

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

**RECEIVED**  
MAR 24 2015  
SC Court of Appeals

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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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 HERN’s 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

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

v.

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

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***ATTACHMENT***

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

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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 5:30  
JULIE J. ARISTON  
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 Hems 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 Hems provided Plaintiff and Mr. Molony with all requested financial records.

Pierce Hems complied with the appraisal process set out in the Operating Agreement by providing Plaintiff with an appraisal of his interests in Pierce Hems. Plaintiff provided Pierce Hems 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 Hens for Plaintiff's interests in Pierce Hens. Conversely, Pierce Hens' counterclaims are concerned solely with the damages Plaintiff caused to Pierce Hens by his wrongful dissociation, including his failure to work solely on behalf of Pierce Hens, 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.**

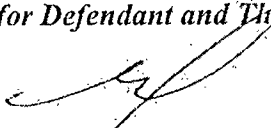
In contravention of the Operating Agreement signed by Plaintiff, Plaintiff has alleged a cause of action pursuant to South Carolina Code Ann. §§ 33-44-701 & 702 for judicial appraisal of his interests in the LLC: Assuming that the valuation provisions of the Operating Agreement are not applicable, which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

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October 31, 2014  
Charleston, South Carolina



# **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. Hearn, 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 I (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, Hearn, 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,



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Reply to:  
Peoples Building  
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Eric S. Bland\*  
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March 19, 2015

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

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

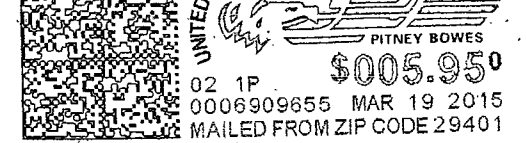
Very truly yours,

  
Ronald L. Richter, Jr.

RLR/lml  
Enclosure

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

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



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MAR 24 2015

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