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**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

CASE NO. 2014-CP-10-5462

W. Mullins McLeod, Jr., ..... Respondent,

v.

Pierce, Hems, Sloan and Wilson, LLC f/k/a Pierce, Hems, Sloan  
& McLeod, LLC ..... Appellants,

v.

McLeod Law Group, LLC (Third-Party Defendant).

**APPELLANT'S MEMORANDUM IN SUPPORT OF APPELLATE JURISDICTION**

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**RECEIVED**

MAR 20 2015

**SC Court of Appeals**

By letter dated March 10, 2012, the Court of Appeals has requested that the parties to this appeal serve and file a memorandum addressing whether the trial court's ruling is immediately appealable. Appellant's motion to dismiss was not a Rule 12(b)(6) motion, but instead was a motion to dismiss or stay the matter for the parties to engage in an agreed upon appraisal process, similar to an arbitration. See attached Motion to Dismiss or, in the Alternative, to Stay. Motions that deny a party the agreed upon mode of trial affect substantial rights under South Carolina Code § 14-3-330(2), and are immediately appealable. *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997).

In this lawsuit, Respondent Mullins McLeod, Jr., seeks payment for the purchase of his interests in Appellant Pierce, Hems, Sloan & Wilson, LLC. McLeod withdrew from Pierce Hems in November of 2011. McLeod's claims in this matter are governed by an alternative dispute resolution provision contained in the Pierce, Hems, Sloan & McLeod, LLC Operating Agreement. The Operating Agreement provides the exclusive remedy for the valuation of shares of a withdrawing member of the Law Firm. Motion to Dismiss or, in the Alternative, to Stay, Operating Agreement, Section 11.3, Exhibit A. Pursuant to Section 11.3 of the Operating Agreement, Pierce Hems and the withdrawing member, McLeod, each select an appraiser with at least five years of experience to value the shares. If the two appraisers cannot agree on a value, they appoint a third appraiser, and the final and binding purchase price is the average value calculated by the three appraisers.

As stated by the Operating Agreement:

The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns. If any party fails to appoint an appraiser within the time required herein, the purchase price determined by the appraiser appointed by the other party shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns.

In addition, the purchase price to be paid to the withdrawing member "shall be reduced by the amount of all costs, expenses (including reasonable attorneys' fees) and damages incurred by the [Law Firm] as a result of the Withdrawing Member's wrongful dissociation from the Company." Section 11.2(a).

While this is not an arbitration clause, it is very similar to one in that it represents an agreement by the parties as to how McLeod's shares should be valued and removes such decision from the judicial process. South Carolina has a long and established history of upholding appraisal clauses. See *Charleston County Sch. Dist. v. State Budget & Control Bd.*, 313 S.E. 1, 4-6, 437 S.E.2d 6, 8-9 (1993) (affirming trial court order granting motion to invoke appraisal pursuant to statutory appraisal procedure applicable to insurance coverage disputes involving public buildings, where statute made appraisal condition precedent to filing suit); *Hendricks v. Am. Fire & Cas. Co.*, 247 S.C. 479, 483-91, 148 S.E.2d 162, 164-68 (1966) (affirming award issued by third appraiser and holding that insured was not entitled under contract to notice of appraisal proceedings); *Miller v. British Am. Assur. Co.*, 238 S.C. 94, 98-104, 119 S.E.2d 527, 530-32 (1961) (affirming trial court order requiring plaintiff to participate in appraisal process and staying proceedings pending appraisal); *Harwell v. Home Mut. Fire Ins. Co.*, 228 S.C. 594, 598, 91 S.E.2d 273, 275 (1956) ("[T]his Court has in numerous cases recognized the validity of a provision in an insurance policy for arbitration or appraisal as to the amount of the loss.").

By refusing to dismiss or stay this action and by failing to order completion of the agreed upon appraisal process, the trial court has denied Pierce Hens' right to the agreed upon appraisal process. More importantly, if the trial court's ruling is not addressed on an interlocutory basis,

then Pierce Hems will be forced to litigate the appraisal process in court and will lose the substantial right that they bargained for, namely a private appraisal process.

Appellate jurisdiction is governed by S.C. Code Ann. § 14-3-330. Interlocutory appeals that do not decide the merits of a case are permitted if the court's ruling affects a substantial right. S.C. Code Ann. § 14-3-330(2); *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997); *Frampton v. S. Carolina Dep't of Transp.*, 406 S.C. 377, 385, 752 S.E.2d 269, 274 (Ct. App. 2013). Thus, interlocutory orders denying trial by jury or disqualifying a party's attorney are immediately appealable. See *Pelfrey v. Bank of Greer*, 270 S.C. 691, 693, 244 S.E.2d 315, 316 (1978); *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). Of course, orders denying a motion to compel arbitration are also immediately appealable. See *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 121, 747 S.E.2d 461, 464 n. 4 (2013). Similarly, an order denying a motion for injunction, including an order requiring compliance with an appraisal process, are also immediately appealable. S.C. Code Ann. § 14-3-330(4).<sup>1</sup> See *Travis v. American Mfrs. Mut. Ins. Co.*, 335 Ill.App.3d 1171, 1173-74, 782 N.E.2d 322, 324 (2002).

The trial court's denial of Pierce Hems' motion takes the valuation process out of the hands of the appraisers hired by the parties, as agreed to by the parties in the Operating Agreement, and puts it in the hands of the judge or jury. Thus, the trial court's refusal to enforce that appraisal provision denies Pierce Hems' a substantial right to have the appraisal performed

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<sup>1</sup> The fact that the motion did not explicitly reference injunctive relief is of no matter. What matters is the substance of the motion, not the nomenclature. *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 127, 747 S.E.2d 461, 467 (2013) ("Regardless of how the motion was styled or captioned, Appellants requested only that arbitration be compelled. Focusing, as we must, on substance rather than nomenclature, because Appellants sought only the precise relief afforded under the FAA, we find the trial court's refusal to compel arbitration is immediately appealable.").

in private, in compliance with the agreement signed by all parties, and by appraisers retained by the parties, as opposed to an appraisal by way of a public trial by judge and jury.

Although the exact issue has not been reached by a South Carolina court, other courts across the country have recognized that a trial court's decision as to whether to enforce an appraisal process mandated by the parties' contract impacts substantial rights and is subject to immediate appellate review. *See Travis*, 335 Ill.App.3d at 1173-74, 782 N.E.2d at 324; *In re Slavonic Mut. Fire Ins. Ass'n*, 308 S.W.3d 556 (Tex. App. 2010); *North Glenn Homeowners Assn. v. State Farm Fire & Cas. Co.*, 854 N.W.2d 67, 69 (Iowa App. 2014); *Paradise Plaze Condominium Ass'n, Inc. v. Reinsurance Corp. of New York*, 685 So.2d 937 (Fla. App. 1996).

#### CONCLUSION

By denying Appellants Pierce HERNs' motion to dismiss or, in the alternative, motion to stay, the trial court has denied Pierce HERNs a substantial right. McLeod and every other member of Pierce HERNs has agreed that, upon withdrawal from the firm, the member's shares are valued according to a precise appraisal process that is "conclusive and binding on the parties . . ." A contractually agreed upon appraisal process is analogous to an arbitration clause and is enforceable under South Carolina law. The trial court's ruling denies Pierce HERNs the appraisal process that was agreed to and is enforceable. This is a substantial right that cannot be vindicated if the appeal is not heard on an interlocutory basis.

Based on the foregoing, Appellant Pierce HERNs would ask that the Court of Appeals accept appellate jurisdiction of this matter and address the trial court's ruling.

{SIGNATURE PAGE TO FOLLOW}

Respectfully submitted,

**BLAND RICHTER, LLP**  
*Attorneys for Appellant*



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Charleston, South Carolina  
March 19, 2015



Eric S. Bland\*  
Ronald L. Richter, Jr.

\*Also admitted in PA & FL

South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

**RE: McLeod v. PHSW v. McLeod**  
**Appellate Case No.: 2015-000294**  
**Charleston County Common Pleas Case No.: 2014-CP-10-5462**

March 19, 2015

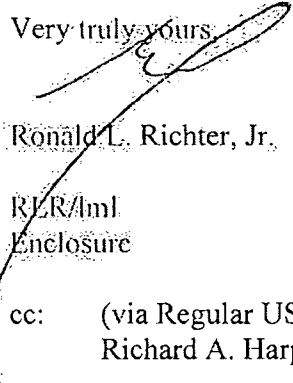
Dear Madame Clerk:

Enclosed please find the original and one (1) copy of the Appellant's Memorandum in Support of Appellate Jurisdiction and Proof of Service in the above-referenced matter. Please file the original and return the clocked copy to me in the enclosed self-addressed stamped envelope.

By copy of this letter to opposing counsel, I am hereby serving the same upon them this date under separate cover.

Thanking you for your assistance with this matter, I am

Very truly yours,

  
Ronald L. Richter, Jr.

R/LR/aml  
Enclosure

cc: (via Regular US Mail)  
Richard A. Harpootlian, Esquire

(via email)  
Clients  
Eric S. Bland, Esquire  
Scott M. Mongillo, Esquire

Reply to:  
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**MAR 20 2015**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
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CASE NO. 2014-CP-10-5462

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v.

Pierce, Hems, Sloan and Wilson, LLC f/k/a Pierce, Hems, Sloan  
& McLeod, LLC ..... Appellants,

v.

McLeod Law Group, LLC (Third-Party Defendant).

---

**ATTACHMENT**

**APPELLANT'S MEMORANDUM IN SUPPORT OF APPELLATE JURISDICTION**

---

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803.252.4848  
*Attorney for Respondent Mullins McLeod, Jr.*

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 W. MULLINS McLEOD, JR., )  
 Plaintiff, )  
 v. )  
 PIERCE HERNS SLOAN and WILSON, )  
 LLC f/k/a PIERCE HERNS SLOAN & )  
 McLEOD, LLC, )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2014-CP-10-5462

FILED  
 2014 OCT 31 PM 3:30  
 JULIE J. ANNE  
 CLERK OF COURT

DEFENDANT'S NOTICE OF MOTION  
 AND MOTION TO DISMISS OR IN  
 THE ALTERNATIVE, TO STAY

TO: RICHARD A. HARPOOTLIAN, ESQUIRE, COUNSEL FOR PLAINTIFF:

PLEASE TAKE NOTICE THAT Defendant Pierce Herns Sloan and Wilson, LLC f/k/a Pierce Herns Sloan & McLeod, LLC ("Pierce Herns") hereby moves to dismiss this action or, in the alternative, to stay pending calculation of the purchase price of Plaintiff W. Mullins McLeod's ("Plaintiff") interests in the firm in according with the Pierce Herns Operating Agreement.

**I. MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION.**

In this lawsuit, Plaintiff seeks payment for the purchase of his interests in Pierce Herns, which he withdrew from in November of 2011. Plaintiff's claims in this matter are governed by an alternative dispute resolution provision contained in the Pierce, Herns, Sloan & McLeod, LLC Operating Agreement, attached as Exhibit A, which provides the exclusive remedy for the valuation of shares of a withdrawing member of the Law Firm. See Section 11.3. Pursuant to Section 11.3, Pierce Herns and the withdrawing member, Plaintiff, each select an appraiser with at least five years of experience. If the two appraisers cannot agree on a value, they appoint a third appraiser, and the ultimate value is the average value calculated by the three appraisers.

As stated by the Operating Agreement:

The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns. If any party fails to appoint an appraiser within the time required herein, the purchase price determined by the appraiser appointed by the other party shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns.

In addition, the purchase price to be paid to the withdrawing member "shall be reduced by the amount of all costs, expenses (including reasonable attorneys' fees) and damages incurred by the [Law Firm] as a result of the Withdrawing Member's wrongful dissociation from the Company." Section 11.2(a).

Pierce Hens retained a qualified appraiser that valued Plaintiff's shares in accord with the terms of the Operating Agreement and provided the resulting appraisal to Plaintiff. Plaintiff also retained an accountant, John W. Molony, who requested and received all relevant financial material with the stated goal of preparing an appraisal for Plaintiff. Pursuant to the Operating Agreement and in good faith reliance upon Plaintiff's indication that he would comply with the Operating Agreement, Pierce Hens provided Plaintiff and Mr. Molony with all requested financial records.

Pierce Hens complied with the appraisal process set out in the Operating Agreement by providing Plaintiff with an appraisal of his interests in Pierce Hens. Plaintiff provided Pierce Hens with an unsigned appraisal that was not in compliance with the terms of the Operating Agreement. Plaintiff further refused to participate in the appraisal process set out in the Operating Agreement by refusing to agree on third appraiser to finalize the appraisal.

Since the appraisal process in the Operating Agreement is, by agreement of the parties, the exclusive means for the valuation of the Plaintiff's interests, this Court does not have subject matter jurisdiction over this dispute, and Defendant is entitled to an order dismissing this case or,

in the alternative, to a motion to stay this matter pending conclusion of the valuation process set out in the Operating Agreement.

South Carolina has a long and established history of upholding appraisal clauses. See *Charleston County Sch. Dist. v. State Budget & Control Bd.*, 313 S.E. 1, 4-6, 437 S.E.2d 6, 8-9 (1993) (affirming trial court order granting motion to invoke appraisal pursuant to statutory appraisal procedure applicable to insurance coverage disputes involving public buildings, where statute made appraisal condition precedent to filing suit); *Hendricks v. Am. Fire & Cas. Co.*, 247 S.C. 479, 483-91, 148 S.E.2d 162, 164-68 (1966) (affirming award issued by third appraiser and holding that insured was not entitled under contract to notice of appraisal proceedings); *Miller*, 238 S.C. at 98-104, 119 S.E.2d at 530-32 (affirming trial court order requiring plaintiff to participate in appraisal process and staying proceedings pending appraisal); *Harwell v. Home Mut. Fire Ins. Co.*, 228 S.C. 594, 598, 91 S.E.2d 273, 275 (1956) (“[T]his Court has in numerous cases recognized the validity of a provision in an insurance policy for arbitration or appraisal as to the amount of the loss.”); *Orenstein v. N.J. Ins. Co. of Newark, N.J.*, 131 S.C. 500, 511-12, 127 S.E. 570, 574 (1925); *Jones v. Enoree Power Co.*, 92 S.C. 263, 266-67, 75 S.E. 452, 454 (1912). Long-standing United States Supreme Court precedent also holds that contractual appraisal provisions relating to the amount of loss are “unquestionably valid.” *Hamilton v. Liverpool, London & Globe Ins. Co.*, 136 U.S. 242, 255 (1890).

Plaintiff’s claims solely arise out of the amounts, if any, purportedly owed by Defendant Pierce Hems for Plaintiff’s interests in Pierce Hems. Conversely, Pierce Hems’ counterclaims are concerned solely with the damages Plaintiff caused to Pierce Hems by his wrongful dissociation, including his failure to work solely on behalf of Pierce Hems, his conduct in running a “shadow firm” on his own behalf as set out in the Answer and Counterclaim, and his

failure to compensate Pierce Hems for work performed on files transferred to Plaintiff upon his departure. According to the Operating Agreement, such damages can be deducted from any amounts owed to Plaintiff for his membership interests. Accordingly, such Counterclaims are also part of the Operating Agreement's appraisal process.

Based on the foregoing, Defendants are entitled to dismissal of Plaintiff's claims or, in the alternative, a stay of this action pending the appraisal process set out in the Operating Agreement.

## **II. MOTION TO DISMISS BASED ON STATUTE OF LIMITATIONS.**

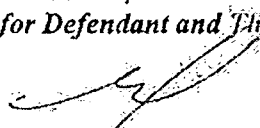
In contravention of the Operating Agreement signed by Plaintiff, Plaintiff has alleged a cause of action pursuant to South Carolina Code Ann. §§ 33-44-701 & 702 for judicial appraisal of his interests in the LLC. Assuming that the valuation provisions of the Operating Agreement are not applicable, which Defendant denies, these provisions would govern any recovery sought by Plaintiff.

Pursuant to South Carolina Code Ann. § 33-44-701(d), a dissociation member, such as Plaintiff, has a total of two hundred and forty days, at most, from the day of his dissociation to commence a proceeding against the LLC, such as Defendant, to enforce the purchase of his interests under Section 33-44-701. McLeod dissociated on November 4, 2011. Letter of Dissociation, Exhibit B. McLeod did not bring this action until September 4, 2014, more than two years after the 240 day statute of limitations deadline had passed.

Accordingly, Defendant is entitled to dismissal of McLeod's claims under South Carolina Code Ann. §§ 33-44-701 & 702, as well as all other claims seeking the appraisal of his interests in Defendant.

*{SIGNATURE PAGE TO FOLLOW}*

**BLAND RICHTER, LLP**  
*Attorneys for Defendant and Third-Party Plaintiff*



---

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October 31, 2014  
Charleston, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
W. MULLINS McLEOD, JR., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
PIERCE HERNS SLOAN and WILSON, )  
 )  
LLC f/k/a PIERCE HERNS SLOAN & )  
 )  
McLEOD, LLC, )  
 )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-10-5462

FILED  
2014 OCT 31 PM 12:30  
JULIE J. ARCHSTRONG  
CLERK OF COURT

CERTIFICATE OF SERVICE

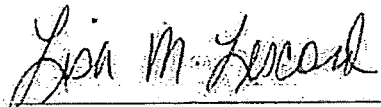
I, Lisa M. Lescord, the undersigned paralegal at Bland Richter, LLP, attorney for the Plaintiffs, do hereby certify that I have served upon the Defendants in the above referenced matter, by forwarding a copy of the same, via email and/or first class mail postage prepaid, unless otherwise stated below, to the following counsel listed below:

Documents:

**DEFENDANT'S NOTICE OF MOTION AND MOTION TO DISMISS**

Counsel:

Richard A. Harpootlian, Esquire  
RICHARD A. HARPOOTLIAN P.A.  
P.O. Box 1090  
Columbia, SC 29201

  
\_\_\_\_\_  
Lisa M. Lescord  
Paralegal

Charleston, South Carolina  
October 31, 2014

# EXHIBIT A

OPERATING AGREEMENT  
PIERCE, HERNS, SLOAN & MCLEOD, LLC  
PROFESSIONAL MEMBER – MANAGED LLC

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT ("Agreement") is made and entered into as of the 7<sup>th</sup> day of February, 2000 by and among Carl E. Pierce, II, Louis P. Hems, Allan P. Sloan, III, W. Mullins McLeod, and Joseph C. Wilson, IV, (collectively referred to as the "Members" and individually as a "Member").

### WITNESSETH:

WHEREAS, the parties desire to form a limited liability company under South Carolina law for the limited purposes hereinafter set forth.

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 hereby form 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 1 (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 Pierce, Hems, Sloan & McLeod, LLC.

1.3 Articles of Organization. The Company shall file 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. Beginning with the first full calendar year following the year in which the Company is organized, between January 1 and April 1 of each year during the Company's existence, the Company shall prepare and file with the South Carolina Secretary of State an annual report as required by Section 33-44-211 of the Act.

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 507 Savannah Highway, Charleston, SC 29407. The Company may from time to time change the location of its designated office.

1.6 Registered Agent and Address. The registered agent for service of process on the Company shall be Allan P. Sloan, III. The street address of the registered agent for service of process on the Company shall be 507 Savannah Highway, Charleston, SC 29407. The Company 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 At-Will Company. The Company shall be an at-will Company, as that term is defined in the Act. The Company's existence and business shall commence on the date Articles of Organization are filed with the South Carolina Secretary of State unless a later effective date is specified in said Articles of Organization.

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 Company 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 Purpose. The character of business and purpose of the Company shall be limited to rendering legal services and all services ancillary to such services which are permitted or authorized by the licensing authority of this state applicable to the legal profession. The Company may only render such services in this state through individuals licensed or otherwise authorized in this state to render such services. The Company may render professional services within two or more professions to the extent the combination of professional services or of professional and business purposes is authorized by the licensing law of this state applicable to each profession in the combination.

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 I 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, general partner, member, associate, or manager of any partnership, joint venture, trust, or other entity, but only if the entity is engaged solely in rendering professional services or in carrying on business authorized by the Company's Articles or Organization;

(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.

Notwithstanding anything herein to the contrary, the Company shall not have any power to engage in any activity or carry on any business that is not authorized by the licensing authority of this state applicable to the # profession; moreover, the Company may not render any professional service or engage in any business other than the professional service and business authorized by its Articles of Organization.

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 Company.

1.13 Foreign Qualification. Prior to the Company doing any business in a state other than South Carolina, the Company shall determine if it is required to "qualify to do business" in that state, and if so, the Company shall take all steps necessary to become qualified 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 an Action of the Company, 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 Company. 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 Members in accordance with ARTICLES IV, 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 #, 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 f the Company, including, but not limited to, the property described on EXHIBIT A attached hereto.

(k) "Disinterested" shall mean with respect to any Member, a Member 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) "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.

(p) "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.

(q) "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 .

(r) "Profits" shall mean the profits of the Company as determined under SECTION 8.3 hereof.

(s) "S.C. Code" shall mean the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(t) "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.

(u) "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 consent of those Members who own 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 Company may deem appropriate to the Company; and

(d) Would be a "Qualified Person" within the meaning of Section 33-19-103(8) of the S.C. Code if the Company was a South Carolina professional corporation.

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 Company, the transferee's

federal and state tax identification numbers, current legal address and telephone number, and such other information as the Company 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 Company may 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;
- (b) Is expelled from the Company by judicial determination under Section 33-44-601(6) of the Act; or
- (c) Becomes a "Disqualified Person" within the meaning of Section 33-19-103(1) of the S.C. Code if the Company was a South Carolina professional corporation and if such Member remains a Disqualified Person for a period of five (5) or more months from the date the disqualification occurs.

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 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 Meeting

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 60 ( % ) 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 for an Action of the Company. Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. More than 60 ( % ) percent of the Voting Rights in the Company constitutes a quorum. Except as provided in SECTION 4.6, in order for any vote of the Members to be valid and constitute an Action of the Company, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative vote of those Members who own more than 60 (#%) percent of the Voting Rights represented at the meeting shall constitute a valid decision of the Members, and an authorized Action of the Company, 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 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.

4.6 Action without Meeting. The Members may take action without notice and a r 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.

4.7 Ratification. The Members may, by an Action of the Company, ratify and adopt any and all acts of a Member 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, any matter relating to the business and affairs of the Company shall be decided by those Members who own more than 60 (%) percent of the Voting Rights in the Company. In addition, such Members may authorize or delegate any of their authority to any Person from time to time to act on their behalf. Such Members, or their authorized delegates, 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, they 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 Additional Voting Requirements 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 approval of those Members who own more than 60 ( %) 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 consent of those Disinterested Members in the Company who own more than 60 ( %) 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 approval of those Members who own more than 60 ( %) 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 50 ( %) 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 approval of those Members who own more than 60 ( %) percent of the Voting Rights in the Company.

(e) The Company shall not hire anyone who is a member of a Member's Family on a full time basis without the approval of those Members who own more than 60 ( %) percent of the Voting Rights in the Company.

### 5.3 Responsibility for Professional Services.

(a) Each individual who renders professional services as an employee or Member of the Company is liable for a negligent or wrongful act or omission in which he personally participates to the same extent as if he rendered the services as a sole practitioner. An employee or Member of the Company is not liable, however, for the conduct of other employees or Members of the Company unless he is at fault in appointing, supervising, or cooperating with them.

(b) The Company shall be liable to the same extent as its employees and Members if such employees and Members perform professional services within the scope of their employment or of their apparent authority to act for the Company.

(c) Except as otherwise provided by this Agreement and by law, the personal liability of a Member of the Company is no greater in any respect than the liability of a shareholder of a corporation incorporated under the South Carolina Business Corporation Act.

5.4 Liability for Certain Acts. A Member 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 Member of the Company. A Member 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 Member's fraud, deceit, gross negligence, willful misconduct, breach of this Agreement or a knowing violation of the law.

5.5 Compensation. The Members shall be entitled to reasonable compensation for the performance of their duties, unless otherwise determined by those Members who own more than 60 ( %) percent of the Voting Rights in the Company.

## ARTICLE VI

### Fiduciary Duties; Right to Rely; Indemnification

6.1 Duty of Loyalty. A Member's duty of loyalty to the Company and the other 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 Member in the conduct or winding up of the Company's business or derived from a use by the Member 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.

All of the Disinterested Members may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable. All of the Disinterested Members in the Company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

6.2 Duty of Care. A Member's duty of care to the Company and the other 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.

6.3 Fiduciary Duties. Each Member 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 other Members. A Member does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company. As to each loan or transaction, the rights and obligations of the Member are the same as those of a Person who is not a Member, subject to other applicable law. The duty of loyalty, duty of care and fiduciary duties set forth in this Agreement shall apply to any person winding up the Company's business and the personal or legal representative of the last surviving Member as if such Person were a Member.

6.4 Duty of Confidentiality. Each Member 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 rates, fees, sales methods, know how, processes, licenses, trade secrets, names of clients or patients, names of Members, or the partners, shareholders, members or other principals of any other Member, future plans, accounting, marketing, financial data, or contract information. Furthermore, each Member warrants, covenants and agrees that he will maintain client or patient confidentiality as required by any applicable rules and ethical requirements imposed by any applicable licensing or governing body with authority over the Company. The relationship between an individual

rendering professional services as an employee or Member of the Company and his client or patient is the same as if the individual were rendering the services as a sole practitioner. The relationship between the Company and the client or patient for whom its employees or Members are rendering professional services is the same as that between the client or patient and the employee or Member.

6.5 Right to Rely. The Members shall not be held liable to the Company, or to the other 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 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 Member reasonably believes 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.

6.6 Indemnification of Members. To the fullest extent allowed by law, the Members 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.

6.7 Remedies. Each Member 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, the Members agree 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 Member agrees to return all documents and copies of documents upon request by the Company.

## 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 an Action of the Company or a Member authorized to make such decisions pursuant to ARTICLE V.

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 an Action of the Company or a Member authorized to make such election pursuant to ARTICLE V.

7.4 Tax Returns. Not later than the time required by law, the Company 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; and

(2) To deduct expenses incurred in organizing the Company ratably over a sixty (60) month period as provided in Section 709 of the Code.

(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 § 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: Allan P. Sloan, III is designated the tax matters partner of the Company, as defined in Section 6231(a)(7) of the Code. The Company may designate a new tax matters partner from time to time .

## ARTICLE VIII

### Interim Distributions and Allocations

(Option) 8.1 Interim Distributions. From time to time the Company 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 Company, and has given notice and proof of his Financial Rights satisfactory to the Company.

(Option) 8.1 Interim Distributions. Within fifteen (15) days after the end of each calendar month, the Company shall determine the amount of Profits and Losses of the Company for such month and the allocation of such Profits and Losses to the

Members' Capital Accounts. The Company shall promptly distribute to each Member the excess of that Member's Capital Account over the sum of such Member's Capital Contributions; provided, however, that the Members may, by unanimous consent, agree to the establishment of reasonable reserves by the Company for current or future expenses and investments, anticipated and unanticipated. 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 Company, and has given notice and proof of his Financial Rights satisfactory to the Company.

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, and 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 written consent of the Members who own more than # (#%) 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.

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, those Members, other than a wrongfully dissociating Member, who own more than 60 ( %) percent of the Voting Rights in the Company shall appoint one or more Members 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 agreed by those Members, other than a wrongfully dissociating Member, who own more than 60 (%) percent of the Voting Rights in the Company, 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 agreed to by those Members, other than a wrongfully dissociating Member, who own more than 60 (%) percent of the Voting Rights in the Company, 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 anyone 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 60% 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 anyone 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.

(c) Any event occurs (other than the death or disability of the Member) which would result in the Member being a "Disqualified Person" within the meaning of Section 33-19-103(1) of the S.C. Code if the Company was a South Carolina professional corporation, unless the disqualification lasts no more than five (5) months from the date the disqualification occurs.

(d) The transfer of all or any part of a Member's Membership Share by operation of law or court judgment to any Person who would be a "Disqualified Person" within the meaning of Section 33-19-103(1) of the S.C. Code if the Company was a South Carolina professional corporation, unless the disqualification lasts no more than five (5) months from the date the transfer occurs.

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 receipt of the purchase price for his Membership Share, as determined in SECTION 11.2(a) and SECTION 11.3 upon the terms set forth in SECTION 11.4. The parties to this Agreement agree that the purchase price as so determined and reduced 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 the 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 written consent of those Members who own more than 60 ( %) 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. Notwithstanding anything herein to the contrary, any attempted transfer to a Person who would not be a "Qualified Person" within the meaning of Section 33-19-103(8) of the S.C. Code if the Company was a South Carolina professional corporation, 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"), he shall be deemed to have immediately offered to sell, and the Company shall be deemed to have immediately agreed to purchase 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, in no event will the purchase price to be paid for a wrongfully dissociating Member's Membership Share exceed 75 ( %) percent of the "Appraised Value" of such Member's Membership Share as determined pursuant to SECTION 11.3. No amount of the purchase price shall be due to the Withdrawing Member, however, unless and until he gives written notice of his dissociation to the Company.

(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 Member is deemed to have offered to the Company all of his 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 (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"). If the Company and/or the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by the Company and/or said Remaining Members. In the event more than one offeree accepts 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 his Membership Share for sale to any other Person if such Person would be a "Qualified Person" within the meaning of Section 33-19-103(8) of the S.C. Code if the Company was a South Carolina professional corporation, and 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 Qualified 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 herein provided.

[Option]

(c) Death. Notwithstanding anything herein to the contrary, upon the death of a Member, the Company shall purchase, and the estate of the decedent, or his successor in interest by operation of law shall sell all of the decedent's Membership Share in the Company now owned or hereafter acquired. The purchase price of such Membership Share shall be computed in accordance with the provisions of SECTION 11.3 and paid in accordance with the provisions of SECTION 11.4.

[Option]

(d) Disability. Notwithstanding anything herein to the contrary, if a Member is disabled continuously for more than twelve (12) months, then the Company shall purchase and said Member shall sell all of his Membership Share in the Company now owned or hereafter acquired. The purchase price of such Membership Share shall be computed in accordance with the provisions of SECTION 11.3 and paid in accordance with the provisions of 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.

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 Company, 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. Both appraisers must have at least five (5) years experience valuing businesses similar to the business of the Company. If the two (2) appraisers cannot agree on an Appraised Value within thirty (30) days after they have both been selected, they shall appoint a third appraiser. The third appraiser shall determine the Appraised Value within thirty (30) days after his appointment. Appraised Value shall 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 (1/2) 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. If any party fails to appoint an appraiser within the time required herein, the purchase price determined by the appraiser appointed by the other party shall be conclusive and binding upon the seller and purchaser(s), 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. 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 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 thereto) 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 provide 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 Company at its 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 # 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 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 Members 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 Member aggrieved against any other Member for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the Members that the respective rights and obligations of the Members hereunder shall be enforceable in equity as well as at law or otherwise.

12.16 Memorandum of Company. Upon an Action of the Company, the Members agree 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.

12.19 Attorney's Representations. The parties all acknowledge that the law firm of Vaughan & Lawrence prepared this Agreement on behalf of and in the course of its representation of the Company and that:

(a) The parties have been advised by Vaughan & Lawrence that a conflict exists among their individual interests; and

(b) The parties have been advised by Vaughan & Lawrence to seek the advice of independent counsel; and

(c) The parties have had the opportunity to seek the advice of independent counsel.

12.20 Merger. If all the members of the disappearing and surviving limited liability companies are qualified to be members of the surviving limited liability company, the Company may merge with another domestic or foreign limited liability company.

12.21 Termination of Professional Status. If the Company ceases to render professional services, it must amend its Articles of Organization to delete references to rendering professional services.

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

Witnesses:

ABH  
Patricia Ross

Carl E. Jones

ABH  
Patricia Ross

Lain P. Hunt

ABH  
Patricia Ross

Alan P. Mount

ABH  
Patricia Ross

W. M. ...

ABH  
Patricia Ross

J. C. ...

EXHIBIT A

Description of Initial Company Property

Dell Computers and Server HP Printers- \$40,000.00  
Teleco Phone and Voice Mail System- \$22,000.00  
Canon Digital Copier - \$15,000.00  
Lanier Fax Machine - \$3500.00  
File Cabinets- \$10,000.00  
Dictation Machines- \$3,000.00

EXHIBIT B

<u>Member's Name and Address</u>	<u>Capital Contribution</u>	<u>Financial Rights</u>	<u>Voting Rights</u>
Carl E. Pierce, II	\$85,000.00	42.5%	42.5%
Louis P. Hems	\$40,000.00	20%	20%
Allan P. Sloan, III	\$40,000.00	20%	20%
Mullins McLeod	\$20,000.00	10%	10%
Joseph Wilson	\$15,000.00	7.5%	7.5%

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, says that ( )he saw Carl E. Pierce, II execute and delivery the within written Pierce, Hems, Sloan & McLeod, LLC OPERATING AGREEMENT, and that ( )he with the other witness subscribed above witnessed the execution and delivery thereof.

Amy B McPhail  
Witness

SWORN TO AND SUBSCRIBED before me  
this 7 day of February, 2000.

M. B. Chambers  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 8-21-2005



STATE OF SOUTH CAROLINA)  
COUNTY OF CHARLESTON )

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, says that ( )he saw Allan P. Sloan, III execute and delivery the within written Pierce, Hems, Sloan & McLeod, LLC OPERATING AGREEMENT, and that ( )he with the other witness subscribed above witnessed the execution and delivery thereof.

Amy B. McPhail  
Witness

SWORN TO AND SUBSCRIBED before me  
this 7 day of February 2000.

Michael P. Chapman  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 8-21-2005

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF CHARLESTON )

PERSONALLY appeared before me the undersigned witness who, being duly sworn, says that ( )he saw W. Mullins McLeod execute and delivery the within written Pierce, Hems, Sloan & McLeod, LLC OPERATING AGREEMENT, and that ( )he with the other witness subscribed above witnessed the execution and delivery thereof.

Amy B. McPhail  
Witness

SWORN TO AND SUBSCRIBED before me  
this 7 day of February 2000.

Michelle R. Chapman  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 8-21-2005

STATE OF SOUTH CAROLINA)  
 )  
COUNTY OF CHARLESTON )

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, says that ( )he saw Joseph C. Wilson, IV execute and delivery the within written Pierce, Hems, Sloan & McLeod, LLC OPERATING AGREEMENT, and that ( )he with the other witness subscribed above witnessed the execution and delivery thereof.

Amy B. McPhail  
Witness

SWORN TO AND SUBSCRIBED before me  
this 7 day of February, 2000.

Michael B. Chapman  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 8-21-2005

# EXHIBIT B

## PIERCE, HERNS, SLOAN & McLEOD, LLC

CARL E. PIERCE, II  
LOUIS P. HERNS  
ALLAN P. SLOAN, III ♦♦  
W. MULLINS McLEOD, JR.  
JOSEPH C. WILSON, IV †  
JAMES G. KENNEDY  
JAMES D. GANDY, III  
WILLIAM P. EARLY

ATTORNEYS AND COUNSELORS AT LAW

THE BLAKE HOUSE, 321 EAST BAY STREET  
CHARLESTON, SOUTH CAROLINA 29401

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CHARLESTON, SOUTH CAROLINA 29413

(843) 722-7733  
(843) 722-7732 FAX  
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M. TODD RAINSFORD  
SONALY K. HENDRICKS ★  
ELIZABETH R. HAMILTON  
KRISTEN B. FEHSENFELD  
CHRISTINA von ZIELINSKI  
RYAN K. MILLER  
JULIE L. MOORE

- ◆ MEMBER SC & FL BAR
- ◆ CERTIFIED SC CIRCUIT COURT MEDIATOR
- † MEMBER SC, FL & GA BAR
- ▲ MEMBER SC & KY BAR
- ★ MEMBER SC, CO & WA BAR

November 4, 2011

Carl E. Pierce, II  
Pierce, Herns, Sloan and McLeod  
321 East Bay Street  
Charleston, SC 29401

Dear Carl,

Please accept this letter as confirmation of my withdrawal and proper disassociation from PHSM. I sincerely appreciate everyone's understanding regarding the reasons for my withdrawal from the firm.

I look forward to this being a smooth transition and wish PHSM nothing but success in the years to come.

With kind regards, I am

Sincerely,

  
W. Mullins McLeod, Jr.

WMM

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

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CASE NO. 2014-CP-10-5462

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W. Mullins McLeod, Jr.,.....Respondent,

v.

Pierce, Hens, Sloan and Wilson, LLC f/k/a Pierce, Hens, Sloan  
& McLeod, LLC ..... Appellants,

v.

McLeod Law Group, LLC (Third-Party Defendant).

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**PROOF OF SERVICE**

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I certify that I have served the Appellant's Memorandum in Support of Appellate Jurisdiction on W. Mullins McLeod, Jr. and McLeod Law Group, LLC, by depositing a copy of it in the United States Mail, postage prepaid, on March 19, 2015, addressed to his attorneys of record, Richard A. Harpootlian, Esquire, Post Office Box 1090, Columbia, South Carolina 29202.

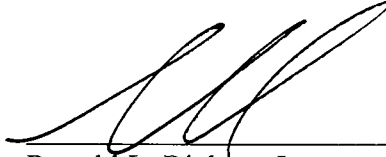
Charleston, South Carolina  
March 19, 2015

**RECEIVED**

MAR 20 2015

**SC Court of Appeals**

**BLAND RICHTER, LLP**  
*Attorneys for Appellant*



---

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Other Counsel of Record:

Richard A. Harpootlian, Esquire  
Post Office Box 1090  
Columbia, South Carolina 29202  
803.252.4848  
*Attorney for Respondent Mullins McLeod, Jr.*