose any right to so appoint an appraiser. If one party fails to appoint a qualified appraiser within the prescribed time period for such appointment, the sole appointed appraiser shall determine the Appraised Value and such Appraised Value determined by such sole appointed appraiser shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns. Where both parties properly appoint appraisers and both appraisers

cannot agree on an Appraised Value within thirty (30) days after they have both been selected, such appraisers shall appoint a third appraiser within ten (10) days of the expiration of the thirty (30) day period for the two original appraisers to agree upon an Appraised Value. The third appraiser shall determine the Appraised Value within thirty (30) days after such third appraiser's appointment. Appraised Value shall then be the average of all three (3) appraisals. The seller and the purchaser(s) shall each pay the costs of the appraiser appointed by them, and one-half (2) of the cost of the third appraiser. The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns.

11.4 Payment of Purchase Price. The closing of the purchase shall take place at the principal place of business of the Company, or at such other place as the parties may agree, and at a time and date designated by the parties, but in all events such closing shall take place within thirty (30) days after the date upon which the Appraised Value is determined under the provisions of SECTION 11.3, unless the parties otherwise mutually agree in writing. Unless the parties mutually agree otherwise, the purchase price shall be paid in twenty (20) equal and consecutive quarterly installments of principal and interest beginning ninety (90) days after the death, disability, attempted transfer or event of dissociation, and the determination of the purchase price has been made. The purchase price shall be evidenced by a promissory note made by the purchaser(s) to the order of the seller and shall bear interest compounded annually at the prime rate as published in the Wall Street Journal at the date of the sale or, if greater, the rate of interest applicable under Section 1274 of the Code. Payments may be anticipated, in whole or in part, at any time and from time to time, without penalty. The note shall provide that upon default of any payment of interest or principal, the note shall become due and payable immediately, at the option of the holder of the note. Upon payment of the purchase price, the Withdrawing or Dissolving Member's Membership Share (or any portion thereof) shall be conveyed to the purchaser(s). Until the purchase price is paid in full, the seller's Membership Share shall be held by the seller as collateral security for payment of the note, but in no case may the seller participate in the management of the Company as long as the note is not in default.

Any closing adjustments which are then usual and customary shall be made between the seller and the purchaser(s) on and as of the date of closing. The seller shall pay any transfer, gains or similar taxes arising out of or in connection with the sale and transfer of his Membership Share. Except as specifically provided in this Agreement, such sale shall be subject to all liabilities and obligations of the Company, matured and unmatured, absolute or contingent. All Members agree to execute and deliver all certificates and other instruments reasonably necessary to effectuate any transaction contemplated herein. Without limiting the foregoing, any Member transferring his Membership Share shall transfer such interest free and clear of any liens, encumbrances or any interests of any third party and shall execute or cause to be executed any and all documents required to fully transfer good and clear title to such Membership Share to the purchaser(s), including, but not limited to, any documents required to release any interest of a Member's spouse or any other party who may claim an interest in such Member's Membership Share.

ARTICLE XII
Miscellaneous Provisions

12.1 Members' Rights To Receive Information.

(a) The Company shall provide Members and their agents and attorneys access to its records, if any, at the Company's principal office. The Company shall provided former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:

(1) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and

(2) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(c) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

12.2 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, to the Managers, the Management Committee and the Company, at the Company's principal place of business, and to a Member at the address on EXHIBIT B attached hereto, or to such other address as may hereafter be designated by any amendment or addendum to this Agreement. All notices, consents or other communications shall be deemed given when actually hand delivered, or three (3) days after mailing in accordance with this Section.

12.3 Time of Essence. Time is of the essence of this Agreement.

12.4 Governing Law. This Agreement shall be governed by and construed in accordance with the South Carolina Uniform Limited Liability Company Act of 1996, as amended, any corresponding provisions of future laws, and other applicable laws of the State of South Carolina.

12.5 Consent to Jurisdiction. The parties to this Agreement hereby agree that the courts of the State of South Carolina shall have sole and exclusive jurisdiction over any matter arising from the interpretation, purpose, effect, or operation of this Agreement, and with regard to all matters associated with operation of the Company's business, regardless of the residence, now or in the future, of any party hereto. The parties consent to venue in Charleston County, South Carolina, and waive any rights they may have to assert jurisdiction or venue in any other court, administrative forum, or other adjudicative body.

12.6 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the nonbreaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

12.7 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforced to the fullest extent permitted by law. If any such invalidity shall be caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

12.8 Counterparts. This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.

12.9 Captions. The headings, titles and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.

12.10 Entire Agreement. This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.

12.11 Remedies Cumulative. Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.

12.12 Binding Effect. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.

12.13 Use of Terms. Use of the terms “herein”, “hereby”, “hereunder”, “hereof”, “hereinbefore”, “hereinafter”, and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to “this Article”, “this Section”, or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.

12.14 Further Assurances. Each of the parties will execute, deliver, acknowledge or supply such further documents, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement.

12.15 Equitable Remedies. The rights and remedies of the Members, the Company and the Managers hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any party aggrieved against any other party for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

12.16 Memorandum of Company. If the Management Committee deems it appropriate, the Management Committee shall cause the Company to file and record either a copy of this Agreement or a Memorandum of this Agreement with the applicable government authorities.

12.17 Exhibits. The exhibits attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All such exhibits read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.

12.18 Effective Date. This Agreement shall become effective upon the later of the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.

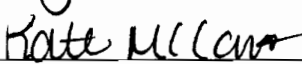
IN WITNESS WHEREOF, the undersigned have executed and sealed this Operating Agreement to be effective as of the day and year first above written.

WITNESSES:

MEMBER:



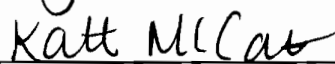
Witness #1



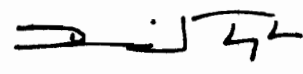
Witness #2 or Notary



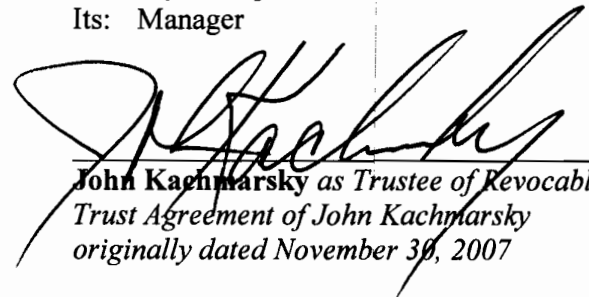
Witness #1



Witness #2 or Notary



By: **David Glenn Taylor**
For: Taylor Capital, LLC
Its: Manager



John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007

ACKNOWLEDGEMENT BY MANAGER

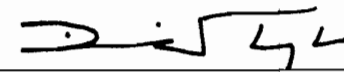
IN WITNESS WHEREOF, David Glenn Taylor hereby accepts the powers and obligations set forth herein for the capacity as Manager and has executed this Agreement in acknowledgement of same to be effective as of the day and year first above written.

WITNESSES:

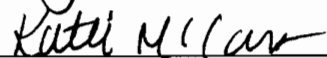
MANAGER:



Witness #1



David Glenn Taylor



Witness #2 or Notary

ACKNOWLEDGEMENT BY MANAGER

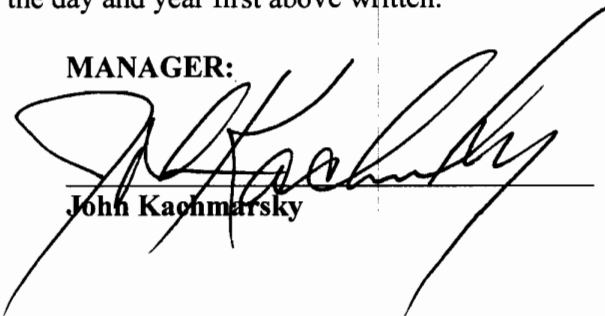
IN WITNESS WHEREOF, John Kachmarsky hereby accepts the powers and obligations set forth herein for the capacity as Manager and has executed this Agreement in acknowledgement of same to be effective as of the day and year first above written.

WITNESSES:

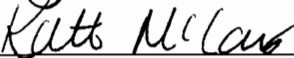
MANAGER:



Witness #1



John Kachmarsky



Witness #2 or Notary

EXHIBIT A

Description of Initial Company Property

- (1) _____ and No/100 United States Dollars (U.S.\$_____.00)
-- contributed by Taylor Capital, LLC.

- (2) _____ and No/100 United States Dollars (U.S.\$_____.00)
-- contributed by John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007.

EXHIBIT B

<u>MEMBER'S NAME AND ADDRESS</u>	<u>CAPITAL CONTRIBUTION</u>	<u>FINANCIAL RIGHTS</u>	<u>VOTING RIGHTS</u>
Taylor Capital, LLC 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$____.00	50.00%	50.00%
John Kachmarsky <i>Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007</i> 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$____.00	50.00%	50.00%
TOTALS	\$____.00	100.00%	100.00%

RECEIVED

Feb 10 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough
Master in Equity

Appellate Case No. 2025-001384

John Kachmarsky, individually, as Manager of K&T Group, LLC, and as Trustee of the Revocable Trust of John Kachmarsky dated November 30, 2007, as member of K&T Group, LLC, Appellant,

v.

David G. Taylor, individually and as Manager of K&T Group, LLC; Taylor Capital, LLC, as member of K&T Group, LLC; and K&T Group, LLC, and Foley Bullock, LLC, Respondents.

CERTIFICATE OF COUNSEL

I, the undersigned, hereby certify that the Record on Appeal (Vols. I-VI) contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

Jesse Sanchez, Esq. (SC Bar No. 101906)

751 Johnnie Dodds Blvd., Suite 200

Mt. Pleasant, South Carolina 29464

jesse@jessesanchezlaw.com

(843) 814-8181

Attorney for Appellant John Kachmarsky

January 21, 2026
Mount Pleasant, South Carolina

ROA - 2505