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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159

Case No. 2020-CP-40-02040

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC, ... Respondents

v.

Julia B. Brooker,..... Appellant

MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

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Pursuant to Rule 240, SCACR, Respondents Beacham O. Brooker, Ellen B. Corontzes, and BBB&C Family, LLC hereby move this Court to dismiss this appeal because it is an appeal of an order granting a stay, which is not immediately appealable. *Edwards v. SunCom*, 369 S.C. 91, 93, 631 S.E.2d 529, 530 (2006) ("The sole issue we need address is whether an order granting a stay is immediately appealable. We hold that it is not."). Contrary to Appellant's argument, the order from which appellate review is sought is not an order denying a motion to compel arbitration. At no time, even on a Rule 59(e) motion, did the circuit court rule on a motion to compel arbitration. Rather, it simply granted Respondents' motion to stay the arbitration demand. Because no order that is immediately appealable is before this Court, this appeal should be dismissed.

FACTUAL AND PROCEDURAL HISTORY

Appellant Julia Brooker ("Appellant" or "Julia") is the sister of Respondents Beacham O. Brooker Jr. ("Beach") and Ellen Corontzes ("Ellen"). Their mother Janet Brooker ("Settlor" or "Janet") died in April of 2015. Prior to her death, she, her family, and estate planner realized that her estate would place a tremendous tax burden on her children based on the substantially increased value of Lockheed Martin stock owned by Janet. Consequently, Janet entered a new estate plan, a part of which involved aggressive gift giving through a trust, which is the subject of a probate lawsuit that has now been appealed, and the other part of the estate plan involved creating an LLC to hold property, which Janet previously owned. The LLC is called BBB&C Family, LLC – a party to this action.

I. The Probate Matter and Resulting Appeal

The probate matter involved an equalization distribution clause (See Order Calculating Equalization Distribution of Lifetime Gifts, attached as Exhibit A.) Once Janet realized the substantial tax bill her estate would face, she engaged in aggressive gift giving, which included

gifting to the spouses of her children. However, Julia is not married, and therefore, she had no spouse to whom Janet could gift. Therefore, Janet added an equalization distribution provision to her trust to ensure that Julia would be made whole for the gift giving to the spouses. Julia disagrees with this characterization because she claims her mother wanted to make her whole for all gifts her mother gave to all spouses and grandchildren, but that distinction is of no moment for this dispute. The sum and substance is that the probate matter involves an equalization distribution and Julia feels that she is not being treated equally under the trust, just as she feels she is not being treated equally under the other estate device, the LLC.

The probate matter was tried, and the probate court ruled partially in favor of Julia's interpretation of the equalization distribution and concluded that she should be compensated for all gifts to all grandchildren and spouses from the beginning of time. (Exhibit A.) This issue is on appeal in the probate matter. (Notices of Intent to Appeal, dated July 1, 2019, August 8, 2019, and November 5, 2019, attached hereto as Exhibit B.) Beach and Ellen contend the calculation of the equalization distribution began once their mother agreed to and signed the trust, creating the equalization distribution. Julia contends the calculation of the equalization distribution was supposed to start when Janet first started giving gifts to any of her children or grandchildren. Regardless, it is indisputable that the probate appeal involves whether the three children are being treated equally under the estate plan. The parties are on the cusp of having the probate appeal heard, as the appeal is fully briefed.

II. The Arbitration Demand and Motion to Stay

During the appeal of the probate matter, on March 17, 2020, Julia submitted an arbitration demand. (Arbitration Demand attached as Exhibit C.) In response, Beach, Ellen, and the LLC filed a Petition and Motion to Stay Arbitration Demand ("Motion to Stay") on April 21, 2020.

(Motion to Stay attached as Exhibit D.) In return, on April 24, 2020, Julia's filed a Motion to Dismiss Petition, Motion to Compel Arbitration and Motion for Attorney Fees. (Motion to Dismiss attached as Exhibit E.) On April 29, 2020, Beach, Ellen, and the LLC filed an Amended Motion to Stay because they inadvertently filed a prior draft of the motion, instead of the final draft. (Amended Motion to Stay attached as Exhibit F.) The Amended Motion to Stay was accompanied by a memorandum of law in support of the Amended Motion and opposition to Julia's motions. (Memorandum of Law attached as Exhibit G). In response, Julia filed Respondent's Renewed Motion to Dismiss Petition and Amended Motion to Stay, Motion to Compel Arbitration and Motion for Attorney's Fees and Expenses ("Julia's Renewed Motions") on May 1, 2020. (Renewed Motions attached as Exhibit H.)

On June 24, 2020, a hearing before the Honorable Casey Manning was held on Beach, Ellen, and the LLC's Amended Motion to Stay Arbitration Demand and Julia's Renewed Motions.

On July 17, 2020, Judge Manning issued his Order Granting Petitioner's Motion to Stay ("Order"). (Order attached as Exhibit I.) Nowhere in the Order is there any reference to a motion to compel arbitration, much less, a ruling on or denial of the motion to compel arbitration. Rather, the circuit court stated as follows: "Accordingly, for the reasons set forth herein, the court grants the Petition for Stay and orders the arbitration demand be stayed pending the disposition of the probate appeal." (Order at 3.)

In response to the Order, Julia filed Respondent's Motion Pursuant to Rules 52(b) and 59(a), SCRCP, to Alter or Amend Order Granting Petitioners' Motion to Stay ("Motion for Reconsideration") on July 27, 2020. (Motion to Reconsider attached as Exhibit J.) However, Julia waited until August 18, 2020 to send a courtesy copy of the Motion for Reconsideration to Judge Manning. *See* Rule 59(g), SCRCP. On August 24, 2020, Judge Manning issued his Order

Denying Respondent's Motion Pursuant to Rules 52(b) and 59(a), to Alter or Amend Order Granting Petitioners' Motion to Stay ("Reconsideration Order"). (Reconsideration Order attached as Exhibit K.) Again, there is no mention of a motion to compel arbitration or a denial of the same. Rather, the circuit court found the arguments in the Motion for Reconsideration "are not convincing and are not new" and that the Reconsideration Motion was not timely sent to him, providing a separate ground for denial. (Reconsideration Order at 1.) The circuit court concluded "[f]or the above reasons, I DENY the Respondent's Motion Pursuant to Rules 52(b) and 59(a), SCRCP, to Alter or Amend Order Granting Petitioners' Motion to Stay." (*Id.* at 2.) Later that day on August 24, 2020, Julia filed a Notice of Appeal in this matter.

ARGUMENT

The sole ruling issued both in the Order and the Reconsideration Order is that a stay is warranted. In no manner did the circuit court rule that Julia's motion to compel arbitration was denied. Moreover, Julia never asked the circuit court to do so in her Motion for Reconsideration. Arguably, her motion is still extant so that when the probate appeals reach their finality, the circuit court can then grant the motion to compel arbitration. But as of now, the sole ruling and relief granted by the circuit court is the issuance of a stay, which is not an immediately appealable order under well-established South Carolina law. *See, e.g., Edwards v. Suncom*, 369 S.C. 91, 94-95, 631 S.E.2d 529, 530-31 (2006) ("The order here does not discontinue the proceeding. It merely temporarily stays the matter pending a ruling by the FCC. Accordingly, we find an order granting a stay is not immediately appealable."); *Carolina Water Serv., Inc. v. Lexington Cnty. Joint Mun. Water & Sewer Comm'n*, 373 S.C. 96, 98, 644 S.E.2d 681, 682 (2007) (noting *Edwards* held an order granting stay is not immediately appealable); *Serv. Corp. of S.C. v. Bahama Sands Dev., LLC*, No. 2011-UP-300, 2011 WL 11734673, at *2 (S.C. Ct. App. June 14, 2011) (finding that

similar to an order granting a stay, an order denying a motion to stay "did not involve the merits, affect a substantial right, or prevent a judgment from which an appeal may later be taken.").

CONCLUSION

An order granting a motion to stay is not immediately appealable under South Carolina law. The circuit court did not rule on Julia's motion to compel arbitration, despite being invited to reconsider its order granting the motion to stay. For the reasons above, this Court should dismiss the appeal.

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December 31, 2020
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159

Case No. 2020-CP-40-02040

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC, ... Respondents

v.

Julia B. Brooker,..... Appellant

EXHIBIT A TO MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

ORDER CALCULATING EQUALIZATION DISTRIBUTION OF LIFETIME GIFTS

STATE OF SOUTH CAROLINA)) **COUNTY OF RICHLAND**)	**IN THE PROBATE COURT** **Estate Number: 2017-GC-40-36**
IN THE MATTER OF THE JANET B. BROOKER TRUST Julia B. Brooker, Petitioner, v. Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	**ORDER CALCULATING EQUALIZATION DISTRIBUTION OF LIFETIME GIFTS**

FILED
2019 JUN 20 P 5:18
AMY W. MCCULLOUGH
PROBATE JUDGE
RICHLAND COUNTY, SC

THIS MATTER COMES BEFORE THE COURT upon the filing of a Summons and Petition for Declaratory Relief by Julia B. Brooker (hereinafter "Julia" or "Petitioner"), through her attorneys James M. Griffin, and Margaret N. Fox, on March 17, 2017. In the Petition, the Petitioner asks this Court to determine the intent of Janet B. Brooker (hereinafter also "Decedent" or "Settlor") in the equalization clause of the Janet B. Brooker Trust and Decedent's meaning of the words *lifetime gifts*, as it is used within the Decedent's Trust document, to calculate the amount that should be paid to Julia to equalize her share of the Janet B. Brooker Trust. Beacham O. Brooker (hereinafter "Beacham") and Ellen B. Corontzes (hereinafter "Ellen") (hereinafter collectively "Respondents") are the only other beneficiaries of the Janet B. Brooker Trust.

Beacham and Ellen were served with the Summons and Petition by certified mail as evidenced by the signed Certified Return Receipts filed with the Court on March 29, 2017 and April 3, 2017 respectively.

Respondents are represented by Thornwell F. "Biff" Sowell, III and Bess J. DuRant. Respondents filed an Answer to the Petition on May 17, 2017. The Respondents contend that their understanding and interpretation of the lifetime gift provision should control, and

1 & 10 am

additionally, that the amount of $525,528.08 offered to Julia as her disputed equalization share of the Janet B. Brooker Trust is accurate.

A bench trial was scheduled for and held on February 4, 2019. All parties were mailed Notice of Hearing and all parties were present with their attorneys. Additional witnesses were certified forensic accountant, George Durant and attorneys, W. Steven Johnson and William H. Reynolds, III.

Summary of Facts

The Decedent died on April 15, 2015. At her death she had three children: Beacham, Ellen, and Julia. Beacham is married to Beth Brooker and his children are Elizabeth Brooker and Grace Brooker. Ellen is married to Dino Corontzes and her children are Arthur Corontzes and Beacham Corontzes. Julia is not married and does not have children.

Before her death, the Decedent was represented by attorney W. Steven Johnson of the law firm of Todd and Johnson, LLP, in the creation of her 2007 estate planning documents. The Last Will and Testament of the Decedent, executed on October 16, 2007, names Beacham to serve as the Personal Representative and transfers the assets of the Decedent's Estate into a Trust known as the Janet B. Brooker Trust (hereinafter the "Trust"). Upon the death of the Decedent, the Trust was fully funded from the Estate. The beneficiaries of the Trust are her three children, Beacham, Ellen, and Julia. Beacham is the Trustee of the Trust. At the same time the Will and Trust were executed, the Decedent also appointed Beacham as her Agent under a Durable Power of Attorney.

All parties agree that a family meeting occurred on September 25, 2016 where all parties were present with W. Steven Johnson. All parties agree that Mr. Johnson advised them about an aggressive gifting program to the spouses and issue of Beacham and Ellen in an effort to minimize the amount of estate taxes that could be levied against the Decedent's estate at her death. As a part of this plan, all children of the Decedent received equal gifts, the additional gifts to the spouses and issue of Beacham and Ellen were to be equalized for Julia at the death of the Decedent. To accomplish this, the Trust provides for an equalization distribution that reads as follows:

(2) **Equalization distribution to the Settlor's Daughter Julia B. Brooker**. The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlors children, the Settlors issue and spouses of the Settlor's children.

2 @ 10 am

Because the Settlor's daughter Julia B. Brooker is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., as well as the spouses of Ellen B. Corontzes and Beacham O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5 %) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter Julia B. Brooker, if she shall survive the Settlor.

Argument of the Petitioner

Petitioner argues that an examination of the plain language found within the four corners of the Trust necessitates a finding that Petitioner is entitled to an equalizing share equivalent to the sum of **all** lifetime gifts to Respondents' spouses and children, with five (5%) percent interest applied to the amount of each gift. Petitioner believes that the first sentence of the applicable provision in Settlor's Trust that reads that the Settlor "*previously made lifetime gifts* and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children" is evidence of her intent that gifts made prior to the Trust's creation should be included in the equalization calculation.

Petitioner argues that Respondents rely on the following Trust language, "[f]rom the date of this trust forward, the Trustee shall determine the date and the amount of any lifetime gifts" to take the position that the calculation should be only gifts made after the Trust's creation. Petitioner believes that the language "from the date of this trust forward," merely establishes the date on which Beacham could begin exercising the authority delegated to him as Trustee to determine the date and amount of lifetime gifts.

Petitioner believes that if the Decedent had intended otherwise, the Trust language would have been worded in the future tense, such as "Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts ***[to be made], [that will be made], [that Settlor intends to make pursuant to the gifting program]*** to such daughter's siblings' spouses or siblings' issue."

3/9/10 am

Petitioner believes that the use of past tense "**lifetime gifts made** to such daughter's siblings' spouses or siblings' issue" is clear.

Finally, Petitioner argues that pursuant to the plain language of the Trust document, Petitioner's Equalizing Share is calculated by adding the (a) the sum of all lifetime gifts to Respondents' Children and Spouses and (b) five (5%) percent interest from there date of such gift to the date of distribution. Petitioner's position is that Respondent "cannot create ambiguity in contract when it does not exist within the four corners...[h]ence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed." Silver v. Abstract Pool & Spas, 658 S.E.2d 539 (S.C. Ct. App. 2008) (quoting McPherson v. J.E. Sirrine & Co., 33 S.E.2d 501, 509 (1945).

Pursuant to this method of calculating, Petitioner believes she should receive the total of gifts made to Ellen's spouse and children prior to October 16, 2007 of $502,755.92 and after October 16, 2007 of $396,305.23 plus the total of gifts made to Beacham's spouse and children prior to October 16, 2007 of $495,113.92 and after October 16, 2007 of $408,194.00 for a total of $1,802,369.07 plus interest of $1,139,694.81 (as of the date of the hearing) for a final total of **$2,942,063.87**.

Argument of the Respondents

Respondents argue that the unambiguous terms of the Trust provide that Petitioner is entitled to a distribution from the date of the Trust until the death of the Settlor as the plain language of the Trust provides that "[f]rom the date of this trust forward," the Trustee shall determine the amount of the gifts made to the children and spouses. Respondents point to *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003) "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect.".

Respondents' position is that Petitioner is entitled to the sum of all gifts made to the children and spouses from October 16, 2007 until the date of Decedent's death on April 16, 2015, divided by two (2), with the addition of interest in the amount of 5%. To make the point of their calculation, Respondents by example argue that Petitioner is not entitled to the sum of all gifts made to the grandchildren and spouses, plus 5% interest, because to do so would bestow a great windfall to the Petitioner. For example, under Petitioner's construction of the Trust, if Beacham's family received $100,000.00 and Ellen's family received $100,000.00, Julia would

4 @ 10 am

receive $200,000.00 plus the 5% interest. Consequently, Julia would receive a windfall of $100,000.00 because Beacham's family received $100,000.00, Ellen's received $100,000.00, yet Julia received $200,000.00. Therefore, Respondents believe that the payment of **$525,528.08, plus some calculation of interest after death,** is correct.

Summary of Issues to be Resolved

1. **Did the offer of $525,528.08 include all gifts? As stipulated by Mr. Sowell at the trial, it did not.**
2. **What time frame did the Decedent mean by lifetime gifts – all lifetime gifts or only gifts after the creation of the Trust?**
3. **How is the equalization to be calculated – add all gifts together to equalize, add all gifts together then divide by two, or add the gifts of Ellen's family and separately add the gifts of Beacham's family and determine which is larger and equalize Julia by the larger?**

Findings by the Court during the Hearing

During the hearing, this court made certain findings with regard to the offer of $525,528.08 and interest related to when that offer was officially rejected. This Court also indicated to the parties that only after Trust gifts were being considered. After a full review of the hearing, the testimony, and the exhibits in evidence, those decisions are amended as the remainder of this order will document.

Testimony

Julia testified about her family, the manner in which their parents acquired their wealth, the individual trusts for each child created in 1997 by her parents, the trusts for each grandchild created close to their births by the Decedent, the Family Partnership, and what she believed to be her mother's intent with her estate plan as to the 2007 estate plan and the Trust that is the source of this litigation. She believes that the calculation of Decedent's lifetime gifts should include all gifts.

George Durant, a certified forensic accountant, testified, over the objection of Respondents' counsel, regarding his review of Decedent's brokerage statements, bank records and checks, Decedent's gift tax returns, deposition transcripts, and other spreadsheets and his calculations regarding the equalization for Petitioner, as directed by Mr. Griffin. Mr. Durant described how he calculated the amounts of the lifetime gifts received by the spouses and issue

5 & 10 am

of Beacham and Ellen. Mr. Durant provided the Court with a list of all documents reviewed and a table showing all the lifetime gifts given by the Decedent before the execution of the Trust and the interest of that amount calculated at five percent (5%) until the day of the trial. He also provided the same calculations for gifts given after the execution of the Trust as well as the addition of those figures representing the total lifetime gift amounts given.

Over the initial objection and disagreement of Respondents, payments made to Hammond School, the school attended by all of the grandchildren, totaling $437,445.48, were included in Mr. Durant's calculations as gifts. Respondents argued that those payments should not be included because Mr. Durant could not determine what was tuition payments versus what were donations made by the Decedent. The court requested that Respondents review their tuition invoices for those years to be able to separate any donations. This court allowed all payments to Hammond School as gifts to the grandchildren to be included in the equalization calculations.

Additionally, at the time of his original calculation offered into evidence by the Petitioner, Mr. Durant included the following in his pre-Trust calculation: $24,000.00 ($12,00.00 x 2) for annual gifts to spouses made by Beacham on September 26, 2007 and $240,000.00 paid into 529 plans for grandchildren made by Beacham on October 1, 2007. After the court's request to include these gifts with the gifts made after the Trust's creation, as Beacham had included them in his original gift calculations as they were made in anticipation of the Trust's creation, all parties were in agreement to the accuracy of the numbers and calculations provided by Mr. Durant. These calculations have now become less relevant as the findings below will show.

Mr. Durant's testimony and calculations were relied on heavily by this court and ultimately agreed upon by all parties. All documents that were reviewed by Mr. Durant were admitted as a flash drive as Respondents Exhibit 8. These same documents were available for all parties throughout the discovery and deposition phase of this litigation.

W. Steven Johnson, estate planning attorney for the Decedent, testified about his conversations with the Decedent and her intent regarding the equalizing distribution summarized as follows:

- Beginning in September 2007, there was a heightened awareness of a need to make gifts on behalf of Decedent to lessen the estate taxes.
- In September of 2007, Mr. Johnson met with the Brooker family to discuss the need to accelerate the gifts that the Decedent needed to make to children, grandchildren and spouses of children, to

6 of 10 an

include college and private school tuition and 529 plans for the grandchildren.

- Decedent did not want to disadvantage Julia so Mr. Johnson said he could put a provision in the will or trust to "catch up" Julia for any gifts made to her children's spouses and children.
- Decedent did not want Julia to suffer as a result of these gifts.
- He does not recall if the meaning of lifetime gifts was ever discussed or if he defined that for the Decedent or the family at the family meeting.
- Mr. Johnson spoke with his law partner Mr. Reynolds about the equalization provision he drafted because he wanted a second set of eyes to review the language of the Trust.
- He does not recall the Decedent asking any questions about the lifetime gift equalization but he does remember that their conversations were about prospective gifts, not retrospective gifts.
- If there had been a discussion about prior gifts, Mr. Johnson would have recommended to the Decedent to catch up Julia for the prior gifts at that time, not at the Decedent's death.
- Mr. Johnson was not aware that the Decedent had already given large sums as gifts to the spouses and children of Beacham and Ellen before the creation of the Trust.
- The way the equalization was to be calculated was from the date of the Trust forward to take the larger of the two gifting groups, Beacham's spouse and children versus Ellen's spouse and children, and then add the interest to achieve Petitioner's share.
- The calculation of the equalization amount offered of $525,528.08 was made based on the numbers Beacham provided to the paralegal for Mr. Johnson.
- Neither Mr. Johnson nor his paralegal were given the bank statements or tax returns to calculate the equalization amount.
- In a document from Mr. Johnson's file that he explained was created by his paralegal as a to do list, appearing to be created post death of the Decedent, noted is "to determine gifts made to the spouse and children of Beach and Ellen from May of 1997 forward to be distributed with five (5) percent interest to Julia". Mr. Johnson explained that he told his paralegal that was incorrect.

William H. Reynolds, III, Mr. Johnson's law partner, supported Mr. Johnson's testimony because he reviewed the draft of the equalization provision. He testified that if a client wanted to look back, he would want to capture what those gifts had been to calculate the number to equalize. Mr. Reynolds agreed that the Petitioner should be equalized with the higher amount given to Beacham or Ellen.

7 & 10 am

Beacham testified he made the following pre-Trust gifts after the family meeting with Mr. Johnson in anticipation of the creation of the Trust: $24,000.00 ($12,00.00 x 2) for annual gifts to spouses on September 26, 2007 and $240,000.00 for 529 plans for grandchildren on October 1, 2007, and agreed they should be included in the equalization calculation that he offered Petitioner but that after the lawsuit he withdrew that as part of his calculation. On October 16, 2007, he became Trustee of the Trust; however, the Trust was not funded until the death of the Decedent in April of 2016. Beacham began the accelerated gifting program as the Decedent's signatory or agent under a Power of Attorney and does not remember if the Decedent individually continued gifting after the Trust. Specifically, Beachum reviewed the financial documents and could not find where she independently acted or gifted after the Trust's creation.

Beacham testified that he relied heavily on Dino Corontzes, who was the broker for the Decedent's investment accounts and the husband of Ellen, to make the annual gifts. Beacham agreed that the Decedent paid full tuition to Hammond School for his children and Ellen's children before the creation of the Trust and that he considered the payments a gift. He further stated that while he continued to pay Hammond School tuition for the grandchildren as signatory on the Decedent's account after the creation of the Trust, he did not consider it to be a part of the definition of lifetime gift for equalization in the Trust. He testified that he is not aware of other donations the Decedent made to Hammond School.

Beacham, after a one-day recess during the trial and his ability to go back through his records, agreed to Mr. Durant's review of the financial documents and Mr. Durant's calculations. Based on Mr. Durant's review and calculation, from the time Beacham took over managing the Decedent's gifting in September of 2007, the gift amount totaled $804,499.23. Of that total gift amount, $396,305.23 was received by the spouse, and issue of Ellen, and $408,194.00 was received by the spouse and issue of Beacham. Prior to the creation of the Trust, the Decedent had previously given gifts in the amount of $997,869.83. Of this prior gift amount, $495,113.92 was received by the spouse and issue of Beacham and $502,755.92 was received by the spouse and issue Ellen.

On May 31, 2016, an email was sent by Beacham offering the equalization distribution to his sister Julia in the amount of $525,528.08. This offer was a result of calculations by Mr. Johnson's paralegal based on numbers she received from Beacham regarding annual gift amounts to each spouse and their issue. While there is some disagreement about when the offer

8 of 10 am

was received or when the offer was officially rejected, it is clear that the Petitioner received the offer and wanted additional documents to review to be able to determine if the amount was correct. This equalization distribution was ultimately rejected by Julia on or about August 31, 2016, due to her own investigation of previous lifetime gifts she believed should have been included in the equalization distribution calculation.

Having carefully considered all testimony, exhibits, and arguments presented at the hearing and the other submissions of the parties, the Court makes the following:

FINDING OF FACTS AND CONCLUSIONS OF LAW

1. Janet B. Brooker died on April 16, 2015 as a resident of Richland County, South Carolina, therefore the Probate Court has subject matter jurisdiction pursuant to S.C. Code Ann. § 62-1-302(a) and § 62-1-302(a)(3), 1976, as amended and venue is proper pursuant to S.C. Code Ann. 62-3-201(a)(1), 1976, as amended.
2. The Last Will and Testament of Janet B. Brooker, executed October 27, 2007, provides that the totality of her estate be poured over into the Janet B. Brooker Trust, established October 27, 2007.
3. Pursuant to S.C. Code Ann. § 62-7-201, 1976, as amended, the Probate Court has exclusive jurisdiction, to "ascertain beneficiaries, determine a question arising in the administration or distribution of a trust including, questions of construction of trust instruments..."
4. The Janet B. Brooker Trust is governed by the laws of the State of South Carolina.
5. The beneficiaries of the Trust are the children of Janet B. Brooker: Beacham, Ellen, and Julia.
6. The Trust provides for an equalization distribution for the Settlor's daughter Julia upon the Settlor's death, for all lifetime gifts given to the spouses and issue of Beacham and Ellen.
7. Prior to the October 16, 2007 execution of the Trust, W. Steven Johnson, as drafting attorney, represented the Settlor and met with the family to explain the Decedent's estate plan.
8. At the time of the execution of the Trust instrument, the Decedent had previously given lifetime gifts in the amount of $997,869.83 to the spouses and issue of Beacham and Ellen.
9. These previous gifts were not discussed with Mr. Johnson.
10. The Decedent did not want Julia to be disadvantaged or treated differently because she did not have a spouse or children.
11. The Decedent wanted Julia equalized at her death.

9 & 10 am

12. Mr. Durant was able to capture gifts to the spouses and issue of Beacham and Ellen from approximately 1992 forward by a review of all account statements and tax returns available.
13. The phrase in the Trust document that "the Settlor has previously given lifetime gifts and will continue" is evidence that the Settlor intended that the previous lifetime gifts be included in the equalization calculation for Julia and comports with her desire for Julia to be treated the same.
14. Gifts such as private school tuition, college plan contributions, and college tuition are to be included as gifts in the equalization calculation.
15. The sum total of the lifetime gifts to the spouses and issue of Beacham and Ellen, as calculated by Mr. Durant is $1,802,369.07, with $899,061.15 to spouse and issue of Ellen and $903,307.92 to the spouse and issue of Beacham.
16. Five percent interest on that amount through the date of February 5, 2019 was $1,139,694.81.
17. The total of $2,942,063.88 will be divided by two to allow for Julia to be equalized to but not receive more than either the spouse and issue of Ellen or Beacham.
18. As of the trial date, the amount owed to Julia to equalize her to the lifetime gifts to her siblings' spouses and children was $1,471,031.94 ($2,942,063.88 / 2).
19. This same formula shall be used to calculate date of payment amount.

THEREFORE, IT IS HEREBY ORDERED THAT:

A. Julia B. Brooker was entitled to $1,471,031.94 as of February 5, 2019, as her equalization distribution of the Janet B. Brooker Trust.

B. The Trustee of the Janet B. Brooker Trust shall pay the amount due to Julia B. Brooker using the formula as outlined above to calculate interest and final payment.

IT IS SO ORDERED.

Amy W. McCulloch Judge
Richland County Probate Court

June 22, 2019
Columbia, South Carolina

10 of 10 am

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159

Case No. 2020-CP-40-02040

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC, ... Respondents

v.

Julia B. Brooker,..... Appellant

EXHIBIT B TO MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

NOTICES OF INTENT TO APPEAL, DATED JULY 1, 2019, AUGUST 13, 2019 AND NOVEMBER 5, 2019

ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**Estate Number: 2017-GC-40-36**
COUNTY OF RICHLAND	)	
IN THE MATTER OF:	)	
THE JANET B. BROOKER TRUST	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	**NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT**
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
Respondents.	)	

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated June 22, 2019 but filed on June 20, 2019. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on June 20, 2019. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 1st day of July, 2019.

Notary Public for: South Carolina
My Commission Expires: May 27, 2025

Signature:
Print Name: Beacham O. Brooker, Jr.
Address: 754 Kilborne Road
Columbia, SC 29205

Telephone (Work):
(Home): (803) 771-9096
(Cell): (803) 315-8951
Email: b_brooker@bellsouth.net
Relationship to Decedent/Estate: Trustee, Beneficiary and Respondent

Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant,LLC
Address: 1325 Park Street, Suite 100
Columbia, SC 29201
Telephone: (803) 722-1100
Email: bsowell@sowelldurant.com
bdurant@sowelldurant.com

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(l) and the South Carolina Appellate Court Rules, as applicable.

ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**Estate Number: 2017-GC-40-36**
COUNTY OF RICHLAND	)	
IN THE MATTER OF:	)	
THE JANET B. BROOKER TRUST	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	**NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT**
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
Respondents.	)	

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated June 22, 2019 and filed June 20, 2019. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on June 20, 2019. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 1st day of July, 2019.

Notary Public for South Carolina

My Commission Expires: May 27, 2026

Signature: Ellen B Corontzes

Print Name: Ellen B. Corontzes

Address: 809 Woodland Drive
Columbia, SC 29205

Telephone (Work):
(Home): (803) 782-6161
(Cell): (803) 238-6223
Email: ecorontzes@sc.rr.com
Relationship to Decedent/Estate: Beneficiary and Respondent

Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant,LLC
Address: 1325 Park Street, Suite 100
Columbia, SC 29201
Telephone: (803) 722-1100
Email: bsowell@sowelldurant.com
bdurant@sowelldurant.com

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(l) and the South Carolina Appellate Court Rules, as applicable.

ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

STATE OF SOUTH CAROLINA)	**IN THE PROBATE COURT**
)	**Estate Number: 2017-GC-40-36**
COUNTY OF RICHLAND)	
IN THE MATTER OF THE JANET B. BROOKER TRUST	**ORDER CALCULATING EQUALIZATION DISTRIBUTION OF LIFETIME GIFTS**
Julia B. Brooker, Petitioner,	
v.	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	

FILED
2019 JUN 20 P 2:18
AMY W. McCULLOUGH
PROBATE JUDGE
RICHLAND COUNTY, SC

THIS MATTER COMES BEFORE THE COURT upon the filing of a Summons and Petition for Declaratory Relief by Julia B. Brooker (hereinafter "Julia" or "Petitioner"), through her attorneys James M. Griffin, and Margaret N. Fox, on March 17, 2017. In the Petition, the Petitioner asks this Court to determine the intent of Janet B. Brooker (hereinafter also "Decedent" or "Settlor") in the equalization clause of the Janet B. Brooker Trust and Decedent's meaning of the words *lifetime gifts,* as it is used within the Decedent's Trust document, to calculate the amount that should be paid to Julia to equalize her share of the Janet B. Brooker Trust. Beacham O. Brooker (hereinafter "Beacham") and Ellen B. Corontzes (hereinafter "Ellen") (hereinafter collectively "Respondents") are the only other beneficiaries of the Janet B. Brooker Trust.

Beacham and Ellen were served with the Summons and Petition by certified mail as evidenced by the signed Certified Return Receipts filed with the Court on March 29, 2017 and April 3, 2017 respectively.

Respondents are represented by Thornwell F. "Biff" Sowell, III and Bess J. DuRant. Respondents filed an Answer to the Petition on May 17, 2017. The Respondents contend that their understanding and interpretation of the lifetime gift provision should control, and

1 & 10 am

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additionally, that the amount of $525,528.08 offered to Julia as her disputed equalization share of the Janet B. Brooker Trust is accurate.

A bench trial was scheduled for and held on February 4, 2019. All parties were mailed Notice of Hearing and all parties were present with their attorneys. Additional witnesses were certified forensic accountant, George Durant and attorneys, W. Steven Johnson and William H. Reynolds, III.

Summary of Facts

The Decedent died on April 15, 2015. At her death she had three children: Beacham, Ellen, and Julia. Beacham is married to Beth Brooker and his children are Elizabeth Brooker and Grace Brooker. Ellen is married to Dino Corontzes and her children are Arthur Corontzes and Beacham Corontzes. Julia is not married and does not have children.

Before her death, the Decedent was represented by attorney W. Steven Johnson of the law firm of Todd and Johnson, LLP, in the creation of her 2007 estate planning documents. The Last Will and Testament of the Decedent, executed on October 16, 2007, names Beacham to serve as the Personal Representative and transfers the assets of the Decedent's Estate into a Trust known as the Janet B. Brooker Trust (hereinafter the "Trust"). Upon the death of the Decedent, the Trust was fully funded from the Estate. The beneficiaries of the Trust are her three children, Beacham, Ellen, and Julia. Beacham is the Trustee of the Trust. At the same time the Will and Trust were executed, the Decedent also appointed Beacham as her Agent under a Durable Power of Attorney.

All parties agree that a family meeting occurred on September 25, 2016 where all parties were present with W. Steven Johnson. All parties agree that Mr. Johnson advised them about an aggressive gifting program to the spouses and issue of Beacham and Ellen in an effort to minimize the amount of estate taxes that could be levied against the Decedent's estate at her death. As a part of this plan, all children of the Decedent received equal gifts, the additional gifts to the spouses and issue of Beacham and Ellen were to be equalized for Julia at the death of the Decedent. To accomplish this, the Trust provides for an equalization distribution that reads as follows:

(2) **Equalization distribution to the Settlor's Daughter Julia B. Brooker.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlors children, the Settlors issue and spouses of the Settlor's children.

2 @ 10 am

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Because the Settlor's daughter Julia B. Brooker is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., as well as the spouses of Ellen B. Corontzes and Beacham O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5 %) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter Julia B. Brooker, if she shall survive the Settlor.

Argument of the Petitioner

Petitioner argues that an examination of the plain language found within the four corners of the Trust necessitates a finding that Petitioner is entitled to an equalizing share equivalent to the sum of **all** lifetime gifts to Respondents' spouses and children, with five (5%) percent interest applied to the amount of each gift. Petitioner believes that the first sentence of the applicable provision in Settlor's Trust that reads that the Settlor "*previously made lifetime gifts* and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children" is evidence of her intent that gifts made prior to the Trust's creation should be included in the equalization calculation.

Petitioner argues that Respondents rely on the following Trust language, "[f]rom the date of this trust forward, the Trustee shall determine the date and the amount of any lifetime gifts" to take the position that the calculation should be only gifts made after the Trust's creation. Petitioner believes that the language "from the date of this trust forward," merely establishes the date on which Beacham could begin exercising the authority delegated to him as Trustee to determine the date and amount of lifetime gifts.

Petitioner believes that if the Decedent had intended otherwise, the Trust language would have been worded in the future tense, such as "Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts [***to be made***], [***that will be made***], [***that Settlor intends to make pursuant to the gifting program***] to such daughter's siblings' spouses or siblings' issue."

3 & 10 am

ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

Petitioner believes that the use of past tense "**lifetime gifts made** to such daughter's siblings' spouses or siblings' issue" is clear.

Finally, Petitioner argues that pursuant to the plain language of the Trust document, Petitioner's Equalizing Share is calculated by adding the (a) the sum of all lifetime gifts to Respondents' Children and Spouses and (b) five (5%) percent interest from there date of such gift to the date of distribution. Petitioner's position is that Respondent "cannot create ambiguity in contract when it does not exist within the four corners…[h]ence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed." Silver v. Abstract Pool & Spas, 658 S.E.2d 539 (S.C. Ct. App. 2008) (quoting McPherson v. J.E. Sirrine & Co., 33 S.E.2d 501, 509 (1945).

Pursuant to this method of calculating, Petitioner believes she should receive the total of gifts made to Ellen's spouse and children prior to October 16, 2007 of $502,755.92 and after October 16, 2007 of $396,305.23 plus the total of gifts made to Beacham's spouse and children prior to October 16, 2007 of $495,113.92 and after October 16, 2007 of $408,194.00 for a total of $1,802,369.07 plus interest of $1,139,694.81 (as of the date of the hearing) for a final total of **$2,942,063.87**.

Argument of the Respondents

Respondents argue that the unambiguous terms of the Trust provide that Petitioner is entitled to a distribution from the date of the Trust until the death of the Settlor as the plain language of the Trust provides that "[f]rom the date of this trust forward," the Trustee shall determine the amount of the gifts made to the children and spouses. Respondents point to *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003) "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect.".

Respondents' position is that Petitioner is entitled to the sum of all gifts made to the children and spouses from October 16, 2007 until the date of Decedent's death on April 16, 2015, divided by two (2), with the addition of interest in the amount of 5%. To make the point of their calculation, Respondents by example argue that Petitioner is not entitled to the sum of all gifts made to the grandchildren and spouses, plus 5% interest, because to do so would bestow a great windfall to the Petitioner. For example, under Petitioner's construction of the Trust, if Beacham's family received $100,000.00 and Ellen's family received $100,000.00, Julia would

4 @ 10 am

ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

receive $200,000.00 plus the 5% interest. Consequently, Julia would receive a windfall of $100,000.00 because Beacham's family received $100,000.00, Ellen's received $100,000.00, yet Julia received $200,000.00. Therefore, Respondents believe that the payment of **$525,528.08, plus some calculation of interest after death,** is correct.

Summary of Issues to be Resolved

1. **Did the offer of $525,528.08 include all gifts? As stipulated by Mr. Sowell at the trial, it did not.**
2. **What time frame did the Decedent mean by lifetime gifts – all lifetime gifts or only gifts after the creation of the Trust?**
3. **How is the equalization to be calculated – add all gifts together to equalize, add all gifts together then divide by two, or add the gifts of Ellen's family and separately add the gifts of Beacham's family and determine which is larger and equalize Julia by the larger?**

Findings by the Court during the Hearing

During the hearing, this court made certain findings with regard to the offer of $525,528.08 and interest related to when that offer was officially rejected. This Court also indicated to the parties that only after Trust gifts were being considered. After a full review of the hearing, the testimony, and the exhibits in evidence, those decisions are amended as the remainder of this order will document.

Testimony

Julia testified about her family, the manner in which their parents acquired their wealth, the individual trusts for each child created in 1997 by her parents, the trusts for each grandchild created close to their births by the Decedent, the Family Partnership, and what she believed to be her mother's intent with her estate plan as to the 2007 estate plan and the Trust that is the source of this litigation. She believes that the calculation of Decedent's lifetime gifts should include all gifts.

George Durant, a certified forensic accountant, testified, over the objection of Respondents' counsel, regarding his review of Decedent's brokerage statements, bank records and checks, Decedent's gift tax returns, deposition transcripts, and other spreadsheets and his calculations regarding the equalization for Petitioner, as directed by Mr. Griffin. Mr. Durant described how he calculated the amounts of the lifetime gifts received by the spouses and issue

5 & 10 am

ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

of Beacham and Ellen. Mr. Durant provided the Court with a list of all documents reviewed and a table showing all the lifetime gifts given by the Decedent before the execution of the Trust and the interest of that amount calculated at five percent (5%) until the day of the trial. He also provided the same calculations for gifts given after the execution of the Trust as well as the addition of those figures representing the total lifetime gift amounts given.

Over the initial objection and disagreement of Respondents, payments made to Hammond School, the school attended by all of the grandchildren, totaling $437,445.48, were included in Mr. Durant's calculations as gifts. Respondents argued that those payments should not be included because Mr. Durant could not determine what was tuition payments versus what were donations made by the Decedent. The court requested that Respondents review their tuition invoices for those years to be able to separate any donations. This court allowed all payments to Hammond School as gifts to the grandchildren to be included in the equalization calculations.

Additionally, at the time of his original calculation offered into evidence by the Petitioner, Mr. Durant included the following in his pre-Trust calculation: $24,000.00 ($12,00.00 x 2) for annual gifts to spouses made by Beacham on September 26, 2007 and $240,000.00 paid into 529 plans for grandchildren made by Beacham on October 1, 2007. After the court's request to include these gifts with the gifts made after the Trust's creation, as Beacham had included them in his original gift calculations as they were made in anticipation of the Trust's creation, all parties were in agreement to the accuracy of the numbers and calculations provided by Mr. Durant. These calculations have now become less relevant as the findings below will show.

Mr. Durant's testimony and calculations were relied on heavily by this court and ultimately agreed upon by all parties. All documents that were reviewed by Mr. Durant were admitted as a flash drive as Respondents Exhibit 8. These same documents were available for all parties throughout the discovery and deposition phase of this litigation.

W. Steven Johnson, estate planning attorney for the Decedent, testified about his conversations with the Decedent and her intent regarding the equalizing distribution summarized as follows:

- Beginning in September 2007, there was a heightened awareness of a need to make gifts on behalf of Decedent to lessen the estate taxes.
- In September of 2007, Mr. Johnson met with the Brooker family to discuss the need to accelerate the gifts that the Decedent needed to make to children, grandchildren and spouses of children, to

6 of 10 an

include college and private school tuition and 529 plans for the grandchildren.

- Decedent did not want to disadvantage Julia so Mr. Johnson said he could put a provision in the will or trust to "catch up" Julia for any gifts made to her children's spouses and children.
- Decedent did not want Julia to suffer as a result of these gifts.
- He does not recall if the meaning of lifetime gifts was ever discussed or if he defined that for the Decedent or the family at the family meeting.
- Mr. Johnson spoke with his law partner Mr. Reynolds about the equalization provision he drafted because he wanted a second set of eyes to review the language of the Trust.
- He does not recall the Decedent asking any questions about the lifetime gift equalization but he does remember that their conversations were about prospective gifts, not retrospective gifts.
- If there had been a discussion about prior gifts, Mr. Johnson would have recommended to the Decedent to catch up Julia for the prior gifts at that time, not at the Decedent's death.
- Mr. Johnson was not aware that the Decedent had already given large sums as gifts to the spouses and children of Beacham and Ellen before the creation of the Trust.
- The way the equalization was to be calculated was from the date of the Trust forward to take the larger of the two gifting groups, Beacham's spouse and children versus Ellen's spouse and children, and then add the interest to achieve Petitioner's share.
- The calculation of the equalization amount offered of $525,528.08 was made based on the numbers Beacham provided to the paralegal for Mr. Johnson.
- Neither Mr. Johnson nor his paralegal were given the bank statements or tax returns to calculate the equalization amount.
- In a document from Mr. Johnson's file that he explained was created by his paralegal as a to do list, appearing to be created post death of the Decedent, noted is "to determine gifts made to the spouse and children of Beach and Ellen from May of 1997 forward to be distributed with five (5) percent interest to Julia". Mr. Johnson explained that he told his paralegal that was incorrect.

William H. Reynolds, III, Mr. Johnson's law partner, supported Mr. Johnson's testimony because he reviewed the draft of the equalization provision. He testified that if a client wanted to look back, he would want to capture what those gifts had been to calculate the number to equalize. Mr. Reynolds agreed that the Petitioner should be equalized with the higher amount given to Beacham or Ellen.

7 & 10 am

ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

Beacham testified he made the following pre-Trust gifts after the family meeting with Mr. Johnson in anticipation of the creation of the Trust: $24,000.00 ($12,00.00 x 2) for annual gifts to spouses on September 26, 2007 and $240,000.00 for 529 plans for grandchildren on October 1, 2007, and agreed they should be included in the equalization calculation that he offered Petitioner but that after the lawsuit he withdrew that as part of his calculation. On October 16, 2007, he became Trustee of the Trust; however, the Trust was not funded until the death of the Decedent in April of 2016. Beacham began the accelerated gifting program as the Decedent's signatory or agent under a Power of Attorney and does not remember if the Decedent individually continued gifting after the Trust. Specifically, Beachum reviewed the financial documents and could not find where she independently acted or gifted after the Trust's creation.

Beacham testified that he relied heavily on Dino Corontzes, who was the broker for the Decedent's investment accounts and the husband of Ellen, to make the annual gifts. Beacham agreed that the Decedent paid full tuition to Hammond School for his children and Ellen's children before the creation of the Trust and that he considered the payments a gift. He further stated that while he continued to pay Hammond School tuition for the grandchildren as signatory on the Decedent's account after the creation of the Trust, he did not consider it to be a part of the definition of lifetime gift for equalization in the Trust. He testified that he is not aware of other donations the Decedent made to Hammond School.

Beacham, after a one-day recess during the trial and his ability to go back through his records, agreed to Mr. Durant's review of the financial documents and Mr. Durant's calculations. Based on Mr. Durant's review and calculation, from the time Beacham took over managing the Decedent's gifting in September of 2007, the gift amount totaled $804,499.23. Of that total gift amount, $396,305.23 was received by the spouse, and issue of Ellen, and $408,194.00 was received by the spouse and issue of Beacham. Prior to the creation of the Trust, the Decedent had previously given gifts in the amount of $997,869.83. Of this prior gift amount, $495,113.92 was received by the spouse and issue of Beacham and $502,755.92 was received by the spouse and issue Ellen.

On May 31, 2016, an email was sent by Beacham offering the equalization distribution to his sister Julia in the amount of $525,528.08. This offer was a result of calculations by Mr. Johnson's paralegal based on numbers she received from Beacham regarding annual gift amounts to each spouse and their issue. While there is some disagreement about when the offer

8 of 10 am

ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

was received or when the offer was officially rejected, it is clear that the Petitioner received the offer and wanted additional documents to review to be able to determine if the amount was correct. This equalization distribution was ultimately rejected by Julia on or about August 31, 2016, due to her own investigation of previous lifetime gifts she believed should have been included in the equalization distribution calculation.

Having carefully considered all testimony, exhibits, and arguments presented at the hearing and the other submissions of the parties, the Court makes the following:

FINDING OF FACTS AND CONCLUSIONS OF LAW

1. Janet B. Brooker died on April 16, 2015 as a resident of Richland County, South Carolina, therefore the Probate Court has subject matter jurisdiction pursuant to S.C. Code Ann. § 62-1-302(a) and § 62-1-302(a)(3), 1976, as amended and venue is proper pursuant to S.C. Code Ann. 62-3-201(a)(1), 1976, as amended.
2. The Last Will and Testament of Janet B. Brooker, executed October 27, 2007, provides that the totality of her estate be poured over into the Janet B. Brooker Trust, established October 27, 2007.
3. Pursuant to S.C. Code Ann. § 62-7-201, 1976, as amended, the Probate Court has exclusive jurisdiction, to "ascertain beneficiaries, determine a question arising in the administration or distribution of a trust including, questions of construction of trust instruments…"
4. The Janet B. Brooker Trust is governed by the laws of the State of South Carolina.
5. The beneficiaries of the Trust are the children of Janet B. Brooker: Beacham, Ellen, and Julia.
6. The Trust provides for an equalization distribution for the Settlor's daughter Julia upon the Settlor's death, for all lifetime gifts given to the spouses and issue of Beacham and Ellen.
7. Prior to the October 16, 2007 execution of the Trust, W. Steven Johnson, as drafting attorney, represented the Settlor and met with the family to explain the Decedent's estate plan.
8. At the time of the execution of the Trust instrument, the Decedent had previously given lifetime gifts in the amount of $997,869.83 to the spouses and issue of Beacham and Ellen.
9. These previous gifts were not discussed with Mr. Johnson.
10. The Decedent did not want Julia to be disadvantaged or treated differently because she did not have a spouse or children.
11. The Decedent wanted Julia equalized at her death.

9 & 10 am

ELECTRONICALLY FILED - 2019 Jul 01 3:05 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4003582

12. Mr. Durant was able to capture gifts to the spouses and issue of Beacham and Ellen from approximately 1992 forward by a review of all account statements and tax returns available.
13. The phrase in the Trust document that "the Settlor has previously given lifetime gifts and will continue" is evidence that the Settlor intended that the previous lifetime gifts be included in the equalization calculation for Julia and comports with her desire for Julia to be treated the same.
14. Gifts such as private school tuition, college plan contributions, and college tuition are to be included as gifts in the equalization calculation.
15. The sum total of the lifetime gifts to the spouses and issue of Beacham and Ellen, as calculated by Mr. Durant is $1,802,369.07, with $899,061.15 to spouse and issue of Ellen and $903,307.92 to the spouse and issue of Beacham.
16. Five percent interest on that amount through the date of February 5, 2019 was $1,139,694.81.
17. The total of $2,942,063.88 will be divided by two to allow for Julia to be equalized to but not receive more than either the spouse and issue of Ellen or Beacham.
18. As of the trial date, the amount owed to Julia to equalize her to the lifetime gifts to her siblings' spouses and children was $1,471,031.94 ($2,942,063.88 / 2).
19. This same formula shall be used to calculate date of payment amount.

THEREFORE, IT IS HEREBY ORDERED THAT:

A. Julia B. Brooker was entitled to $1,471,031.94 as of February 5, 2019, as her equalization distribution of the Janet B. Brooker Trust.

B. The Trustee of the Janet B. Brooker Trust shall pay the amount due to Julia B. Brooker using the formula as outlined above to calculate interest and final payment.

IT IS SO ORDERED.

Amy W. McCulloch Judge
Richland County Probate Court

June 22, 2019
Columbia, South Carolina

10 & 10 am

ELECTRONICALLY FILED - 2019 Aug 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4004463

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**Estate Number: 2017-GC-40-36**
COUNTY OF RICHLAND	)	
IN THE MATTER OF:	)	
THE JANET B. BROOKER TRUST	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	**NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT**
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
Respondents.	)	

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated August 5, 2019. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on August 5, 2019. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 8th day of August, 2019.

Notary Public for: South Carolina
My Commission Expires: May 27, 2021

Signature: Beacham O. Brooker, Jr.
Print Name: Beacham O. Brooker, Jr.
Address: 754 Kilborne Road
Columbia, SC 29205
Telephone (Work):
(Home): (803) 771-9096
(Cell): (803) 315-8951
Email: b_brooker@bellsouth.net
Relationship to Decedent/Estate: Trustee, Beneficiary and Respondent

Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant,LLC
Address: 1325 Park Street, Suite 100
Columbia, SC 29201
Telephone: (803) 722-1100
Email: bsowell@sowelldurant.com
bdurant@sowelldurant.com

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(l) and the South Carolina Appellate Court Rules, as applicable.

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF RICHLAND) Estate Number: 2017-GC-40-36
)

IN THE MATTER OF:
THE JANET B. BROOKER TRUST

Julia B. Brooker,

Petitioner,

vs.

Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,

Respondents.

NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT

ELECTRONICALLY FILED - 2019 Aug 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4004463

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated August 5, 2019. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on August 5, 2019. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 9 day of August, 2019.

Notary Public for: Lincoln County, Wyoming
My Commission Expires: 2.11.23

LORI BELL - NOTARY PUBLIC
County of Lincoln
State of Wyoming
My Commission Expires February 11, 2023

Signature: Ellen B Corontzes
Print Name: Ellen B. Corontzes
Address: 809 Woodland Drive
Columbia, SC 29205
Telephone (Work):
(Home): (803) 782-6161
(Cell): (803) 238-6223
Email: ecorontzes@sc.rr.com
Relationship to Decedent/Estate: Beneficiary and Respondent

Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant,LLC
Address: 1325 Park Street, Suite 100
Columbia, SC 29201
Telephone: (803) 722-1100
Email: bsowell@sowelldurant.com
bdurant@sowelldurant.com

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

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ELECTRONICALLY FILED - 2019 Aug 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4004463

STATE OF SOUTH CAROLINA)	**IN THE PROBATE COURT**
)	**Estate Number: 2017-GC-40-00036**
COUNTY OF RICHLAND)	
)	
IN THE MATTER OF THE)	
JANET B. BROOKER TRUST)	
)	
Julia B. Brooker,)	
Petitioner,)	
)	
vs.)	
)	**ORDER ALLOWING ATTORNEY'S FEES**
Beacham O Brooker, Jr., in his official)	
capacity as Trustee and individually as a)	
Beneficiary of the Janet B. Brooker Trust;)	
and Ellen B. Corontzes individually as a)	
Beneficiary of the Janet B. Brooker Trust,)	
)	
Respondents.)	

FILED
2019 AUG -5 P 3:29
AMY M. MCCULLOUGH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

THIS MATTER COMES BEFORE THE COURT upon the filing of an Affidavit in Support of Award of Attorney's Fees and Reimbursement of Expenses, by Attorney James. M. Griffin on behalf of his client Julia Brooker ("Petitioner") on February 28, 2019. The Affidavit asks for this Court to award attorney's fees and reimbursement to Julia Brooker for cost paid by her in the matter of the Janet B. Brooker Trust, case number 2017-GC-40-00036, from the Janet B Brooker Trust ("Trust"). Respondents, through their attorneys Thornwell F. "Biff" Sowell, III and Bess J. DuRant, of the law firm Sowell Durant, filed a Memorandum in Opposition to Petitioner's Fee Affidavit on April 10, 2019.

A hearing on the matter was scheduled and held on May 22, 2019. All parties were sent Notice of Hearing. All parties were present at the hearing with their respective counsels.

At the hearing, the Court heard arguments from both sides about the appropriateness of awarding attorney's fees in this case, including arguments based on the experience of the attorneys' on either side, and the differences in hourly rate charged by each set of attorneys based on that experience. Mr. Griffin argued that Respondents' legal fees are being paid by the Janet B. Brooker Trust, while Petitioner personally paid the fees and costs of her attorney. This court notes that after the hearing on the fee issue, this court issued its ruling in the case in favor of the Petitioner.

Because the remaining Trust corpus is to be split evenly between Respondents and Petitioner after the distribution ordered in this Court's Order filed June 20, 2019, having the Trust be responsible for some attorney's fees advantages some beneficiaries over others, reducing the amount of corpus left to be distributed to all beneficiaries. The Court views this as inequitable. For

1 of 2

this reason, the Court required Respondents' to provide their itemized legal bill so that a comparison could be made with that of the Petitioner's.

The Probate Court has authority to award attorney's fees in this trust matter pursuant to S.C. Code Ann. § 62-7-1004 which states "In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

After reviewing the legal bills and professional fees of both Respondents and Petitioner and finding them comparable, and weighing the equities of the case, Petitioner's Motion for Attorney's Fees and Reimbursement **IS HEREBY GRANTED**.

THE COURT FURTHER ORDERS THAT Petitioner's attorney's fees and reimbursement be paid out of the corpus of the Janet B. Brooker Trust, along with Respondents' attorney's fees.

IT IS SO ORDERED.

Amy W. McCulloch Judge
Richland County Probate Court

August 5, 2019
Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Aug 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4004463

ELECTRONICALLY FILED - 2019 Nov 05 1:42 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006229

FILED
2019 NOV -5 P 12:03

STATE OF SOUTH CAROLINA	**IN THE PROBATE COURT**
	Estate Number: 2017-GC-40-36
COUNTY OF RICHLAND	
IN THE MATTER OF:	
THE JANET B. BROOKER TRUST	
Julia B. Brooker, Petitioner,	**NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT**
vs.	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated October 28, 2019. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on October 28, 2019. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 31st day of October, 2019.

Notary Public for: South Carolina

My Commission Expires: May 27, 2026

Signature:

Print Name: Beacham O. Brooker, Jr.

Address: 754 Kilborne Road
Columbia, SC 29205

Telephone (Work):
(Home): (803) 771-9096
(Cell): (803) 315-8951

Email: b_brooker@bellsouth.net

Relationship to Decedent/Estate: Trustee, Beneficiary and Respondent

s/ Bess J. DuRant (SC Bar # 77920)

Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant,LLC

Address: 1325 Park Street, Suite 100
Columbia, SC 29201

Telephone: (803) 722-1100

Email: bsowell@sowelldurant.com
bdurant@sowelldurant.com

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

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ELECTRONICALLY FILED - 2019 Nov 05 1:42 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006229

FILED
2019 NOV 5 P 12:02
RICHLAND COUNTY

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**Estate Number: 2017-GC-40-365**
COUNTY OF RICHLAND	)	
IN THE MATTER OF:	)	
THE JANET B. BROOKER TRUST	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	**NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT**
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	
Respondents.	)	

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated October 28, 2019. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on October 28, 2019. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 1st day of November, 2019

Notary Public for: South Carolina

My Commission Expires: May 27, 2026

Signature: Ellen B Corontzes

Print Name: Ellen B. Corontzes

Address: 809 Woodland Drive
Columbia, SC 29205

Telephone (Work):
(Home): (803) 782-6161
(Cell): (803) 238-6223

Email: ecorontzes@sc.rr.com

Relationship to Decedent/Estate: Beneficiary and Respondent

Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant,LLC

Address: 1325 Park Street, Suite 100
Columbia, SC 29201

Telephone: (803) 722-1100

Email: bsowell@sowelldurant.com
bdurant@sowelldurant.com

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ELECTRONICALLY FILED - 2019 Nov 05 1:42 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006229

STATE OF SOUTH CAROLINA)	**IN THE PROBATE COURT**
)	**Case Number: 2017-GC-40-00036**
COUNTY OF RICHLAND)	
IN THE MATTER OF THE JANET B. BROOKER TRUST)	
Julia B. Brooker, Petitioner,)	
vs.)	
Beacham O Brooker, Jr., in his official Capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,)	**ORDER REGARDING MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCP**
Respondents.)	

THIS MATTER COMES BEFORE THE COURT upon the filing of a Motion to Reconsider and to Alter or Amend Under Rules 52 and 59(e) (hereinafter "Motion") by Beacham O. Brooker (hereinafter "Beacham"), in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontez (hereinafter "Ellen"), individually as a Beneficiary of the Janet B. Brooker Trust, (hereinafter collectively "Respondents") through their attorneys Thornwell F. Sowell, III and Bess J. DuRant, filed on July 1, 2019. Julia B. Brooker (hereinafter "Julia"), through her attorneys James M. Griffin and Margaret N. Fox, filed a Response in Opposition to the Motion for Reconsideration on August 29, 2019. Rule 59(f), SCRCP, allows for a Rule 59(e) motion "in the discretion of the Court [to] be determined on briefs filed by the parties without oral argument."

The Motion asks this Court to reconsider and to alter or amend its Order Calculating Equalization Distribution of Lifetime Gifts (hereinafter "Order") dated June 22, 2019 and filed June 20, 2019. In the Order, the Court concludes that the language "lifetime gifts" in the equalization provision of the Janet B. Brooker Trust (hereinafter "Trust") included gifts Janet B. Brooker (hereinafter "Decedent" or "Settlor") made to the spouses and children of Beacham and Ellen prior to the creation of the Trust on October 16, 2007. The Court found that it was the Decedent's intent to have Julia B. Brooker (hereinafter "Julia") equalized at her death, therefore, the equalization provision was interpreted so that Julia would receive half of the sum total of all

ELECTRONICALLY FILED - 2019 Nov 05 1:42 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006229

lifetime gifts made to the spouses and children of Beacham and Ellen, plus five percent interest, as calculated on the date of payment so that she may be equalized.

Respondents request the Court explicitly rule on the threshold question of whether the Trust Agreement is ambiguous (Motion at 2). Respondents also argue that the Court ignored the intent of the Settlor in making its findings and rendered the phrase "[f]rom the date of this trust forward, the Trustee shall..." meaningless (Motion at 2, 3). Respondents' further claim the Court erroneously relied on the testimony of Julia in violation of the Dead Man's Statute and the parol evidence rule (Motion at 3, 4).

This Court considers Respondent's Motion and offers clarifications of its Order as set forth below.

The Equalization Provision of the Janet B. Brooker Trust Is Ambiguous

Respondents argue that the Court did not explicitly rule on the threshold question of whether the Trust Agreement or its equalization provision is ambiguous (Motion at 2). The Court has previously determined that the equalization provision is ambiguous, however, for clarification, the Court explicitly rules that the equalization provision of the Janet B. Brooker Trust is ambiguous. Even Beachum and his witness, drafting attorney Steven Johnson, had different interpretations of the Settlor's intent regarding how to interpret the equalization calculation in the Trust document.

The Court Made Specific Findings and Conclusions Regarding the Settlor's Intent

Respondents argue that the Court ignored the intent of the Settlor in making its findings (Motion at 2). The Court determined that the Settlor's intent was for Julia not to be disadvantaged or treated differently because she did not have a spouse or children and that Julia should be equalized at the time of Janet's death (Order at 10, 11). The Court based this determination on the plain language of the Janet B. Brooker Trust as well as the situation and purposes of the parties at the time the Trust was created. *See Schulmeyer v. State Farm Fire and Casualty Company*, 353 S.C. 491, 579 S.E.2d 132 (2003); *Columbia East Associates v. Bi-Lo Inc.*, 299 S.C. 515, 386 S.E.2d 259 (Ct. App. 1989).

When considering the plain language of the Trust as a whole, "equal shares" appears twice, indicating that the Settlor intended her children to receive equally under the Trust:

- Article V (1)(b), General Distribution of Personal and Household Effects with a Mandatory Memorandum: "In default of such memoranda, or to the extent that such memoranda do not completely or effectively dispose of such property, the rest of the

2/6 am

ELECTRONICALLY FILED - 2019 Nov 05 1:42 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006229

Settlor's personal and household effects of every kind shall be distributed to the Settlor's children surviving the Settlor, in approximately equal shares…"

- Article VI, Trust Estate to Settlor's Issue: "Upon the death of the Settlor, the Trust Estate (which shall include any property which may be added from the Settlor's General Estate) shall be held in trust or paid over and distributed to the Settlor's surviving children in equal shares…"

Considering the context in which the Trust uses the phrase "equal shares" to indicate that the Settlor's intent was for her surviving children to receive equal shares of personal and household effects and of the Trust Estate, it follows that the Settlor's intent of the equalization provision in Article V(2) was also to ensure her children received equally, and therefore that Julia would be made equal as to all the lifetime gifts made to the spouses and children of Beacham and Ellen upon the Settlor's death.

Further, in determining the situation and purposes of the Settlor at the time the Trust was created, the Court also relied on the testimony of Steven Johnson, who testified on behalf of the Respondents. According to Johnson, the Settlor did not want Julia to be disadvantaged as a result of the lifetime gifts to the spouses and children of Beacham and Ellen since Julia was not married and had no children (Trial Tr. 102:6-11). Based on this express desire by the Settlor, Johnson testified that he told the Settlor that he could put in a provision to "catch up" Julia for gifts made to Beacham and Ellen's spouses and children (Trial Tr. 102:11-14).

Mr. Johnson further testified that, after the family meeting on September 25, 2001, he asked his paralegal to "prepare a codicil with an equalization provision in it" (Trial Tr. 135:4-8). The Court found persuasive the Draft First Codicil to Last Will and Testament of Janet Bloom Brooker, Plaintiff's Exhibit 9, which in pertinent part reads:

> "I give, devise and bequeath such amount necessary to equalize for gifts given to any child of mine during my life. Thus, to the extent that I have not equalized for such gifts during my lifetime, I direct that at the time of my death my Personal Representative determine what gifts I made and whether I accomplished equalization and if not then I direct my Personal Representative to make equalizing gifts to my children or to such child's issue, per stirpes. Such equalization shall be made for the value of the gift given at the time such gift was made with no interest thereon."

Mr. Johnson agreed that this draft codicil created by his paralegal does not make a distinction between gifts given before and after the Trust was created (Trial Tr. 136:25 – 137: 1-5).

Additionally, the Court relies on the To Do List of Mr. Johnson's estate paralegal, submitted as Plaintiff's Exhibit 11, which states: "Need to know the amount of annual exclusion gifts to the children of Beach and Ellen, as well as the spouses of Beach and Ellen, beginning in

ELECTRONICALLY FILED - 2019 Nov 05 1:42 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006229

May of 1997. The amount of these gifts will accrue interest at 5% from the date of the gift until the amount is distributed to Julia." This exhibit clearly indicates the Trust's equalization provision included the lifetime gifts made before the Trust was created.

Based on the above testimony and the evidence submitted, the Court considered the Settlor's intent and determined that it was for Julia not to be disadvantaged or treated differently because she did not have a spouse or children (Order at 10, 11). As such, the Court determined that all lifetime gifts made to the spouses and children of Beacham and Ellen were to be included in the equalization distribution in order to ensure Julia were made equal (Order at 8).

The Court Determined that the Phrase "[F]rom the Date of This Trust Forward, the Trustee Shall..." Indicates the Beginning of Beacham's Duties as Trustee

Respondents argue that the Court rendered the phrase "[f]rom the date of this trust forward, the Trustee shall..." within the equalization provision meaningless (Motion at 3). The Court determined that this phrase plainly marks the beginning of Beacham's duties as Trustee.

Respondents argue that this language was not "imposing a duty on the Trustee to equalize Beach, Ellen, and Julia for gifts made prior to the Trust and the Settlor had substantially better knowledge as to the gifts she made to each child and grandchild prior to the Trust" (Motion at 3.) Respondents quote *In re Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995), claiming that "no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous...." however the portion cited applies to statute interpretation, not contract interpretation. Contract precedent determines that interpretation of the language in a testamentary trust must be reasonably supported by a plain reading of the document as a whole. *See Epworth Children's Home v. Beasley*, 365 S.C. 157, 167, 616 S.E.2d 710, 715 (2005); *Harper v. South Carolina Tax Commission*, 267 S.C. 144, 149, 226 S.E.2d 699, 701 (1976). Therefore, the Court determined that the plain reading of the phrase "[f]rom the date of this trust forward, the Trustee shall..." indicates the beginning of the Trustee's duties.

Further, although the Settlor may have had substantially better knowledge of the gifts she made to each child and grandchild prior to the Trust, the gifts were accurately identified by accountant George Durant via bank and investment statements of the Settlor (Order at 12). The sum total of all lifetime gifts was calculated to be $997,869.83 (Order at 8). Therefore, this point is moot.

The Court's Order is not Based on Evidence Prohibited by the Dead Man's Statute

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Respondents contend the Court erroneously relied on Julia's testimony in violation of the Dead Man's Statute and the parol evidence rule (Motion at 3-4). This argument is without merit. There is no indication under the "Findings of Facts and Conclusions of Law" section of the Order that supports the assertion that the Court's decision is based, in whole or in part, on the testimony of Julia Brooker. The only allusion to Julia's testimony in the Order is found under a summary of all testimony provided by witnesses at the hearing. As set forth in the summary, Julia was permitted to testify as to what she believed her mother's intent was "as to the 2007 estate plan and the Trust" (Order at 5). A review of the transcript of her testimony illustrates that the Court carefully circumscribed the scope of her testimony. Julia was not permitted to testify as to any communications she had with her mother about her mother's intentions regarding the equalizing provision in the Trust. Rather, she was permitted to provide background information and to testify that in family meetings with Steve Johnson, she was told by Steve Johnson that her mother intended to "catch her up at the end" (Trial Tr. 254:1). This Court correctly ruled that such testimony is not prohibited by the Dead Man's Statute, nor is it prohibited from the Court's consideration based on a claim of attorney-client privilege (Id. at 254:23-255:11).

Moreover, the information provided to Julia in her testimony was duplicative of the information provided through Steve Johnson's testimony and documents introduced in to evidence. As recognized by the Court (Id. at 254:5-8), Mr. Johnson mimicked Julia's testimony that it was the Settlor's intent to catch Julia up at the end because Janet did not want Julia to be disadvantaged (Id. at 102:6-14). The gifts made by Janet Brooker prior to 2007, as testified by George Durant, were identified by the bank and investment account statements of Janet Brooker. Given the introduction of this evidence from permissible sources other than Julia, Respondents cannot support their argument that the Order necessarily relied on impermissible testimony provided by Julia.

The Court's Order Need Not Address the Admissibility of Parol Evidence

Lastly, Respondents never objected to parol evidence being considered by the Court during the hearing. A party cannot use a motion to alter or amend a judgment to present an issue that the party could have raised prior to judgment but failed to do so. *MailSource, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003). Therefore, the Court need not address the admissibility of parole evidence.

Upon review of the Order and consideration of Respondent's Motion for Reconsideration and to Alter or Amend and Petitioner's Response, the Court confirms and clarifies its Order

5 of 6 ar

Calculating Equalization Distribution of Lifetime Gifts dated June 22, 2019 and filed June 20, 2019.

THEREFORE, IT IS HEREBY ORDERED THAT respondents Motion to Reconsider and to Alter or Amend the Order issued by this Court dated June 22, 2019 and filed June 20, 2019, has been considered, and the Court hereby clarifies its Order.

AND IT IS SO ORDERED.

The Honorable Amy McCulloch
Judge, Richland County Probate Court

October 28, 2019
Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Nov 05 1:42 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006229

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159

Case No. 2020-CP-40-02040

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC, ... Respondents

v.

Julia B. Brooker,..... Appellant

EXHIBIT C TO MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

ARBITRATION DEMAND

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	
Julia B. Brooker,	)	
	)	
Plaintiff,	)	
	)	**ARBITRATION DEMAND**
v.	)	
	)	
Beacham O. Brooker, Jr.; Ellen B. Corontzes; and BBB&C FAMILY LLC;	)	
	)	
Defendants.	)	
	)	

Plaintiff Julia B. Brooker, complaining of certain conduct of the Defendants Beacham O. Brooker, Jr., Ellen Corontzes, and BBB&C Family LLC ("BBB&C"), would respectfully show unto the Court the following based upon personal knowledge as to herself and her own acts and upon information and belief as to all other matters:

PARTIES AND FORUM

1. Plaintiff Julia Brooker ("Julia" or "Plaintiff") is a citizen of South Carolina and resides within Richland County at 1705 Graham Drive in Columbia, South Carolina.

2. Defendant Beacham O. Brooker, Jr. ("Beacham") is a citizen of South Carolina and resides within Richland County at 754 Kilbourne Road in Columbia, South Carolina.

3. Defendant Ellen B. Corontzes ("Ellen") is a citizen of South Carolina and resides within Richland County at 809 Woodland Drive in Columbia, South Carolina.

4. Defendant BBB&C FAMILY LLC ("BBB&C" or the "Company") is manager-managed limited liability company organized and existing under the laws of the State of South Carolina.

5. On January, 31, 2014, the Operating Agreement of BBB&C (attached hereto as **Exhibit 1**)[1] was made and entered into by and among Janet B. Brooker ("Janet" or "Mother"), Beacham, Julia, and Ellen (hereinafter referred to collectively as the "Members" and individually as a "Member") and BBB&C.

6. On February 4, 2014, the Members signed the Company's Articles of Organization (attached hereto as **Exhibit 2**), which was filed with the South Carolina Secretary of State the same day.

7. Section 11.01 of the Operating Agreement for BBB&C provides that "[a]ny dispute or controversy between the parties hereto arising out of, under, or in connection with, or in relation to, this Operating Agreement shall be submitted to binding arbitration in accordance with South Carolina Code Sections 15-48-10, et seq., as such may be amended from time to time (the South Carolina Uniform Arbitration Act, "SCUAA")."

8. That section of the Operating Agreement further provides that "[a]ll arbitration proceedings shall be conducted in Barnwell County, South Carolina, or by mutual agreement of the parties, wherever else is most convenient for a rapid resolution of the matter."

9. Plaintiff hereby proposes that the parties mutually agree for the arbitration to be conducted in Richland County, South Carolina for the convenience of all involved.

FACTUAL BACKGROUND

10. When the Company was created in 2014, Janet, the mother of Beacham, Julia, and Ellen, was 88 years old.

11. The idea for the Company was to form part of an estate planning technique designed by Mother's attorney to minimize transfer taxes, both gift and estate taxes.

[1] Capitalized terms that are not otherwise defined have the meaning ascribed in Exhibit 1.

12. Pursuant to that estate planning technique, Mother was to contribute the vast majority of the Company's assets by value, and the Operating Agreement's provisions restricting the control and marketability of the Company's Membership Shares would substantially reduce the value of those Membership Shares.

13. Pursuant to the plan, Mother would then gift Membership Shares of the Company to her children and fellow Members—Beacham, Julia, and Ellen—at a substantially reduced value, for gift-tax purposes, compared to the value of the underlying assets.

14. At the time of the Company's formation, Mother owned 81.4% of the Membership Shares—both in terms of Voting Rights and Financial Rights—while Beacham, Julia, and Ellen each owned 6.2% of the Membership Shares; however, Beacham was attorney in fact for Mother and voted her Membership Shares.

15. The vast majority of the assets, by value, that Mother contributed to the Company consisted of Lockheed Martin Corporation ("Lockheed Martin") common stock, valued at $4,285,910 as of February 4, 2014.

16. Beacham, Ellen, and Julia contributed remaining assets, which consisted of interests in real property and limited liability companies jointly owned by Beacham, Ellen, and Julia valued at $979,000:

a. Approximately 7 acres in Pontiac, South Carolina known as the "Woodcreek Lake Property" valued at $518,000;

b. 100% interest in 636 Harden LLC valued at $285,000 (representing a one-half interest in property appraised at $570,000); and

c. 100% interest in 640 Harden LLC valued at $176,000.

17. Beacham persuaded Julia to participate in the forming of the Company by telling her that the Company would be dissolved after Mother's death upon securing the estate tax savings.

18. Pursuant to the estate planning technique, Beacham, acting as attorney-in-fact for Mother, proceeded to gift her Membership Shares to himself, Julia, and Ellen.

19. By the time Mother died on April 15, 2015, her children each owned one-third of the Membership Shares.

20. Not long after Mother's death, ongoing acrimony between the parties erupted into outright strife over the disposition of her assets.

21. Shortly after her death, Beacham and Ellen destroyed Mother's financial records.

22. If available, those records could help explain the disposition of a substantial number of shares of Martin Marietta Corporation common stock that may have been held by the children's father at the time of his death and/or additional Lockheed Martin shares that may have been held by Mother at the time of her death.[2]

23. As a fiduciary for the estate of Father and Mother, Beacham increased Julia's distrust by destroying emails and documents.

24. Mother's testamentary instruments consisted of a pour-over will and a trust known as the Janet B. Brooker Trust (hereinafter the "Trust").

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[2] Beacham O. Brooker, Sr. ("Father") died on January 11, 1990 owning at least 28,850 shares in Martin Marietta Corporation. During 1991, those shares were distributed from his estate as follows: 20,700 shares were distributed to Mother; 2,717 shares each were distributed to Beacham and Julia; and 2716 shares were distributed to Ellen. Of the 20,700 Martin Marietta shares Mother inherited, she initially held 16,500 shares in her name in certificate form and 4,200 shares in a brokerage account. Martin Marietta shares split 2 for 1 on September 30, 1993 and were exchanged 1 for 1 for Lockheed Martin shares on March 15, 1995. On January 7, 1999, Lockheed Martin shares split 2 for 1. Immediately after the split on January 7,1999, Mother was holding 58,000 shares of Lockheed Martin in her name and 7,846 shares in her brokerage account. Of the 58,000 shares held in her name, Mother contributed 29,000 shares to the Company in 2014 and was still holding 29,000 shares upon her death.

25. The Trust contained an equalization provision for Julia because Julia was not married and had no children and because Mother had given substantial sums to the spouses and issue of Beacham and Ellen over her lifetime:

> (2) **Equalization distribution to the Settlor's Daughter Julia B. Brooker.** ***The Settler has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlors children, the Settlors issue and spouses of the Settlor's children.***
>
> Because the Settler's daughter Julia B. Brooker is not married and has no children or issue, the Settlor intends that at the Settlor's death, an ***equalizing distribution will be made to the Settler's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution*** will be determined as follows:
>
> (a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settler to issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., as well as the spouses of Ellen B. Corontzes and Beacham O. Brooker, Jr.
>
> (b) To such amount specified above from the date of such gift an interest rate of five (5 %) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.
>
> (c) The sum of (a) and (b) above shall be distributed to the Settler's daughter Julia B. Brooker, if she shall survive the Settlor.

26. Mother's three children were the beneficiaries of the Trust, and Beacham was its Trustee as well.

27. Despite the clear terms of the equalization provision in the Trust, Beacham took the position while acting as Trustee that Julia would be entitled to equalization for gifts made on or after the date of the October 16, 2007 forward, ignoring the language emphasized above providing

that the equalization provision shall make up for "***lifetime gifts made*** to" the spouses and issue of Beacham and Ellen.

28. Pursuant to Beacham's interpretation of the Trust, Beacham as Trustee verbally offered Julia as Beneficiary $300,000[3] despite the fact that Mother had made lifetime gifts of over $1.8 million to the spouses and issue of Beacham and Ellen that with the 5% interest contemplated by the Trust totaled over $2.94 million.

29. Contentious litigation ensued and culminated in a trial before the Honorable Amy W. McCullough, who subsequently ordered that Julia was entitled to over $1.47 million as her equalization distribution from the Trust (one-half of $2.94 million) as well as payment of her attorney's fees and litigation expenses.

30. That litigation continues as Beacham and Ellen appeal the orders of Judge McCullough, and to date, Julia has received only $735,954 as an equalization distribution from the Trust, for which Beacham still serves as Trustee.

31. In the meantime, Beacham as manager of the Company has continued a pattern and practice of denying Julia distributions from the Company as contemplated by the Operating Agreement, which provides as follows in this respect in Section 7.05:

> A. At periodic intervals as determined by the Managers, but no less frequently than annually, the Managers shall determine the amount of profits and losses of the Company for such period and the allocation of such profits and losses to the Member's capital accounts. The Managers shall determine in their reasonable judgment to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain and repair any Company Property, reserves

[3] Eventually, Beacham raised this offer to $525,528, but like the earlier offer of $300,000, it was contingent on Julia's releasing any and all claims to dispute the amount or request additional funds from the Trust.

against future contingent liabilities, and the retention of funds for future investments and activities. Any Company Cash in excess of such amounts shall be distributed to the owners of the Financial Rights. All distributions must be made simultaneously to each of the owners of the Financial Rights, and must be made in proportion to the owners' Financial Rights. Such distributions may be in cash or Company Property or partly in both, as determined by the Managers. Items of Company Property need not be distributed proportionately, provided the Managers agree upon the value of the property being distributed and the value of the property and the cash received by each owner of the Financial Rights is proportionate to such owner's Financial Rights.

B. Notwithstanding anything herein to the contrary, the Company shall make a minimum pro rata distribution from the Company Cash to the Members within seventy-five (75) Days after the end of each tax year in an amount as shall be necessary to make the distributions to the Members for the entire tax year at least equal to the amount necessary to pay each Member's federal and state income taxes for that tax year attributable to their pro rata share of the Company's net income.

32. Despite these provisions and the fact that Beacham as Manager has determined that Company Cash needed to be distributed, the Company has paid over $200,000 of distributions owed to Julia to an account controlled by Beacham and Ellen without Julia's consent.

33. Despite multiple requests, Beacham and Ellen have denied Julia access to information about these deposits of funds into an account controlled by Beacham and Ellen and the Company in general.

34. In addition, Beacham has not held or conducted any annual meetings or observed corporate formalities with regard to the real estate limited liability companies held by BBB&C, namely 636 Harden LLC and 640 Harden LLC, and as a result is potentially exposing the assets of BBB&C in the event that a judgment is obtained against one or both real estate limited liability companies.

35. Section 2.07 of the Operating Agreement sets forth the purposes of the Company:

> The purposes of the Company are to make a profit, increase wealth, acquire, finance, develop, subdivide, exchange, manage, improve, operate, sell, rent, lease real property and to engage in a general investment business as the members shall determine from time to time; to do all things necessary and proper for the effective, efficient and productive management of Company Property; to consolidate and centralize the management of certain properties owned by the Members; to promote the efficient and economical management of the properties by holding them in a single entity; to avoid fractional ownership of certain properties of the Members in order to promote the greater sales potential of the properties; to provide an orderly buy-sell arrangement between the Members; to provide protection from creditors; to avoid potential expensive litigation and disputes over the properties of the Members by providing mechanisms for their management and procedures to resolve disputes; and to promote knowledge and communication as to Company Property.

36. Acting as manager, Beacham has also failed to profit, increase wealth, acquire, finance, develop, subdivide, exchange, manage, improve, operate, sell, rent, or lease the real property known as the Woodcreek Lake Property despite its significant carrying cost to the Company.

37. The Woodcreek Lake Property consists of two tracts of land: Tract 17 is 3.01 acres of land, and Tract 18 is 3.97 acres with a 1,368 square foot residence with a screened porch, decks, and a shed.

38. The floor plan of the residence on Tract 18 is functional for a weekend cottage but practically inefficient and not the highest and best use of the property that it is an under-improvement for the area.

39. The carrying costs for the Woodcreek Lake Property have totaled over $100,000 since the creation of the Company: $9,836 in 2014; $18,658 in 2015; $22,960 in 2016; $17,974 in 2017; $17,908 in 2018; and at least $15,000 in 2019.

40. Instead of utilizing the property as contemplated by the Operating Agreement, Beacham and Ellen have used the Woodcreek Lake Property as a personal recreational property despite its significant carrying cost.

41. As the Company's Manager, Beacham has also failed to maintain the Company's accounting records in accordance with Section 6.04 of the Operating Agreement, which requires the Company to establish and maintain each Member's capital account in accordance with Section 704 of the Internal Revenue Code and the capital account rules set forth in Treasury Regulations Section 1.704-l(b)(2)(iv).

42. Treasury Regulations Section 1.704-l(b)(2)(iv) requires that each Member's capital account be increased by the fair market value of property contributed to the Company by such Member on the date of contribution, and such increases are not reflected in the Members' capital accounts.[4]

43. Beacham, as manager of the Company, has also failed to observe the corporate formalities of the limited liability companies owned and controlled by the Company—636 Harden LLC and 640 Harden LLC.

44. The tenants leasing the respective premises from 636 Harden LLC and 640 Harden LLC sell alcoholic beverages to their customers on those premises.

45. Accordingly, Beacham's negligent failure to maintain corporate formalities could subject the Company to additional liability, thereby needlessly exposing the Company's primary assets—29,000 shares of Lockheed Martin common stock—to potential claims.

[4] For example, only $29,000 is reflected in the Members' capital accounts with respect to the 29,000 shares of Lockheed Martin that were contributed by Mother when the fair market value of the shares was $4,285.510.

46. Since 2015, the cash generated by 636 Harden LLC and 640 Harden LLC has greatly exceeded the cash used by the Woodcreek Lake Property and the Company's administrative expenses: by $30,476 in 2015, by $28,879 in 2016, by $34,490 in 2018, and by $34,943 in 2018.

47. Accordingly, the Company's investment in 29,000 shares of Lockheed Martin common stock and the corresponding dividends generated[5] are unnecessary to meet the current and anticipated needs of the Company based on historical operating results.

48. Section 7.05 of the Operating Agreement requires interim distribution of excess "Company Cash," that is, the amount of cash on hand that exceeds "the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain, and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities."[6]

49. After six years of operations, the Company is in substantially the same position it was when formed except for the passive and substantial increase in the value of its Lockheed Martin shares, now worth over $12 million.

50. Julia does not trust Beacham and Ellen to properly manage the Company's assets, particularly its $12 million investment in Lockheed Martin common stock.

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[5] From 2014 to 2018, the 29,000 shares of Lockheed Martin common stock generated $949,460 in dividends: $120,640 in 2014; $178,350 in 2015; $196,330 in 2016; $216,340 in 2017; and $237,800 in 2018.

[6] Excess Company Cash is the amount of cash on hand that exceeds "the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain, and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities."

FIRST CAUSE OF ACTION
(Dissolution Under S.C. Code Ann. § 33-44-801(4))

51. Plaintiff realleges each and every allegation set forth above as if repeated verbatim herein.

52. Section 10.01 of the Operating Agreement provides that "[t]he Company shall dissolve and its affairs shall be wound up . . . [o]n application by a Member, upon entry of a judicial decree as provided in Section 33-44-801(4) of the [South Carolina Uniform Limited Liability Company Act of 1996]."

53. Section 33-44-801(4) provides that "[a] limited liability company is dissolved, and its business must be wound up . . . on application by a member or a dissociated member, upon entry of a judicial decree that" *inter alia*:

> (a) the economic purpose of the company is likely to be unreasonably frustrated;
>
> (b) 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;
>
> (c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;
>
> * * *
>
> (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner . . . .

54. For the reasons discussed above and below, "the economic purpose of the company is likely to be unreasonably frustrated":

a. As stated above, the true purpose for the Company was its service as part of an estate planning technique to effectively decrease the value of the underlying assets for purposes of gifting Membership Shares from Janet to

her three children, and accordingly, that primary purpose behind the Company has been served and is no longer valid because Janet made contemplated gifts years ago prior to her death on April 15, 2015;

b. None of the putative purposes of the Company are being served with respect to the primary assets of the Company, $12 million worth of entirely fungible Lockheed Martin common stock, which need no form of management by the Company to make a profit and for which there is no possible concern about fractional ownership or greater sales potential; and

c. Beacham and Ellen have continued to use the Company's second most valuable asset as a personal recreational property rather than utilizing it in a manner consistent with the purpose of the Company as expressed in the Operating Agreement.

55. Therefore, the Company should be dissolved and its business wound up under Section 33-44-801(4)(a).

56. For the reasons discussed above and below, Beacham and Ellen have "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" as contemplated by Section 33-44-801(4)(b):

a. Beacham and Ellen have used the Woodcreek Lake Property as a personal recreational facility rather than making economic use of the property as contemplated by the Operating Agreement;

b. Without Julia's consent, Beacham and Ellen have diverted distributions owed to Julia under the Operating Agreement to an account managed by

Ellen for the benefit of six properties jointly owned by Beacham, Ellen, and Julia;

c. Beacham has failed to maintain the Company's accounting records in accordance with Section 6.04 of the Operating Agreement; and

d. Beacham has failed to observe the corporate formalities of the Company as well as the limited liability companies owned and controlled by the Company—636 Harden LLC and 640 Harden LLC—and thereby, needlessly subjected the Company and its Members to potential liability.

57. Accordingly, the Company should be dissolved and its business wound up pursuant to Section 33-44-801(4)(b).

58. For the reasons discussed above and below, it is likewise "not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement":

a. There is serious and longstanding distrust and animosity between Julia and her siblings, as shown by a history of discord and litigation between them;

b. The practical economic reality of the Company's primary asset—$12 million in Lockheed Martin common stock—is entirely incongruent with the putative purposes of the Company as expressed in the Operating Agreement;

c. The practical economic reality of the Company's secondary assets is that they are completely self-sustaining without the need of the Lockheed Martin common stock or the dividends those shares provide; and

d. Beacham and Ellen have ignored and continue to ignore corporate formalities.

59. Therefore, the Company should be dissolved and its business wound up pursuant to Section 33-44-801(4)(c).

60. For the reasons discussed above and below, Beacham and Ellen as "the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner," Julia:

a. For nearly as long as the Company has existed, the relationship between Julia and her siblings has been marked by severe distrust and animosity;

b. Beacham and Ellen have a history of attempting to short Julia what she is entitled from Mother's estate, as shown by the results of the litigation over Mother's Trust, which result Beacham and Ellen are now appealing;

c. There has been an ongoing lack of transparency shown by Beacham and Ellen to Julia as demonstrated by their destruction of documents pertaining to Mother's finances, which could have shed light on inconsistencies in the numbers of shares of Martin Marietta and Lockheed Martin common stock owned by Father and Mother;

d. Contrary to the terms of the Operating Agreement, Beacham and Ellen have diverted distributions owed to Julia to an account maintained by Beacham and Ellen without Julia's consent; and

e. Beacham and Ellen have ignored Julia's request for additional information about these deposits of funds and the Company in general;

f. Beacham has failed to observe corporate formalities with regard to the real estate limited liability companies, namely 636 Harden LLC and 640 Harden LLC, and as a result is potentially exposing the assets of BBB&C in the event that a judgment is obtained against one or both real estate limited liability companies.

61. Accordingly, the Company should be dissolved and its business wound up pursuant to Section 33-44-801(4)(e).

62. Therefore, pursuant to Section 33-44-801(4) of the South Carolina Code of Laws, Julia is entitled to the entry of a judicial decree winding up and dissolving the Company, awarding proper distributions in accordance with the Operating Agreement and applicable law, and awarding the other relief requested below.

SECOND CAUSE OF ACTION
(Accounting)

63. Plaintiff realleges each and every allegation set forth above as if repeated verbatim herein.

64. Plaintiff is entitled to a full and complete accounting of all of the business affairs and financial dealings of BBB&C, together with an accounting and tracing of all dealings and transfers between BBB&C, Beacham, and Ellen.

THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty Under S.C. Code Ann. § 33-44-409(h))

65. Plaintiff realleges each and every allegation set forth above as if repeated verbatim herein.

66. As Manager of the Company, Beacham owed Julia the duties of loyalty, care, and good faith as provided by Section 33-44-409(h) of the South Carolina Uniform Limited Liability Company Act of 1996.

67. By exercising some or all of the rights of Manager of the Company in the management and conduct of the Company's business, Ellen likewise owed Julia the duties of loyalty, care, and good faith as provided by Section 33-44-409(h).

68. By failing to abide by the Operating Agreement and failing to safeguard the profits of the Company until rightfully distributing to Julia her portion of Company Cash, Beacham and Ellen breached duties owed to Julia.

69. Beacham's and Ellen's breaches of their duties to Julia has proximately caused damages to Julia, and Julia is entitled to an award of damages as a result of Beacham's and Ellen's fiduciary misconduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. Dissolving the Company and winding up its business pursuant to Section 10.04 of the Operating Agreement, and in the alternative, removing Beacham as Manager and distributing the shares of Lockheed Martin common stock equally to the Members;

B. Ordering that a full and complete accounting be made;

C. Awarding against all of the Defendants and in favor of the Plaintiff the amount of damages sustained by the Plaintiff as a result of the Defendants' breaches of fiduciary duties;

D. Awarding pre-judgment interest;

E. Awarding punitive damages in favor of the Plaintiff;

F. Awarding the Plaintiff its costs and expenses incurred in this action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses pursuant to Section 11.02 of the Operating Agreement; and

G. Granting such other and further relief as the Arbitrators deem just and proper.

Respectfully submitted,

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Counsel for Plaintiff

Columbia, South Carolina
March 17, 2020

NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10 ET SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA

OPERATING AGREEMENT, LLC OF BBB&C FAMILY LLC

This Operating Agreement ("Operating Agreement") is made and entered into this 31st day January, 2014, by and among Janet B. Brooker, Beacham O. Brooker, Jr., Julia B. Brooker and Ellen B. Corontzes, (hereinafter referred to collectively as the "Members" and individually as a "Member") and BBB&C FAMILY LLC (the "Company").

WHEREAS, the parties desire to form the Company as a limited liability company under the laws of the State of South Carolina and they wish to enter into this Operating Agreement to govern the relationship among the Members of this Company and between the Company and the Members.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

ARTICLE I
DEFINED TERMS

Section 1.01 Definitions. The terms defined in this Article I shall, for purposes of this Operating Agreement, have the meanings herein specified.

"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), and any successor statute, as amended from time to time.

"Articles" shall mean the initial, amended and restated Articles of Organization filed with the Secretary of State of South Carolina by which BBB&C FAMILY LLC was organized as a South Carolina limited liability company under and pursuant to the Act.

"Bona Fide Offer" shall mean a written offer received by a Member from a third party to purchase all or any part of that Member's Membership Shares which offer sets forth all of the material terms and conditions of the proposed purchase and is not subject to contingencies.

"Capital Contribution" shall mean the amount of cash and fair market value (at the time of contribution) of any property contributed to the Company with respect to the Membership Share held by such Member.

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

"Company" shall have the meaning set forth in the preamble hereof.

"Company Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company, including, but not limited to, the property described on Exhibit A attached hereto. Exhibit A shall be amended from time to time as necessary to accurately reflect changes in Company Property without the need for any amendment to this Operating Agreement.

"Day" or "Days" shall mean all calendar days, whether or not such days are legal holidays under the laws of the United States or any State.

"Dispose," "Disposing," or "Disposition" shall mean to sell, assign, transfer, give, donate, exchange, bequeath, devise, mortgage, pledge, grant a security interest, or otherwise dispose or encumber, including, without limitation, on account of a court order or otherwise by operation of law (including, but not limited to, foreclosure, being subject to a charging order, or transfer incident to divorce or any similar proceeding), or the acts thereof, to any Person.

"Family Member" shall mean Janet B. Brooker and Janet B. Brooker's lineal descendants, by natural birth or legal adoption, as well as the spouses of her lineal descendants.

"Financial Rights" shall mean the right to share in the net profits, net losses and distributions of the Company. Any reference to a Member's Financial Rights shall mean the percentage of Financial Rights in the Company held by the Member.

"Manager" or "Managers" shall mean the Person(s) elected in accordance with this Operating Agreement to manage and operate the Company.

"Member" shall mean any Member named in the preamble of this Operating Agreement, and any other Person who hereafter acquires a Membership Share and is admitted to the Company as a Member as provided in this Operating Agreement, but does not include any Person who has ceased to be a Member of the Company. For purposes of this Operating Agreement, the settlor of a revocable living trust shall be considered to be the Member.

"Membership Share" shall mean all of the rights, powers, benefits, duties or obligations of a Member under this Operating Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights. The Membership Share of each Member is represented by a percentage. Each Membership Share shall have the same rights and privileges and shall rank equally and be identical in all respects as to all matters.

"Offered Membership Shares" shall mean all of the Membership Shares that are deemed to have been offered for sale to the Company and the other Members pursuant to this Operating Agreement.

"Permitted Transferee" shall mean (i) the Company; (ii) any Member; (iii) any Family Member; (iv) any estate, trust, guardianship, custodianship, conservatorship or other fiduciary arrangement for the sole benefit of any one or more of the individuals described in (ii) or (iii) above and which assures that the Membership Shares will only be held by or for the benefit of such individuals; or (v) any corporation, partnership, limited liability company or other business organization in which the individuals or entities described in (i) - (iv) above are the sole owners and the management and control of which must rest exclusively with any one or more of such individuals.

"Person" shall mean any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, personal representative or other legal entity or organization.

"Treasury Regulations" shall mean, except where the context indicates otherwise, the permanent, proposed or temporary rules and regulations of the U.S. Department of the Treasury promulgated under the Code, as such rules and regulations may be lawfully changed from time to time.

"Voluntary Transfer" shall mean any Disposition of a Membership Share made by a Member that is not an Involuntary Transfer. An "Involuntary Transfer" is any Disposition of a Membership Share by a Member made on account of a court order or otherwise by operation of law, including, but not limited to, an occurrence of an event of bankruptcy, being subject to a charging order, or any transfer incident to any divorce or marital property settlement or any transfer pursuant to applicable community property, quasi-community property or similar state law.

"Voting Rights" shall mean the right of a Member to vote on any matter as provided in this Operating 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.

Section 1.02 Terms and Usage Generally. All references herein to an "Article," "Section" or "Exhibit" shall refer to an Article or a Section of, or an Exhibit to, this Operating Agreement. Whenever the words "include," "includes" or "including" are used in this Operating Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereto," "hereof," "herein" and "hereunder" and words of similar import when used in this Operating Agreement shall refer to this Operating Agreement as a whole and not to any particular provision of this Operating Agreement. All terms defined in this Operating Agreement shall have the defined meanings when used in any other document made or delivered pursuant hereto unless otherwise defined therein.

ARTICLE II
ORGANIZATION

Section 2.01 Name. The name of the Company is **BBB&C FAMILY LLC**.

Section 2.02 Formation. The Company shall be organized as a South Carolina limited liability company by the filing of Articles pursuant to the Act and the issuance of a Certificate of Existence for the Company by the Secretary of State of South Carolina.

Section 2.03 Designated Office. The Company shall maintain a designated office in the State of South Carolina in accordance with the Act. The designated office shall be at the address set forth in the Articles.

Section 2.04 Registered Agent and Address. The registered agent of the Company in the State of South Carolina and the street address of the registered agent shall be the Person and address set forth in the Articles.

Section 2.05 Principal Office in the United States and Other Offices. The principal office of the Company in the United States shall be at such place as the Managers may designate from time to

time, which need not be in the State of South Carolina. The Company may have such other offices as the Managers may designate from time to time.

Section 2.06 Term Company. The Company shall be a term company within the meaning of the Act. The term of the Company shall commence on the date the Articles are filed with the Secretary of State of South Carolina, unless a later effective date is specified in the Articles, and the existence of the Company shall terminate upon the expiration of its term on December 31, 2054, unless extended or sooner terminated by law or pursuant to the provisions of this Operating Agreement.

Section 2.07 Purposes. The purposes of the Company are to make a profit, increase wealth, acquire, finance, develop, subdivide, exchange, manage, improve, operate, sell, rent, lease real property and to engage in a general investment business as the members shall determine from time to time; to do all things necessary and proper for the effective, efficient and productive management of Company Property; to consolidate and centralize the management of certain properties owned by the Members; to promote the efficient and economical management of the properties by holding them in a single entity; to avoid fractional ownership of certain properties of the Members in order to promote the greater sales potential of the properties; to provide an orderly buy-sell arrangement between the Members; to provide protection from creditors; to avoid potential expensive litigation and disputes over the properties of the Members by providing mechanisms for their management and procedures to resolve disputes; and to promote knowledge and communication as to Company Property.

Section 2.08 No Liability to Third Parties. No Member, Manager or officer, solely by reason of being a Member or acting as a Manager or officer, will be subject to any liability in connection with the debts, obligations or liabilities of the Company. The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, will be solely the debts, obligations and liabilities of the Company.

Section 2.09 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. However, the Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal and state tax income purposes, and this Operating Agreement may not be construed to suggest otherwise.

ARTICLE III
MEMBERS

Section 3.01 Initial Members. The name and address of each initial Member and the percentage of Membership Shares held by such initial Member shall be as set forth on Exhibit B. Exhibit B shall be amended from time to time as necessary to accurately reflect changes in the Members and the Membership Share of any Member without the need for any amendment to this Operating Agreement.

Section 3.02 Admission of New Members. After the date of this Operating Agreement, a Person shall have the right to become a Member of the Company if such Person (i) acquires a Membership Share from a Member and obtains the written consent of all non-Disposing Members who have Voting Rights in the Company; (ii) acquires a Membership Share from a Member and such Disposition is a Permitted Transfer (as defined in Section 9.02); or (iii) is issued any Membership Shares

in accordance with Section 3.03. Upon compliance with Section 3.04, any such Person shall automatically be admitted as a Member of the Company and shall be entitled to all rights and powers and subject to all restrictions and liabilities of a Member.

Section 3.03 Issuance of Additional Membership Shares. The timing and terms of any new issuance of Membership Shares of the Company to any Person, including a Member, shall require the unanimous approval of the Members who have Voting Rights in the Company. A Member need give no reason for voting not to issue additional Membership Shares and a Member may unreasonably withhold his or her consent to such issuance.

Section 3.04 Additional Conditions to Recognition of Transfer or Issuance of Membership Shares. Whether or not such Person is admitted as a new Member or will merely be the owner of Financial Rights, such Person must, as a condition to recognizing the effectiveness and binding nature of such transaction:

A. Execute and deliver to the Company a written agreement that such Person has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of this Operating Agreement, as the same may have been further amended, in a form acceptable to the Company.

B. Deliver to the Company such instruments of transfer, assignment and assumption with respect to such transaction as are in form and substance reasonably satisfactory to the Company.

C. Assure compliance with any applicable state and federal laws, including securities law and regulations.

D. Pay or reimburse the Company a fee not to exceed One Thousand ($1,000.00) to cover costs and expenses incurred by the Company in preparing, executing and recording all pertinent documents.

The Company, however, may waive any requirement in this Section.

Section 3.05 Transferee of Membership Share 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, then such transferee shall be entitled to retain the Financial Rights transferred, but shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any other rights of a Member. The transferee is 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 Operating Agreement may change 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 the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred. Upon the transferee being admitted as a Member, the transferring Member shall be relieved of all obligations under this Operating Agreement. 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 the provisions of Section 3.04 of this Operating Agreement have been satisfied.

Section 3.06 No Authority of Members. Except as otherwise provided in this Operating Agreement, or as authorized by the Managers, no Member is an agent of the Company or has the

authority to make any contracts, enter into any transactions, or make any commitments on behalf of the Company.

Section 3.07 No Right to Withdraw. No Member shall have any right to withdraw from the Company prior to the dissolution and winding up of the Company's business and affairs except (i) with the unanimous consent of all the remaining Members who have Voting Rights in the Company, or (ii) in connection with a transfer of its entire Membership Share in accordance with this Operating Agreement. If a Member attempts to withdraw in violation of the provisions of this Section 3.07, such act shall, as to the Company and the other Members, be void and of no force and effect, nor shall such attempted resignation entitle any Member to receive the fair value of its interest in the Company prior to the dissolution and winding up of the Company's business and affairs.

ARTICLE IV
MANAGEMENT OF COMPANY

Section 4.01 General Authority of Managers.

A. Except as otherwise expressly provided by this Operating Agreement or required by any nonwaivable provision of applicable law, all powers shall be exercised by or under the authority of, and the business and affairs of the Company shall be controlled by the Managers.

B. All actions required to be taken by the Managers hereunder shall be made by the vote of a majority of the number of Managers unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by any express provision of the statutes which are applicable to such vote unless legally overridden by the Articles or this Operating Agreement, a different vote is required, in which case such express provision shall govern and control the decision of such matter.

C. Subject to the foregoing, the Managers shall have full and complete authority, power, right and duty to manage and control the business, affairs and assets of the Company, to make all decisions regarding those matters and to perform any and all acts and activities customary or incident to the management of the Company's business. Unless authorized to do so by this Operating Agreement or by the Managers, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. Specifically, but not by way of limitation, the Managers shall be authorized for and on behalf of the Company to:

1. Borrow money for the Company from banks, other lending institutions, Managers, Members and other Persons, and in connection therewith, to hypothecate, encumber, mortgage and grant security interests in Company Property to secure payment of the borrowed sums;

2. Acquire, hold, own, invest and reinvest, purchase and sell, any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, 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, and to actively trade, speculate on, maintain and manage the same;

3. Enter into, make, execute and perform all instruments and documents, including, but not limited to, contracts, mortgages, security agreements, deeds, financing statements, partnership agreements, leases, management contracts 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;

4. Employ from time to time persons, firms or corporations for the operation and management of various aspects of the Company's business, including, without limitation, accountants, legal counsel, managing agents, money managers, property managers, contractors, subcontractors, architects, engineers, laborers, suppliers, investment advisors and other advisors to perform services for the Company and to compensate them out of Company Property, notwithstanding the fact that any Manager or Member may have a financial interest in such firms or corporations;

5. Open and maintain bank accounts, investment accounts and other arrangements, draw checks, letters of credit, and other orders for the payment of money and designate individuals (which may be an officer, Manager, Member or any other individual) with authority to sign or give instructions with respect to those accounts and arrangements; and

6. Collect sums due and owing to the Company.

Section 4.02 Limitations on Powers. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

A. The Company shall not sell, or contract to sell, or otherwise dispose of all or substantially all of the Company Property other than in the ordinary course of Company business without the approval of those Members who own Seventy-five (75%) percent of the Voting Rights in the Company. For purposes of this subsection, all or substantially all of the Company Property means Eighty (80%) percent of such property by value in any consecutive twelve (12) month period.

B. The Company shall not hypothecate, encumber and grant a security interest in Company Property without the approval of those Members who own Seventy-five (75%) percent of the Voting Rights in the Company.

C. The Company shall not materially deviate from the purposes of the Company as set forth in this Operating Agreement without the approval of those Members who own Seventy-five (75%) percent of the Voting Rights in the Company.

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 Seventy-five (75%) percent of the Voting Rights in the Company.

Section 4.03 Delegation of Authority and Duties. In managing the business and affairs of the Company and exercising its powers, the Managers may act through Managers or officers to whom authority and duties have been delegated in accordance with this Section.

A. The Managers may, from time to time, delegate to one or more Managers such authority and duties as the Managers may deem necessary or desirable in furtherance of any action that they have authorized on behalf of the Company. Such delegation shall be made by delivering to the

Manager or Managers to whom such powers and duties are delegated written notice specifying the powers and duties delegated and the period of such delegation.

B. The Managers may designate one or more individuals to be officers of the Company. No officer need be a resident of the State of South Carolina, a Manager or a Member. Any officers so designated shall have such authority and perform such duties as the Managers may, from time to time, delegate to them. The Managers may assign titles (including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer) to particular officers. Unless the Managers decide otherwise, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made pursuant to Section 4.03(A). The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Managers. No officer shall be prevented from receiving a salary by reason of the fact that such officer is also a Manager or Member.

Section 4.04 Election of Manager, Number and Term of Office. The Members shall elect one or more Persons as Managers. The initial Manager of the Company shall be Beacham O. Brooker, Jr. Each Manager shall hold office until such Manager dies, is removed pursuant to Section 4.05 or resigns pursuant to Section 4.06. The number of Managers shall be fixed from time to time by the Members, but in no instance shall there be less than one Manager. A Manager need not be a Member or resident of the State of South Carolina.

Section 4.05 Removal. Any and all Managers may be removed, either with or without cause, by a vote of the Members (including a Manager, if such Manager is also a Member with Voting Rights) who own Seventy-five (75%) percent of the Voting Rights in the Company. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member.

Section 4.06 Resignation. Any Manager may resign at any time by giving written notice to each Member. Such resignation shall take effect upon the delivery of the notice to the Members or at such later time as shall be specified in such notice. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member.

Section 4.07 Vacancies. Any vacancy occurring for any reason in the number of Managers shall be filled by a vote of the Members (determined without regard to any Voting Rights owned by a Member who was a Manager but was removed pursuant to Section 4.05 of this Operating Agreement during the preceding 24 month period), unless one or more other Persons then serve as Manager and the Members determine not to fill such vacancy.

Section 4.08 Execution of Documents and Other Actions. Pursuant to Section 4.03, the Managers may act through Managers or officers to whom authority and duties have been delegated. In the absence of such delegation, the signature, authorization or actions of only those number of Managers sufficient to approve such action had such action been properly voted on at a duly called meeting of the Managers shall be required.

Section 4.09 Single Manager. If at any time there is only one Person serving as a Manager, such Manager shall be entitled to exercise all powers of the Managers set forth in this Article IV, and all

references in this Article IV and otherwise in this Operating Agreement to Managers shall be deemed to refer to such single Manager.

Section 4.10 Place and Manner of Meetings. It is not contemplated that there will be regular meetings of the Managers. However, meetings of the Managers may be called at any time by any Manager. All meetings of the Managers shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by all Managers. Managers may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.11 Notice of Meetings and Record Date. Written notice stating the time, date, place and purpose of the meeting shall be delivered at least ten (10) Days but no more than sixty (60) Days in advance of the proposed meeting date, either personally or by mail, by or at the direction of the Manager calling the meeting, to each Manager. An affidavit of the mailing or other means of giving any notice of any Managers meeting shall be executed by the Person giving such notice, and shall be filed and maintained in the books and records of the Company. When a meeting of the Managers is adjourned, notice need not be given of any such adjourned meeting if the date, time and place thereof are announced at the meeting at which the adjournment is taken. For the purpose of determining the Managers entitled to notice of or to vote at any meeting of Managers or any adjournment thereof, or in order to make a determination of Managers for any other purpose, the record date shall be the date on which notice of the meeting is mailed or the date on which the resolution of the Managers declaring such action is adopted, as the case may be. When a determination of Managers entitled to vote at any meeting of Managers has been made as provided in this Section 4.11, such determination shall apply to any adjournment thereof.

Section 4.12 Waiver of Notice. When any notice is required to be given to any Manager, a waiver thereof in writing signed by the Manager entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice. In addition, a Manager who attends a meeting waives his or her right to assert any lack of notice, or defect in notice, of the meeting unless he or she states such objection at the outset of the meeting.

Section 4.13 Action without Meeting. The Managers may take action without notice and without a meeting if a consent or consents in writing, setting forth the action so taken, is signed by a sufficient number of Managers, as the case may be, to approve such action had such action been properly voted on at a duly called meeting of the Managers. Every written consent pursuant to this Section shall be signed, dated and delivered to the Company and shall become effective when the requisite number of Managers, as the case may be, have signed the consent, unless the consent specifies a different effective date. The date for determining the Managers entitled to take action without a meeting shall be the date the first Manager signs a written consent. A telegram, telex, cablegram, or similar transmission by a Manager, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a Manager, shall be regarded as signed by the Manager for purposes of this Section. Prompt notice of the taking of any action by the Managers without a meeting by less than unanimous written consent shall be given by the Managers who signed the written consent to those Managers who did not consent in writing to the action.

Section 4.14 Meeting of all Managers. If all of the Managers shall meet at any time and place, either within or outside of the State of South Carolina, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

Section 4.15 Compensation and Reimbursement. The Company shall reimburse a Manager for all reasonable out-of-pocket expenses incurred by the Manager in managing and conducting the Company's business. The compensation of the Managers shall be fixed from time to time by a vote of the Members, and no Manager shall be prevented from receiving such compensation by reason of the fact that he or she is also a Member.

Section 4.16 Liability for Certain Acts. The Managers do not in any way guarantee the return of the Members' Capital Contribution or a profit for the Members from the operations of the Company. No Manager shall be liable or accountable to the Company or to the other Members, in damages or otherwise, for any error in judgment, for any mistake of fact or of law, or for any other act or thing that the Manager may do or refrain from doing in connection with the business and affairs of the Company, except for willful misconduct, gross negligence, fraud, deceit or breach of fiduciary duty, and further for breaches of contractual obligations or agreements between the Managers and the Company or the Managers themselves.

Section 4.17 Indemnity. The Company shall indemnify and hold harmless each Manager for all expenses, costs, losses, liabilities, and damages paid or accrued by such Manager in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State of South Carolina, except to the extent the claim for which indemnification is sought results from an act or omission for which the Manager may be held liable to the Company, a Member or a Manager under Section 4.16 above. Any such indemnification under this Section shall be made by the Company only if authorized by a vote of the Members (determined without regard to any Voting Rights owned by a Member who is also a Manager seeking indemnification). The foregoing rights of indemnification shall not be exclusive of any other rights to which the Managers may be entitled.

Section 4.18 Interested Managers, Officers and Members. No contract or transaction between this Company and one or more of its Managers, officers or Members, or between this Company and any other limited liability company, corporation, partnership, association, or other organization in which one or more of its managers, officers, members or partners are Managers, officers or Members of this Company or have a financial interest in this Company, shall be void or voidable solely because the Manager, officer or Member is present at, participates in, or votes at the meeting which authorizes the contract or transaction if:

A. The contract or transaction is fair as to this Company as of the time it is authorized, approved, or ratified; and

B. The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Managers, officers or Members and the Managers, officers or Members in good faith authorize the contract or transaction.

This Section shall not be construed to invalidate any contract or transaction which would be valid in the absence of this Section.

Section 4.19 Business Pursuits of Managers and Members. The Managers and Members may engage in other business activities and the Managers shall be obligated by reason of this Operating Agreement to devote only as much of their time to the Company's business as shall be reasonably required in light of the Company's business and objectives and the responsibilities undertaken or assigned to the Managers. This Operating Agreement shall not preclude or limit in any respect the right of any Manager or Member to engage in or invest in any business activity of any nature or description, whether or not competitive with the business of the Company and a Manager or Member shall have no obligation to offer any opportunity to the Company, the other Managers or the other Members. Any such activity may be engaged in independently or with other Managers and Members. No Manager or Member shall have the right, by virtue of this Operating Agreement or the relationship created hereby, to any interest in such other ventures or activities or to the income or proceeds derived therefrom. The pursuit of such other ventures shall not be deemed wrongful or improper and any Manager or Member shall have the right to participate in or to recommend to others any such investment opportunity. The Company and each Manager and Member hereby expressly consents to the continued and future ownership and operation by the other Managers and Members of such businesses and activities and waives any claim for damages or otherwise, or rights to participate therein or with respect to the operation and profits or losses thereof.

Section 4.20 Books and Records. The Managers shall cause the Company to maintain at its principal place of business the following Company records:

A. A current list of the full name and last known mailing address of each Member and his or her Membership Share.

B. A current list of the full name and last known mailing address of each Manager.

C. A copy of the Articles and this Operating Agreement, together with all amendments thereto.

D. Copies of the Company's federal, state and local income tax returns and reports for the three (3) most recent fiscal years.

E. Original or copies of all minutes, actions by written consent, notice of meetings and waivers of notices.

Each Member, or the legal representative of such Member, may, at any time during normal business hours, inspect and copy the books and records of the Company. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

ARTICLE V
ACTIONS OF MEMBERS

Section 5.01 No Required Meetings. It is not contemplated that there will be regular meetings of the Members. However, meetings may be called at any time by any Manager or by any Member or Members who own Fifty (50%) percent of the Voting Rights in the Company. All meetings

shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by all Members.

Section 5.02 Notice of Meetings. Written notice stating the time, date, place and purpose of the meeting shall be delivered at least ten (10) Days but no more than sixty (60) Days in advance of the proposed meeting date, either personally or by mail, by or at the direction of the Persons calling the meeting, to each Member entitled to vote as such meeting, provided that such notice may be waived as provided in this Operating Agreement. An affidavit of the mailing or other means of giving any notice of any Members' meeting shall be executed by the Person giving such notice, and shall be filed and maintained in the books and records of the Company. When a meeting of the Members is adjourned, notice need not be given of any such adjourned meeting if the date, time and place thereof are announced at the meeting at which the adjournment is taken; provided, however, that if a new record date must be fixed for the adjourned meeting in accordance with Section 5.03, then notice of the adjourned meeting shall be given as in the case of an original meeting.

Section 5.03 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members, or any adjournment thereof, to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the record date shall be the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution or action is adopted, as the case may be. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section 5.03, such determination shall apply to any adjournment thereof; provided, however, that if a meeting is adjourned for more than forty-five (45) days, a new record date must be fixed.

Section 5.04 Conduct of Meetings. All meetings of the Members shall be presided over by the chairman of the meeting who shall be a Member designated by a majority of the Members at the meeting. The chairman of the meeting shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion.

Section 5.05 Member Voting. All actions required to be taken by the Members shall be made by the vote of the Members who own more than Fifty (50%) percent of the Voting Rights in the Company, unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by any express provision of the statutes which are applicable to such vote unless legally overridden by the Articles or this Operating Agreement, a different percentage is required, in which case such express provision shall govern and control the decision of such matter.

Section 5.06 Participation in Meetings. Members may participate in such meetings of the Members by means of conference telephone or similar communications equipment by means of which all Members participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 5.07 Proxies. Each Member may authorize any Person to act for him or her by proxy on all matters in which a Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be in writing and signed by the Member or his or her attorney-in-fact or other legal representative. The proxy shall be delivered to a Manager of the

Company at or before the meeting at which the appointment is to be effective and shall not be valid after the final adjournment of the meeting.

Section 5.08 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the Member entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice. A Member who attends a meeting waives his or her right to assert any lack of notice, or defect in notice, of the meeting unless he or she states such objection at the outset of the meeting.

Section 5.09 Action Without Meeting. The Members may take action without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the Members holding sufficient Voting Rights, as the case may be, to approve such action had such action been properly voted on at a duly called meeting of the Members. Every written consent pursuant to this Section shall be signed, dated and delivered to the Company and shall become effective when the Members with requisite Voting Rights, as the case may be, have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent. Prompt notice of the taking of any action by Members without meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action.

ARTICLE VI
CAPITAL ACCOUNTS AND CONTRIBUTIONS

Section 6.01 Initial Contributions. Upon the execution of this Operating Agreement, each initial Member shall contribute to the Company the monies and/or properties which are specified in Exhibit A as that Member's initial Capital Contribution in exchange for the issuance by the Company of Membership Shares to each such initial Member as set forth on Exhibit B. No Membership Shares shall be issued to an initial Member until the full amount of consideration therefore has been paid.

Section 6.02 Subsequent Contributions.

A. **Mandatory Contributions.** The Members recognize that the income produced by the Company's business may be insufficient to pay the operating costs of the Company. Without creating any rights in favor of any third party, if the Managers determine that additional funds from the Members are necessary and appropriate for the conduct of the Company's business (including without limitation, any funds needed for working capital, any operating deficit or the purchase, lease, acquisition, expansion or construction of additional Company Property), then upon the Managers making such determination, the Managers shall provide written notice of such request for additional Capital Contributions to each Member, which notice must include the aggregate amount of the Capital Contributions and a statement in reasonable detail of the proposed uses of the Capital Contributions. Any such additional Capital Contributions shall require the approval of those Members who own more than fifty (50%) percent of the Voting Rights in the Company. Upon such approval, the Managers shall notify each Member in writing of the date (which date may be no earlier than fifteen (15) Days following the date of the Members' approval) before which the Capital Contributions must be made. Additional Capital Contributions shall be contributed by the Members, in cash, on or before the date specified in the written notice, in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. If any Member makes a Capital Contribution to the Company, such Capital Contribution shall increase only that Member's capital account and such Capital Contribution shall in no event be

allocated pro rata to the capital accounts of the other Members. Solely for purposes of this Section, a Member who has transferred his or her Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

B. Default. If a Member does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Operating Agreement, that Member is in default ("Defaulting Member"). If the Defaulting Member fails to cure the default in full within thirty (30) Days of the date such contribution was due, the Defaulting Member shall pay to the Company a late fee of Two Hundred ($200.00) Dollars. If the defaulting Member has failed to cure the default in full (any unpaid contribution and late fee) within sixty (60) Days of the date the contribution was due, the Defaulting Member shall not have any Voting Rights and shall not be entitled to participate in the management of the Company until such default is fully cured.

C. Extended Default. If, within ninety (90) Days after the due date of the contribution, the Defaulting Member has not completely cured his or her default (any unpaid contribution and late fee), such Defaulting Member shall be notified in writing by the Company that his or her default has exceeded ninety (90) Days and that he or she is in extended default. By execution of this Operating Agreement, each Member expressly agrees and understands that, in the event such Member thereafter receives written notice that he or she is in extended default, the Company may exercise one or more of the following remedies:

1. The Members who made their Capital Contribution may, but shall not be required to, make further additional contributions in such proportion as they might agree among themselves, or in the absence of any such agreement, in proportion to their Financial Rights, up to the full amount not contributed by the Defaulting Member. After such contribution is made, each Member's Membership Share shall be adjusted and determined by dividing the aggregate contributions of all the Members since the inception of the Company into the aggregate contribution of each Member. The resulting quotient with respect to each Member shall be the adjusted Membership Share of the Member.

2. The amount that the Defaulting Member is in default may be considered a loan made by the Company to the Defaulting Member ("Deficit Loan"). A Defaulting Member's Deficit Loan shall be payable on demand of the Company as well as out of distributions from the Company otherwise payable to the Defaulting Member (whether before or after dissolution of the Company). Said loan shall bear interest, per annum, at a rate of two (2%) percent above the prime rate as published in the Wall Street Journal as of the day following the expiration of the ninety (90) Day period or, if greater, the rate of interest applicable under Section 1274 of the Code, adjusted each January 1 the Deficit Loan is outstanding. The Defaulting Member shall not be entitled to receive any distributions from the Company until the Deficit Loan of the Defaulting Member has been paid in full. The Defaulting Member hereby grants to the Company a security interest in his or her Membership Shares to the extent of the Defaulting Member's Deficit Loan. If the Defaulting Member fails to satisfy his Deficit Loan within thirty (30) Days after the Company's demand for payment, the Defaulting Member shall forfeit his or her Membership Shares to the extent of any unpaid obligations. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture. To the extent the Defaulting Member's Deficit Loan remains unsatisfied, the Deficit Loan of the Defaulting Member shall be a personal debt obligation of the Defaulting Member, and the Company may resort to any available legal or equitable remedy to enforce said obligation.

D. **Continuing Liability of Member in Default.** A Member who is in default or extended default under this Section shall in no way be relieved of his or her obligation to pay additional contributions which accrue either before or after the date of such default.

Section 6.03 Return of Capital. No interest shall accrue on any Capital Contribution and except as specifically provided in this Operating Agreement, no Member shall be entitled to withdraw or obtain a return of any Capital Contribution or, when such withdrawal of capital is permitted, to demand a distribution of property other than cash.

Section 6.04 Capital Accounts. The Company shall establish and maintain for each Member a separate 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)(2)(iv). Each Member's capital account shall be adjusted as necessary to reflect the economic conditions of the Membership Shares. These adjustments shall include, but are not limited to, the following:

A. Adjustments to reflect each Member's distributive share of Company profits and losses, including capital gains and losses and tax-exempt income;

B. Adjustments to reflect each Member's additional contributions to the Company; and

C. Adjustments to reflect distributions made by the Company to each Member.

Section 6.05 Transferee Capital Accounts. In the event of a Disposition of a Membership Share in accordance with the terms of this Operating Agreement, the capital account of the transferring Member shall become the capital account of the transferee to the extent it relates to the transferred Membership Share.

Section 6.06 Compliance with Section 704(b) of the Code. The provisions of this Article VI 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 and credit pursuant to this Operating Agreement to have substantial economic effect under Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. Notwithstanding anything herein to the contrary, no Member shall have any obligation to restore all or any portion of a deficit balance in such Member's capital account.

ARTICLE VII
ALLOCATIONS AND DISTRIBUTIONS

Section 7.01 Allocation of Profits and Losses. The Company's net profits and net losses (and each item of income, deduction, gain, loss and credit that makes up net profits and net losses) shall be computed in accordance with professionally accepted accounting principles, consistently applied and appropriate for the method of accounting selected by the Members for use by the Company. Except as provided in Sections 7.02 and 7.03, the net profits and net losses and other items of income, gain, loss, deduction and credit shall be apportioned among the Members in accordance with their Financial Rights in the Company.

Section 7.02 Regulatory Allocations. Notwithstanding anything to the contrary herein, any special allocations required to be made pursuant to the Treasury Regulations promulgated under Section 704 of the Code, including those related to minimum gain chargebacks and qualified income offsets, which qualified income offset rules of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations are hereby incorporated by reference, shall be made prior to the allocations set forth in Section 7.01 and in the order of priority set forth in the Treasury Regulations. It is the intent of the Members that, to the maximum extent possible, all regulatory allocations will be offset either by other regulatory allocations or special allocations of other items of Company income, gain, loss or deduction such that, after all such regulatory allocations are made, each Member's capital account balance is, to the maximum extent possible, equal to the capital account balance that such Member would have had if the regulatory allocations were not contained in this Operating Agreement, and all allocations were made pursuant to Section 7.01 hereof.

Section 7.03 Section 704(c) of the Code. The Company shall cause depreciation and/or cost recovery deductions and gain or loss with respect to each item of property to be allocated among the Members for income tax purposes in accordance with the principles of Section 704(c) of the Code and Treasury Regulations promulgated thereunder using the "traditional" method as defined in Section 1.704-3(b) of the Treasury Regulations. Allocations pursuant to this Section 7.03 are solely for purposes of federal and state income taxes and shall not affect, or in any way be taken into account in computing, any Member's capital account or share of profits, losses, other items, or distribution pursuant to any provisions of this Operating Agreement.

Section 7.04 Allocations Attributable to Particular Periods. If Financial Rights are transferred, or are increased or decreased by reason of the admission of a new Member or otherwise, at any time other than the end of a tax year, the share of profits, losses or any other items to be allocated (in respect of the Financial Rights so transferred) shall be allocated between the transferor and the transferee in the same ratio as the number of days in such fiscal year before and after the effective date of such transfer. The provisions of this Section 7.04 shall not apply to any profit or loss attributable to a sale or other disposition of all or substantially all of the Company Property, or to other extraordinary non-recurring items. Such profit and loss shall be allocated to the owner of the Financial Rights as of the date of closing of the sale or other disposition, or, with respect to other extraordinary non-recurring items, the date the profit is realized or the loss is incurred, as the case may be.

Section 7.05 Interim Distributions. Interim distributions to the owners of the Financial Rights shall be made in accordance with the following:

A. At periodic intervals as determined by the Managers, but no less frequently than annually, the Managers shall determine the amount of profits and losses of the Company for such period and the allocation of such profits and losses to the Member's capital accounts. The Managers shall determine in their reasonable judgment to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities. Any Company Cash in excess of such amounts shall be distributed to the owners of the Financial Rights. All distributions must be made simultaneously to each of the owners of the Financial Rights, and must be made in proportion to the owners' Financial Rights. Such distributions may be in cash or Company Property or partly in both, as determined by the Managers. Items of Company Property need not be distributed proportionately, provided the Managers agree upon the value

of the property being distributed and the value of the property and the cash received by each owner of the Financial Rights is proportionate to such owner's Financial Rights.

B. Notwithstanding anything herein to the contrary, the Company shall make a minimum pro rata distribution from the Company Cash to the Members within seventy-five (75) Days after the end of each tax year in an amount as shall be necessary to make the distributions to the Members for the entire tax year at least equal to the amount necessary to pay each Member's federal and state income taxes for that tax year attributable to their pro rata share of the Company's net income.

Section 7.06 Distribution in Kind. Except as provided by the Articles or this Operating Agreement, a Member, regardless of the nature of the Member's contribution, may not demand to receive a distribution from this Company in any form other than cash.

Section 7.07 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution shall be declared and paid if payment of such distribution would cause the Company to violate any limitations on distributions provided in the Act.

Section 7.08 Right to Set-Off. Except as otherwise provided in this Operating Agreement, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE VIII
TAX MATTERS

Section 8.01 Preparation of Tax Returns. The Managers shall arrange for the preparation and timely filing of all returns of Company income, gains, deductions, losses and other items required of the Company for federal, state and local income tax purposes, and the delivery to the Members of all tax information reasonably required by the Members for federal, state and local income tax reporting purposes.

Section 8.02 Tax Elections. The Managers shall determine whether to make any available election (including, without limitation, the election under Section 754 of the Code) or choose any available reporting method pursuant to the Code or state or local tax law. The Managers shall have the right to seek to revoke any such election (including, without limitation, the election under Section 754 of the Code) or change any reporting method.

Section 8.03 Tax Matters Partner. Beacham O. Brooker, Jr. shall be the initial "tax matters partner" of the Company within the meaning of Section 6231(a)(7) of the Code, and as such, shall be solely responsible for representing the Company (at the Company's expense) in all dealings with the U.S. Internal Revenue Service and any state, local and foreign tax authorities. If Beacham O. Brooker, Jr. is no longer a Member or resigns as the tax matters partner, the Members shall designate one Member as the successor tax matters partner. The tax matters partner shall comply with the provisions of this Operating Agreement in the performance of its duties as tax matters partner. The tax matters partner shall receive no compensation for serving as tax partner. All costs and expenses incurred by the tax matters partner in performing its duties as such (including legal and accounting fees) shall be borne by the Company. Nothing herein shall be construed to restrict the Company from engaging an accounting firm to assist the tax matters partner in discharging its duties hereunder.

ARTICLE IX
TRANSFER OF MEMBERSHIP SHARES

Section 9.01 Transfer of Membership Shares Generally. Except for a Disposition specifically permitted by this Article IX, no Member shall Dispose of any Membership Shares held by such Member without the written consent of all non-Disposing Members who have Voting Rights in the Company. If such consent is obtained, then the following Sections of this Article IX shall be of no effect, and the provisions of Article III shall govern the rights of the transferor and transferee. With regards to all other Dispositions, the provisions of this Article IX shall control, and any attempted Disposition of Membership Shares in contravention of this Article IX shall be null and void, and neither the Company nor the Members shall recognize the same. Any Member who Disposes or attempts to Dispose any Membership Share except in compliance herewith shall be liable to, and shall indemnify and hold harmless, the Company and other Members for all costs, expenses, damages and other liabilities resulting therefrom.

Section 9.02 Permitted Transfers. Any Member may at any time Dispose of all or any portion of his or her Membership Shares if such Disposition is a Permitted Transfer. For purposes of this Operating Agreement, a Permitted Transfer is the Voluntary Transfer by a Member of his or her Membership Share to a Permitted Transferee. Any Disposition that is a Permitted Transfer shall be effective to assign the right to become a Member, and, without the need for any action or consent of any other Person, a transferee of such Membership Share shall be admitted as a Member upon the transferee's compliance with Section 3.04 hereof.

Section 9.03 Right of First Refusal. If a Member attempts to Dispose of (other than in a Permitted Transfer) all or any portion of his or her Membership Shares without obtaining the written consent of all non-Disposing Members, such Member (the "Offering Member") is deemed to have offered to the Company, then to all of the remaining Members (the "Remaining Members"), on a pro rata basis, the right to purchase all, but not less than all, of the Membership Shares owned by the Offering Member at a price determined in accordance with Section 9.05 and upon the terms contained in Section 9.06; provided, however, that if a Member attempts to Dispose of only a portion of his or her Membership Shares, then the Company's and the Members' options shall apply only to the portion of the Membership Shares that is proposed to be transferred.

Section 9.04 Exercise of Right of First Refusal.

A. Upon the occurrence of an event specified in Section 9.03 above, the Offering Member, or their legal representative, must give written notice of such event to the Company and each Remaining Member (the "First Refusal Notice"), which notice must contain a description of the Membership Shares to be transferred, the name, address and business occupation of the proposed transferee, the proposed sales price or other consideration, the proposed sales terms (including the relative percentages of cash and debt instruments, and the duration, interest rate, and payment schedule of any such debt instruments) and a copy of the Bona Fide Offer, if applicable.

B. The Managers shall have until the later of (i) thirty (30) Days following the date the First Refusal Notice was delivered to the Company, and (ii) fifteen (15) Days after the purchase price is determined pursuant to Section 9.05 (such period, the "Original Option Period") in which to notify the Offering Member and the Remaining Members in writing whether the Company elects to purchase all or any part of the Offered Membership Shares.

C. If the Managers do not elect to purchase all of the Offered Membership Shares within the Original Option Period (the Offered Membership Shares which the Company elects not to purchase being referred to as the "Refused Shares"), each Remaining Member shall have fifteen (15) Days following the end of the Original Option Period (such period, the "Second Option Period") in which to notify the Offering Member in writing whether it elects to purchase all or any part of its pro rata share (based on the percentage of the Membership Shares owned by such Remaining Member bears to the percentage of Membership Shares owned by all Remaining Members) of the Refused Shares.

D. If a Remaining Member does not elect to purchase all of its pro rata share of the Refused Shares within the Second Option Period, the Offering Member must immediately give written notice of such event to each Remaining Member who elected to purchase all of its pro rata share of the Refused Shares (the "Second Refusal Notice"). Each such Remaining Member shall have fifteen (15) Days from the date the Second Refusal Notice is given (such period, the "Third Option Period") in which to notify the Offering Member in writing whether it elects to purchase its pro rata share (based on the percentage of the Membership Shares owned by such Remaining Member bears to the percentage of Membership Shares owned by all Remaining Members then entitled to an option) of the Refused Shares previously rejected by a Remaining Member. Subject to the condition that each Remaining Member so entitled to an option shall first be permitted to purchase or reject the maximum number of Membership Shares to which he or she is entitled pursuant to the ratios hereinbefore described, such Remaining Members shall be free to mutually agree by unanimous consent to the portion of Refused Shares to be purchased by each.

E. If the Remaining Members do not elect to purchase all (but not less than all) of the Refused Shares by the expiration of the Third Option Period, the Offering Member may, during the thirty (30) Days following the expiration of the Third Option Period, complete the intended Disposition of all (but not less than all) of the Offered Membership Shares to the proposed transferee upon the terms and conditions specified in the First Refusal Notice. Unless and until the proposed transferee is admitted as a Member in accordance with Section 3.02, the rights of the proposed transferee are as provided in Section 3.05. If the Disposition is not completed within the thirty (30) Day period described above, any attempted Disposition will be deemed pursuant to a new offer and this Section shall again apply.

Section 9.05 Purchase Price.

A. If the transaction described in the First Refusal Notice is a proposed transfer of the Membership Shares pursuant to a Bona Fide Offer, then the purchase price shall be at the price and on the terms and conditions, proportionately, as were contained in the Bona Fide Offer; provided, however, that if any consideration to be paid pursuant to the Bona Fide Offer is other than cash or an obligation to pay money, the purchasing party shall have the option to pay either such non-cash consideration or the fair market value thereof.

B. If the event giving rise to the option is not pursuant to a Bona Fide Offer (for example, a gift or a pledge of the Membership Shares, a transfer incident to or by virtue of divorce or equitable distribution proceedings, or the occurrence of an event of bankruptcy with respect to the Member), then the purchase price shall be the fair market value of the Offered Membership Shares as of the date of event giving rise to the options.

1. The Offering Member and the Managers (excluding the Offering Member, if the Offering Member is also a Manager) shall attempt to agree in writing as to the fair market value of the Offered Membership Shares.

2. If no such agreement can be reached within fifteen (15) Days following the date the First Refusal Notice was delivered to the Company, then the fair market value (taking into account all applicable valuation discounts, including but not limited to, minority, lack of marketability, undivided interests in real estate, voting versus non-voting interest, and all costs, expenses and damages sustained by the Company and the Remaining Members as a result of a Member's wrongful dissociation) for the Offered Membership Shares shall be determined by the agreement of two (2) appraisers. The Offering Member shall name one appraiser and the Managers (excluding the Offering Member, if the Offering Member is also a Manager) shall name the other appraiser. Both appraisers must have at least five (5) years experience valuing Membership Shares similar to the one being offered hereunder. The parties must appoint their respective appraiser by delivering written notice of the name, address and telephone number of their appraiser to each other within seven (7) Days after the expiration of the above referenced fifteen (15) Day period. If either party fails to appoint an appraiser within the time period required herein, the appraiser appointed by the other party shall unilaterally establish the fair market value of the Offered Membership Shares by written opinion. If both parties appoint an appraiser within the seven (7) Day period, these two appraisers shall establish the fair market value of the Offered Membership Shares in a single written opinion agreed on by both of them. If the two appraisers cannot agree on the fair market value within thirty (30) Days after the last of them is appointed, each appraiser shall render their own written opinion and the fair market value shall be the average of the two opinions. The fees and costs of the appraiser appointed by the Offering Member shall be paid by the Offering Member. The fees and costs of the appraiser appointed by the Managers shall be paid by the Company. Fair market value is defined as the cash equivalent price at which property would change hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of relevant facts. The hypothetical buyer and seller are assumed to be able, as well as willing, to trade and are assumed to be well-informed about the property and the market for such property. The purchase price as determined herein shall be conclusive and binding upon the parties, their legal representative, personal representative, heirs, transferees, successors and assigns.

If the Offering Member is also the sole Manager, then the actions of the Managers under this Section 9.05(B) shall be taken by the Members.

Section 9.06 Payment of Purchase Price.

A. If the purchase relates to a proposed transfer of the Offered Membership Shares due to a Bona Fide Offer, the purchase price for the Offered Membership Shares shall be paid in accordance with the terms, proportionately, as were contained in the Bona Fide Offer.

B. If the event giving rise to the option is not pursuant to a Bona Fide Offer, then unless the parties mutually agree to different terms, the purchase price shall be paid in one hundred twenty (120) equal and consecutive monthly installments of principal plus interest commencing on the first day of the month after the date of the closing. Each purchaser shall execute and deliver to the seller a separate promissory note made payable to the order of the seller which shall bear interest, per annum, at the prime rate as published in the Wall Street Journal at the date of the closing. The purchaser shall have the right to prepay all or any part of the principal of the note at any time without penalty or premium. All payments, when received, shall be applied first to accrued interest and then to principal. The note shall

provide that immediately 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 delivery of the note, the Offered Membership Shares shall be conveyed to the purchaser. The purchaser's payment obligations under the note will be secured by a security interest in the Offered Membership Shares.

Section 9.07 Closing. The purchase of the Offered Membership Shares shall take place at a closing to be held not later than the thirtieth (30th) Day after the last option period is exercised or lapses, at the Company's primary place of business, or at any other place to which the parties agree. At the closing, each purchaser will pay for the Offered Membership Shares in accordance with Section 9.06 and the seller will deliver such instruments of transfer, assignment and assumption with respect to such transaction and shall transfer such interest free and clear of any liens, encumbrances or any interests of any third party. Each Member appoints the Company as his or her agent and attorney-in-fact to execute and deliver all documents needed to convey his or her Offered Membership Shares if such selling Member is not present at the closing. This power of attorney is coupled with an interest and does not terminate on the Member's disability or death, and continues for so long as this Operating Agreement is in effect.

ARTICLE X
DISSOLUTION, LIQUIDATION, AND TERMINATION

Section 10.01 Dissolution. The Company shall dissolve and its affairs shall be wound up upon the first to occur of the following:

A. The written consent of all Members;

B. The expiration of the period fixed for the duration of the Company set forth in the Articles;

C. Upon an event 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;

D. On application by a Member, upon entry of a judicial decree as provided in Section 33-44-801(4) of the Act; or

E. Upon an administrative dissolution as provided in Section 33-44-809 of the Act, but if the Company is reinstated pursuant to Section 33-44-811 of the Act, the reinstatement is effective retroactively to the date of the administrative dissolution.

Section 10.02 Date of Dissolution. Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until the assets of the Company shall have been distributed as provided herein and the Articles of Termination have been filed with the Secretary of State of South Carolina. Notwithstanding the dissolution of the Company, prior to the termination of the Company, as aforesaid, the business of the Company and the affairs of the Members, as such, shall continue to be governed by this Operating Agreement.

Section 10.03 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 may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (i) 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 (ii) the rights of a third party accruing under 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.

Section 10.04 Winding Up and Termination. On dissolution of the Company, if the Members do not continue the Company's business under Section 10.03, the Managers shall appoint one or more Managers to serve as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company with all of the power and authority of the Managers. The steps to be accomplished by the liquidator are as follows:

A. First, sell or otherwise liquidate any or all of the Company's assets, except to the extent that the liquidator may determine to distribute in kind any assets to the Members;

B. Second, pay, satisfy or discharge from Company Property all of the debts, liabilities and obligations of the Company (including liabilities to Members who are also creditors, to the extent permitted by law) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent or unforeseen liabilities or obligations in such amount and for such term as the liquidator may reasonably determine);

C. Third, the assets of the Company shall be distributed proportionately among the Members in accordance with their positive capital account balances as determined after taking into account all capital account adjustments for the taxable year of the Company during which the liquidation of the Company occurs, as necessary to bring the balance of all capital accounts to zero. Any such distributions to the Members in respect to their capital accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations.

D. Fourth, all remaining assets shall be distributed proportionately among the Members based on their respective percentages of Financial Rights.

Section 10.05 Termination of Company. When all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, have been distributed to the Members in the manner provided for in this Operating Agreement, the Company's affairs shall terminate and the liquidator shall file the Articles of Termination with the Secretary of State of South Carolina, as well as any and all other documents required to effectuate the termination of the Company under the Act.

Section 10.06 Distribution in Kind. The liquidator may distribute assets in kind to the Members or to satisfy any or all of its obligations. If the liquidator distributes 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 in question. The fair market value of each asset or group of assets appraised shall be the average of the two appraisals.

Section 10.07 Gain or Loss. Any gain or loss on the disposition of Company Property in the process of liquidation shall be credited and charged to the Members in proportion to their respective percentage of Membership Shares, except that gain or loss with respect to property contributed to the Company by a Member shall be shared among the Members so as to take account of any variation between the basis of the property so contributed and its fair market value at the time of contribution, in accordance with any applicable Treasury Regulations. Any property distributed in kind in the liquidation shall be valued and treated as though it were sold and the cash proceeds distributed.

Section 10.08 Deficit Capital Accounts. Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from deductions and losses of the Company (including non-cash items such as depreciation) or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective interest in the Company, upon dissolution of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's capital account to zero.

Section 10.09 Company's Assets Sole Source. The Members shall look solely to the assets of the Company for the payment of any debts and liabilities owed by the Company to the Members and for the return of their Capital Contributions and liquidation amounts. If the Company Property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of one or more Members, such Member shall have no recourse against the Company or any other Member, except to the extent that such other Member may have outstanding debts or obligations owing to the Company.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01 Arbitration. Any dispute or controversy between the parties hereto arising out of, under, or in connection with, or in relation to, this Operating Agreement shall be submitted to binding arbitration in accordance with South Carolina Code Sections 15-48-10, et seq., as such may be amended from time to time (the South Carolina Uniform Arbitration Act, "SCUAA"). All arbitration proceedings shall be conducted in Barnwell County, South Carolina, or by mutual agreement of the parties, wherever else is most convenient for a rapid resolution of the matter. Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding. The arbitrators shall be selected as provided in the SCUAA, and the arbitrators shall render a decision on any dispute within one hundred twenty (120) Days after the last of the arbitrators has been selected. If any party to this Operating Agreement fails to select an arbitrator with regard to any dispute submitted to arbitration under this Section 11.01 within thirty (30) Days after receiving notice of the submission to arbitration of such dispute, then the other party shall select an arbitrator for such non-selecting party. The decision of the arbitrators shall be final and binding on the parties, who specifically renounce any judicial review of the award, and agree that judgment on the award may be enforceable in any court of competent jurisdiction.

Section 11.02 Proceeding Expenses. In any controversy, claim or dispute arising out of, or relating to, this Operating Agreement or the method or manner of the performance hereof, the prevailing party shall be entitled to, in addition to any other relief, recovery of proceeding expenses. In determining the award of proceeding expenses, attorney's fees, arbitrator fees, proceeding costs, cost of investigation and other reasonable expenses shall be included. For the purposes of this provision, the term

"proceeding" shall include arbitration, administrative, bankruptcy and judicial proceedings, including appeals therefrom or enforcement of decisions thereof.

Section 11.03 Amendment or Modification. This Operating Agreement and the Articles may be amended and modified from time to time only by a written instrument unanimously adopted and executed by all Members.

Section 11.04 Construction. The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation. Whenever the context so requires, the gender of all words used in this Operating Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All such Exhibits read as of the date of this Operating Agreement or, as to any Exhibits bearing a particular date, as of any other date specified therein.

Section 11.05 Severability. If any provision of this Operating Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Operating Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

Section 11.06 Entire Agreement; Supersedure. This Operating Agreement cancels and supersedes all prior written or oral agreements among the parties hereto respecting the within contained subject matter and represents the entire agreement between the parties hereto with respect to the transactions contemplated hereby.

Section 11.07 Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

Section 11.08 Binding Effect. All rights, obligations and duties provided for in this Operating Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors and permitted assigns; provided, however, that all rights, obligations and duties of the Members shall be personal to each of them and, except as herein expressly provided, may not be assigned or transferred.

Section 11.09 Governing Law. This Operating Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of South Carolina, without regard to its conflicts of laws principles. In the event of a direct conflict between the provisions of this Operating Agreement and (i) a mandatory provision of the Articles, or (ii) any mandatory provision of the Act, the applicable provision of the Articles or the Act shall control.

Section 11.10 Notices. Except as otherwise provided in this Operating Agreement, any notice, offer, acceptance, right, option or other communication required or permitted under this Operating Agreement shall be exercisable and made only upon the giving/delivery of written notice to the other party, and shall be deemed given/delivered when personally delivered or, if mailed, three (3) Days after

the date it was postmarked by the United States Postal Service, if it was sent by first class mail, with postage prepaid. Notice to any Member is valid if sent to him or her at such Member's address as it appears in the Company's records. Notice to any Manager is valid if sent to him or her at such Manger's address as it appears in the Company's records. Notice to the Company is valid if sent to it at the Company's designated office as set forth in the Articles.

Section 11.11 Counterparts. This Operating Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

Section 11.12 Conflicting Provisions. To the extent that one or more provisions in this Operating Agreement appear to be in conflict with one another, then the Company shall have the right to choose which of the conflicting provisions are to be enforced. Wide latitude is given to the Company in interpreting the provisions of this Operating Agreement to accomplish the purposes and objectives of the Company, and the Company may apply this Operating Agreement in such a manner as to be in its best interest, even if such interpretation or choice of conflicting provisions to enforce is detrimental to one or more Members.

Section 11.13 Effective Date. This Operating Agreement shall become effective upon the execution of this Operating Agreement by all the parties hereto.

ARTICLE XII
DISCLOSURE

The parties acknowledge that the law firm of Todd & Johnson, L.L.P. (the "Law Firm") prepared this Operating Agreement on behalf of the parties hereto. There is an inherent potential for conflicts of interest among the parties to the Operating Agreement because the Operating Agreement establishes the rights and obligations of each of the parties to the Operating Agreement. Due to such potential conflicts of interest, the Law Firm hereby advises each of the parties that it would be in their best interest to obtain the services of their independent legal counsel to review this document. The parties hereby waive any potential conflicts of interest that may arise as a result of the above actions by the Law Firm, whether or not one or more of the parties to this Operating Agreement may have consulted with separate legal counsel concerning the Operating Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Operating Agreement the day and year first written above.

WITNESSES:

BBB&C FAMILY LLC

By: _____
Beacham O. Brooker, Jr., Manager

MEMBERS:

Janet B. Brooker, by Beacham O. Brooker, Jr. as attorney-in-fact under power of attorney recorded in Richland County, SC in Book 1368 at Page 495

Beacham O. Brooker, Jr.

Julia B. Brooker

Ellen B. Corontzes

The undersigned, who is the duly elected manager of the Company, hereby agrees to be bound by the provisions of this Operating Agreement, and any amendments thereto.

2/16/14
Date

Beacham O. Brooker, Jr.

EXHIBIT A

COMPANY PROPERTY

Property		Value
Initial Capital Contribution		
Janet B. Brooker 29,000 shares of Lockheed Martin, common stock (valued on date articles of organization filed with Secretary of State)		$4,285,910.00
Initial Capital Contribution of Acreage:		
Approximately 7 acres in Pontiac		$ 518,000.00
100% interest in 636 Harden LLC (LLC owns a one-half interest in property Appraised at $570,000)		$ 285,000.00
100% interest in 640 Harden LLC		$ 176,000.00
Beacham O. Brooker, Jr. Julia B. Brooker Ellen B. Corontzes	1/3 1/3 1/3	
		$5,264,910.00

EXHIBIT B

MEMBERS AND MEMBERSHIP SHARES

Name and Address of Initial Members	Membership Shares	
	Voting Rights	Financial Rights
Janet B. Brooker 1705 Graeme Drive Columbia, SC 29206	81.40 %	81.40%
Beacham O. Brooker, Jr. 754 Kilbourne Road Columbia, SC 29205	6.20%	6.20%
Julia B. Brooker 1325 Sinkler Road Columbia, SC 29206	6.20%	6.20%
Ellen B. Corontzes 809 Woodland Drive Columbia, SC 29205	6.20%	6.20%

COPY

CERTIFIED TO BE A TRUE AND CORRECT COPY AS TAKEN FROM AND COMPARED WITH THE ORIGINAL ON FILE IN THIS OFFICE

FEB 0 4 2014

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF ORGANIZATION LIMITED LIABILITY COMPANY

BBB&C FAMILY LLC

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to § 33-44-202 and § 33-44-203 of the South Carolina Code, as amended.

1. **Name.** The name of the limited liability company which complies with § 33-44-105 of the South Carolina Code, as amended, is **BBB&C FAMILY LLC.**

2. **Initial Designated Office.** The address of the initial designated office of the limited liability company in South Carolina is 754 Kilbourne Road, Columbia, SC 29205.

3. **Registered Office And Agent.** The street address of the initial registered office of the limited liability company is 754 Kilbourne Road, Columbia, SC 29205, in the county of Richland, State of South Carolina, and the initial registered agent of the limited liability company at that office is Beacham O. Brooker, Jr.

I hereby consent to the appointment as registered agent of the limited liability company.

Beacham O. Brooker, Jr.
Signature of New Registered Agent

4. **Organizer.** The name and address of one of the organizers is:

Beacham O. Brooker, Jr.
754 Kilbourne Road
Columbia, South Carolina 29205

5. **Term.** The limited liability company is a term company as defined in § 33-44-101(19) of the South Carolina Code, as amended. The term of the limited liability company shall end on December 31, 2063.

6. **Manager Managed.** The management of the limited liability company shall be vested in a Manager or Managers. The name and address of the intial Manager is:

Beacham O. Brooker, Jr.
754 Kilbourne Road
Columbia, South Carolina 29205

140204-0085 FILED: 02/04/2014
BBB&C FAMILY LLC
Filing Fee: $110.00 ORIG
Mark Hammond South Carolina Secretary of State

7. **No Personal Liability.** The members of the company are not liable for its debts and obligations under as contemplated by Section 33-44-303(c) of the South Carolina Code, as amended.

8. **Optional Provisions.** Set forth any other provisions which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement: None.

9. **Effective Date.** These articles shall be effective when filed with the South Carolina Secretary of State.

10. **Signature.** The following is the signature of the organizers of this limited liability company:

ORGANIZERS:

Date: 2/4/14

Janet B. Brooker by Beacham O. Brooker, Jr., as attorney-in-fact under power of attorney recorded in Richland County, SC in Book 1368 at Page 495

1705 Graeme Dr
Columbia SC
29206

Date: 2/4/14

Beacham O. Brooker, Jr.

Date: 2/4/14

Julia B. Brooker

1325 Sinkler Rd
Columbia SC 29206

Date: 2/4/14

Ellen B. Corontzes

809 Woodland Drive
Columbia, SC 29205

The State of South Carolina

Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

BBB&C FAMILY LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on February 4th, 2014, with a duration that is until December 31st, 2063, has as of this date filed all reports due this office, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed articles of termination as of the date hereof.

Given under my Hand and the Great Seal of the State of South Carolina this 4th day of February, 2014.

Mark Hammond

Mark Hammond, Secretary of State

South Carolina Secretary of State
Mark Hammond's Office
Customer Receipt

Receipt Number: 754114
Printed on 2/4/2014 11:24:40 AM
Operator ID: AGREEN
Submitter Name:
PUBLIC

Charges

DLC-ARTICLES OF ORGANIZATION	
File ID: 140204-0085	
Filed Date: 02/04/2014 11:24:39 AM	
Recording Fee	$110.00
Subtotal:	$110.00

Payments

Check #10534	$110.00

Totals

Total Charges	$110.00
Total Payments	$110.00
Balance	$0.00

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159

Case No. 2020-CP-40-02040

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC, ... Respondents

v.

Julia B. Brooker,..... Appellant

EXHIBIT D TO MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

Motion to Stay

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2020-CP-40-_____
Beacham O. Brooker; Jr.; Ellen B. Corontzes; and BBB&C Family, LLC	)	
Petitioners	)	**SUMMONS**
vs.	)	
Julia B. Brooker,	)	
Respondent	)	

TO: THE RESPONDENT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to respond to the Petition and Motion to Stay in the above-captioned action, a copy of which is herewith served upon you, and to serve a copy of your response on the subscribers located at 1325 Park Street, Suite 100, Columbia, South Carolina 29201, within thirty (30) days after service hereof, exclusive of the day of such service or as soon as the parties can be heard by the Court on Petitioners' motion to stay whichever is earlier.

SOWELL & DuRANT, LLC

s/Bess J. DuRant

Thornwell F. Sowell, III (SC Bar No. 5197)
Bess J. DuRant (SC Bar No. 77920)
1325 Park Street, Suite 100
Columbia, South Carolina 29201
803-722-1100
bsowell@sowelldurant.com
bdurant@sowelldurant.com

Attorneys for Petitioners Beacham O. Brooker; Jr.; Ellen B. Corontzes; and BBB&C Family, LLC

Columbia, South Carolina
April 21, 2020

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2020-CP-40-_____
	)	
Beacham O. Brooker; Jr.; Ellen B. Corontzes; and BBB&C Family, LLC	)	
	)	**PETITION AND MOTION TO STAY**
Petitioners	)	
	)	
vs.	)	
	)	
Julia B. Brooker,	)	
	)	
Respondent	)	

Petitioners Beacham O. Brooker, Jr., Ellen B. Corontzes, and BBB&C Family, LLC hereby petition and move this Court, pursuant to S.C. Code Ann. § 15-48-20, for a stay of the arbitration demand attached hereto as Exhibit A. This motion is made on the ground that the determination of the appeal in 2019-CP-40-03582 may have a material effect on this proceeding, and therefore this proceeding should be stayed until the referenced appeal is decided with finality. Additionally, a stay will preserve judicial and the parties' resources and promote judicial efficiency.

SOWELL & DuRANT, LLC

s/Bess J. DuRant

Thornwell F. Sowell, III (SC Bar No. 5197)
Bess J. DuRant (SC Bar No. 77920)
1325 Park Street, Suite 100
Columbia, South Carolina 29201
803-722-1100
bsowell@sowelldurant.com
bdurant@sowelldurant.com

Attorneys for Petitioners Beacham O. Brooker; Jr.; Ellen B. Corontzes; and BBB&C Family, LLC

Columbia, South Carolina
April 21, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2020-CP-40-_____
	)	
Beacham O. Brooker; Jr.; Ellen B. Corontzes; and BBB&C Family, LLC	)	
	)	
Petitioners	)	
	)	
vs.	)	
	)	
Julia B. Brooker,	)	
	)	
Respondent	)	

EXHIBIT A TO PETITION AND MOTION TO STAY

Arbitration Demand

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	
Julia B. Brooker,	)	
	)	
Plaintiff,	)	
	)	**ARBITRATION DEMAND**
v.	)	
	)	
Beacham O. Brooker, Jr.; Ellen B. Corontzes; and BBB&C FAMILY LLC;	)	
	)	
Defendants.	)	
	)	

Plaintiff Julia B. Brooker, complaining of certain conduct of the Defendants Beacham O. Brooker, Jr., Ellen Corontzes, and BBB&C Family LLC ("BBB&C"), would respectfully show unto the Court the following based upon personal knowledge as to herself and her own acts and upon information and belief as to all other matters:

PARTIES AND FORUM

1. Plaintiff Julia Brooker ("Julia" or "Plaintiff") is a citizen of South Carolina and resides within Richland County at [redacted] in Columbia, South Carolina.

2. Defendant Beacham O. Brooker, Jr. ("Beacham") is a citizen of South Carolina and resides within Richland County at [redacted] in Columbia, South Carolina.

3. Defendant Ellen B. Corontzes ("Ellen") is a citizen of South Carolina and resides within Richland County at [redacted] in Columbia, South Carolina.

4. Defendant BBB&C FAMILY LLC ("BBB&C" or the "Company") is manager-managed limited liability company organized and existing under the laws of the State of South Carolina.

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5. On January, 31, 2014, the Operating Agreement of BBB&C (attached hereto as **Exhibit 1**)[1] was made and entered into by and among Janet B. Brooker ("Janet" or "Mother"), Beacham, Julia, and Ellen (hereinafter referred to collectively as the "Members" and individually as a "Member") and BBB&C.

6. On February 4, 2014, the Members signed the Company's Articles of Organization (attached hereto as **Exhibit 2**), which was filed with the South Carolina Secretary of State the same day.

7. Section 11.01 of the Operating Agreement for BBB&C provides that "[a]ny dispute or controversy between the parties hereto arising out of, under, or in connection with, or in relation to, this Operating Agreement shall be submitted to binding arbitration in accordance with South Carolina Code Sections 15-48-10, et seq., as such may be amended from time to time (the South Carolina Uniform Arbitration Act, "SCUAA")."

8. That section of the Operating Agreement further provides that "[a]ll arbitration proceedings shall be conducted in Barnwell County, South Carolina, or by mutual agreement of the parties, wherever else is most convenient for a rapid resolution of the matter."

9. Plaintiff hereby proposes that the parties mutually agree for the arbitration to be conducted in Richland County, South Carolina for the convenience of all involved.

FACTUAL BACKGROUND

10. When the Company was created in 2014, Janet, the mother of Beacham, Julia, and Ellen, was 88 years old.

11. The idea for the Company was to form part of an estate planning technique designed by Mother's attorney to minimize transfer taxes, both gift and estate taxes.

[1] Capitalized terms that are not otherwise defined have the meaning ascribed in Exhibit 1.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

12. Pursuant to that estate planning technique, Mother was to contribute the vast majority of the Company's assets by value, and the Operating Agreement's provisions restricting the control and marketability of the Company's Membership Shares would substantially reduce the value of those Membership Shares.

13. Pursuant to the plan, Mother would then gift Membership Shares of the Company to her children and fellow Members—Beacham, Julia, and Ellen—at a substantially reduced value, for gift-tax purposes, compared to the value of the underlying assets.

14. At the time of the Company's formation, Mother owned 81.4% of the Membership Shares—both in terms of Voting Rights and Financial Rights—while Beacham, Julia, and Ellen each owned 6.2% of the Membership Shares; however, Beacham was attorney in fact for Mother and voted her Membership Shares.

15. The vast majority of the assets, by value, that Mother contributed to the Company consisted of Lockheed Martin Corporation ("Lockheed Martin") common stock, valued at $4,285,910 as of February 4, 2014.

16. Beacham, Ellen, and Julia contributed remaining assets, which consisted of interests in real property and limited liability companies jointly owned by Beacham, Ellen, and Julia valued at $979,000:

a. Approximately 7 acres in Pontiac, South Carolina known as the "Woodcreek Lake Property" valued at $518,000;

b. 100% interest in 636 Harden LLC valued at $285,000 (representing a one-half interest in property appraised at $570,000); and

c. 100% interest in 640 Harden LLC valued at $176,000.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

17. Beacham persuaded Julia to participate in the forming of the Company by telling her that the Company would be dissolved after Mother's death upon securing the estate tax savings.

18. Pursuant to the estate planning technique, Beacham, acting as attorney-in-fact for Mother, proceeded to gift her Membership Shares to himself, Julia, and Ellen.

19. By the time Mother died on April 15, 2015, her children each owned one-third of the Membership Shares.

20. Not long after Mother's death, ongoing acrimony between the parties erupted into outright strife over the disposition of her assets.

21. Shortly after her death, Beacham and Ellen destroyed Mother's financial records.

22. If available, those records could help explain the disposition of a substantial number of shares of Martin Marietta Corporation common stock that may have been held by the children's father at the time of his death and/or additional Lockheed Martin shares that may have been held by Mother at the time of her death.[2]

23. As a fiduciary for the estate of Father and Mother, Beacham increased Julia's distrust by destroying emails and documents.

24. Mother's testamentary instruments consisted of a pour-over will and a trust known as the Janet B. Brooker Trust (hereinafter the "Trust").

---

[2] Beacham O. Brooker, Sr. ("Father") died on January 11, 1990 owning at least 28,850 shares in Martin Marietta Corporation. During 1991, those shares were distributed from his estate as follows: 20,700 shares were distributed to Mother; 2,717 shares each were distributed to Beacham and Julia; and 2716 shares were distributed to Ellen. Of the 20,700 Martin Marietta shares Mother inherited, she initially held 16,500 shares in her name in certificate form and 4,200 shares in a brokerage account. Martin Marietta shares split 2 for 1 on September 30, 1993 and were exchanged 1 for 1 for Lockheed Martin shares on March 15, 1995. On January 7, 1999, Lockheed Martin shares split 2 for 1. Immediately after the split on January 7,1999, Mother was holding 58,000 shares of Lockheed Martin in her name and 7,846 shares in her brokerage account. Of the 58,000 shares held in her name, Mother contributed 29,000 shares to the Company in 2014 and was still holding 29,000 shares upon her death.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

25. The Trust contained an equalization provision for Julia because Julia was not married and had no children and because Mother had given substantial sums to the spouses and issue of Beacham and Ellen over her lifetime:

> (2) **Equalization distribution to the Settlor's Daughter Julia B. Brooker.** ***The Settler has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlors children, the Settlors issue and spouses of the Settlor's children.***
>
> Because the Settler's daughter Julia B. Brooker is not married and has no children or issue, the Settlor intends that at the Settlor's death, an ***equalizing distribution will be made to the Settler's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution*** will be determined as follows:
>
> (a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settler to issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., as well as the spouses of Ellen B. Corontzes and Beacham O. Brooker, Jr.
>
> (b) To such amount specified above from the date of such gift an interest rate of five (5 %) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.
>
> (c) The sum of (a) and (b) above shall be distributed to the Settler's daughter Julia B. Brooker, if she shall survive the Settlor.

26. Mother's three children were the beneficiaries of the Trust, and Beacham was its Trustee as well.

27. Despite the clear terms of the equalization provision in the Trust, Beacham took the position while acting as Trustee that Julia would be entitled to equalization for gifts made on or after the date of the October 16, 2007 forward, ignoring the language emphasized above providing

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

that the equalization provision shall make up for "***lifetime gifts made*** to" the spouses and issue of Beacham and Ellen.

28. Pursuant to Beacham's interpretation of the Trust, Beacham as Trustee verbally offered Julia as Beneficiary $300,000[3] despite the fact that Mother had made lifetime gifts of over $1.8 million to the spouses and issue of Beacham and Ellen that with the 5% interest contemplated by the Trust totaled over $2.94 million.

29. Contentious litigation ensued and culminated in a trial before the Honorable Amy W. McCullough, who subsequently ordered that Julia was entitled to over $1.47 million as her equalization distribution from the Trust (one-half of $2.94 million) as well as payment of her attorney's fees and litigation expenses.

30. That litigation continues as Beacham and Ellen appeal the orders of Judge McCullough, and to date, Julia has received only $735,954 as an equalization distribution from the Trust, for which Beacham still serves as Trustee.

31. In the meantime, Beacham as manager of the Company has continued a pattern and practice of denying Julia distributions from the Company as contemplated by the Operating Agreement, which provides as follows in this respect in Section 7.05:

> A. At periodic intervals as determined by the Managers, but no less frequently than annually, the Managers shall determine the amount of profits and losses of the Company for such period and the allocation of such profits and losses to the Member's capital accounts. The Managers shall determine in their reasonable judgment to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain and repair any Company Property, reserves

[3] Eventually, Beacham raised this offer to $525,528, but like the earlier offer of $300,000, it was contingent on Julia's releasing any and all claims to dispute the amount or request additional funds from the Trust.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

against future contingent liabilities, and the retention of funds for future investments and activities. Any Company Cash in excess of such amounts shall be distributed to the owners of the Financial Rights. All distributions must be made simultaneously to each of the owners of the Financial Rights, and must be made in proportion to the owners' Financial Rights. Such distributions may be in cash or Company Property or partly in both, as determined by the Managers. Items of Company Property need not be distributed proportionately, provided the Managers agree upon the value of the property being distributed and the value of the property and the cash received by each owner of the Financial Rights is proportionate to such owner's Financial Rights.

B. Notwithstanding anything herein to the contrary, the Company shall make a minimum pro rata distribution from the Company Cash to the Members within seventy-five (75) Days after the end of each tax year in an amount as shall be necessary to make the distributions to the Members for the entire tax year at least equal to the amount necessary to pay each Member's federal and state income taxes for that tax year attributable to their pro rata share of the Company's net income.

32. Despite these provisions and the fact that Beacham as Manager has determined that Company Cash needed to be distributed, the Company has paid over $200,000 of distributions owed to Julia to an account controlled by Beacham and Ellen without Julia's consent.

33. Despite multiple requests, Beacham and Ellen have denied Julia access to information about these deposits of funds into an account controlled by Beacham and Ellen and the Company in general.

34. In addition, Beacham has not held or conducted any annual meetings or observed corporate formalities with regard to the real estate limited liability companies held by BBB&C, namely 636 Harden LLC and 640 Harden LLC, and as a result is potentially exposing the assets of BBB&C in the event that a judgment is obtained against one or both real estate limited liability companies.

35. Section 2.07 of the Operating Agreement sets forth the purposes of the Company:

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

> The purposes of the Company are to make a profit, increase wealth, acquire, finance, develop, subdivide, exchange, manage, improve, operate, sell, rent, lease real property and to engage in a general investment business as the members shall determine from time to time; to do all things necessary and proper for the effective, efficient and productive management of Company Property; to consolidate and centralize the management of certain properties owned by the Members; to promote the efficient and economical management of the properties by holding them in a single entity; to avoid fractional ownership of certain properties of the Members in order to promote the greater sales potential of the properties; to provide an orderly buy-sell arrangement between the Members; to provide protection from creditors; to avoid potential expensive litigation and disputes over the properties of the Members by providing mechanisms for their management and procedures to resolve disputes; and to promote knowledge and communication as to Company Property.

36. Acting as manager, Beacham has also failed to profit, increase wealth, acquire, finance, develop, subdivide, exchange, manage, improve, operate, sell, rent, or lease the real property known as the Woodcreek Lake Property despite its significant carrying cost to the Company.

37. The Woodcreek Lake Property consists of two tracts of land: Tract 17 is 3.01 acres of land, and Tract 18 is 3.97 acres with a 1,368 square foot residence with a screened porch, decks, and a shed.

38. The floor plan of the residence on Tract 18 is functional for a weekend cottage but practically inefficient and not the highest and best use of the property that it is an under-improvement for the area.

39. The carrying costs for the Woodcreek Lake Property have totaled over $100,000 since the creation of the Company: $9,836 in 2014; $18,658 in 2015; $22,960 in 2016; $17,974 in 2017; $17,908 in 2018; and at least $15,000 in 2019.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

40. Instead of utilizing the property as contemplated by the Operating Agreement, Beacham and Ellen have used the Woodcreek Lake Property as a personal recreational property despite its significant carrying cost.

41. As the Company's Manager, Beacham has also failed to maintain the Company's accounting records in accordance with Section 6.04 of the Operating Agreement, which requires the Company to establish and maintain each Member's capital account in accordance with Section 704 of the Internal Revenue Code and the capital account rules set forth in Treasury Regulations Section 1.704-l(b)(2)(iv).

42. Treasury Regulations Section 1.704-l(b)(2)(iv) requires that each Member's capital account be increased by the fair market value of property contributed to the Company by such Member on the date of contribution, and such increases are not reflected in the Members' capital accounts.[4]

43. Beacham, as manager of the Company, has also failed to observe the corporate formalities of the limited liability companies owned and controlled by the Company—636 Harden LLC and 640 Harden LLC.

44. The tenants leasing the respective premises from 636 Harden LLC and 640 Harden LLC sell alcoholic beverages to their customers on those premises.

45. Accordingly, Beacham's negligent failure to maintain corporate formalities could subject the Company to additional liability, thereby needlessly exposing the Company's primary assets—29,000 shares of Lockheed Martin common stock—to potential claims.

[4] For example, only $29,000 is reflected in the Members' capital accounts with respect to the 29,000 shares of Lockheed Martin that were contributed by Mother when the fair market value of the shares was $4,285.510.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

46. Since 2015, the cash generated by 636 Harden LLC and 640 Harden LLC has greatly exceeded the cash used by the Woodcreek Lake Property and the Company's administrative expenses: by $30,476 in 2015, by $28,879 in 2016, by $34,490 in 2018, and by $34,943 in 2018.

47. Accordingly, the Company's investment in 29,000 shares of Lockheed Martin common stock and the corresponding dividends generated[5] are unnecessary to meet the current and anticipated needs of the Company based on historical operating results.

48. Section 7.05 of the Operating Agreement requires interim distribution of excess "Company Cash," that is, the amount of cash on hand that exceeds "the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain, and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities."[6]

49. After six years of operations, the Company is in substantially the same position it was when formed except for the passive and substantial increase in the value of its Lockheed Martin shares, now worth over $12 million.

50. Julia does not trust Beacham and Ellen to properly manage the Company's assets, particularly its $12 million investment in Lockheed Martin common stock.

---

[5] From 2014 to 2018, the 29,000 shares of Lockheed Martin common stock generated $949,460 in dividends: $120,640 in 2014; $178,350 in 2015; $196,330 in 2016; $216,340 in 2017; and $237,800 in 2018.

[6] Excess Company Cash is the amount of cash on hand that exceeds "the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain, and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities."

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

FIRST CAUSE OF ACTION
(Dissolution Under S.C. Code Ann. § 33-44-801(4))

51. Plaintiff realleges each and every allegation set forth above as if repeated verbatim herein.

52. Section 10.01 of the Operating Agreement provides that "[t]he Company shall dissolve and its affairs shall be wound up . . . [o]n application by a Member, upon entry of a judicial decree as provided in Section 33-44-801(4) of the [South Carolina Uniform Limited Liability Company Act of 1996]."

53. Section 33-44-801(4) provides that "[a] limited liability company is dissolved, and its business must be wound up . . . on application by a member or a dissociated member, upon entry of a judicial decree that" *inter alia*:

> (a) the economic purpose of the company is likely to be unreasonably frustrated;
>
> (b) 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;
>
> (c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;
>
> * * *
>
> (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner . . . .

54. For the reasons discussed above and below, "the economic purpose of the company is likely to be unreasonably frustrated":

a. As stated above, the true purpose for the Company was its service as part of an estate planning technique to effectively decrease the value of the underlying assets for purposes of gifting Membership Shares from Janet to

her three children, and accordingly, that primary purpose behind the Company has been served and is no longer valid because Janet made contemplated gifts years ago prior to her death on April 15, 2015;

b. None of the putative purposes of the Company are being served with respect to the primary assets of the Company, $12 million worth of entirely fungible Lockheed Martin common stock, which need no form of management by the Company to make a profit and for which there is no possible concern about fractional ownership or greater sales potential; and

c. Beacham and Ellen have continued to use the Company's second most valuable asset as a personal recreational property rather than utilizing it in a manner consistent with the purpose of the Company as expressed in the Operating Agreement.

55. Therefore, the Company should be dissolved and its business wound up under Section 33-44-801(4)(a).

56. For the reasons discussed above and below, Beacham and Ellen have "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" as contemplated by Section 33-44-801(4)(b):

a. Beacham and Ellen have used the Woodcreek Lake Property as a personal recreational facility rather than making economic use of the property as contemplated by the Operating Agreement;

b. Without Julia's consent, Beacham and Ellen have diverted distributions owed to Julia under the Operating Agreement to an account managed by

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Ellen for the benefit of six properties jointly owned by Beacham, Ellen, and Julia;

c. Beacham has failed to maintain the Company's accounting records in accordance with Section 6.04 of the Operating Agreement; and

d. Beacham has failed to observe the corporate formalities of the Company as well as the limited liability companies owned and controlled by the Company—636 Harden LLC and 640 Harden LLC—and thereby, needlessly subjected the Company and its Members to potential liability.

57. Accordingly, the Company should be dissolved and its business wound up pursuant to Section 33-44-801(4)(b).

58. For the reasons discussed above and below, it is likewise "not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement":

a. There is serious and longstanding distrust and animosity between Julia and her siblings, as shown by a history of discord and litigation between them;

b. The practical economic reality of the Company's primary asset—$12 million in Lockheed Martin common stock—is entirely incongruent with the putative purposes of the Company as expressed in the Operating Agreement;

c. The practical economic reality of the Company's secondary assets is that they are completely self-sustaining without the need of the Lockheed Martin common stock or the dividends those shares provide; and

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

d. Beacham and Ellen have ignored and continue to ignore corporate formalities.

59. Therefore, the Company should be dissolved and its business wound up pursuant to Section 33-44-801(4)(c).

60. For the reasons discussed above and below, Beacham and Ellen as "the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner," Julia:

a. For nearly as long as the Company has existed, the relationship between Julia and her siblings has been marked by severe distrust and animosity;

b. Beacham and Ellen have a history of attempting to short Julia what she is entitled from Mother's estate, as shown by the results of the litigation over Mother's Trust, which result Beacham and Ellen are now appealing;

c. There has been an ongoing lack of transparency shown by Beacham and Ellen to Julia as demonstrated by their destruction of documents pertaining to Mother's finances, which could have shed light on inconsistencies in the numbers of shares of Martin Marietta and Lockheed Martin common stock owned by Father and Mother;

d. Contrary to the terms of the Operating Agreement, Beacham and Ellen have diverted distributions owed to Julia to an account maintained by Beacham and Ellen without Julia's consent; and

e. Beacham and Ellen have ignored Julia's request for additional information about these deposits of funds and the Company in general;

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

f. Beacham has failed to observe corporate formalities with regard to the real estate limited liability companies, namely 636 Harden LLC and 640 Harden LLC, and as a result is potentially exposing the assets of BBB&C in the event that a judgment is obtained against one or both real estate limited liability companies.

61. Accordingly, the Company should be dissolved and its business wound up pursuant to Section 33-44-801(4)(e).

62. Therefore, pursuant to Section 33-44-801(4) of the South Carolina Code of Laws, Julia is entitled to the entry of a judicial decree winding up and dissolving the Company, awarding proper distributions in accordance with the Operating Agreement and applicable law, and awarding the other relief requested below.

SECOND CAUSE OF ACTION
(Accounting)

63. Plaintiff realleges each and every allegation set forth above as if repeated verbatim herein.

64. Plaintiff is entitled to a full and complete accounting of all of the business affairs and financial dealings of BBB&C, together with an accounting and tracing of all dealings and transfers between BBB&C, Beacham, and Ellen.

THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty Under S.C. Code Ann. § 33-44-409(h))

65. Plaintiff realleges each and every allegation set forth above as if repeated verbatim herein.

66. As Manager of the Company, Beacham owed Julia the duties of loyalty, care, and good faith as provided by Section 33-44-409(h) of the South Carolina Uniform Limited Liability Company Act of 1996.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

67. By exercising some or all of the rights of Manager of the Company in the management and conduct of the Company's business, Ellen likewise owed Julia the duties of loyalty, care, and good faith as provided by Section 33-44-409(h).

68. By failing to abide by the Operating Agreement and failing to safeguard the profits of the Company until rightfully distributing to Julia her portion of Company Cash, Beacham and Ellen breached duties owed to Julia.

69. Beacham's and Ellen's breaches of their duties to Julia has proximately caused damages to Julia, and Julia is entitled to an award of damages as a result of Beacham's and Ellen's fiduciary misconduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. Dissolving the Company and winding up its business pursuant to Section 10.04 of the Operating Agreement, and in the alternative, removing Beacham as Manager and distributing the shares of Lockheed Martin common stock equally to the Members;

B. Ordering that a full and complete accounting be made;

C. Awarding against all of the Defendants and in favor of the Plaintiff the amount of damages sustained by the Plaintiff as a result of the Defendants' breaches of fiduciary duties;

D. Awarding pre-judgment interest;

E. Awarding punitive damages in favor of the Plaintiff;

F. Awarding the Plaintiff its costs and expenses incurred in this action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses pursuant to Section 11.02 of the Operating Agreement; and

G. Granting such other and further relief as the Arbitrators deem just and proper.

Respectfully submitted,

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Counsel for Plaintiff

Columbia, South Carolina
March 17, 2020

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10 ET SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA

OPERATING AGREEMENT, LLC OF BBB&C FAMILY LLC

This Operating Agreement ("Operating Agreement") is made and entered into this 31st day January, 2014, by and among Janet B. Brooker, Beacham O. Brooker, Jr., Julia B. Brooker and Ellen B. Corontzes, (hereinafter referred to collectively as the "Members" and individually as a "Member") and BBB&C FAMILY LLC (the "Company").

WHEREAS, the parties desire to form the Company as a limited liability company under the laws of the State of South Carolina and they wish to enter into this Operating Agreement to govern the relationship among the Members of this Company and between the Company and the Members.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

ARTICLE I
DEFINED TERMS

Section 1.01 Definitions. The terms defined in this Article I shall, for purposes of this Operating Agreement, have the meanings herein specified.

"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), and any successor statute, as amended from time to time.

"Articles" shall mean the initial, amended and restated Articles of Organization filed with the Secretary of State of South Carolina by which BBB&C FAMILY LLC was organized as a South Carolina limited liability company under and pursuant to the Act.

"Bona Fide Offer" shall mean a written offer received by a Member from a third party to purchase all or any part of that Member's Membership Shares which offer sets forth all of the material terms and conditions of the proposed purchase and is not subject to contingencies.

"Capital Contribution" shall mean the amount of cash and fair market value (at the time of contribution) of any property contributed to the Company with respect to the Membership Share held by such Member.

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

"Company" shall have the meaning set forth in the preamble hereof.

"Company Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company, including, but not limited to, the property described on Exhibit A attached hereto. Exhibit A shall be amended from time to time as necessary to accurately reflect changes in Company Property without the need for any amendment to this Operating Agreement.

"Day" or "Days" shall mean all calendar days, whether or not such days are legal holidays under the laws of the United States or any State.

"Dispose," "Disposing," or "Disposition" shall mean to sell, assign, transfer, give, donate, exchange, bequeath, devise, mortgage, pledge, grant a security interest, or otherwise dispose or encumber, including, without limitation, on account of a court order or otherwise by operation of law (including, but not limited to, foreclosure, being subject to a charging order, or transfer incident to divorce or any similar proceeding), or the acts thereof, to any Person.

"Family Member" shall mean Janet B. Brooker and Janet B. Brooker's lineal descendants, by natural birth or legal adoption, as well as the spouses of her lineal descendants.

"Financial Rights" shall mean the right to share in the net profits, net losses and distributions of the Company. Any reference to a Member's Financial Rights shall mean the percentage of Financial Rights in the Company held by the Member.

"Manager" or "Managers" shall mean the Person(s) elected in accordance with this Operating Agreement to manage and operate the Company.

"Member" shall mean any Member named in the preamble of this Operating Agreement, and any other Person who hereafter acquires a Membership Share and is admitted to the Company as a Member as provided in this Operating Agreement, but does not include any Person who has ceased to be a Member of the Company. For purposes of this Operating Agreement, the settlor of a revocable living trust shall be considered to be the Member.

"Membership Share" shall mean all of the rights, powers, benefits, duties or obligations of a Member under this Operating Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights. The Membership Share of each Member is represented by a percentage. Each Membership Share shall have the same rights and privileges and shall rank equally and be identical in all respects as to all matters.

"Offered Membership Shares" shall mean all of the Membership Shares that are deemed to have been offered for sale to the Company and the other Members pursuant to this Operating Agreement.

"Permitted Transferee" shall mean (i) the Company; (ii) any Member; (iii) any Family Member; (iv) any estate, trust, guardianship, custodianship, conservatorship or other fiduciary arrangement for the sole benefit of any one or more of the individuals described in (ii) or (iii) above and which assures that the Membership Shares will only be held by or for the benefit of such individuals; or (v) any corporation, partnership, limited liability company or other business organization in which the individuals or entities described in (i) - (iv) above are the sole owners and the management and control of which must rest exclusively with any one or more of such individuals.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

"Person" shall mean any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, personal representative or other legal entity or organization.

"Treasury Regulations" shall mean, except where the context indicates otherwise, the permanent, proposed or temporary rules and regulations of the U.S. Department of the Treasury promulgated under the Code, as such rules and regulations may be lawfully changed from time to time.

"Voluntary Transfer" shall mean any Disposition of a Membership Share made by a Member that is not an Involuntary Transfer. An "Involuntary Transfer" is any Disposition of a Membership Share by a Member made on account of a court order or otherwise by operation of law, including, but not limited to, an occurrence of an event of bankruptcy, being subject to a charging order, or any transfer incident to any divorce or marital property settlement or any transfer pursuant to applicable community property, quasi-community property or similar state law.

"Voting Rights" shall mean the right of a Member to vote on any matter as provided in this Operating 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.

Section 1.02 Terms and Usage Generally. All references herein to an "Article," "Section" or "Exhibit" shall refer to an Article or a Section of, or an Exhibit to, this Operating Agreement. Whenever the words "include," "includes" or "including" are used in this Operating Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereto," "hereof," "herein" and "hereunder" and words of similar import when used in this Operating Agreement shall refer to this Operating Agreement as a whole and not to any particular provision of this Operating Agreement. All terms defined in this Operating Agreement shall have the defined meanings when used in any other document made or delivered pursuant hereto unless otherwise defined therein.

ARTICLE II
ORGANIZATION

Section 2.01 Name. The name of the Company is **BBB&C FAMILY LLC**.

Section 2.02 Formation. The Company shall be organized as a South Carolina limited liability company by the filing of Articles pursuant to the Act and the issuance of a Certificate of Existence for the Company by the Secretary of State of South Carolina.

Section 2.03 Designated Office. The Company shall maintain a designated office in the State of South Carolina in accordance with the Act. The designated office shall be at the address set forth in the Articles.

Section 2.04 Registered Agent and Address. The registered agent of the Company in the State of South Carolina and the street address of the registered agent shall be the Person and address set forth in the Articles.

Section 2.05 Principal Office in the United States and Other Offices. The principal office of the Company in the United States shall be at such place as the Managers may designate from time to

time, which need not be in the State of South Carolina. The Company may have such other offices as the Managers may designate from time to time.

Section 2.06 Term Company. The Company shall be a term company within the meaning of the Act. The term of the Company shall commence on the date the Articles are filed with the Secretary of State of South Carolina, unless a later effective date is specified in the Articles, and the existence of the Company shall terminate upon the expiration of its term on December 31, 2054, unless extended or sooner terminated by law or pursuant to the provisions of this Operating Agreement.

Section 2.07 Purposes. The purposes of the Company are to make a profit, increase wealth, acquire, finance, develop, subdivide, exchange, manage, improve, operate, sell, rent, lease real property and to engage in a general investment business as the members shall determine from time to time; to do all things necessary and proper for the effective, efficient and productive management of Company Property; to consolidate and centralize the management of certain properties owned by the Members; to promote the efficient and economical management of the properties by holding them in a single entity; to avoid fractional ownership of certain properties of the Members in order to promote the greater sales potential of the properties; to provide an orderly buy-sell arrangement between the Members; to provide protection from creditors; to avoid potential expensive litigation and disputes over the properties of the Members by providing mechanisms for their management and procedures to resolve disputes; and to promote knowledge and communication as to Company Property.

Section 2.08 No Liability to Third Parties. No Member, Manager or officer, solely by reason of being a Member or acting as a Manager or officer, will be subject to any liability in connection with the debts, obligations or liabilities of the Company. The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, will be solely the debts, obligations and liabilities of the Company.

Section 2.09 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. However, the Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal and state tax income purposes, and this Operating Agreement may not be construed to suggest otherwise.

ARTICLE III
MEMBERS

Section 3.01 Initial Members. The name and address of each initial Member and the percentage of Membership Shares held by such initial Member shall be as set forth on Exhibit B. Exhibit B shall be amended from time to time as necessary to accurately reflect changes in the Members and the Membership Share of any Member without the need for any amendment to this Operating Agreement.

Section 3.02 Admission of New Members. After the date of this Operating Agreement, a Person shall have the right to become a Member of the Company if such Person (i) acquires a Membership Share from a Member and obtains the written consent of all non-Disposing Members who have Voting Rights in the Company; (ii) acquires a Membership Share from a Member and such Disposition is a Permitted Transfer (as defined in Section 9.02); or (iii) is issued any Membership Shares

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

in accordance with Section 3.03. Upon compliance with Section 3.04, any such Person shall automatically be admitted as a Member of the Company and shall be entitled to all rights and powers and subject to all restrictions and liabilities of a Member.

Section 3.03 Issuance of Additional Membership Shares. The timing and terms of any new issuance of Membership Shares of the Company to any Person, including a Member, shall require the unanimous approval of the Members who have Voting Rights in the Company. A Member need give no reason for voting not to issue additional Membership Shares and a Member may unreasonably withhold his or her consent to such issuance.

Section 3.04 Additional Conditions to Recognition of Transfer or Issuance of Membership Shares. Whether or not such Person is admitted as a new Member or will merely be the owner of Financial Rights, such Person must, as a condition to recognizing the effectiveness and binding nature of such transaction:

A. Execute and deliver to the Company a written agreement that such Person has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of this Operating Agreement, as the same may have been further amended, in a form acceptable to the Company.

B. Deliver to the Company such instruments of transfer, assignment and assumption with respect to such transaction as are in form and substance reasonably satisfactory to the Company.

C. Assure compliance with any applicable state and federal laws, including securities law and regulations.

D. Pay or reimburse the Company a fee not to exceed One Thousand ($1,000.00) to cover costs and expenses incurred by the Company in preparing, executing and recording all pertinent documents.

The Company, however, may waive any requirement in this Section.

Section 3.05 Transferee of Membership Share 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, then such transferee shall be entitled to retain the Financial Rights transferred, but shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any other rights of a Member. The transferee is 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 Operating Agreement may change 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 the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred. Upon the transferee being admitted as a Member, the transferring Member shall be relieved of all obligations under this Operating Agreement. 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 the provisions of Section 3.04 of this Operating Agreement have been satisfied.

Section 3.06 No Authority of Members. Except as otherwise provided in this Operating Agreement, or as authorized by the Managers, no Member is an agent of the Company or has the

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

authority to make any contracts, enter into any transactions, or make any commitments on behalf of the Company.

Section 3.07 No Right to Withdraw. No Member shall have any right to withdraw from the Company prior to the dissolution and winding up of the Company's business and affairs except (i) with the unanimous consent of all the remaining Members who have Voting Rights in the Company, or (ii) in connection with a transfer of its entire Membership Share in accordance with this Operating Agreement. If a Member attempts to withdraw in violation of the provisions of this Section 3.07, such act shall, as to the Company and the other Members, be void and of no force and effect, nor shall such attempted resignation entitle any Member to receive the fair value of its interest in the Company prior to the dissolution and winding up of the Company's business and affairs.

ARTICLE IV
MANAGEMENT OF COMPANY

Section 4.01 General Authority of Managers.

A. Except as otherwise expressly provided by this Operating Agreement or required by any nonwaivable provision of applicable law, all powers shall be exercised by or under the authority of, and the business and affairs of the Company shall be controlled by the Managers.

B. All actions required to be taken by the Managers hereunder shall be made by the vote of a majority of the number of Managers unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by any express provision of the statutes which are applicable to such vote unless legally overridden by the Articles or this Operating Agreement, a different vote is required, in which case such express provision shall govern and control the decision of such matter.

C. Subject to the foregoing, the Managers shall have full and complete authority, power, right and duty to manage and control the business, affairs and assets of the Company, to make all decisions regarding those matters and to perform any and all acts and activities customary or incident to the management of the Company's business. Unless authorized to do so by this Operating Agreement or by the Managers, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. Specifically, but not by way of limitation, the Managers shall be authorized for and on behalf of the Company to:

1. Borrow money for the Company from banks, other lending institutions, Managers, Members and other Persons, and in connection therewith, to hypothecate, encumber, mortgage and grant security interests in Company Property to secure payment of the borrowed sums;

2. Acquire, hold, own, invest and reinvest, purchase and sell, any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, 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, and to actively trade, speculate on, maintain and manage the same;

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

3. Enter into, make, execute and perform all instruments and documents, including, but not limited to, contracts, mortgages, security agreements, deeds, financing statements, partnership agreements, leases, management contracts 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;

4. Employ from time to time persons, firms or corporations for the operation and management of various aspects of the Company's business, including, without limitation, accountants, legal counsel, managing agents, money managers, property managers, contractors, subcontractors, architects, engineers, laborers, suppliers, investment advisors and other advisors to perform services for the Company and to compensate them out of Company Property, notwithstanding the fact that any Manager or Member may have a financial interest in such firms or corporations;

5. Open and maintain bank accounts, investment accounts and other arrangements, draw checks, letters of credit, and other orders for the payment of money and designate individuals (which may be an officer, Manager, Member or any other individual) with authority to sign or give instructions with respect to those accounts and arrangements; and

6. Collect sums due and owing to the Company.

Section 4.02 Limitations on Powers. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

A. The Company shall not sell, or contract to sell, or otherwise dispose of all or substantially all of the Company Property other than in the ordinary course of Company business without the approval of those Members who own Seventy-five (75%) percent of the Voting Rights in the Company. For purposes of this subsection, all or substantially all of the Company Property means Eighty (80%) percent of such property by value in any consecutive twelve (12) month period.

B. The Company shall not hypothecate, encumber and grant a security interest in Company Property without the approval of those Members who own Seventy-five (75%) percent of the Voting Rights in the Company.

C. The Company shall not materially deviate from the purposes of the Company as set forth in this Operating Agreement without the approval of those Members who own Seventy-five (75%) percent of the Voting Rights in the Company.

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 Seventy-five (75%) percent of the Voting Rights in the Company.

Section 4.03 Delegation of Authority and Duties. In managing the business and affairs of the Company and exercising its powers, the Managers may act through Managers or officers to whom authority and duties have been delegated in accordance with this Section.

A. The Managers may, from time to time, delegate to one or more Managers such authority and duties as the Managers may deem necessary or desirable in furtherance of any action that they have authorized on behalf of the Company. Such delegation shall be made by delivering to the

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Manager or Managers to whom such powers and duties are delegated written notice specifying the powers and duties delegated and the period of such delegation.

B. The Managers may designate one or more individuals to be officers of the Company. No officer need be a resident of the State of South Carolina, a Manager or a Member. Any officers so designated shall have such authority and perform such duties as the Managers may, from time to time, delegate to them. The Managers may assign titles (including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer) to particular officers. Unless the Managers decide otherwise, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made pursuant to Section 4.03(A). The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Managers. No officer shall be prevented from receiving a salary by reason of the fact that such officer is also a Manager or Member.

Section 4.04 Election of Manager, Number and Term of Office. The Members shall elect one or more Persons as Managers. The initial Manager of the Company shall be Beacham O. Brooker, Jr. Each Manager shall hold office until such Manager dies, is removed pursuant to Section 4.05 or resigns pursuant to Section 4.06. The number of Managers shall be fixed from time to time by the Members, but in no instance shall there be less than one Manager. A Manager need not be a Member or resident of the State of South Carolina.

Section 4.05 Removal. Any and all Managers may be removed, either with or without cause, by a vote of the Members (including a Manager, if such Manager is also a Member with Voting Rights) who own Seventy-five (75%) percent of the Voting Rights in the Company. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member.

Section 4.06 Resignation. Any Manager may resign at any time by giving written notice to each Member. Such resignation shall take effect upon the delivery of the notice to the Members or at such later time as shall be specified in such notice. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member.

Section 4.07 Vacancies. Any vacancy occurring for any reason in the number of Managers shall be filled by a vote of the Members (determined without regard to any Voting Rights owned by a Member who was a Manager but was removed pursuant to Section 4.05 of this Operating Agreement during the preceding 24 month period), unless one or more other Persons then serve as Manager and the Members determine not to fill such vacancy.

Section 4.08 Execution of Documents and Other Actions. Pursuant to Section 4.03, the Managers may act through Managers or officers to whom authority and duties have been delegated. In the absence of such delegation, the signature, authorization or actions of only those number of Managers sufficient to approve such action had such action been properly voted on at a duly called meeting of the Managers shall be required.

Section 4.09 Single Manager. If at any time there is only one Person serving as a Manager, such Manager shall be entitled to exercise all powers of the Managers set forth in this Article IV, and all

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

references in this Article IV and otherwise in this Operating Agreement to Managers shall be deemed to refer to such single Manager.

Section 4.10 Place and Manner of Meetings. It is not contemplated that there will be regular meetings of the Managers. However, meetings of the Managers may be called at any time by any Manager. All meetings of the Managers shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by all Managers. Managers may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.11 Notice of Meetings and Record Date. Written notice stating the time, date, place and purpose of the meeting shall be delivered at least ten (10) Days but no more than sixty (60) Days in advance of the proposed meeting date, either personally or by mail, by or at the direction of the Manager calling the meeting, to each Manager. An affidavit of the mailing or other means of giving any notice of any Managers meeting shall be executed by the Person giving such notice, and shall be filed and maintained in the books and records of the Company. When a meeting of the Managers is adjourned, notice need not be given of any such adjourned meeting if the date, time and place thereof are announced at the meeting at which the adjournment is taken. For the purpose of determining the Managers entitled to notice of or to vote at any meeting of Managers or any adjournment thereof, or in order to make a determination of Managers for any other purpose, the record date shall be the date on which notice of the meeting is mailed or the date on which the resolution of the Managers declaring such action is adopted, as the case may be. When a determination of Managers entitled to vote at any meeting of Managers has been made as provided in this Section 4.11, such determination shall apply to any adjournment thereof.

Section 4.12 Waiver of Notice. When any notice is required to be given to any Manager, a waiver thereof in writing signed by the Manager entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice. In addition, a Manager who attends a meeting waives his or her right to assert any lack of notice, or defect in notice, of the meeting unless he or she states such objection at the outset of the meeting.

Section 4.13 Action without Meeting. The Managers may take action without notice and without a meeting if a consent or consents in writing, setting forth the action so taken, is signed by a sufficient number of Managers, as the case may be, to approve such action had such action been properly voted on at a duly called meeting of the Managers. Every written consent pursuant to this Section shall be signed, dated and delivered to the Company and shall become effective when the requisite number of Managers, as the case may be, have signed the consent, unless the consent specifies a different effective date. The date for determining the Managers entitled to take action without a meeting shall be the date the first Manager signs a written consent. A telegram, telex, cablegram, or similar transmission by a Manager, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a Manager, shall be regarded as signed by the Manager for purposes of this Section. Prompt notice of the taking of any action by the Managers without a meeting by less than unanimous written consent shall be given by the Managers who signed the written consent to those Managers who did not consent in writing to the action.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Section 4.14 Meeting of all Managers. If all of the Managers shall meet at any time and place, either within or outside of the State of South Carolina, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

Section 4.15 Compensation and Reimbursement. The Company shall reimburse a Manager for all reasonable out-of-pocket expenses incurred by the Manager in managing and conducting the Company's business. The compensation of the Managers shall be fixed from time to time by a vote of the Members, and no Manager shall be prevented from receiving such compensation by reason of the fact that he or she is also a Member.

Section 4.16 Liability for Certain Acts. The Managers do not in any way guarantee the return of the Members' Capital Contribution or a profit for the Members from the operations of the Company. No Manager shall be liable or accountable to the Company or to the other Members, in damages or otherwise, for any error in judgment, for any mistake of fact or of law, or for any other act or thing that the Manager may do or refrain from doing in connection with the business and affairs of the Company, except for willful misconduct, gross negligence, fraud, deceit or breach of fiduciary duty, and further for breaches of contractual obligations or agreements between the Managers and the Company or the Managers themselves.

Section 4.17 Indemnity. The Company shall indemnify and hold harmless each Manager for all expenses, costs, losses, liabilities, and damages paid or accrued by such Manager in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State of South Carolina, except to the extent the claim for which indemnification is sought results from an act or omission for which the Manager may be held liable to the Company, a Member or a Manager under Section 4.16 above. Any such indemnification under this Section shall be made by the Company only if authorized by a vote of the Members (determined without regard to any Voting Rights owned by a Member who is also a Manager seeking indemnification). The foregoing rights of indemnification shall not be exclusive of any other rights to which the Managers may be entitled.

Section 4.18 Interested Managers, Officers and Members. No contract or transaction between this Company and one or more of its Managers, officers or Members, or between this Company and any other limited liability company, corporation, partnership, association, or other organization in which one or more of its managers, officers, members or partners are Managers, officers or Members of this Company or have a financial interest in this Company, shall be void or voidable solely because the Manager, officer or Member is present at, participates in, or votes at the meeting which authorizes the contract or transaction if:

A. The contract or transaction is fair as to this Company as of the time it is authorized, approved, or ratified; and

B. The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Managers, officers or Members and the Managers, officers or Members in good faith authorize the contract or transaction.

This Section shall not be construed to invalidate any contract or transaction which would be valid in the absence of this Section.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Section 4.19 Business Pursuits of Managers and Members. The Managers and Members may engage in other business activities and the Managers shall be obligated by reason of this Operating Agreement to devote only as much of their time to the Company's business as shall be reasonably required in light of the Company's business and objectives and the responsibilities undertaken or assigned to the Managers. This Operating Agreement shall not preclude or limit in any respect the right of any Manager or Member to engage in or invest in any business activity of any nature or description, whether or not competitive with the business of the Company and a Manager or Member shall have no obligation to offer any opportunity to the Company, the other Managers or the other Members. Any such activity may be engaged in independently or with other Managers and Members. No Manager or Member shall have the right, by virtue of this Operating Agreement or the relationship created hereby, to any interest in such other ventures or activities or to the income or proceeds derived therefrom. The pursuit of such other ventures shall not be deemed wrongful or improper and any Manager or Member shall have the right to participate in or to recommend to others any such investment opportunity. The Company and each Manager and Member hereby expressly consents to the continued and future ownership and operation by the other Managers and Members of such businesses and activities and waives any claim for damages or otherwise, or rights to participate therein or with respect to the operation and profits or losses thereof.

Section 4.20 Books and Records. The Managers shall cause the Company to maintain at its principal place of business the following Company records:

A. A current list of the full name and last known mailing address of each Member and his or her Membership Share.

B. A current list of the full name and last known mailing address of each Manager.

C. A copy of the Articles and this Operating Agreement, together with all amendments thereto.

D. Copies of the Company's federal, state and local income tax returns and reports for the three (3) most recent fiscal years.

E. Original or copies of all minutes, actions by written consent, notice of meetings and waivers of notices.

Each Member, or the legal representative of such Member, may, at any time during normal business hours, inspect and copy the books and records of the Company. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

ARTICLE V
ACTIONS OF MEMBERS

Section 5.01 No Required Meetings. It is not contemplated that there will be regular meetings of the Members. However, meetings may be called at any time by any Manager or by any Member or Members who own Fifty (50%) percent of the Voting Rights in the Company. All meetings

shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by all Members.

Section 5.02 Notice of Meetings. Written notice stating the time, date, place and purpose of the meeting shall be delivered at least ten (10) Days but no more than sixty (60) Days in advance of the proposed meeting date, either personally or by mail, by or at the direction of the Persons calling the meeting, to each Member entitled to vote as such meeting, provided that such notice may be waived as provided in this Operating Agreement. An affidavit of the mailing or other means of giving any notice of any Members' meeting shall be executed by the Person giving such notice, and shall be filed and maintained in the books and records of the Company. When a meeting of the Members is adjourned, notice need not be given of any such adjourned meeting if the date, time and place thereof are announced at the meeting at which the adjournment is taken; provided, however, that if a new record date must be fixed for the adjourned meeting in accordance with Section 5.03, then notice of the adjourned meeting shall be given as in the case of an original meeting.

Section 5.03 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members, or any adjournment thereof, to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the record date shall be the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution or action is adopted, as the case may be. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section 5.03, such determination shall apply to any adjournment thereof; provided, however, that if a meeting is adjourned for more than forty-five (45) days, a new record date must be fixed.

Section 5.04 Conduct of Meetings. All meetings of the Members shall be presided over by the chairman of the meeting who shall be a Member designated by a majority of the Members at the meeting. The chairman of the meeting shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion.

Section 5.05 Member Voting. All actions required to be taken by the Members shall be made by the vote of the Members who own more than Fifty (50%) percent of the Voting Rights in the Company, unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by any express provision of the statutes which are applicable to such vote unless legally overridden by the Articles or this Operating Agreement, a different percentage is required, in which case such express provision shall govern and control the decision of such matter.

Section 5.06 Participation in Meetings. Members may participate in such meetings of the Members by means of conference telephone or similar communications equipment by means of which all Members participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 5.07 Proxies. Each Member may authorize any Person to act for him or her by proxy on all matters in which a Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be in writing and signed by the Member or his or her attorney-in-fact or other legal representative. The proxy shall be delivered to a Manager of the

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Company at or before the meeting at which the appointment is to be effective and shall not be valid after the final adjournment of the meeting.

Section 5.08 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the Member entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice. A Member who attends a meeting waives his or her right to assert any lack of notice, or defect in notice, of the meeting unless he or she states such objection at the outset of the meeting.

Section 5.09 Action Without Meeting. The Members may take action without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the Members holding sufficient Voting Rights, as the case may be, to approve such action had such action been properly voted on at a duly called meeting of the Members. Every written consent pursuant to this Section shall be signed, dated and delivered to the Company and shall become effective when the Members with requisite Voting Rights, as the case may be, have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent. Prompt notice of the taking of any action by Members without meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action.

ARTICLE VI
CAPITAL ACCOUNTS AND CONTRIBUTIONS

Section 6.01 Initial Contributions. Upon the execution of this Operating Agreement, each initial Member shall contribute to the Company the monies and/or properties which are specified in Exhibit A as that Member's initial Capital Contribution in exchange for the issuance by the Company of Membership Shares to each such initial Member as set forth on Exhibit B. No Membership Shares shall be issued to an initial Member until the full amount of consideration therefore has been paid.

Section 6.02 Subsequent Contributions.

A. Mandatory Contributions. The Members recognize that the income produced by the Company's business may be insufficient to pay the operating costs of the Company. Without creating any rights in favor of any third party, if the Managers determine that additional funds from the Members are necessary and appropriate for the conduct of the Company's business (including without limitation, any funds needed for working capital, any operating deficit or the purchase, lease, acquisition, expansion or construction of additional Company Property), then upon the Managers making such determination, the Managers shall provide written notice of such request for additional Capital Contributions to each Member, which notice must include the aggregate amount of the Capital Contributions and a statement in reasonable detail of the proposed uses of the Capital Contributions. Any such additional Capital Contributions shall require the approval of those Members who own more than fifty (50%) percent of the Voting Rights in the Company. Upon such approval, the Managers shall notify each Member in writing of the date (which date may be no earlier than fifteen (15) Days following the date of the Members' approval) before which the Capital Contributions must be made. Additional Capital Contributions shall be contributed by the Members, in cash, on or before the date specified in the written notice, in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. If any Member makes a Capital Contribution to the Company, such Capital Contribution shall increase only that Member's capital account and such Capital Contribution shall in no event be

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

allocated pro rata to the capital accounts of the other Members. Solely for purposes of this Section, a Member who has transferred his or her Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

B. Default. If a Member does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Operating Agreement, that Member is in default ("Defaulting Member"). If the Defaulting Member fails to cure the default in full within thirty (30) Days of the date such contribution was due, the Defaulting Member shall pay to the Company a late fee of Two Hundred ($200.00) Dollars. If the defaulting Member has failed to cure the default in full (any unpaid contribution and late fee) within sixty (60) Days of the date the contribution was due, the Defaulting Member shall not have any Voting Rights and shall not be entitled to participate in the management of the Company until such default is fully cured.

C. Extended Default. If, within ninety (90) Days after the due date of the contribution, the Defaulting Member has not completely cured his or her default (any unpaid contribution and late fee), such Defaulting Member shall be notified in writing by the Company that his or her default has exceeded ninety (90) Days and that he or she is in extended default. By execution of this Operating Agreement, each Member expressly agrees and understands that, in the event such Member thereafter receives written notice that he or she is in extended default, the Company may exercise one or more of the following remedies:

1. The Members who made their Capital Contribution may, but shall not be required to, make further additional contributions in such proportion as they might agree among themselves, or in the absence of any such agreement, in proportion to their Financial Rights, up to the full amount not contributed by the Defaulting Member. After such contribution is made, each Member's Membership Share shall be adjusted and determined by dividing the aggregate contributions of all the Members since the inception of the Company into the aggregate contribution of each Member. The resulting quotient with respect to each Member shall be the adjusted Membership Share of the Member.

2. The amount that the Defaulting Member is in default may be considered a loan made by the Company to the Defaulting Member ("Deficit Loan"). A Defaulting Member's Deficit Loan shall be payable on demand of the Company as well as out of distributions from the Company otherwise payable to the Defaulting Member (whether before or after dissolution of the Company). Said loan shall bear interest, per annum, at a rate of two (2%) percent above the prime rate as published in the Wall Street Journal as of the day following the expiration of the ninety (90) Day period or, if greater, the rate of interest applicable under Section 1274 of the Code, adjusted each January 1 the Deficit Loan is outstanding. The Defaulting Member shall not be entitled to receive any distributions from the Company until the Deficit Loan of the Defaulting Member has been paid in full. The Defaulting Member hereby grants to the Company a security interest in his or her Membership Shares to the extent of the Defaulting Member's Deficit Loan. If the Defaulting Member fails to satisfy his Deficit Loan within thirty (30) Days after the Company's demand for payment, the Defaulting Member shall forfeit his or her Membership Shares to the extent of any unpaid obligations. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture. To the extent the Defaulting Member's Deficit Loan remains unsatisfied, the Deficit Loan of the Defaulting Member shall be a personal debt obligation of the Defaulting Member, and the Company may resort to any available legal or equitable remedy to enforce said obligation.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

D. **Continuing Liability of Member in Default.** A Member who is in default or extended default under this Section shall in no way be relieved of his or her obligation to pay additional contributions which accrue either before or after the date of such default.

Section 6.03 Return of Capital. No interest shall accrue on any Capital Contribution and except as specifically provided in this Operating Agreement, no Member shall be entitled to withdraw or obtain a return of any Capital Contribution or, when such withdrawal of capital is permitted, to demand a distribution of property other than cash.

Section 6.04 Capital Accounts. The Company shall establish and maintain for each Member a separate 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)(2)(iv). Each Member's capital account shall be adjusted as necessary to reflect the economic conditions of the Membership Shares. These adjustments shall include, but are not limited to, the following:

A. Adjustments to reflect each Member's distributive share of Company profits and losses, including capital gains and losses and tax-exempt income;

B. Adjustments to reflect each Member's additional contributions to the Company; and

C. Adjustments to reflect distributions made by the Company to each Member.

Section 6.05 Transferee Capital Accounts. In the event of a Disposition of a Membership Share in accordance with the terms of this Operating Agreement, the capital account of the transferring Member shall become the capital account of the transferee to the extent it relates to the transferred Membership Share.

Section 6.06 Compliance with Section 704(b) of the Code. The provisions of this Article VI 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 and credit pursuant to this Operating Agreement to have substantial economic effect under Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. Notwithstanding anything herein to the contrary, no Member shall have any obligation to restore all or any portion of a deficit balance in such Member's capital account.

ARTICLE VII
ALLOCATIONS AND DISTRIBUTIONS

Section 7.01 Allocation of Profits and Losses. The Company's net profits and net losses (and each item of income, deduction, gain, loss and credit that makes up net profits and net losses) shall be computed in accordance with professionally accepted accounting principles, consistently applied and appropriate for the method of accounting selected by the Members for use by the Company. Except as provided in Sections 7.02 and 7.03, the net profits and net losses and other items of income, gain, loss, deduction and credit shall be apportioned among the Members in accordance with their Financial Rights in the Company.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Section 7.02 Regulatory Allocations. Notwithstanding anything to the contrary herein, any special allocations required to be made pursuant to the Treasury Regulations promulgated under Section 704 of the Code, including those related to minimum gain chargebacks and qualified income offsets, which qualified income offset rules of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations are hereby incorporated by reference, shall be made prior to the allocations set forth in Section 7.01 and in the order of priority set forth in the Treasury Regulations. It is the intent of the Members that, to the maximum extent possible, all regulatory allocations will be offset either by other regulatory allocations or special allocations of other items of Company income, gain, loss or deduction such that, after all such regulatory allocations are made, each Member's capital account balance is, to the maximum extent possible, equal to the capital account balance that such Member would have had if the regulatory allocations were not contained in this Operating Agreement, and all allocations were made pursuant to Section 7.01 hereof.

Section 7.03 Section 704(c) of the Code. The Company shall cause depreciation and/or cost recovery deductions and gain or loss with respect to each item of property to be allocated among the Members for income tax purposes in accordance with the principles of Section 704(c) of the Code and Treasury Regulations promulgated thereunder using the "traditional" method as defined in Section 1.704-3(b) of the Treasury Regulations. Allocations pursuant to this Section 7.03 are solely for purposes of federal and state income taxes and shall not affect, or in any way be taken into account in computing, any Member's capital account or share of profits, losses, other items, or distribution pursuant to any provisions of this Operating Agreement.

Section 7.04 Allocations Attributable to Particular Periods. If Financial Rights are transferred, or are increased or decreased by reason of the admission of a new Member or otherwise, at any time other than the end of a tax year, the share of profits, losses or any other items to be allocated (in respect of the Financial Rights so transferred) shall be allocated between the transferor and the transferee in the same ratio as the number of days in such fiscal year before and after the effective date of such transfer. The provisions of this Section 7.04 shall not apply to any profit or loss attributable to a sale or other disposition of all or substantially all of the Company Property, or to other extraordinary non-recurring items. Such profit and loss shall be allocated to the owner of the Financial Rights as of the date of closing of the sale or other disposition, or, with respect to other extraordinary non-recurring items, the date the profit is realized or the loss is incurred, as the case may be.

Section 7.05 Interim Distributions. Interim distributions to the owners of the Financial Rights shall be made in accordance with the following:

A. At periodic intervals as determined by the Managers, but no less frequently than annually, the Managers shall determine the amount of profits and losses of the Company for such period and the allocation of such profits and losses to the Member's capital accounts. The Managers shall determine in their reasonable judgment to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities. Any Company Cash in excess of such amounts shall be distributed to the owners of the Financial Rights. All distributions must be made simultaneously to each of the owners of the Financial Rights, and must be made in proportion to the owners' Financial Rights. Such distributions may be in cash or Company Property or partly in both, as determined by the Managers. Items of Company Property need not be distributed proportionately, provided the Managers agree upon the value

of the property being distributed and the value of the property and the cash received by each owner of the Financial Rights is proportionate to such owner's Financial Rights.

B. Notwithstanding anything herein to the contrary, the Company shall make a minimum pro rata distribution from the Company Cash to the Members within seventy-five (75) Days after the end of each tax year in an amount as shall be necessary to make the distributions to the Members for the entire tax year at least equal to the amount necessary to pay each Member's federal and state income taxes for that tax year attributable to their pro rata share of the Company's net income.

Section 7.06 Distribution in Kind. Except as provided by the Articles or this Operating Agreement, a Member, regardless of the nature of the Member's contribution, may not demand to receive a distribution from this Company in any form other than cash.

Section 7.07 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution shall be declared and paid if payment of such distribution would cause the Company to violate any limitations on distributions provided in the Act.

Section 7.08 Right to Set-Off. Except as otherwise provided in this Operating Agreement, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE VIII
TAX MATTERS

Section 8.01 Preparation of Tax Returns. The Managers shall arrange for the preparation and timely filing of all returns of Company income, gains, deductions, losses and other items required of the Company for federal, state and local income tax purposes, and the delivery to the Members of all tax information reasonably required by the Members for federal, state and local income tax reporting purposes.

Section 8.02 Tax Elections. The Managers shall determine whether to make any available election (including, without limitation, the election under Section 754 of the Code) or choose any available reporting method pursuant to the Code or state or local tax law. The Managers shall have the right to seek to revoke any such election (including, without limitation, the election under Section 754 of the Code) or change any reporting method.

Section 8.03 Tax Matters Partner. Beacham O. Brooker, Jr. shall be the initial "tax matters partner" of the Company within the meaning of Section 6231(a)(7) of the Code, and as such, shall be solely responsible for representing the Company (at the Company's expense) in all dealings with the U.S. Internal Revenue Service and any state, local and foreign tax authorities. If Beacham O. Brooker, Jr. is no longer a Member or resigns as the tax matters partner, the Members shall designate one Member as the successor tax matters partner. The tax matters partner shall comply with the provisions of this Operating Agreement in the performance of its duties as tax matters partner. The tax matters partner shall receive no compensation for serving as tax partner. All costs and expenses incurred by the tax matters partner in performing its duties as such (including legal and accounting fees) shall be borne by the Company. Nothing herein shall be construed to restrict the Company from engaging an accounting firm to assist the tax matters partner in discharging its duties hereunder.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ARTICLE IX
TRANSFER OF MEMBERSHIP SHARES

Section 9.01 Transfer of Membership Shares Generally. Except for a Disposition specifically permitted by this Article IX, no Member shall Dispose of any Membership Shares held by such Member without the written consent of all non-Disposing Members who have Voting Rights in the Company. If such consent is obtained, then the following Sections of this Article IX shall be of no effect, and the provisions of Article III shall govern the rights of the transferor and transferee. With regards to all other Dispositions, the provisions of this Article IX shall control, and any attempted Disposition of Membership Shares in contravention of this Article IX shall be null and void, and neither the Company nor the Members shall recognize the same. Any Member who Disposes or attempts to Dispose any Membership Share except in compliance herewith shall be liable to, and shall indemnify and hold harmless, the Company and other Members for all costs, expenses, damages and other liabilities resulting therefrom.

Section 9.02 Permitted Transfers. Any Member may at any time Dispose of all or any portion of his or her Membership Shares if such Disposition is a Permitted Transfer. For purposes of this Operating Agreement, a Permitted Transfer is the Voluntary Transfer by a Member of his or her Membership Share to a Permitted Transferee. Any Disposition that is a Permitted Transfer shall be effective to assign the right to become a Member, and, without the need for any action or consent of any other Person, a transferee of such Membership Share shall be admitted as a Member upon the transferee's compliance with Section 3.04 hereof.

Section 9.03 Right of First Refusal. If a Member attempts to Dispose of (other than in a Permitted Transfer) all or any portion of his or her Membership Shares without obtaining the written consent of all non-Disposing Members, such Member (the "Offering Member") is deemed to have offered to the Company, then to all of the remaining Members (the "Remaining Members"), on a pro rata basis, the right to purchase all, but not less than all, of the Membership Shares owned by the Offering Member at a price determined in accordance with Section 9.05 and upon the terms contained in Section 9.06; provided, however, that if a Member attempts to Dispose of only a portion of his or her Membership Shares, then the Company's and the Members' options shall apply only to the portion of the Membership Shares that is proposed to be transferred.

Section 9.04 Exercise of Right of First Refusal.

A. Upon the occurrence of an event specified in Section 9.03 above, the Offering Member, or their legal representative, must give written notice of such event to the Company and each Remaining Member (the "First Refusal Notice"), which notice must contain a description of the Membership Shares to be transferred, the name, address and business occupation of the proposed transferee, the proposed sales price or other consideration, the proposed sales terms (including the relative percentages of cash and debt instruments, and the duration, interest rate, and payment schedule of any such debt instruments) and a copy of the Bona Fide Offer, if applicable.

B. The Managers shall have until the later of (i) thirty (30) Days following the date the First Refusal Notice was delivered to the Company, and (ii) fifteen (15) Days after the purchase price is determined pursuant to Section 9.05 (such period, the "Original Option Period") in which to notify the Offering Member and the Remaining Members in writing whether the Company elects to purchase all or any part of the Offered Membership Shares.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

C. If the Managers do not elect to purchase all of the Offered Membership Shares within the Original Option Period (the Offered Membership Shares which the Company elects not to purchase being referred to as the "Refused Shares"), each Remaining Member shall have fifteen (15) Days following the end of the Original Option Period (such period, the "Second Option Period") in which to notify the Offering Member in writing whether it elects to purchase all or any part of its pro rata share (based on the percentage of the Membership Shares owned by such Remaining Member bears to the percentage of Membership Shares owned by all Remaining Members) of the Refused Shares.

D. If a Remaining Member does not elect to purchase all of its pro rata share of the Refused Shares within the Second Option Period, the Offering Member must immediately give written notice of such event to each Remaining Member who elected to purchase all of its pro rata share of the Refused Shares (the "Second Refusal Notice"). Each such Remaining Member shall have fifteen (15) Days from the date the Second Refusal Notice is given (such period, the "Third Option Period") in which to notify the Offering Member in writing whether it elects to purchase its pro rata share (based on the percentage of the Membership Shares owned by such Remaining Member bears to the percentage of Membership Shares owned by all Remaining Members then entitled to an option) of the Refused Shares previously rejected by a Remaining Member. Subject to the condition that each Remaining Member so entitled to an option shall first be permitted to purchase or reject the maximum number of Membership Shares to which he or she is entitled pursuant to the ratios hereinbefore described, such Remaining Members shall be free to mutually agree by unanimous consent to the portion of Refused Shares to be purchased by each.

E. If the Remaining Members do not elect to purchase all (but not less than all) of the Refused Shares by the expiration of the Third Option Period, the Offering Member may, during the thirty (30) Days following the expiration of the Third Option Period, complete the intended Disposition of all (but not less than all) of the Offered Membership Shares to the proposed transferee upon the terms and conditions specified in the First Refusal Notice. Unless and until the proposed transferee is admitted as a Member in accordance with Section 3.02, the rights of the proposed transferee are as provided in Section 3.05. If the Disposition is not completed within the thirty (30) Day period described above, any attempted Disposition will be deemed pursuant to a new offer and this Section shall again apply.

Section 9.05 Purchase Price.

A. If the transaction described in the First Refusal Notice is a proposed transfer of the Membership Shares pursuant to a Bona Fide Offer, then the purchase price shall be at the price and on the terms and conditions, proportionately, as were contained in the Bona Fide Offer; provided, however, that if any consideration to be paid pursuant to the Bona Fide Offer is other than cash or an obligation to pay money, the purchasing party shall have the option to pay either such non-cash consideration or the fair market value thereof.

B. If the event giving rise to the option is not pursuant to a Bona Fide Offer (for example, a gift or a pledge of the Membership Shares, a transfer incident to or by virtue of divorce or equitable distribution proceedings, or the occurrence of an event of bankruptcy with respect to the Member), then the purchase price shall be the fair market value of the Offered Membership Shares as of the date of event giving rise to the options.

1. The Offering Member and the Managers (excluding the Offering Member, if the Offering Member is also a Manager) shall attempt to agree in writing as to the fair market value of the Offered Membership Shares.

2. If no such agreement can be reached within fifteen (15) Days following the date the First Refusal Notice was delivered to the Company, then the fair market value (taking into account all applicable valuation discounts, including but not limited to, minority, lack of marketability, undivided interests in real estate, voting versus non-voting interest, and all costs, expenses and damages sustained by the Company and the Remaining Members as a result of a Member's wrongful dissociation) for the Offered Membership Shares shall be determined by the agreement of two (2) appraisers. The Offering Member shall name one appraiser and the Managers (excluding the Offering Member, if the Offering Member is also a Manager) shall name the other appraiser. Both appraisers must have at least five (5) years experience valuing Membership Shares similar to the one being offered hereunder. The parties must appoint their respective appraiser by delivering written notice of the name, address and telephone number of their appraiser to each other within seven (7) Days after the expiration of the above referenced fifteen (15) Day period. If either party fails to appoint an appraiser within the time period required herein, the appraiser appointed by the other party shall unilaterally establish the fair market value of the Offered Membership Shares by written opinion. If both parties appoint an appraiser within the seven (7) Day period, these two appraisers shall establish the fair market value of the Offered Membership Shares in a single written opinion agreed on by both of them. If the two appraisers cannot agree on the fair market value within thirty (30) Days after the last of them is appointed, each appraiser shall render their own written opinion and the fair market value shall be the average of the two opinions. The fees and costs of the appraiser appointed by the Offering Member shall be paid by the Offering Member. The fees and costs of the appraiser appointed by the Managers shall be paid by the Company. Fair market value is defined as the cash equivalent price at which property would change hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of relevant facts. The hypothetical buyer and seller are assumed to be able, as well as willing, to trade and are assumed to be well-informed about the property and the market for such property. The purchase price as determined herein shall be conclusive and binding upon the parties, their legal representative, personal representative, heirs, transferees, successors and assigns.

If the Offering Member is also the sole Manager, then the actions of the Managers under this Section 9.05(B) shall be taken by the Members.

Section 9.06 Payment of Purchase Price.

A. If the purchase relates to a proposed transfer of the Offered Membership Shares due to a Bona Fide Offer, the purchase price for the Offered Membership Shares shall be paid in accordance with the terms, proportionately, as were contained in the Bona Fide Offer.

B. If the event giving rise to the option is not pursuant to a Bona Fide Offer, then unless the parties mutually agree to different terms, the purchase price shall be paid in one hundred twenty (120) equal and consecutive monthly installments of principal plus interest commencing on the first day of the month after the date of the closing. Each purchaser shall execute and deliver to the seller a separate promissory note made payable to the order of the seller which shall bear interest, per annum, at the prime rate as published in the Wall Street Journal at the date of the closing. The purchaser shall have the right to prepay all or any part of the principal of the note at any time without penalty or premium. All payments, when received, shall be applied first to accrued interest and then to principal. The note shall

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ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

provide that immediately 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 delivery of the note, the Offered Membership Shares shall be conveyed to the purchaser. The purchaser's payment obligations under the note will be secured by a security interest in the Offered Membership Shares.

Section 9.07 Closing. The purchase of the Offered Membership Shares shall take place at a closing to be held not later than the thirtieth (30^{th}) Day after the last option period is exercised or lapses, at the Company's primary place of business, or at any other place to which the parties agree. At the closing, each purchaser will pay for the Offered Membership Shares in accordance with Section 9.06 and the seller will deliver such instruments of transfer, assignment and assumption with respect to such transaction and shall transfer such interest free and clear of any liens, encumbrances or any interests of any third party. Each Member appoints the Company as his or her agent and attorney-in-fact to execute and deliver all documents needed to convey his or her Offered Membership Shares if such selling Member is not present at the closing. This power of attorney is coupled with an interest and does not terminate on the Member's disability or death, and continues for so long as this Operating Agreement is in effect.

ARTICLE X
DISSOLUTION, LIQUIDATION, AND TERMINATION

Section 10.01 Dissolution. The Company shall dissolve and its affairs shall be wound up upon the first to occur of the following:

A. The written consent of all Members;

B. The expiration of the period fixed for the duration of the Company set forth in the Articles;

C. Upon an event 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;

D. On application by a Member, upon entry of a judicial decree as provided in Section 33-44-801(4) of the Act; or

E. Upon an administrative dissolution as provided in Section 33-44-809 of the Act, but if the Company is reinstated pursuant to Section 33-44-811 of the Act, the reinstatement is effective retroactively to the date of the administrative dissolution.

Section 10.02 Date of Dissolution. Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until the assets of the Company shall have been distributed as provided herein and the Articles of Termination have been filed with the Secretary of State of South Carolina. Notwithstanding the dissolution of the Company, prior to the termination of the Company, as aforesaid, the business of the Company and the affairs of the Members, as such, shall continue to be governed by this Operating Agreement.

Section 10.03 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,

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

the Members may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (i) 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 (ii) the rights of a third party accruing under 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.

Section 10.04 Winding Up and Termination. On dissolution of the Company, if the Members do not continue the Company's business under Section 10.03, the Managers shall appoint one or more Managers to serve as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company with all of the power and authority of the Managers. The steps to be accomplished by the liquidator are as follows:

A. First, sell or otherwise liquidate any or all of the Company's assets, except to the extent that the liquidator may determine to distribute in kind any assets to the Members;

B. Second, pay, satisfy or discharge from Company Property all of the debts, liabilities and obligations of the Company (including liabilities to Members who are also creditors, to the extent permitted by law) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent or unforeseen liabilities or obligations in such amount and for such term as the liquidator may reasonably determine);

C. Third, the assets of the Company shall be distributed proportionately among the Members in accordance with their positive capital account balances as determined after taking into account all capital account adjustments for the taxable year of the Company during which the liquidation of the Company occurs, as necessary to bring the balance of all capital accounts to zero. Any such distributions to the Members in respect to their capital accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations.

D. Fourth, all remaining assets shall be distributed proportionately among the Members based on their respective percentages of Financial Rights.

Section 10.05 Termination of Company. When all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, have been distributed to the Members in the manner provided for in this Operating Agreement, the Company's affairs shall terminate and the liquidator shall file the Articles of Termination with the Secretary of State of South Carolina, as well as any and all other documents required to effectuate the termination of the Company under the Act.

Section 10.06 Distribution in Kind. The liquidator may distribute assets in kind to the Members or to satisfy any or all of its obligations. If the liquidator distributes 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 in question. The fair market value of each asset or group of assets appraised shall be the average of the two appraisals.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Section 10.07 Gain or Loss. Any gain or loss on the disposition of Company Property in the process of liquidation shall be credited and charged to the Members in proportion to their respective percentage of Membership Shares, except that gain or loss with respect to property contributed to the Company by a Member shall be shared among the Members so as to take account of any variation between the basis of the property so contributed and its fair market value at the time of contribution, in accordance with any applicable Treasury Regulations. Any property distributed in kind in the liquidation shall be valued and treated as though it were sold and the cash proceeds distributed.

Section 10.08 Deficit Capital Accounts. Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from deductions and losses of the Company (including non-cash items such as depreciation) or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective interest in the Company, upon dissolution of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's capital account to zero.

Section 10.09 Company's Assets Sole Source. The Members shall look solely to the assets of the Company for the payment of any debts and liabilities owed by the Company to the Members and for the return of their Capital Contributions and liquidation amounts. If the Company Property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of one or more Members, such Member shall have no recourse against the Company or any other Member, except to the extent that such other Member may have outstanding debts or obligations owing to the Company.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01 Arbitration. Any dispute or controversy between the parties hereto arising out of, under, or in connection with, or in relation to, this Operating Agreement shall be submitted to binding arbitration in accordance with South Carolina Code Sections 15-48-10, et seq., as such may be amended from time to time (the South Carolina Uniform Arbitration Act, "SCUAA"). All arbitration proceedings shall be conducted in Barnwell County, South Carolina, or by mutual agreement of the parties, wherever else is most convenient for a rapid resolution of the matter. Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding. The arbitrators shall be selected as provided in the SCUAA, and the arbitrators shall render a decision on any dispute within one hundred twenty (120) Days after the last of the arbitrators has been selected. If any party to this Operating Agreement fails to select an arbitrator with regard to any dispute submitted to arbitration under this Section 11.01 within thirty (30) Days after receiving notice of the submission to arbitration of such dispute, then the other party shall select an arbitrator for such non-selecting party. The decision of the arbitrators shall be final and binding on the parties, who specifically renounce any judicial review of the award, and agree that judgment on the award may be enforceable in any court of competent jurisdiction.

Section 11.02 Proceeding Expenses. In any controversy, claim or dispute arising out of, or relating to, this Operating Agreement or the method or manner of the performance hereof, the prevailing party shall be entitled to, in addition to any other relief, recovery of proceeding expenses. In determining the award of proceeding expenses, attorney's fees, arbitrator fees, proceeding costs, cost of investigation and other reasonable expenses shall be included. For the purposes of this provision, the term

"proceeding" shall include arbitration, administrative, bankruptcy and judicial proceedings, including appeals therefrom or enforcement of decisions thereof.

Section 11.03 Amendment or Modification. This Operating Agreement and the Articles may be amended and modified from time to time only by a written instrument unanimously adopted and executed by all Members.

Section 11.04 Construction. The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation. Whenever the context so requires, the gender of all words used in this Operating Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All such Exhibits read as of the date of this Operating Agreement or, as to any Exhibits bearing a particular date, as of any other date specified therein.

Section 11.05 Severability. If any provision of this Operating Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Operating Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

Section 11.06 Entire Agreement; Supersedure. This Operating Agreement cancels and supersedes all prior written or oral agreements among the parties hereto respecting the within contained subject matter and represents the entire agreement between the parties hereto with respect to the transactions contemplated hereby.

Section 11.07 Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

Section 11.08 Binding Effect. All rights, obligations and duties provided for in this Operating Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors and permitted assigns; provided, however, that all rights, obligations and duties of the Members shall be personal to each of them and, except as herein expressly provided, may not be assigned or transferred.

Section 11.09 Governing Law. This Operating Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of South Carolina, without regard to its conflicts of laws principles. In the event of a direct conflict between the provisions of this Operating Agreement and (i) a mandatory provision of the Articles, or (ii) any mandatory provision of the Act, the applicable provision of the Articles or the Act shall control.

Section 11.10 Notices. Except as otherwise provided in this Operating Agreement, any notice, offer, acceptance, right, option or other communication required or permitted under this Operating Agreement shall be exercisable and made only upon the giving/delivery of written notice to the other party, and shall be deemed given/delivered when personally delivered or, if mailed, three (3) Days after

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

the date it was postmarked by the United States Postal Service, if it was sent by first class mail, with postage prepaid. Notice to any Member is valid if sent to him or her at such Member's address as it appears in the Company's records. Notice to any Manager is valid if sent to him or her at such Manger's address as it appears in the Company's records. Notice to the Company is valid if sent to it at the Company's designated office as set forth in the Articles.

Section 11.11 Counterparts. This Operating Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

Section 11.12 Conflicting Provisions. To the extent that one or more provisions in this Operating Agreement appear to be in conflict with one another, then the Company shall have the right to choose which of the conflicting provisions are to be enforced. Wide latitude is given to the Company in interpreting the provisions of this Operating Agreement to accomplish the purposes and objectives of the Company, and the Company may apply this Operating Agreement in such a manner as to be in its best interest, even if such interpretation or choice of conflicting provisions to enforce is detrimental to one or more Members.

Section 11.13 Effective Date. This Operating Agreement shall become effective upon the execution of this Operating Agreement by all the parties hereto.

ARTICLE XII
DISCLOSURE

The parties acknowledge that the law firm of Todd & Johnson, L.L.P. (the "Law Firm") prepared this Operating Agreement on behalf of the parties hereto. There is an inherent potential for conflicts of interest among the parties to the Operating Agreement because the Operating Agreement establishes the rights and obligations of each of the parties to the Operating Agreement. Due to such potential conflicts of interest, the Law Firm hereby advises each of the parties that it would be in their best interest to obtain the services of their independent legal counsel to review this document. The parties hereby waive any potential conflicts of interest that may arise as a result of the above actions by the Law Firm, whether or not one or more of the parties to this Operating Agreement may have consulted with separate legal counsel concerning the Operating Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Operating Agreement the day and year first written above.

WITNESSES:

BBB&C FAMILY LLC

By: _____
Beacham O. Brooker, Jr., Manager

MEMBERS:

Janet B. Brooker, by Beacham O. Brooker, Jr. as attorney-in-fact under power of attorney recorded in Richland County, SC in Book 1368 at Page 495

Beacham O. Brooker, Jr.

Julia B. Brooker

Ellen B. Corontzes

The undersigned, who is the duly elected manager of the Company, hereby agrees to be bound by the provisions of this Operating Agreement, and any amendments thereto.

2/16/14
Date

Beacham O. Brooker, Jr.

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

EXHIBIT A

COMPANY PROPERTY

Property		Value
Initial Capital Contribution		
Janet B. Brooker 29,000 shares of Lockheed Martin, common stock (valued on date articles of organization filed with Secretary of State)		$4,285,910.00
Initial Capital Contribution of Acreage:		
Approximately 7 acres in Pontiac		$ 518,000.00
100% interest in 636 Harden LLC (LLC owns a one-half interest in property Appraised at $570,000)		$ 285,000.00
100% interest in 640 Harden LLC		$ 176,000.00
Beacham O. Brooker, Jr.	1/3	
Julia B. Brooker	1/3	
Ellen B. Corontzes	1/3	
		$5,264,910.00

ELECTRONICALLY FILED - 2020 Apr 21 2:51 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

EXHIBIT B

MEMBERS AND MEMBERSHIP SHARES

Name and Address of Initial Members	Membership Shares	
	Voting Rights	Financial Rights
Janet B. Brooker [redacted] Columbia, SC 29206	81.40 %	81.40%
Beacham O. Brooker, Jr. [redacted] Columbia, SC 29205	6.20%	6.20%
Julia B. Brooker [redacted] Columbia, SC 29206	6.20%	6.20%
Ellen B. Corontzes [redacted] Columbia, SC 29205	6.20%	6.20%

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159

Case No. 2020-CP-40-02040

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC, ... Respondents

v.

Julia B. Brooker,..... Appellant

EXHIBIT E TO MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

Motion to Dismiss

ELECTRONICALLY FILED - 2020 Apr 24 3:27 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CASE NO. 2020-CP-40-02040
Beacham O. Brooker, Jr.; Ellen B. Corontzes; and BBB&C Family, LLC, Petitioners, v. Julia B. Brooker, Respondent.	**RESPONDENT'S MOTION TO DISMISS PETITION AND MOTION TO STAY, MOTION TO COMPEL ARBITRATION, AND MOTION FOR AN AWARD OF ATTORNEY'S FEES AND EXPENSES**

Respondent Julia B. Brooker, by and through undersigned counsel, hereby submits her Motion to Dismiss Petitioners' Petition and Motion to Stay, her Motion to Compel Arbitration, and her Motion for an Award of Attorney's Fees and Expenses.

Respondent hereby moves for the dismissal of Petitioners' Petition and Motion to Stay Respondent's arbitration demand pursuant to Rule 12(b)(6), SCRCP, and S.C. Code Ann. § 15-48-20(b). Respondent further moves the Court, pursuant to S.C. Code Ann. § 15-48-20(a), for an order compelling the arbitration of claims asserted in Respondents' arbitration demand, all of which arise out of the Operating Agreement of BBB&C Family LLC executed by Petitioners Beacham O. Brooker, Jr. and Ellen B. Corontzes and Respondent Julia B. Brooker on January 31, 2014. That Operating Agreement requires that "[a]ny dispute or controversy between the parties hereto arising out of, under, or in connection with, or in relation to, this Operating Agreement shall be submitted to binding arbitration in accordance with South Carolina Code Sections 15-48-10, et seq." It further provides that "[a]ny dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding." By filing their Petition and Motion to Stay, Petitioners have refused to arbitrate.

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Respondent respectfully requests that the Court determine Respondents' Motion to Dismiss and Motion to Compel Arbitration based on the submissions alone and without a hearing because such summary relief is contemplated by Section 15-48-20. S.C. Code Ann. § 15-48-20(a) ("On application of a party showing an agreement described in § 15-48-10, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration . . . ."). Respondent also respectfully suggests that the Court should exercise its discretion to determine these matters "without further input from the lawyers," as contemplated by the Supreme Court of South Carolina's Order No. 2020-04-14-01, RE: Operation of the Trial Courts During the Coronavirus Emergency (as amended April 14, 2020) (stating that "[a] trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers.").

Finally, Respondent seeks an award of attorney's fees and expenses associated with this judicial proceeding to be paid by Petitioners Beacham O. Brooker, Jr. and Ellen B. Corontzes, to be proved immediately prior to its conclusion by Respondent's submission of verified time and expense reports. Pursuant to the Operating Agreement, "[i]n any controversy, claim or dispute arising out of, or relating to, this Operating Agreement or the method or manner of the performance hereof, the prevailing party shall be entitled to, in addition to other relief, recovery of proceeding expenses." The Operating Agreement further provides that "[i]n determining the award of proceeding expenses, attorney's fees . . . and other reasonable expenses shall be included." In this regard, "the term 'proceeding' shall include . . . judicial proceedings."

In support of her Motions, Respondent relies on the supporting Memorandum of Law and exhibits submitted herewith and the verified time and expense reports to be submitted upon further direction by the Court.

Respectfully submitted,

s/ Badge Humphries

Badge Humphries
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Counsel for Respondent

Columbia, South Carolina
April 24, 2020

ELECTRONICALLY FILED - 2020 Apr 24 3:27 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159

Case No. 2020-CP-40-02040

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC, ... Respondents

v.

Julia B. Brooker,..... Appellant

EXHIBIT F TO MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

Amended Motion to Stay

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2020-CP-40-02040
	)	
Beacham O. Brooker; Jr.; Ellen B. Corontzes; and BBB&C Family, LLC	)	**PETITION AND AMENDED MOTION TO STAY**
Petitioners	)	
vs.	)	
Julia B. Brooker,	)	
Respondent	)	

Petitioners Beacham O. Brooker, Jr., Ellen B. Corontzes, and BBB&C Family, LLC hereby amend their Petition and Motion to Stay filed on April 21, 2020 because a prior draft of the motion was inadvertently filed instead of the final draft. The current amended motion is the proper final motion.

Therefore, Petitioners petition and move this Court, pursuant to S.C. Code Ann. § 15-48-20 and the South Carolina Uniform Arbitration Act, *in toto*, for a stay of the arbitration demand attached hereto as Exhibit A. This motion is made on the ground that the determination of the appeals in 2019-CP-40-03582 may have a material effect on this proceeding, and therefore this proceeding should be stayed until the referenced appeals are decided with finality. Additionally, a stay will preserve judicial and the parties' resources and promote judicial efficiency.

SOWELL & DuRANT, LLC

s/Bess J. DuRant

Thornwell F. Sowell, III (SC Bar No. 5197)
Bess J. DuRant (SC Bar No. 77920)
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Attorneys for Petitioners Beacham O. Brooker; Jr. and Ellen B. Corontzes

s/Gray T. Culbreath

Gray T. Culbreath (SC Bar No. 11907)
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Attorneys for Petitioner BBB&C Family, LLC

Columbia, South Carolina
April 29, 2020

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2020-CP-40-_____
	)	
Beacham O. Brooker; Jr.; Ellen B. Corontzes; and BBB&C Family, LLC	)	
	)	
Petitioners	)	
	)	
vs.	)	
	)	
Julia B. Brooker,	)	
	)	
Respondent	)	

EXHIBIT A TO PETITION AND AMENDED MOTION TO STAY

Arbitration Demand

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	
Julia B. Brooker,	)	
	)	
Plaintiff,	)	
	)	**ARBITRATION DEMAND**
v.	)	
	)	
Beacham O. Brooker, Jr.; Ellen B. Corontzes; and BBB&C FAMILY LLC;	)	
	)	
Defendants.	)	
	)	

Plaintiff Julia B. Brooker, complaining of certain conduct of the Defendants Beacham O. Brooker, Jr., Ellen Corontzes, and BBB&C Family LLC ("BBB&C"), would respectfully show unto the Court the following based upon personal knowledge as to herself and her own acts and upon information and belief as to all other matters:

PARTIES AND FORUM

1. Plaintiff Julia Brooker ("Julia" or "Plaintiff") is a citizen of South Carolina and resides within Richland County at [redacted] in Columbia, South Carolina.

2. Defendant Beacham O. Brooker, Jr. ("Beacham") is a citizen of South Carolina and resides within Richland County at [redacted] in Columbia, South Carolina.

3. Defendant Ellen B. Corontzes ("Ellen") is a citizen of South Carolina and resides within Richland County at [redacted] in Columbia, South Carolina.

4. Defendant BBB&C FAMILY LLC ("BBB&C" or the "Company") is manager-managed limited liability company organized and existing under the laws of the State of South Carolina.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

5. On January, 31, 2014, the Operating Agreement of BBB&C (attached hereto as **Exhibit 1**)[1] was made and entered into by and among Janet B. Brooker ("Janet" or "Mother"), Beacham, Julia, and Ellen (hereinafter referred to collectively as the "Members" and individually as a "Member") and BBB&C.

6. On February 4, 2014, the Members signed the Company's Articles of Organization (attached hereto as **Exhibit 2**), which was filed with the South Carolina Secretary of State the same day.

7. Section 11.01 of the Operating Agreement for BBB&C provides that "[a]ny dispute or controversy between the parties hereto arising out of, under, or in connection with, or in relation to, this Operating Agreement shall be submitted to binding arbitration in accordance with South Carolina Code Sections 15-48-10, et seq., as such may be amended from time to time (the South Carolina Uniform Arbitration Act, "SCUAA")."

8. That section of the Operating Agreement further provides that "[a]ll arbitration proceedings shall be conducted in Barnwell County, South Carolina, or by mutual agreement of the parties, wherever else is most convenient for a rapid resolution of the matter."

9. Plaintiff hereby proposes that the parties mutually agree for the arbitration to be conducted in Richland County, South Carolina for the convenience of all involved.

FACTUAL BACKGROUND

10. When the Company was created in 2014, Janet, the mother of Beacham, Julia, and Ellen, was 88 years old.

11. The idea for the Company was to form part of an estate planning technique designed by Mother's attorney to minimize transfer taxes, both gift and estate taxes.

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[1] Capitalized terms that are not otherwise defined have the meaning ascribed in Exhibit 1.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

12. Pursuant to that estate planning technique, Mother was to contribute the vast majority of the Company's assets by value, and the Operating Agreement's provisions restricting the control and marketability of the Company's Membership Shares would substantially reduce the value of those Membership Shares.

13. Pursuant to the plan, Mother would then gift Membership Shares of the Company to her children and fellow Members—Beacham, Julia, and Ellen—at a substantially reduced value, for gift-tax purposes, compared to the value of the underlying assets.

14. At the time of the Company's formation, Mother owned 81.4% of the Membership Shares—both in terms of Voting Rights and Financial Rights—while Beacham, Julia, and Ellen each owned 6.2% of the Membership Shares; however, Beacham was attorney in fact for Mother and voted her Membership Shares.

15. The vast majority of the assets, by value, that Mother contributed to the Company consisted of Lockheed Martin Corporation ("Lockheed Martin") common stock, valued at $4,285,910 as of February 4, 2014.

16. Beacham, Ellen, and Julia contributed remaining assets, which consisted of interests in real property and limited liability companies jointly owned by Beacham, Ellen, and Julia valued at $979,000:

a. Approximately 7 acres in Pontiac, South Carolina known as the "Woodcreek Lake Property" valued at $518,000;

b. 100% interest in 636 Harden LLC valued at $285,000 (representing a one-half interest in property appraised at $570,000); and

c. 100% interest in 640 Harden LLC valued at $176,000.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

17. Beacham persuaded Julia to participate in the forming of the Company by telling her that the Company would be dissolved after Mother's death upon securing the estate tax savings.

18. Pursuant to the estate planning technique, Beacham, acting as attorney-in-fact for Mother, proceeded to gift her Membership Shares to himself, Julia, and Ellen.

19. By the time Mother died on April 15, 2015, her children each owned one-third of the Membership Shares.

20. Not long after Mother's death, ongoing acrimony between the parties erupted into outright strife over the disposition of her assets.

21. Shortly after her death, Beacham and Ellen destroyed Mother's financial records.

22. If available, those records could help explain the disposition of a substantial number of shares of Martin Marietta Corporation common stock that may have been held by the children's father at the time of his death and/or additional Lockheed Martin shares that may have been held by Mother at the time of her death.[2]

23. As a fiduciary for the estate of Father and Mother, Beacham increased Julia's distrust by destroying emails and documents.

24. Mother's testamentary instruments consisted of a pour-over will and a trust known as the Janet B. Brooker Trust (hereinafter the "Trust").

---

[2] Beacham O. Brooker, Sr. ("Father") died on January 11, 1990 owning at least 28,850 shares in Martin Marietta Corporation. During 1991, those shares were distributed from his estate as follows: 20,700 shares were distributed to Mother; 2,717 shares each were distributed to Beacham and Julia; and 2716 shares were distributed to Ellen. Of the 20,700 Martin Marietta shares Mother inherited, she initially held 16,500 shares in her name in certificate form and 4,200 shares in a brokerage account. Martin Marietta shares split 2 for 1 on September 30, 1993 and were exchanged 1 for 1 for Lockheed Martin shares on March 15, 1995. On January 7, 1999, Lockheed Martin shares split 2 for 1. Immediately after the split on January 7,1999, Mother was holding 58,000 shares of Lockheed Martin in her name and 7,846 shares in her brokerage account. Of the 58,000 shares held in her name, Mother contributed 29,000 shares to the Company in 2014 and was still holding 29,000 shares upon her death.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

25. The Trust contained an equalization provision for Julia because Julia was not married and had no children and because Mother had given substantial sums to the spouses and issue of Beacham and Ellen over her lifetime:

> (2) **Equalization distribution to the Settlor's Daughter Julia B. Brooker.** ***The Settler has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlors children, the Settlors issue and spouses of the Settlor's children.***
>
> Because the Settler's daughter Julia B. Brooker is not married and has no children or issue, the Settlor intends that at the Settlor's death, an ***equalizing distribution will be made to the Settler's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution*** will be determined as follows:
>
> (a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settler to issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., as well as the spouses of Ellen B. Corontzes and Beacham O. Brooker, Jr.
>
> (b) To such amount specified above from the date of such gift an interest rate of five (5 %) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.
>
> (c) The sum of (a) and (b) above shall be distributed to the Settler's daughter Julia B. Brooker, if she shall survive the Settlor.

26. Mother's three children were the beneficiaries of the Trust, and Beacham was its Trustee as well.

27. Despite the clear terms of the equalization provision in the Trust, Beacham took the position while acting as Trustee that Julia would be entitled to equalization for gifts made on or after the date of the October 16, 2007 forward, ignoring the language emphasized above providing

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

that the equalization provision shall make up for "***lifetime gifts made*** to" the spouses and issue of Beacham and Ellen.

28. Pursuant to Beacham's interpretation of the Trust, Beacham as Trustee verbally offered Julia as Beneficiary $300,000[3] despite the fact that Mother had made lifetime gifts of over $1.8 million to the spouses and issue of Beacham and Ellen that with the 5% interest contemplated by the Trust totaled over $2.94 million.

29. Contentious litigation ensued and culminated in a trial before the Honorable Amy W. McCullough, who subsequently ordered that Julia was entitled to over $1.47 million as her equalization distribution from the Trust (one-half of $2.94 million) as well as payment of her attorney's fees and litigation expenses.

30. That litigation continues as Beacham and Ellen appeal the orders of Judge McCullough, and to date, Julia has received only $735,954 as an equalization distribution from the Trust, for which Beacham still serves as Trustee.

31. In the meantime, Beacham as manager of the Company has continued a pattern and practice of denying Julia distributions from the Company as contemplated by the Operating Agreement, which provides as follows in this respect in Section 7.05:

> A. At periodic intervals as determined by the Managers, but no less frequently than annually, the Managers shall determine the amount of profits and losses of the Company for such period and the allocation of such profits and losses to the Member's capital accounts. The Managers shall determine in their reasonable judgment to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain and repair any Company Property, reserves

[3] Eventually, Beacham raised this offer to $525,528, but like the earlier offer of $300,000, it was contingent on Julia's releasing any and all claims to dispute the amount or request additional funds from the Trust.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

against future contingent liabilities, and the retention of funds for future investments and activities. Any Company Cash in excess of such amounts shall be distributed to the owners of the Financial Rights. All distributions must be made simultaneously to each of the owners of the Financial Rights, and must be made in proportion to the owners' Financial Rights. Such distributions may be in cash or Company Property or partly in both, as determined by the Managers. Items of Company Property need not be distributed proportionately, provided the Managers agree upon the value of the property being distributed and the value of the property and the cash received by each owner of the Financial Rights is proportionate to such owner's Financial Rights.

B. Notwithstanding anything herein to the contrary, the Company shall make a minimum pro rata distribution from the Company Cash to the Members within seventy-five (75) Days after the end of each tax year in an amount as shall be necessary to make the distributions to the Members for the entire tax year at least equal to the amount necessary to pay each Member's federal and state income taxes for that tax year attributable to their pro rata share of the Company's net income.

32. Despite these provisions and the fact that Beacham as Manager has determined that Company Cash needed to be distributed, the Company has paid over $200,000 of distributions owed to Julia to an account controlled by Beacham and Ellen without Julia's consent.

33. Despite multiple requests, Beacham and Ellen have denied Julia access to information about these deposits of funds into an account controlled by Beacham and Ellen and the Company in general.

34. In addition, Beacham has not held or conducted any annual meetings or observed corporate formalities with regard to the real estate limited liability companies held by BBB&C, namely 636 Harden LLC and 640 Harden LLC, and as a result is potentially exposing the assets of BBB&C in the event that a judgment is obtained against one or both real estate limited liability companies.

35. Section 2.07 of the Operating Agreement sets forth the purposes of the Company:

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

> The purposes of the Company are to make a profit, increase wealth, acquire, finance, develop, subdivide, exchange, manage, improve, operate, sell, rent, lease real property and to engage in a general investment business as the members shall determine from time to time; to do all things necessary and proper for the effective, efficient and productive management of Company Property; to consolidate and centralize the management of certain properties owned by the Members; to promote the efficient and economical management of the properties by holding them in a single entity; to avoid fractional ownership of certain properties of the Members in order to promote the greater sales potential of the properties; to provide an orderly buy-sell arrangement between the Members; to provide protection from creditors; to avoid potential expensive litigation and disputes over the properties of the Members by providing mechanisms for their management and procedures to resolve disputes; and to promote knowledge and communication as to Company Property.

36. Acting as manager, Beacham has also failed to profit, increase wealth, acquire, finance, develop, subdivide, exchange, manage, improve, operate, sell, rent, or lease the real property known as the Woodcreek Lake Property despite its significant carrying cost to the Company.

37. The Woodcreek Lake Property consists of two tracts of land: Tract 17 is 3.01 acres of land, and Tract 18 is 3.97 acres with a 1,368 square foot residence with a screened porch, decks, and a shed.

38. The floor plan of the residence on Tract 18 is functional for a weekend cottage but practically inefficient and not the highest and best use of the property that it is an under-improvement for the area.

39. The carrying costs for the Woodcreek Lake Property have totaled over $100,000 since the creation of the Company: $9,836 in 2014; $18,658 in 2015; $22,960 in 2016; $17,974 in 2017; $17,908 in 2018; and at least $15,000 in 2019.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

40. Instead of utilizing the property as contemplated by the Operating Agreement, Beacham and Ellen have used the Woodcreek Lake Property as a personal recreational property despite its significant carrying cost.

41. As the Company's Manager, Beacham has also failed to maintain the Company's accounting records in accordance with Section 6.04 of the Operating Agreement, which requires the Company to establish and maintain each Member's capital account in accordance with Section 704 of the Internal Revenue Code and the capital account rules set forth in Treasury Regulations Section 1.704-l(b)(2)(iv).

42. Treasury Regulations Section 1.704-l(b)(2)(iv) requires that each Member's capital account be increased by the fair market value of property contributed to the Company by such Member on the date of contribution, and such increases are not reflected in the Members' capital accounts.[4]

43. Beacham, as manager of the Company, has also failed to observe the corporate formalities of the limited liability companies owned and controlled by the Company—636 Harden LLC and 640 Harden LLC.

44. The tenants leasing the respective premises from 636 Harden LLC and 640 Harden LLC sell alcoholic beverages to their customers on those premises.

45. Accordingly, Beacham's negligent failure to maintain corporate formalities could subject the Company to additional liability, thereby needlessly exposing the Company's primary assets—29,000 shares of Lockheed Martin common stock—to potential claims.

[4] For example, only $29,000 is reflected in the Members' capital accounts with respect to the 29,000 shares of Lockheed Martin that were contributed by Mother when the fair market value of the shares was $4,285.510.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

46. Since 2015, the cash generated by 636 Harden LLC and 640 Harden LLC has greatly exceeded the cash used by the Woodcreek Lake Property and the Company's administrative expenses: by $30,476 in 2015, by $28,879 in 2016, by $34,490 in 2018, and by $34,943 in 2018.

47. Accordingly, the Company's investment in 29,000 shares of Lockheed Martin common stock and the corresponding dividends generated[5] are unnecessary to meet the current and anticipated needs of the Company based on historical operating results.

48. Section 7.05 of the Operating Agreement requires interim distribution of excess "Company Cash," that is, the amount of cash on hand that exceeds "the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain, and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities."[6]

49. After six years of operations, the Company is in substantially the same position it was when formed except for the passive and substantial increase in the value of its Lockheed Martin shares, now worth over $12 million.

50. Julia does not trust Beacham and Ellen to properly manage the Company's assets, particularly its $12 million investment in Lockheed Martin common stock.

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[5] From 2014 to 2018, the 29,000 shares of Lockheed Martin common stock generated $949,460 in dividends: $120,640 in 2014; $178,350 in 2015; $196,330 in 2016; $216,340 in 2017; and $237,800 in 2018.

[6] Excess Company Cash is the amount of cash on hand that exceeds "the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain, and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities."

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

FIRST CAUSE OF ACTION
(Dissolution Under S.C. Code Ann. § 33-44-801(4))

51. Plaintiff realleges each and every allegation set forth above as if repeated verbatim herein.

52. Section 10.01 of the Operating Agreement provides that "[t]he Company shall dissolve and its affairs shall be wound up . . . [o]n application by a Member, upon entry of a judicial decree as provided in Section 33-44-801(4) of the [South Carolina Uniform Limited Liability Company Act of 1996]."

53. Section 33-44-801(4) provides that "[a] limited liability company is dissolved, and its business must be wound up . . . on application by a member or a dissociated member, upon entry of a judicial decree that" *inter alia*:

> (a) the economic purpose of the company is likely to be unreasonably frustrated;
>
> (b) 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;
>
> (c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;
>
> * * *
>
> (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner . . . .

54. For the reasons discussed above and below, "the economic purpose of the company is likely to be unreasonably frustrated":

a. As stated above, the true purpose for the Company was its service as part of an estate planning technique to effectively decrease the value of the underlying assets for purposes of gifting Membership Shares from Janet to

her three children, and accordingly, that primary purpose behind the Company has been served and is no longer valid because Janet made contemplated gifts years ago prior to her death on April 15, 2015;

b. None of the putative purposes of the Company are being served with respect to the primary assets of the Company, $12 million worth of entirely fungible Lockheed Martin common stock, which need no form of management by the Company to make a profit and for which there is no possible concern about fractional ownership or greater sales potential; and

c. Beacham and Ellen have continued to use the Company's second most valuable asset as a personal recreational property rather than utilizing it in a manner consistent with the purpose of the Company as expressed in the Operating Agreement.

55. Therefore, the Company should be dissolved and its business wound up under Section 33-44-801(4)(a).

56. For the reasons discussed above and below, Beacham and Ellen have "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" as contemplated by Section 33-44-801(4)(b):

a. Beacham and Ellen have used the Woodcreek Lake Property as a personal recreational facility rather than making economic use of the property as contemplated by the Operating Agreement;

b. Without Julia's consent, Beacham and Ellen have diverted distributions owed to Julia under the Operating Agreement to an account managed by

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Ellen for the benefit of six properties jointly owned by Beacham, Ellen, and Julia;

c. Beacham has failed to maintain the Company's accounting records in accordance with Section 6.04 of the Operating Agreement; and

d. Beacham has failed to observe the corporate formalities of the Company as well as the limited liability companies owned and controlled by the Company—636 Harden LLC and 640 Harden LLC—and thereby, needlessly subjected the Company and its Members to potential liability.

57. Accordingly, the Company should be dissolved and its business wound up pursuant to Section 33-44-801(4)(b).

58. For the reasons discussed above and below, it is likewise "not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement":

a. There is serious and longstanding distrust and animosity between Julia and her siblings, as shown by a history of discord and litigation between them;

b. The practical economic reality of the Company's primary asset—$12 million in Lockheed Martin common stock—is entirely incongruent with the putative purposes of the Company as expressed in the Operating Agreement;

c. The practical economic reality of the Company's secondary assets is that they are completely self-sustaining without the need of the Lockheed Martin common stock or the dividends those shares provide; and

d. Beacham and Ellen have ignored and continue to ignore corporate formalities.

59. Therefore, the Company should be dissolved and its business wound up pursuant to Section 33-44-801(4)(c).

60. For the reasons discussed above and below, Beacham and Ellen as "the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner," Julia:

a. For nearly as long as the Company has existed, the relationship between Julia and her siblings has been marked by severe distrust and animosity;

b. Beacham and Ellen have a history of attempting to short Julia what she is entitled from Mother's estate, as shown by the results of the litigation over Mother's Trust, which result Beacham and Ellen are now appealing;

c. There has been an ongoing lack of transparency shown by Beacham and Ellen to Julia as demonstrated by their destruction of documents pertaining to Mother's finances, which could have shed light on inconsistencies in the numbers of shares of Martin Marietta and Lockheed Martin common stock owned by Father and Mother;

d. Contrary to the terms of the Operating Agreement, Beacham and Ellen have diverted distributions owed to Julia to an account maintained by Beacham and Ellen without Julia's consent; and

e. Beacham and Ellen have ignored Julia's request for additional information about these deposits of funds and the Company in general;

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

f. Beacham has failed to observe corporate formalities with regard to the real estate limited liability companies, namely 636 Harden LLC and 640 Harden LLC, and as a result is potentially exposing the assets of BBB&C in the event that a judgment is obtained against one or both real estate limited liability companies.

61. Accordingly, the Company should be dissolved and its business wound up pursuant to Section 33-44-801(4)(e).

62. Therefore, pursuant to Section 33-44-801(4) of the South Carolina Code of Laws, Julia is entitled to the entry of a judicial decree winding up and dissolving the Company, awarding proper distributions in accordance with the Operating Agreement and applicable law, and awarding the other relief requested below.

SECOND CAUSE OF ACTION
(Accounting)

63. Plaintiff realleges each and every allegation set forth above as if repeated verbatim herein.

64. Plaintiff is entitled to a full and complete accounting of all of the business affairs and financial dealings of BBB&C, together with an accounting and tracing of all dealings and transfers between BBB&C, Beacham, and Ellen.

THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty Under S.C. Code Ann. § 33-44-409(h))

65. Plaintiff realleges each and every allegation set forth above as if repeated verbatim herein.

66. As Manager of the Company, Beacham owed Julia the duties of loyalty, care, and good faith as provided by Section 33-44-409(h) of the South Carolina Uniform Limited Liability Company Act of 1996.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

67. By exercising some or all of the rights of Manager of the Company in the management and conduct of the Company's business, Ellen likewise owed Julia the duties of loyalty, care, and good faith as provided by Section 33-44-409(h).

68. By failing to abide by the Operating Agreement and failing to safeguard the profits of the Company until rightfully distributing to Julia her portion of Company Cash, Beacham and Ellen breached duties owed to Julia.

69. Beacham's and Ellen's breaches of their duties to Julia has proximately caused damages to Julia, and Julia is entitled to an award of damages as a result of Beacham's and Ellen's fiduciary misconduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. Dissolving the Company and winding up its business pursuant to Section 10.04 of the Operating Agreement, and in the alternative, removing Beacham as Manager and distributing the shares of Lockheed Martin common stock equally to the Members;

B. Ordering that a full and complete accounting be made;

C. Awarding against all of the Defendants and in favor of the Plaintiff the amount of damages sustained by the Plaintiff as a result of the Defendants' breaches of fiduciary duties;

D. Awarding pre-judgment interest;

E. Awarding punitive damages in favor of the Plaintiff;

F. Awarding the Plaintiff its costs and expenses incurred in this action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses pursuant to Section 11.02 of the Operating Agreement; and

G. Granting such other and further relief as the Arbitrators deem just and proper.

Respectfully submitted,

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Counsel for Plaintiff

Columbia, South Carolina
March 17, 2020

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10 ET SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA

OPERATING AGREEMENT, LLC OF BBB&C FAMILY LLC

This Operating Agreement ("Operating Agreement") is made and entered into this 31st day January, 2014, by and among Janet B. Brooker, Beacham O. Brooker, Jr., Julia B. Brooker and Ellen B. Corontzes, (hereinafter referred to collectively as the "Members" and individually as a "Member") and BBB&C FAMILY LLC (the "Company").

WHEREAS, the parties desire to form the Company as a limited liability company under the laws of the State of South Carolina and they wish to enter into this Operating Agreement to govern the relationship among the Members of this Company and between the Company and the Members.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

ARTICLE I DEFINED TERMS

Section 1.01 Definitions. The terms defined in this Article I shall, for purposes of this Operating Agreement, have the meanings herein specified.

"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), and any successor statute, as amended from time to time.

"Articles" shall mean the initial, amended and restated Articles of Organization filed with the Secretary of State of South Carolina by which BBB&C FAMILY LLC was organized as a South Carolina limited liability company under and pursuant to the Act.

"Bona Fide Offer" shall mean a written offer received by a Member from a third party to purchase all or any part of that Member's Membership Shares which offer sets forth all of the material terms and conditions of the proposed purchase and is not subject to contingencies.

"Capital Contribution" shall mean the amount of cash and fair market value (at the time of contribution) of any property contributed to the Company with respect to the Membership Share held by such Member.

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

"Company" shall have the meaning set forth in the preamble hereof.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

"Company Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company, including, but not limited to, the property described on Exhibit A attached hereto. Exhibit A shall be amended from time to time as necessary to accurately reflect changes in Company Property without the need for any amendment to this Operating Agreement.

"Day" or "Days" shall mean all calendar days, whether or not such days are legal holidays under the laws of the United States or any State.

"Dispose," "Disposing," or "Disposition" shall mean to sell, assign, transfer, give, donate, exchange, bequeath, devise, mortgage, pledge, grant a security interest, or otherwise dispose or encumber, including, without limitation, on account of a court order or otherwise by operation of law (including, but not limited to, foreclosure, being subject to a charging order, or transfer incident to divorce or any similar proceeding), or the acts thereof, to any Person.

"Family Member" shall mean Janet B. Brooker and Janet B. Brooker's lineal descendants, by natural birth or legal adoption, as well as the spouses of her lineal descendants.

"Financial Rights" shall mean the right to share in the net profits, net losses and distributions of the Company. Any reference to a Member's Financial Rights shall mean the percentage of Financial Rights in the Company held by the Member.

"Manager" or "Managers" shall mean the Person(s) elected in accordance with this Operating Agreement to manage and operate the Company.

"Member" shall mean any Member named in the preamble of this Operating Agreement, and any other Person who hereafter acquires a Membership Share and is admitted to the Company as a Member as provided in this Operating Agreement, but does not include any Person who has ceased to be a Member of the Company. For purposes of this Operating Agreement, the settlor of a revocable living trust shall be considered to be the Member.

"Membership Share" shall mean all of the rights, powers, benefits, duties or obligations of a Member under this Operating Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights. The Membership Share of each Member is represented by a percentage. Each Membership Share shall have the same rights and privileges and shall rank equally and be identical in all respects as to all matters.

"Offered Membership Shares" shall mean all of the Membership Shares that are deemed to have been offered for sale to the Company and the other Members pursuant to this Operating Agreement.

"Permitted Transferee" shall mean (i) the Company; (ii) any Member; (iii) any Family Member; (iv) any estate, trust, guardianship, custodianship, conservatorship or other fiduciary arrangement for the sole benefit of any one or more of the individuals described in (ii) or (iii) above and which assures that the Membership Shares will only be held by or for the benefit of such individuals; or (v) any corporation, partnership, limited liability company or other business organization in which the individuals or entities described in (i) - (iv) above are the sole owners and the management and control of which must rest exclusively with any one or more of such individuals.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

"Person" shall mean any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, personal representative or other legal entity or organization.

"Treasury Regulations" shall mean, except where the context indicates otherwise, the permanent, proposed or temporary rules and regulations of the U.S. Department of the Treasury promulgated under the Code, as such rules and regulations may be lawfully changed from time to time.

"Voluntary Transfer" shall mean any Disposition of a Membership Share made by a Member that is not an Involuntary Transfer. An "Involuntary Transfer" is any Disposition of a Membership Share by a Member made on account of a court order or otherwise by operation of law, including, but not limited to, an occurrence of an event of bankruptcy, being subject to a charging order, or any transfer incident to any divorce or marital property settlement or any transfer pursuant to applicable community property, quasi-community property or similar state law.

"Voting Rights" shall mean the right of a Member to vote on any matter as provided in this Operating 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.

Section 1.02 Terms and Usage Generally. All references herein to an "Article," "Section" or "Exhibit" shall refer to an Article or a Section of, or an Exhibit to, this Operating Agreement. Whenever the words "include," "includes" or "including" are used in this Operating Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereto," "hereof," "herein" and "hereunder" and words of similar import when used in this Operating Agreement shall refer to this Operating Agreement as a whole and not to any particular provision of this Operating Agreement. All terms defined in this Operating Agreement shall have the defined meanings when used in any other document made or delivered pursuant hereto unless otherwise defined therein.

ARTICLE II
ORGANIZATION

Section 2.01 Name. The name of the Company is **BBB&C FAMILY LLC.**

Section 2.02 Formation. The Company shall be organized as a South Carolina limited liability company by the filing of Articles pursuant to the Act and the issuance of a Certificate of Existence for the Company by the Secretary of State of South Carolina.

Section 2.03 Designated Office. The Company shall maintain a designated office in the State of South Carolina in accordance with the Act. The designated office shall be at the address set forth in the Articles.

Section 2.04 Registered Agent and Address. The registered agent of the Company in the State of South Carolina and the street address of the registered agent shall be the Person and address set forth in the Articles.

Section 2.05 Principal Office in the United States and Other Offices. The principal office of the Company in the United States shall be at such place as the Managers may designate from time to

time, which need not be in the State of South Carolina. The Company may have such other offices as the Managers may designate from time to time.

Section 2.06 Term Company. The Company shall be a term company within the meaning of the Act. The term of the Company shall commence on the date the Articles are filed with the Secretary of State of South Carolina, unless a later effective date is specified in the Articles, and the existence of the Company shall terminate upon the expiration of its term on December 31, 2054, unless extended or sooner terminated by law or pursuant to the provisions of this Operating Agreement.

Section 2.07 Purposes. The purposes of the Company are to make a profit, increase wealth, acquire, finance, develop, subdivide, exchange, manage, improve, operate, sell, rent, lease real property and to engage in a general investment business as the members shall determine from time to time; to do all things necessary and proper for the effective, efficient and productive management of Company Property; to consolidate and centralize the management of certain properties owned by the Members; to promote the efficient and economical management of the properties by holding them in a single entity; to avoid fractional ownership of certain properties of the Members in order to promote the greater sales potential of the properties; to provide an orderly buy-sell arrangement between the Members; to provide protection from creditors; to avoid potential expensive litigation and disputes over the properties of the Members by providing mechanisms for their management and procedures to resolve disputes; and to promote knowledge and communication as to Company Property.

Section 2.08 No Liability to Third Parties. No Member, Manager or officer, solely by reason of being a Member or acting as a Manager or officer, will be subject to any liability in connection with the debts, obligations or liabilities of the Company. The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, will be solely the debts, obligations and liabilities of the Company.

Section 2.09 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. However, the Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal and state tax income purposes, and this Operating Agreement may not be construed to suggest otherwise.

ARTICLE III
MEMBERS

Section 3.01 Initial Members. The name and address of each initial Member and the percentage of Membership Shares held by such initial Member shall be as set forth on Exhibit B. Exhibit B shall be amended from time to time as necessary to accurately reflect changes in the Members and the Membership Share of any Member without the need for any amendment to this Operating Agreement.

Section 3.02 Admission of New Members. After the date of this Operating Agreement, a Person shall have the right to become a Member of the Company if such Person (i) acquires a Membership Share from a Member and obtains the written consent of all non-Disposing Members who have Voting Rights in the Company; (ii) acquires a Membership Share from a Member and such Disposition is a Permitted Transfer (as defined in Section 9.02); or (iii) is issued any Membership Shares

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

in accordance with Section 3.03. Upon compliance with Section 3.04, any such Person shall automatically be admitted as a Member of the Company and shall be entitled to all rights and powers and subject to all restrictions and liabilities of a Member.

Section 3.03 Issuance of Additional Membership Shares. The timing and terms of any new issuance of Membership Shares of the Company to any Person, including a Member, shall require the unanimous approval of the Members who have Voting Rights in the Company. A Member need give no reason for voting not to issue additional Membership Shares and a Member may unreasonably withhold his or her consent to such issuance.

Section 3.04 Additional Conditions to Recognition of Transfer or Issuance of Membership Shares. Whether or not such Person is admitted as a new Member or will merely be the owner of Financial Rights, such Person must, as a condition to recognizing the effectiveness and binding nature of such transaction:

A. Execute and deliver to the Company a written agreement that such Person has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of this Operating Agreement, as the same may have been further amended, in a form acceptable to the Company.

B. Deliver to the Company such instruments of transfer, assignment and assumption with respect to such transaction as are in form and substance reasonably satisfactory to the Company.

C. Assure compliance with any applicable state and federal laws, including securities law and regulations.

D. Pay or reimburse the Company a fee not to exceed One Thousand ($1,000.00) to cover costs and expenses incurred by the Company in preparing, executing and recording all pertinent documents.

The Company, however, may waive any requirement in this Section.

Section 3.05 Transferee of Membership Share 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, then such transferee shall be entitled to retain the Financial Rights transferred, but shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any other rights of a Member. The transferee is 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 Operating Agreement may change 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 the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred. Upon the transferee being admitted as a Member, the transferring Member shall be relieved of all obligations under this Operating Agreement. 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 the provisions of Section 3.04 of this Operating Agreement have been satisfied.

Section 3.06 No Authority of Members. Except as otherwise provided in this Operating Agreement, or as authorized by the Managers, no Member is an agent of the Company or has the

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authority to make any contracts, enter into any transactions, or make any commitments on behalf of the Company.

Section 3.07 No Right to Withdraw. No Member shall have any right to withdraw from the Company prior to the dissolution and winding up of the Company's business and affairs except (i) with the unanimous consent of all the remaining Members who have Voting Rights in the Company, or (ii) in connection with a transfer of its entire Membership Share in accordance with this Operating Agreement. If a Member attempts to withdraw in violation of the provisions of this Section 3.07, such act shall, as to the Company and the other Members, be void and of no force and effect, nor shall such attempted resignation entitle any Member to receive the fair value of its interest in the Company prior to the dissolution and winding up of the Company's business and affairs.

ARTICLE IV
MANAGEMENT OF COMPANY

Section 4.01 General Authority of Managers.

A. Except as otherwise expressly provided by this Operating Agreement or required by any nonwaivable provision of applicable law, all powers shall be exercised by or under the authority of, and the business and affairs of the Company shall be controlled by the Managers.

B. All actions required to be taken by the Managers hereunder shall be made by the vote of a majority of the number of Managers unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by any express provision of the statutes which are applicable to such vote unless legally overridden by the Articles or this Operating Agreement, a different vote is required, in which case such express provision shall govern and control the decision of such matter.

C. Subject to the foregoing, the Managers shall have full and complete authority, power, right and duty to manage and control the business, affairs and assets of the Company, to make all decisions regarding those matters and to perform any and all acts and activities customary or incident to the management of the Company's business. Unless authorized to do so by this Operating Agreement or by the Managers, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. Specifically, but not by way of limitation, the Managers shall be authorized for and on behalf of the Company to:

1. Borrow money for the Company from banks, other lending institutions, Managers, Members and other Persons, and in connection therewith, to hypothecate, encumber, mortgage and grant security interests in Company Property to secure payment of the borrowed sums;

2. Acquire, hold, own, invest and reinvest, purchase and sell, any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, 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, and to actively trade, speculate on, maintain and manage the same;

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3. Enter into, make, execute and perform all instruments and documents, including, but not limited to, contracts, mortgages, security agreements, deeds, financing statements, partnership agreements, leases, management contracts 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;

4. Employ from time to time persons, firms or corporations for the operation and management of various aspects of the Company's business, including, without limitation, accountants, legal counsel, managing agents, money managers, property managers, contractors, subcontractors, architects, engineers, laborers, suppliers, investment advisors and other advisors to perform services for the Company and to compensate them out of Company Property, notwithstanding the fact that any Manager or Member may have a financial interest in such firms or corporations;

5. Open and maintain bank accounts, investment accounts and other arrangements, draw checks, letters of credit, and other orders for the payment of money and designate individuals (which may be an officer, Manager, Member or any other individual) with authority to sign or give instructions with respect to those accounts and arrangements; and

6. Collect sums due and owing to the Company.

Section 4.02 Limitations on Powers. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

A. The Company shall not sell, or contract to sell, or otherwise dispose of all or substantially all of the Company Property other than in the ordinary course of Company business without the approval of those Members who own Seventy-five (75%) percent of the Voting Rights in the Company. For purposes of this subsection, all or substantially all of the Company Property means Eighty (80%) percent of such property by value in any consecutive twelve (12) month period.

B. The Company shall not hypothecate, encumber and grant a security interest in Company Property without the approval of those Members who own Seventy-five (75%) percent of the Voting Rights in the Company.

C. The Company shall not materially deviate from the purposes of the Company as set forth in this Operating Agreement without the approval of those Members who own Seventy-five (75%) percent of the Voting Rights in the Company.

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 Seventy-five (75%) percent of the Voting Rights in the Company.

Section 4.03 Delegation of Authority and Duties. In managing the business and affairs of the Company and exercising its powers, the Managers may act through Managers or officers to whom authority and duties have been delegated in accordance with this Section.

A. The Managers may, from time to time, delegate to one or more Managers such authority and duties as the Managers may deem necessary or desirable in furtherance of any action that they have authorized on behalf of the Company. Such delegation shall be made by delivering to the

Manager or Managers to whom such powers and duties are delegated written notice specifying the powers and duties delegated and the period of such delegation.

B. The Managers may designate one or more individuals to be officers of the Company. No officer need be a resident of the State of South Carolina, a Manager or a Member. Any officers so designated shall have such authority and perform such duties as the Managers may, from time to time, delegate to them. The Managers may assign titles (including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer) to particular officers. Unless the Managers decide otherwise, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made pursuant to Section 4.03(A). The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Managers. No officer shall be prevented from receiving a salary by reason of the fact that such officer is also a Manager or Member.

Section 4.04 Election of Manager, Number and Term of Office. The Members shall elect one or more Persons as Managers. The initial Manager of the Company shall be Beacham O. Brooker, Jr. Each Manager shall hold office until such Manager dies, is removed pursuant to Section 4.05 or resigns pursuant to Section 4.06. The number of Managers shall be fixed from time to time by the Members, but in no instance shall there be less than one Manager. A Manager need not be a Member or resident of the State of South Carolina.

Section 4.05 Removal. Any and all Managers may be removed, either with or without cause, by a vote of the Members (including a Manager, if such Manager is also a Member with Voting Rights) who own Seventy-five (75%) percent of the Voting Rights in the Company. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member.

Section 4.06 Resignation. Any Manager may resign at any time by giving written notice to each Member. Such resignation shall take effect upon the delivery of the notice to the Members or at such later time as shall be specified in such notice. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member.

Section 4.07 Vacancies. Any vacancy occurring for any reason in the number of Managers shall be filled by a vote of the Members (determined without regard to any Voting Rights owned by a Member who was a Manager but was removed pursuant to Section 4.05 of this Operating Agreement during the preceding 24 month period), unless one or more other Persons then serve as Manager and the Members determine not to fill such vacancy.

Section 4.08 Execution of Documents and Other Actions. Pursuant to Section 4.03, the Managers may act through Managers or officers to whom authority and duties have been delegated. In the absence of such delegation, the signature, authorization or actions of only those number of Managers sufficient to approve such action had such action been properly voted on at a duly called meeting of the Managers shall be required.

Section 4.09 Single Manager. If at any time there is only one Person serving as a Manager, such Manager shall be entitled to exercise all powers of the Managers set forth in this Article IV, and all

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

references in this Article IV and otherwise in this Operating Agreement to Managers shall be deemed to refer to such single Manager.

Section 4.10 Place and Manner of Meetings. It is not contemplated that there will be regular meetings of the Managers. However, meetings of the Managers may be called at any time by any Manager. All meetings of the Managers shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by all Managers. Managers may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.11 Notice of Meetings and Record Date. Written notice stating the time, date, place and purpose of the meeting shall be delivered at least ten (10) Days but no more than sixty (60) Days in advance of the proposed meeting date, either personally or by mail, by or at the direction of the Manager calling the meeting, to each Manager. An affidavit of the mailing or other means of giving any notice of any Managers meeting shall be executed by the Person giving such notice, and shall be filed and maintained in the books and records of the Company. When a meeting of the Managers is adjourned, notice need not be given of any such adjourned meeting if the date, time and place thereof are announced at the meeting at which the adjournment is taken. For the purpose of determining the Managers entitled to notice of or to vote at any meeting of Managers or any adjournment thereof, or in order to make a determination of Managers for any other purpose, the record date shall be the date on which notice of the meeting is mailed or the date on which the resolution of the Managers declaring such action is adopted, as the case may be. When a determination of Managers entitled to vote at any meeting of Managers has been made as provided in this Section 4.11, such determination shall apply to any adjournment thereof.

Section 4.12 Waiver of Notice. When any notice is required to be given to any Manager, a waiver thereof in writing signed by the Manager entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice. In addition, a Manager who attends a meeting waives his or her right to assert any lack of notice, or defect in notice, of the meeting unless he or she states such objection at the outset of the meeting.

Section 4.13 Action without Meeting. The Managers may take action without notice and without a meeting if a consent or consents in writing, setting forth the action so taken, is signed by a sufficient number of Managers, as the case may be, to approve such action had such action been properly voted on at a duly called meeting of the Managers. Every written consent pursuant to this Section shall be signed, dated and delivered to the Company and shall become effective when the requisite number of Managers, as the case may be, have signed the consent, unless the consent specifies a different effective date. The date for determining the Managers entitled to take action without a meeting shall be the date the first Manager signs a written consent. A telegram, telex, cablegram, or similar transmission by a Manager, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a Manager, shall be regarded as signed by the Manager for purposes of this Section. Prompt notice of the taking of any action by the Managers without a meeting by less than unanimous written consent shall be given by the Managers who signed the written consent to those Managers who did not consent in writing to the action.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Section 4.14 Meeting of all Managers. If all of the Managers shall meet at any time and place, either within or outside of the State of South Carolina, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

Section 4.15 Compensation and Reimbursement. The Company shall reimburse a Manager for all reasonable out-of-pocket expenses incurred by the Manager in managing and conducting the Company's business. The compensation of the Managers shall be fixed from time to time by a vote of the Members, and no Manager shall be prevented from receiving such compensation by reason of the fact that he or she is also a Member.

Section 4.16 Liability for Certain Acts. The Managers do not in any way guarantee the return of the Members' Capital Contribution or a profit for the Members from the operations of the Company. No Manager shall be liable or accountable to the Company or to the other Members, in damages or otherwise, for any error in judgment, for any mistake of fact or of law, or for any other act or thing that the Manager may do or refrain from doing in connection with the business and affairs of the Company, except for willful misconduct, gross negligence, fraud, deceit or breach of fiduciary duty, and further for breaches of contractual obligations or agreements between the Managers and the Company or the Managers themselves.

Section 4.17 Indemnity. The Company shall indemnify and hold harmless each Manager for all expenses, costs, losses, liabilities, and damages paid or accrued by such Manager in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State of South Carolina, except to the extent the claim for which indemnification is sought results from an act or omission for which the Manager may be held liable to the Company, a Member or a Manager under Section 4.16 above. Any such indemnification under this Section shall be made by the Company only if authorized by a vote of the Members (determined without regard to any Voting Rights owned by a Member who is also a Manager seeking indemnification). The foregoing rights of indemnification shall not be exclusive of any other rights to which the Managers may be entitled.

Section 4.18 Interested Managers, Officers and Members. No contract or transaction between this Company and one or more of its Managers, officers or Members, or between this Company and any other limited liability company, corporation, partnership, association, or other organization in which one or more of its managers, officers, members or partners are Managers, officers or Members of this Company or have a financial interest in this Company, shall be void or voidable solely because the Manager, officer or Member is present at, participates in, or votes at the meeting which authorizes the contract or transaction if:

A. The contract or transaction is fair as to this Company as of the time it is authorized, approved, or ratified; and

B. The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Managers, officers or Members and the Managers, officers or Members in good faith authorize the contract or transaction.

This Section shall not be construed to invalidate any contract or transaction which would be valid in the absence of this Section.

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Section 4.19 Business Pursuits of Managers and Members. The Managers and Members may engage in other business activities and the Managers shall be obligated by reason of this Operating Agreement to devote only as much of their time to the Company's business as shall be reasonably required in light of the Company's business and objectives and the responsibilities undertaken or assigned to the Managers. This Operating Agreement shall not preclude or limit in any respect the right of any Manager or Member to engage in or invest in any business activity of any nature or description, whether or not competitive with the business of the Company and a Manager or Member shall have no obligation to offer any opportunity to the Company, the other Managers or the other Members. Any such activity may be engaged in independently or with other Managers and Members. No Manager or Member shall have the right, by virtue of this Operating Agreement or the relationship created hereby, to any interest in such other ventures or activities or to the income or proceeds derived therefrom. The pursuit of such other ventures shall not be deemed wrongful or improper and any Manager or Member shall have the right to participate in or to recommend to others any such investment opportunity. The Company and each Manager and Member hereby expressly consents to the continued and future ownership and operation by the other Managers and Members of such businesses and activities and waives any claim for damages or otherwise, or rights to participate therein or with respect to the operation and profits or losses thereof.

Section 4.20 Books and Records. The Managers shall cause the Company to maintain at its principal place of business the following Company records:

A. A current list of the full name and last known mailing address of each Member and his or her Membership Share.

B. A current list of the full name and last known mailing address of each Manager.

C. A copy of the Articles and this Operating Agreement, together with all amendments thereto.

D. Copies of the Company's federal, state and local income tax returns and reports for the three (3) most recent fiscal years.

E. Original or copies of all minutes, actions by written consent, notice of meetings and waivers of notices.

Each Member, or the legal representative of such Member, may, at any time during normal business hours, inspect and copy the books and records of the Company. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

ARTICLE V
ACTIONS OF MEMBERS

Section 5.01 No Required Meetings. It is not contemplated that there will be regular meetings of the Members. However, meetings may be called at any time by any Manager or by any Member or Members who own Fifty (50%) percent of the Voting Rights in the Company. All meetings

shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by all Members.

Section 5.02 Notice of Meetings. Written notice stating the time, date, place and purpose of the meeting shall be delivered at least ten (10) Days but no more than sixty (60) Days in advance of the proposed meeting date, either personally or by mail, by or at the direction of the Persons calling the meeting, to each Member entitled to vote as such meeting, provided that such notice may be waived as provided in this Operating Agreement. An affidavit of the mailing or other means of giving any notice of any Members' meeting shall be executed by the Person giving such notice, and shall be filed and maintained in the books and records of the Company. When a meeting of the Members is adjourned, notice need not be given of any such adjourned meeting if the date, time and place thereof are announced at the meeting at which the adjournment is taken; provided, however, that if a new record date must be fixed for the adjourned meeting in accordance with Section 5.03, then notice of the adjourned meeting shall be given as in the case of an original meeting.

Section 5.03 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members, or any adjournment thereof, to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the record date shall be the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution or action is adopted, as the case may be. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section 5.03, such determination shall apply to any adjournment thereof; provided, however, that if a meeting is adjourned for more than forty-five (45) days, a new record date must be fixed.

Section 5.04 Conduct of Meetings. All meetings of the Members shall be presided over by the chairman of the meeting who shall be a Member designated by a majority of the Members at the meeting. The chairman of the meeting shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion.

Section 5.05 Member Voting. All actions required to be taken by the Members shall be made by the vote of the Members who own more than Fifty (50%) percent of the Voting Rights in the Company, unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by any express provision of the statutes which are applicable to such vote unless legally overridden by the Articles or this Operating Agreement, a different percentage is required, in which case such express provision shall govern and control the decision of such matter.

Section 5.06 Participation in Meetings. Members may participate in such meetings of the Members by means of conference telephone or similar communications equipment by means of which all Members participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 5.07 Proxies. Each Member may authorize any Person to act for him or her by proxy on all matters in which a Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be in writing and signed by the Member or his or her attorney-in-fact or other legal representative. The proxy shall be delivered to a Manager of the

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Company at or before the meeting at which the appointment is to be effective and shall not be valid after the final adjournment of the meeting.

Section 5.08 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the Member entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice. A Member who attends a meeting waives his or her right to assert any lack of notice, or defect in notice, of the meeting unless he or she states such objection at the outset of the meeting.

Section 5.09 Action Without Meeting. The Members may take action without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the Members holding sufficient Voting Rights, as the case may be, to approve such action had such action been properly voted on at a duly called meeting of the Members. Every written consent pursuant to this Section shall be signed, dated and delivered to the Company and shall become effective when the Members with requisite Voting Rights, as the case may be, have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent. Prompt notice of the taking of any action by Members without meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action.

ARTICLE VI
CAPITAL ACCOUNTS AND CONTRIBUTIONS

Section 6.01 Initial Contributions. Upon the execution of this Operating Agreement, each initial Member shall contribute to the Company the monies and/or properties which are specified in Exhibit A as that Member's initial Capital Contribution in exchange for the issuance by the Company of Membership Shares to each such initial Member as set forth on Exhibit B. No Membership Shares shall be issued to an initial Member until the full amount of consideration therefore has been paid.

Section 6.02 Subsequent Contributions.

A. Mandatory Contributions. The Members recognize that the income produced by the Company's business may be insufficient to pay the operating costs of the Company. Without creating any rights in favor of any third party, if the Managers determine that additional funds from the Members are necessary and appropriate for the conduct of the Company's business (including without limitation, any funds needed for working capital, any operating deficit or the purchase, lease, acquisition, expansion or construction of additional Company Property), then upon the Managers making such determination, the Managers shall provide written notice of such request for additional Capital Contributions to each Member, which notice must include the aggregate amount of the Capital Contributions and a statement in reasonable detail of the proposed uses of the Capital Contributions. Any such additional Capital Contributions shall require the approval of those Members who own more than fifty (50%) percent of the Voting Rights in the Company. Upon such approval, the Managers shall notify each Member in writing of the date (which date may be no earlier than fifteen (15) Days following the date of the Members' approval) before which the Capital Contributions must be made. Additional Capital Contributions shall be contributed by the Members, in cash, on or before the date specified in the written notice, in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. If any Member makes a Capital Contribution to the Company, such Capital Contribution shall increase only that Member's capital account and such Capital Contribution shall in no event be

allocated pro rata to the capital accounts of the other Members. Solely for purposes of this Section, a Member who has transferred his or her Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

B. Default. If a Member does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Operating Agreement, that Member is in default ("Defaulting Member"). If the Defaulting Member fails to cure the default in full within thirty (30) Days of the date such contribution was due, the Defaulting Member shall pay to the Company a late fee of Two Hundred ($200.00) Dollars. If the defaulting Member has failed to cure the default in full (any unpaid contribution and late fee) within sixty (60) Days of the date the contribution was due, the Defaulting Member shall not have any Voting Rights and shall not be entitled to participate in the management of the Company until such default is fully cured.

C. Extended Default. If, within ninety (90) Days after the due date of the contribution, the Defaulting Member has not completely cured his or her default (any unpaid contribution and late fee), such Defaulting Member shall be notified in writing by the Company that his or her default has exceeded ninety (90) Days and that he or she is in extended default. By execution of this Operating Agreement, each Member expressly agrees and understands that, in the event such Member thereafter receives written notice that he or she is in extended default, the Company may exercise one or more of the following remedies:

1. The Members who made their Capital Contribution may, but shall not be required to, make further additional contributions in such proportion as they might agree among themselves, or in the absence of any such agreement, in proportion to their Financial Rights, up to the full amount not contributed by the Defaulting Member. After such contribution is made, each Member's Membership Share shall be adjusted and determined by dividing the aggregate contributions of all the Members since the inception of the Company into the aggregate contribution of each Member. The resulting quotient with respect to each Member shall be the adjusted Membership Share of the Member.

2. The amount that the Defaulting Member is in default may be considered a loan made by the Company to the Defaulting Member ("Deficit Loan"). A Defaulting Member's Deficit Loan shall be payable on demand of the Company as well as out of distributions from the Company otherwise payable to the Defaulting Member (whether before or after dissolution of the Company). Said loan shall bear interest, per annum, at a rate of two (2%) percent above the prime rate as published in the Wall Street Journal as of the day following the expiration of the ninety (90) Day period or, if greater, the rate of interest applicable under Section 1274 of the Code, adjusted each January 1 the Deficit Loan is outstanding. The Defaulting Member shall not be entitled to receive any distributions from the Company until the Deficit Loan of the Defaulting Member has been paid in full. The Defaulting Member hereby grants to the Company a security interest in his or her Membership Shares to the extent of the Defaulting Member's Deficit Loan. If the Defaulting Member fails to satisfy his Deficit Loan within thirty (30) Days after the Company's demand for payment, the Defaulting Member shall forfeit his or her Membership Shares to the extent of any unpaid obligations. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture. To the extent the Defaulting Member's Deficit Loan remains unsatisfied, the Deficit Loan of the Defaulting Member shall be a personal debt obligation of the Defaulting Member, and the Company may resort to any available legal or equitable remedy to enforce said obligation.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

D. **Continuing Liability of Member in Default.** A Member who is in default or extended default under this Section shall in no way be relieved of his or her obligation to pay additional contributions which accrue either before or after the date of such default.

Section 6.03 Return of Capital. No interest shall accrue on any Capital Contribution and except as specifically provided in this Operating Agreement, no Member shall be entitled to withdraw or obtain a return of any Capital Contribution or, when such withdrawal of capital is permitted, to demand a distribution of property other than cash.

Section 6.04 Capital Accounts. The Company shall establish and maintain for each Member a separate 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)(2)(iv). Each Member's capital account shall be adjusted as necessary to reflect the economic conditions of the Membership Shares. These adjustments shall include, but are not limited to, the following:

A. Adjustments to reflect each Member's distributive share of Company profits and losses, including capital gains and losses and tax-exempt income;

B. Adjustments to reflect each Member's additional contributions to the Company; and

C. Adjustments to reflect distributions made by the Company to each Member.

Section 6.05 Transferee Capital Accounts. In the event of a Disposition of a Membership Share in accordance with the terms of this Operating Agreement, the capital account of the transferring Member shall become the capital account of the transferee to the extent it relates to the transferred Membership Share.

Section 6.06 Compliance with Section 704(b) of the Code. The provisions of this Article VI 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 and credit pursuant to this Operating Agreement to have substantial economic effect under Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. Notwithstanding anything herein to the contrary, no Member shall have any obligation to restore all or any portion of a deficit balance in such Member's capital account.

ARTICLE VII
ALLOCATIONS AND DISTRIBUTIONS

Section 7.01 Allocation of Profits and Losses. The Company's net profits and net losses (and each item of income, deduction, gain, loss and credit that makes up net profits and net losses) shall be computed in accordance with professionally accepted accounting principles, consistently applied and appropriate for the method of accounting selected by the Members for use by the Company. Except as provided in Sections 7.02 and 7.03, the net profits and net losses and other items of income, gain, loss, deduction and credit shall be apportioned among the Members in accordance with their Financial Rights in the Company.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Section 7.02 Regulatory Allocations. Notwithstanding anything to the contrary herein, any special allocations required to be made pursuant to the Treasury Regulations promulgated under Section 704 of the Code, including those related to minimum gain chargebacks and qualified income offsets, which qualified income offset rules of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations are hereby incorporated by reference, shall be made prior to the allocations set forth in Section 7.01 and in the order of priority set forth in the Treasury Regulations. It is the intent of the Members that, to the maximum extent possible, all regulatory allocations will be offset either by other regulatory allocations or special allocations of other items of Company income, gain, loss or deduction such that, after all such regulatory allocations are made, each Member's capital account balance is, to the maximum extent possible, equal to the capital account balance that such Member would have had if the regulatory allocations were not contained in this Operating Agreement, and all allocations were made pursuant to Section 7.01 hereof.

Section 7.03 Section 704(c) of the Code. The Company shall cause depreciation and/or cost recovery deductions and gain or loss with respect to each item of property to be allocated among the Members for income tax purposes in accordance with the principles of Section 704(c) of the Code and Treasury Regulations promulgated thereunder using the "traditional" method as defined in Section 1.704-3(b) of the Treasury Regulations. Allocations pursuant to this Section 7.03 are solely for purposes of federal and state income taxes and shall not affect, or in any way be taken into account in computing, any Member's capital account or share of profits, losses, other items, or distribution pursuant to any provisions of this Operating Agreement.

Section 7.04 Allocations Attributable to Particular Periods. If Financial Rights are transferred, or are increased or decreased by reason of the admission of a new Member or otherwise, at any time other than the end of a tax year, the share of profits, losses or any other items to be allocated (in respect of the Financial Rights so transferred) shall be allocated between the transferor and the transferee in the same ratio as the number of days in such fiscal year before and after the effective date of such transfer. The provisions of this Section 7.04 shall not apply to any profit or loss attributable to a sale or other disposition of all or substantially all of the Company Property, or to other extraordinary non-recurring items. Such profit and loss shall be allocated to the owner of the Financial Rights as of the date of closing of the sale or other disposition, or, with respect to other extraordinary non-recurring items, the date the profit is realized or the loss is incurred, as the case may be.

Section 7.05 Interim Distributions. Interim distributions to the owners of the Financial Rights shall be made in accordance with the following:

A. At periodic intervals as determined by the Managers, but no less frequently than annually, the Managers shall determine the amount of profits and losses of the Company for such period and the allocation of such profits and losses to the Member's capital accounts. The Managers shall determine in their reasonable judgment to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities. Any Company Cash in excess of such amounts shall be distributed to the owners of the Financial Rights. All distributions must be made simultaneously to each of the owners of the Financial Rights, and must be made in proportion to the owners' Financial Rights. Such distributions may be in cash or Company Property or partly in both, as determined by the Managers. Items of Company Property need not be distributed proportionately, provided the Managers agree upon the value

of the property being distributed and the value of the property and the cash received by each owner of the Financial Rights is proportionate to such owner's Financial Rights.

B. Notwithstanding anything herein to the contrary, the Company shall make a minimum pro rata distribution from the Company Cash to the Members within seventy-five (75) Days after the end of each tax year in an amount as shall be necessary to make the distributions to the Members for the entire tax year at least equal to the amount necessary to pay each Member's federal and state income taxes for that tax year attributable to their pro rata share of the Company's net income.

Section 7.06 Distribution in Kind. Except as provided by the Articles or this Operating Agreement, a Member, regardless of the nature of the Member's contribution, may not demand to receive a distribution from this Company in any form other than cash.

Section 7.07 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution shall be declared and paid if payment of such distribution would cause the Company to violate any limitations on distributions provided in the Act.

Section 7.08 Right to Set-Off. Except as otherwise provided in this Operating Agreement, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE VIII
TAX MATTERS

Section 8.01 Preparation of Tax Returns. The Managers shall arrange for the preparation and timely filing of all returns of Company income, gains, deductions, losses and other items required of the Company for federal, state and local income tax purposes, and the delivery to the Members of all tax information reasonably required by the Members for federal, state and local income tax reporting purposes.

Section 8.02 Tax Elections. The Managers shall determine whether to make any available election (including, without limitation, the election under Section 754 of the Code) or choose any available reporting method pursuant to the Code or state or local tax law. The Managers shall have the right to seek to revoke any such election (including, without limitation, the election under Section 754 of the Code) or change any reporting method.

Section 8.03 Tax Matters Partner. Beacham O. Brooker, Jr. shall be the initial "tax matters partner" of the Company within the meaning of Section 6231(a)(7) of the Code, and as such, shall be solely responsible for representing the Company (at the Company's expense) in all dealings with the U.S. Internal Revenue Service and any state, local and foreign tax authorities. If Beacham O. Brooker, Jr. is no longer a Member or resigns as the tax matters partner, the Members shall designate one Member as the successor tax matters partner. The tax matters partner shall comply with the provisions of this Operating Agreement in the performance of its duties as tax matters partner. The tax matters partner shall receive no compensation for serving as tax partner. All costs and expenses incurred by the tax matters partner in performing its duties as such (including legal and accounting fees) shall be borne by the Company. Nothing herein shall be construed to restrict the Company from engaging an accounting firm to assist the tax matters partner in discharging its duties hereunder.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ARTICLE IX
TRANSFER OF MEMBERSHIP SHARES

Section 9.01 Transfer of Membership Shares Generally. Except for a Disposition specifically permitted by this Article IX, no Member shall Dispose of any Membership Shares held by such Member without the written consent of all non-Disposing Members who have Voting Rights in the Company. If such consent is obtained, then the following Sections of this Article IX shall be of no effect, and the provisions of Article III shall govern the rights of the transferor and transferee. With regards to all other Dispositions, the provisions of this Article IX shall control, and any attempted Disposition of Membership Shares in contravention of this Article IX shall be null and void, and neither the Company nor the Members shall recognize the same. Any Member who Disposes or attempts to Dispose any Membership Share except in compliance herewith shall be liable to, and shall indemnify and hold harmless, the Company and other Members for all costs, expenses, damages and other liabilities resulting therefrom.

Section 9.02 Permitted Transfers. Any Member may at any time Dispose of all or any portion of his or her Membership Shares if such Disposition is a Permitted Transfer. For purposes of this Operating Agreement, a Permitted Transfer is the Voluntary Transfer by a Member of his or her Membership Share to a Permitted Transferee. Any Disposition that is a Permitted Transfer shall be effective to assign the right to become a Member, and, without the need for any action or consent of any other Person, a transferee of such Membership Share shall be admitted as a Member upon the transferee's compliance with Section 3.04 hereof.

Section 9.03 Right of First Refusal. If a Member attempts to Dispose of (other than in a Permitted Transfer) all or any portion of his or her Membership Shares without obtaining the written consent of all non-Disposing Members, such Member (the "Offering Member") is deemed to have offered to the Company, then to all of the remaining Members (the "Remaining Members"), on a pro rata basis, the right to purchase all, but not less than all, of the Membership Shares owned by the Offering Member at a price determined in accordance with Section 9.05 and upon the terms contained in Section 9.06; provided, however, that if a Member attempts to Dispose of only a portion of his or her Membership Shares, then the Company's and the Members' options shall apply only to the portion of the Membership Shares that is proposed to be transferred.

Section 9.04 Exercise of Right of First Refusal.

A. Upon the occurrence of an event specified in Section 9.03 above, the Offering Member, or their legal representative, must give written notice of such event to the Company and each Remaining Member (the "First Refusal Notice"), which notice must contain a description of the Membership Shares to be transferred, the name, address and business occupation of the proposed transferee, the proposed sales price or other consideration, the proposed sales terms (including the relative percentages of cash and debt instruments, and the duration, interest rate, and payment schedule of any such debt instruments) and a copy of the Bona Fide Offer, if applicable.

B. The Managers shall have until the later of (i) thirty (30) Days following the date the First Refusal Notice was delivered to the Company, and (ii) fifteen (15) Days after the purchase price is determined pursuant to Section 9.05 (such period, the "Original Option Period") in which to notify the Offering Member and the Remaining Members in writing whether the Company elects to purchase all or any part of the Offered Membership Shares.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

C. If the Managers do not elect to purchase all of the Offered Membership Shares within the Original Option Period (the Offered Membership Shares which the Company elects not to purchase being referred to as the "Refused Shares"), each Remaining Member shall have fifteen (15) Days following the end of the Original Option Period (such period, the "Second Option Period") in which to notify the Offering Member in writing whether it elects to purchase all or any part of its pro rata share (based on the percentage of the Membership Shares owned by such Remaining Member bears to the percentage of Membership Shares owned by all Remaining Members) of the Refused Shares.

D. If a Remaining Member does not elect to purchase all of its pro rata share of the Refused Shares within the Second Option Period, the Offering Member must immediately give written notice of such event to each Remaining Member who elected to purchase all of its pro rata share of the Refused Shares (the "Second Refusal Notice"). Each such Remaining Member shall have fifteen (15) Days from the date the Second Refusal Notice is given (such period, the "Third Option Period") in which to notify the Offering Member in writing whether it elects to purchase its pro rata share (based on the percentage of the Membership Shares owned by such Remaining Member bears to the percentage of Membership Shares owned by all Remaining Members then entitled to an option) of the Refused Shares previously rejected by a Remaining Member. Subject to the condition that each Remaining Member so entitled to an option shall first be permitted to purchase or reject the maximum number of Membership Shares to which he or she is entitled pursuant to the ratios hereinbefore described, such Remaining Members shall be free to mutually agree by unanimous consent to the portion of Refused Shares to be purchased by each.

E. If the Remaining Members do not elect to purchase all (but not less than all) of the Refused Shares by the expiration of the Third Option Period, the Offering Member may, during the thirty (30) Days following the expiration of the Third Option Period, complete the intended Disposition of all (but not less than all) of the Offered Membership Shares to the proposed transferee upon the terms and conditions specified in the First Refusal Notice. Unless and until the proposed transferee is admitted as a Member in accordance with Section 3.02, the rights of the proposed transferee are as provided in Section 3.05. If the Disposition is not completed within the thirty (30) Day period described above, any attempted Disposition will be deemed pursuant to a new offer and this Section shall again apply.

Section 9.05 Purchase Price.

A. If the transaction described in the First Refusal Notice is a proposed transfer of the Membership Shares pursuant to a Bona Fide Offer, then the purchase price shall be at the price and on the terms and conditions, proportionately, as were contained in the Bona Fide Offer; provided, however, that if any consideration to be paid pursuant to the Bona Fide Offer is other than cash or an obligation to pay money, the purchasing party shall have the option to pay either such non-cash consideration or the fair market value thereof.

B. If the event giving rise to the option is not pursuant to a Bona Fide Offer (for example, a gift or a pledge of the Membership Shares, a transfer incident to or by virtue of divorce or equitable distribution proceedings, or the occurrence of an event of bankruptcy with respect to the Member), then the purchase price shall be the fair market value of the Offered Membership Shares as of the date of event giving rise to the options.

1. The Offering Member and the Managers (excluding the Offering Member, if the Offering Member is also a Manager) shall attempt to agree in writing as to the fair market value of the Offered Membership Shares.

2. If no such agreement can be reached within fifteen (15) Days following the date the First Refusal Notice was delivered to the Company, then the fair market value (taking into account all applicable valuation discounts, including but not limited to, minority, lack of marketability, undivided interests in real estate, voting versus non-voting interest, and all costs, expenses and damages sustained by the Company and the Remaining Members as a result of a Member's wrongful dissociation) for the Offered Membership Shares shall be determined by the agreement of two (2) appraisers. The Offering Member shall name one appraiser and the Managers (excluding the Offering Member, if the Offering Member is also a Manager) shall name the other appraiser. Both appraisers must have at least five (5) years experience valuing Membership Shares similar to the one being offered hereunder. The parties must appoint their respective appraiser by delivering written notice of the name, address and telephone number of their appraiser to each other within seven (7) Days after the expiration of the above referenced fifteen (15) Day period. If either party fails to appoint an appraiser within the time period required herein, the appraiser appointed by the other party shall unilaterally establish the fair market value of the Offered Membership Shares by written opinion. If both parties appoint an appraiser within the seven (7) Day period, these two appraisers shall establish the fair market value of the Offered Membership Shares in a single written opinion agreed on by both of them. If the two appraisers cannot agree on the fair market value within thirty (30) Days after the last of them is appointed, each appraiser shall render their own written opinion and the fair market value shall be the average of the two opinions. The fees and costs of the appraiser appointed by the Offering Member shall be paid by the Offering Member. The fees and costs of the appraiser appointed by the Managers shall be paid by the Company. Fair market value is defined as the cash equivalent price at which property would change hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of relevant facts. The hypothetical buyer and seller are assumed to be able, as well as willing, to trade and are assumed to be well-informed about the property and the market for such property. The purchase price as determined herein shall be conclusive and binding upon the parties, their legal representative, personal representative, heirs, transferees, successors and assigns.

If the Offering Member is also the sole Manager, then the actions of the Managers under this Section 9.05(B) shall be taken by the Members.

Section 9.06 Payment of Purchase Price.

A. If the purchase relates to a proposed transfer of the Offered Membership Shares due to a Bona Fide Offer, the purchase price for the Offered Membership Shares shall be paid in accordance with the terms, proportionately, as were contained in the Bona Fide Offer.

B. If the event giving rise to the option is not pursuant to a Bona Fide Offer, then unless the parties mutually agree to different terms, the purchase price shall be paid in one hundred twenty (120) equal and consecutive monthly installments of principal plus interest commencing on the first day of the month after the date of the closing. Each purchaser shall execute and deliver to the seller a separate promissory note made payable to the order of the seller which shall bear interest, per annum, at the prime rate as published in the Wall Street Journal at the date of the closing. The purchaser shall have the right to prepay all or any part of the principal of the note at any time without penalty or premium. All payments, when received, shall be applied first to accrued interest and then to principal. The note shall

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

provide that immediately 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 delivery of the note, the Offered Membership Shares shall be conveyed to the purchaser. The purchaser's payment obligations under the note will be secured by a security interest in the Offered Membership Shares.

Section 9.07 Closing. The purchase of the Offered Membership Shares shall take place at a closing to be held not later than the thirtieth (30th) Day after the last option period is exercised or lapses, at the Company's primary place of business, or at any other place to which the parties agree. At the closing, each purchaser will pay for the Offered Membership Shares in accordance with Section 9.06 and the seller will deliver such instruments of transfer, assignment and assumption with respect to such transaction and shall transfer such interest free and clear of any liens, encumbrances or any interests of any third party. Each Member appoints the Company as his or her agent and attorney-in-fact to execute and deliver all documents needed to convey his or her Offered Membership Shares if such selling Member is not present at the closing. This power of attorney is coupled with an interest and does not terminate on the Member's disability or death, and continues for so long as this Operating Agreement is in effect.

ARTICLE X
DISSOLUTION, LIQUIDATION, AND TERMINATION

Section 10.01 Dissolution. The Company shall dissolve and its affairs shall be wound up upon the first to occur of the following:

A. The written consent of all Members;

B. The expiration of the period fixed for the duration of the Company set forth in the Articles;

C. Upon an event 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;

D. On application by a Member, upon entry of a judicial decree as provided in Section 33-44-801(4) of the Act; or

E. Upon an administrative dissolution as provided in Section 33-44-809 of the Act, but if the Company is reinstated pursuant to Section 33-44-811 of the Act, the reinstatement is effective retroactively to the date of the administrative dissolution.

Section 10.02 Date of Dissolution. Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until the assets of the Company shall have been distributed as provided herein and the Articles of Termination have been filed with the Secretary of State of South Carolina. Notwithstanding the dissolution of the Company, prior to the termination of the Company, as aforesaid, the business of the Company and the affairs of the Members, as such, shall continue to be governed by this Operating Agreement.

Section 10.03 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,

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

the Members may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (i) 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 (ii) the rights of a third party accruing under 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.

Section 10.04 Winding Up and Termination. On dissolution of the Company, if the Members do not continue the Company's business under Section 10.03, the Managers shall appoint one or more Managers to serve as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company with all of the power and authority of the Managers. The steps to be accomplished by the liquidator are as follows:

A. First, sell or otherwise liquidate any or all of the Company's assets, except to the extent that the liquidator may determine to distribute in kind any assets to the Members;

B. Second, pay, satisfy or discharge from Company Property all of the debts, liabilities and obligations of the Company (including liabilities to Members who are also creditors, to the extent permitted by law) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent or unforeseen liabilities or obligations in such amount and for such term as the liquidator may reasonably determine);

C. Third, the assets of the Company shall be distributed proportionately among the Members in accordance with their positive capital account balances as determined after taking into account all capital account adjustments for the taxable year of the Company during which the liquidation of the Company occurs, as necessary to bring the balance of all capital accounts to zero. Any such distributions to the Members in respect to their capital accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations.

D. Fourth, all remaining assets shall be distributed proportionately among the Members based on their respective percentages of Financial Rights.

Section 10.05 Termination of Company. When all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, have been distributed to the Members in the manner provided for in this Operating Agreement, the Company's affairs shall terminate and the liquidator shall file the Articles of Termination with the Secretary of State of South Carolina, as well as any and all other documents required to effectuate the termination of the Company under the Act.

Section 10.06 Distribution in Kind. The liquidator may distribute assets in kind to the Members or to satisfy any or all of its obligations. If the liquidator distributes 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 in question. The fair market value of each asset or group of assets appraised shall be the average of the two appraisals.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Section 10.07 Gain or Loss. Any gain or loss on the disposition of Company Property in the process of liquidation shall be credited and charged to the Members in proportion to their respective percentage of Membership Shares, except that gain or loss with respect to property contributed to the Company by a Member shall be shared among the Members so as to take account of any variation between the basis of the property so contributed and its fair market value at the time of contribution, in accordance with any applicable Treasury Regulations. Any property distributed in kind in the liquidation shall be valued and treated as though it were sold and the cash proceeds distributed.

Section 10.08 Deficit Capital Accounts. Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from deductions and losses of the Company (including non-cash items such as depreciation) or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective interest in the Company, upon dissolution of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's capital account to zero.

Section 10.09 Company's Assets Sole Source. The Members shall look solely to the assets of the Company for the payment of any debts and liabilities owed by the Company to the Members and for the return of their Capital Contributions and liquidation amounts. If the Company Property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of one or more Members, such Member shall have no recourse against the Company or any other Member, except to the extent that such other Member may have outstanding debts or obligations owing to the Company.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01 Arbitration. Any dispute or controversy between the parties hereto arising out of, under, or in connection with, or in relation to, this Operating Agreement shall be submitted to binding arbitration in accordance with South Carolina Code Sections 15-48-10, et seq., as such may be amended from time to time (the South Carolina Uniform Arbitration Act, "SCUAA"). All arbitration proceedings shall be conducted in Barnwell County, South Carolina, or by mutual agreement of the parties, wherever else is most convenient for a rapid resolution of the matter. Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding. The arbitrators shall be selected as provided in the SCUAA, and the arbitrators shall render a decision on any dispute within one hundred twenty (120) Days after the last of the arbitrators has been selected. If any party to this Operating Agreement fails to select an arbitrator with regard to any dispute submitted to arbitration under this Section 11.01 within thirty (30) Days after receiving notice of the submission to arbitration of such dispute, then the other party shall select an arbitrator for such non-selecting party. The decision of the arbitrators shall be final and binding on the parties, who specifically renounce any judicial review of the award, and agree that judgment on the award may be enforceable in any court of competent jurisdiction.

Section 11.02 Proceeding Expenses. In any controversy, claim or dispute arising out of, or relating to, this Operating Agreement or the method or manner of the performance hereof, the prevailing party shall be entitled to, in addition to any other relief, recovery of proceeding expenses. In determining the award of proceeding expenses, attorney's fees, arbitrator fees, proceeding costs, cost of investigation and other reasonable expenses shall be included. For the purposes of this provision, the term

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

"proceeding" shall include arbitration, administrative, bankruptcy and judicial proceedings, including appeals therefrom or enforcement of decisions thereof.

Section 11.03 Amendment or Modification. This Operating Agreement and the Articles may be amended and modified from time to time only by a written instrument unanimously adopted and executed by all Members.

Section 11.04 Construction. The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation. Whenever the context so requires, the gender of all words used in this Operating Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All such Exhibits read as of the date of this Operating Agreement or, as to any Exhibits bearing a particular date, as of any other date specified therein.

Section 11.05 Severability. If any provision of this Operating Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Operating Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

Section 11.06 Entire Agreement; Supersedure. This Operating Agreement cancels and supersedes all prior written or oral agreements among the parties hereto respecting the within contained subject matter and represents the entire agreement between the parties hereto with respect to the transactions contemplated hereby.

Section 11.07 Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

Section 11.08 Binding Effect. All rights, obligations and duties provided for in this Operating Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors and permitted assigns; provided, however, that all rights, obligations and duties of the Members shall be personal to each of them and, except as herein expressly provided, may not be assigned or transferred.

Section 11.09 Governing Law. This Operating Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of South Carolina, without regard to its conflicts of laws principles. In the event of a direct conflict between the provisions of this Operating Agreement and (i) a mandatory provision of the Articles, or (ii) any mandatory provision of the Act, the applicable provision of the Articles or the Act shall control.

Section 11.10 Notices. Except as otherwise provided in this Operating Agreement, any notice, offer, acceptance, right, option or other communication required or permitted under this Operating Agreement shall be exercisable and made only upon the giving/delivery of written notice to the other party, and shall be deemed given/delivered when personally delivered or, if mailed, three (3) Days after

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

the date it was postmarked by the United States Postal Service, if it was sent by first class mail, with postage prepaid. Notice to any Member is valid if sent to him or her at such Member's address as it appears in the Company's records. Notice to any Manager is valid if sent to him or her at such Manger's address as it appears in the Company's records. Notice to the Company is valid if sent to it at the Company's designated office as set forth in the Articles.

Section 11.11 Counterparts. This Operating Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

Section 11.12 Conflicting Provisions. To the extent that one or more provisions in this Operating Agreement appear to be in conflict with one another, then the Company shall have the right to choose which of the conflicting provisions are to be enforced. Wide latitude is given to the Company in interpreting the provisions of this Operating Agreement to accomplish the purposes and objectives of the Company, and the Company may apply this Operating Agreement in such a manner as to be in its best interest, even if such interpretation or choice of conflicting provisions to enforce is detrimental to one or more Members.

Section 11.13 Effective Date. This Operating Agreement shall become effective upon the execution of this Operating Agreement by all the parties hereto.

ARTICLE XII
DISCLOSURE

The parties acknowledge that the law firm of Todd & Johnson, L.L.P. (the "Law Firm") prepared this Operating Agreement on behalf of the parties hereto. There is an inherent potential for conflicts of interest among the parties to the Operating Agreement because the Operating Agreement establishes the rights and obligations of each of the parties to the Operating Agreement. Due to such potential conflicts of interest, the Law Firm hereby advises each of the parties that it would be in their best interest to obtain the services of their independent legal counsel to review this document. The parties hereby waive any potential conflicts of interest that may arise as a result of the above actions by the Law Firm, whether or not one or more of the parties to this Operating Agreement may have consulted with separate legal counsel concerning the Operating Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Operating Agreement the day and year first written above.

WITNESSES:

BBB&C FAMILY LLC

By: _____
Beacham O. Brooker, Jr., Manager

MEMBERS:

Janet B. Brooker, by Beacham O. Brooker, Jr. as attorney-in-fact under power of attorney recorded in Richland County, SC in Book 1368 at Page 495

Beacham O. Brooker, Jr.

Julia B. Brooker

Ellen B. Corontzes

The undersigned, who is the duly elected manager of the Company, hereby agrees to be bound by the provisions of this Operating Agreement, and any amendments thereto.

2/16/14
Date

Beacham O. Brooker, Jr.

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

EXHIBIT A

COMPANY PROPERTY

Property		Value
Initial Capital Contribution		
Janet B. Brooker 29,000 shares of Lockheed Martin, common stock (valued on date articles of organization filed with Secretary of State)		$4,285,910.00
Initial Capital Contribution of Acreage:		
Approximately 7 acres in Pontiac		$ 518,000.00
100% interest in 636 Harden LLC (LLC owns a one-half interest in property Appraised at $570,000)		$ 285,000.00
100% interest in 640 Harden LLC		$ 176,000.00
Beacham O. Brooker, Jr.	1/3	
Julia B. Brooker	1/3	
Ellen B. Corontzes	1/3	
		$5,264,910.00

ELECTRONICALLY FILED - 2020 Apr 29 4:02 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

EXHIBIT B

MEMBERS AND MEMBERSHIP SHARES

Name and Address of Initial Members	Membership Shares	
	Voting Rights	Financial Rights
Janet B. Brooker [redacted] Columbia, SC 29206	81.40 %	81.40%
Beacham O. Brooker, Jr. [redacted] Columbia, SC 29205	6.20%	6.20%
Julia B. Brooker [redacted] Columbia, SC 29206	6.20%	6.20%
Ellen B. Corontzes [redacted] Columbia, SC 29205	6.20%	6.20%

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159

Case No. 2020-CP-40-02040

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC, ... Respondents

v.

Julia B. Brooker,..... Appellant

EXHIBIT G TO MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

Memorandum of Law

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2020-CP-40-02040
Beacham O. Brooker; Jr.; Ellen B. Corontzes; and BBB&C Family, LLC	)	**MEMORANDUM OF LAW IN SUPPORT OF PETITION AND AMENDED MOTION TO STAY AND IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS PETITION AND MOTION TO STAY, MOTION TO COMPEL ARBITRATION, AND MOTION FOR AN AWARD OF ATTORNEY'S FEES AND EXPENSES**
Petitioners	)	
vs.	)	
Julia B. Brooker,	)	
Respondent	)	

Petitioners Beacham O. Brooker, Jr., Ellen B. Corontzes, and BBB&C Family, LLC hereby submit their Memorandum of Law in Support of their Petition and Motion to Stay, as amended, and in opposition to Respondent's Motion to Dismiss Petition and Motion to Stay, Motion to Compel Arbitration, and Motion for an Award of Attorney's Fees and Expenses ("Respondent's Motion"). Finality, judicial consistency, and judicial efficiency suggests that this Court should stay Respondents' demand for arbitration until the appeals, involving the same parties and the same estate planning, are determined with finality.

FACTUAL BACKGROUND

Respondent Julia B. Brooker ("Julia") filed a lawsuit against her siblings Respondents Beacham O. Brooker Jr. ("Beach") and Ellen Corontzes ("Ellen") in probate court over the estate plan of their mother, Janet Brooker ("Janet"). The case bears case number 2017-GC-40-0036. Specifically, she challenged the definition of "lifetime gifts" in her mother's trust once her mother engaged in an aggressive gifting program, which ultimately resulted the creation of BBB&C Family, LLC, a petitioner in the present matter.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Generally, the probate court matter arose from the need to quickly and substantially reduce the assets of Janet for the purpose of avoiding federal estate taxes. A large asset of Janet was Lockheed Martin stock. In the 2000s the value of Lockheed Martin soared, thereby increasing the potential tax liability of Janet's estate when she died. To counteract this liability, Janet and her three children, Beach, Ellen, and Julia spoke with Janet's estate planner, W. Steven Johnson, Esquire of Todd & Johnson, LLP on September 25, 2007. The plan was to engage in an aggressive gifting schedule using the annual federal gift tax exclusion. It later included the creation of the BBB&C Family, LLC, which as alleged by Julia was "to form part of an estate planning technique designed by Mother's attorney to minimize transfer taxes, both gift and estate." (Arbitration Demand ¶ 11, a copy of the demand is attached as **Exhibit A**.)

The probate matter was tried before the Honorable Amy McCulloch in February 2019. In her Order, Judge McCulloch stated that Julia testified about the following:

> her family, the manner in which their parents acquired their wealth, the individual trusts for each child created in 1997 by her parents, the trusts for each grandchild created close to their births by [Janet], ***the Family Partnership***, and what she believed to be her ***mother's intent with her estate plan as to the 2007 estate plan*** and the Trust that is the source of this litigation. She believes that the calculation of Decedent's lifetime gifts should include all gifts.

(Order Calculating Equalization Distribution of Lifetime Gifts at 5 (emphasis added), a copy of this Order is attached hereto as **Exhibit B**.) As stated by Judge McCulloch, Julia's salient testimony at the trial of the probate matter currently on appeal involved the Family Partnership, *i.e.* BBB&C Family, LLC, and her mother's intent about the 2007 estate plan, *i.e.* the ultimate creation of BBB&C Family, LLC years later.

After the bench trial of the probate matter, Beach and Ellen appealed three of the probate court's orders to the circuit court, which have been consolidated under one case number, 2019-CP-40-03582. (*See* Order Consolidating Appeals and Briefing Schedule, filed Nov. 11, 2019, and

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

attached hereto as **Exhibit C**.) The appeals have been fully briefed, and now the parties are waiting on the Court to schedule oral argument.

While the parties were briefing the appeals, Julia again decided to sue her siblings, again over her mother's estate. In her demand, Julia references the probate court litigation and her mother's estate plan. Specifically, she alleges as follows:

> 11. The idea for [BBB&C Family, LLC "Company"] was to form part of an estate planning technique designed by Mother's attorney to minimize transfer taxes, both gift and estate.
>
> 12. Pursuant to that estate planning technique, Mother was to contribute the vast majority of the Company's assets by value, and the Operating Agreement's provisions restricting the control and marketability of the Company's Membership Shares would substantially reduce the value of those Membership Shares.
>
> 13. Pursuant to the plan, Mother would then gift Membership Shares of the Company to her children and fellow Members – Beacham, Julia, and Ellen – at a substantially reduced value, for gift-tax purposes, compared to the value of the underlying assets.

(Arbitration Demand ¶¶ 11-13.) Then, Julia continues in her demand to make allegations at the heart of the probate court litigation. Specifically, she states:

> 24. Mother's testamentary instruments consisted of a pour-over will and a trust known as the Janet B. Brooker Trust (hereinafter the "Trust").
>
> 25. The Trust contained an equalization provision for Julia because Julia was not married and had no children and because Mother had given substantial sums to the spouses and issue of Beacham and Ellen over her lifetime:
>
> > **(2) Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, **JULIA B. BROOKER** is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:
> >
> > (a) From the date of this trust forward, the Trustee shall determine the date and amount of any lifetime gifts made by the Settlor to issue of Ellen B.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

> Corontzes and Beachum [sic] O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum [sic] O. Brooker, Jr.
>
> (b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.
>
> (c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, **JULIA B. BROOKER** if she shall survive the Settlor.

(Demand ¶¶ 24-25.) This is the very language in the Trust that is at issue in the probate court litigation. Then, for the next several paragraphs of the demand, Julia details her interpretation of the equalization provision and Beach's interpretation. Next, she delves into the conduct and results of the probate court litigation. (Demand ¶¶ 26-30.) Julia's arbitration demand is rife with allegations relating to the probate court litigation, and once the probate court litigation ends, it will streamline the present arbitration and preserve the resources not only of the parties, but of the judicial system. *See* Rule 1, SCRCP ("These rules govern the procedure in all South Carolina courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.").

ARGUMENT

I. The Arbitration Should Be Stayed.

As discussed above, Julia relies heavily on the factual findings and conclusions reached in the probate court matter. Beach and Ellen are appealing those very factual findings and conclusions. The appellate courts, which are under *de novo* review, may see those findings and conclusions in a very different light than the probate court. The parties have fully briefed the probate court litigation. Now, they are simply waiting on the Court to schedule oral argument. There is no need to engage in the expensive process of appointing arbitrators and beginning the arbitration process when those findings and conclusions are not conclusive. Julia, herself,

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

substantially relies on the probate court litigation in her demand. Neither she, nor Beach and Ellen, should be prejudiced by not having the final word from the judicial system on the issues involved in the probate court litigation.

Julia strictly reads the South Carolina Uniform Arbitration Act ("the Act") to argue that a stay is only appropriate when there is an "showing that there is no agreement to arbitrate" pursuant to section 15-48-20(b). But, Beach and Ellen are not relying solely on section 15-48-20(b). They are also relying on the Act, *in toto*, including section 15-48-20(d), which provides that "[a]ny action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay."[1] Additionally, they are relying on the general statute of section 15-48-170, entitled "Applications to the court" which provides as follows:

> Except as otherwise provided, an application to the court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

Both of these statutes allow for the filing of the present Petition and Motion to Stay, especially in light of the fact that the probate court litigation is ripe for appellate review and consideration. Moreover, Julia's interpretation of section 15-48-20(b) is incorrect. Section 15-48-20(b) provides that "[o]n application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate." She concludes that a lack of an agreement to

[1] Petitioners inadvertently filed a draft of the Petition and Motion to Stay that was the penultimate draft. The final draft was not filed, and it included a reference to the Act, as a whole, and corrected a typographical error. An amended Petition and Motion to Stay correcting these errors is being filed contemporaneously with this memorandum. For purposes of this memorandum, Petitioners will refer to the amended Petition and Motion to Stay as "Petition and Motion to Stay."

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

arbitrate is the ***only*** way to stay an arbitration. But the statute does not state this. There may be a plethora of reasons to stay an arbitration – an ill party, a companion case in another jurisdiction that would conclusively resolve the arbitration at issue, or the fact that an appeal may substantially impact the arbitration, like the present matter. No arbitrators need to be appointed to make the decision that an arbitration should be stayed. This Court can, and should do so, while it considers the probate court matter before it on appeal.

II. An Award of Attorney's Fees Is Improper.

Julia argues that she should be awarded attorney's fees and expenses pursuant to the Operating Agreement of BBB&C Family, LLC, should she win this motion. First, she should not win it because the arbitration demand should be stayed. In fact, Beach and Ellen seek to stay the arbitration to avoid the incurring any substantial attorney's fees before they are necessary. Second, this motion is not a "controversy, claim or dispute arising out of, or relating to, this Operating Agreement or the method or manner of the performance hereof . . ." which could afford the prevailing party attorney's fees. This motion is one to stay arbitration based on a pending appeal. It has nothing to do with how the Operating Agreement works or performs. This is a procedural motion that does not delve into the substance of the Operating Agreement. Finally, even if Julia was entitled to attorney's fees and the parties were arguing over the substance of the Operating Agreement, it would be up to the arbitrator at the end of the arbitration to award fees and costs. Julia's request is premature.

III. A Hearing on This Motion is Requested.

In light of the rather complex procedural history of the probate court litigation, which ultimately lead to the filing of Julia's arbitration demand, and the importance of this motion, Beach and Ellen request a hearing. Pursuant to the South Carolina Supreme Court's Order Re: Operation of the Trial Courts During the Coronavirus Emergency (As Amended April 22, 2020), this Court

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

can hold hearings via remote communication technology. (Order (c)(3), attached hereto as **Exhibit D**.) This motion is not a typical motion to compel arbitration and warrants oral argument by the parties. Therefore, Petitioners respectfully request that the Court hold a telephonic or video conferencing hearing at its convenience.

CONCLUSION

For all of the reasons stated above and those stated in the Petition and Motion to Stay, this Court should respectfully grant the Petition and Motion to Stay and deny Respondent's Motion to Dismiss Petition and Motion to Stay, Motion to Compel Arbitration, and Motion for an Award of Attorney's Fees and Expenses.

SOWELL & DuRANT, LLC

s/Bess J. DuRant

Thornwell F. Sowell, III (SC Bar No. 5197)
Bess J. DuRant (SC Bar No. 77920)
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Attorneys for Petitioners Beacham O. Brooker; Jr. and Ellen B. Corontzes

s/Gray T. Culbreath

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gculbreath@GWBlawfirm.com

Attorneys for Petitioner BBB&C Family, LLC

Columbia, South Carolina
April 29, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2020-CP-40-02040
	)	
Beacham O. Brooker; Jr.; Ellen B. Corontzes; and BBB&C Family, LLC	)	
	)	
Petitioners	)	
	)	
vs.	)	
	)	
Julia B. Brooker,	)	
	)	
Respondent	)	

Exhibit A to Memorandum of Law in Support of Petition and Amended Motion to Stay and in Opposition to Respondent's Motion to Dismiss Petition and Motion to Stay, Motion to Compel Arbitration, and Motion for an Award of Attorney's Fees and Expenses

Arbitration Demand

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	
Julia B. Brooker,	)	
	)	
Plaintiff,	)	
	)	**ARBITRATION DEMAND**
v.	)	
	)	
Beacham O. Brooker, Jr.; Ellen B. Corontzes; and BBB&C FAMILY LLC;	)	
	)	
Defendants.	)	
	)	

Plaintiff Julia B. Brooker, complaining of certain conduct of the Defendants Beacham O. Brooker, Jr., Ellen Corontzes, and BBB&C Family LLC ("BBB&C"), would respectfully show unto the Court the following based upon personal knowledge as to herself and her own acts and upon information and belief as to all other matters:

PARTIES AND FORUM

1. Plaintiff Julia Brooker ("Julia" or "Plaintiff") is a citizen of South Carolina and resides within Richland County at [redacted] in Columbia, South Carolina.

2. Defendant Beacham O. Brooker, Jr. ("Beacham") is a citizen of South Carolina and resides within Richland County at [redacted] in Columbia, South Carolina.

3. Defendant Ellen B. Corontzes ("Ellen") is a citizen of South Carolina and resides within Richland County at [redacted] in Columbia, South Carolina.

4. Defendant BBB&C FAMILY LLC ("BBB&C" or the "Company") is manager-managed limited liability company organized and existing under the laws of the State of South Carolina.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

5. On January, 31, 2014, the Operating Agreement of BBB&C (attached hereto as **Exhibit 1**)[1] was made and entered into by and among Janet B. Brooker ("Janet" or "Mother"), Beacham, Julia, and Ellen (hereinafter referred to collectively as the "Members" and individually as a "Member") and BBB&C.

6. On February 4, 2014, the Members signed the Company's Articles of Organization (attached hereto as **Exhibit 2**), which was filed with the South Carolina Secretary of State the same day.

7. Section 11.01 of the Operating Agreement for BBB&C provides that "[a]ny dispute or controversy between the parties hereto arising out of, under, or in connection with, or in relation to, this Operating Agreement shall be submitted to binding arbitration in accordance with South Carolina Code Sections 15-48-10, et seq., as such may be amended from time to time (the South Carolina Uniform Arbitration Act, "SCUAA")."

8. That section of the Operating Agreement further provides that "[a]ll arbitration proceedings shall be conducted in Barnwell County, South Carolina, or by mutual agreement of the parties, wherever else is most convenient for a rapid resolution of the matter."

9. Plaintiff hereby proposes that the parties mutually agree for the arbitration to be conducted in Richland County, South Carolina for the convenience of all involved.

FACTUAL BACKGROUND

10. When the Company was created in 2014, Janet, the mother of Beacham, Julia, and Ellen, was 88 years old.

11. The idea for the Company was to form part of an estate planning technique designed by Mother's attorney to minimize transfer taxes, both gift and estate taxes.

[1] Capitalized terms that are not otherwise defined have the meaning ascribed in Exhibit 1.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

12. Pursuant to that estate planning technique, Mother was to contribute the vast majority of the Company's assets by value, and the Operating Agreement's provisions restricting the control and marketability of the Company's Membership Shares would substantially reduce the value of those Membership Shares.

13. Pursuant to the plan, Mother would then gift Membership Shares of the Company to her children and fellow Members—Beacham, Julia, and Ellen—at a substantially reduced value, for gift-tax purposes, compared to the value of the underlying assets.

14. At the time of the Company's formation, Mother owned 81.4% of the Membership Shares—both in terms of Voting Rights and Financial Rights—while Beacham, Julia, and Ellen each owned 6.2% of the Membership Shares; however, Beacham was attorney in fact for Mother and voted her Membership Shares.

15. The vast majority of the assets, by value, that Mother contributed to the Company consisted of Lockheed Martin Corporation ("Lockheed Martin") common stock, valued at $4,285,910 as of February 4, 2014.

16. Beacham, Ellen, and Julia contributed remaining assets, which consisted of interests in real property and limited liability companies jointly owned by Beacham, Ellen, and Julia valued at $979,000:

a. Approximately 7 acres in Pontiac, South Carolina known as the "Woodcreek Lake Property" valued at $518,000;

b. 100% interest in 636 Harden LLC valued at $285,000 (representing a one-half interest in property appraised at $570,000); and

c. 100% interest in 640 Harden LLC valued at $176,000.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

17. Beacham persuaded Julia to participate in the forming of the Company by telling her that the Company would be dissolved after Mother's death upon securing the estate tax savings.

18. Pursuant to the estate planning technique, Beacham, acting as attorney-in-fact for Mother, proceeded to gift her Membership Shares to himself, Julia, and Ellen.

19. By the time Mother died on April 15, 2015, her children each owned one-third of the Membership Shares.

20. Not long after Mother's death, ongoing acrimony between the parties erupted into outright strife over the disposition of her assets.

21. Shortly after her death, Beacham and Ellen destroyed Mother's financial records.

22. If available, those records could help explain the disposition of a substantial number of shares of Martin Marietta Corporation common stock that may have been held by the children's father at the time of his death and/or additional Lockheed Martin shares that may have been held by Mother at the time of her death.[2]

23. As a fiduciary for the estate of Father and Mother, Beacham increased Julia's distrust by destroying emails and documents.

24. Mother's testamentary instruments consisted of a pour-over will and a trust known as the Janet B. Brooker Trust (hereinafter the "Trust").

---

[2] Beacham O. Brooker, Sr. ("Father") died on January 11, 1990 owning at least 28,850 shares in Martin Marietta Corporation. During 1991, those shares were distributed from his estate as follows: 20,700 shares were distributed to Mother; 2,717 shares each were distributed to Beacham and Julia; and 2716 shares were distributed to Ellen. Of the 20,700 Martin Marietta shares Mother inherited, she initially held 16,500 shares in her name in certificate form and 4,200 shares in a brokerage account. Martin Marietta shares split 2 for 1 on September 30, 1993 and were exchanged 1 for 1 for Lockheed Martin shares on March 15, 1995. On January 7, 1999, Lockheed Martin shares split 2 for 1. Immediately after the split on January 7,1999, Mother was holding 58,000 shares of Lockheed Martin in her name and 7,846 shares in her brokerage account. Of the 58,000 shares held in her name, Mother contributed 29,000 shares to the Company in 2014 and was still holding 29,000 shares upon her death.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

25. The Trust contained an equalization provision for Julia because Julia was not married and had no children and because Mother had given substantial sums to the spouses and issue of Beacham and Ellen over her lifetime:

> (2) **Equalization distribution to the Settlor's Daughter Julia B. Brooker.** ***The Settler has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlors children, the Settlors issue and spouses of the Settlor's children.***
>
> Because the Settler's daughter Julia B. Brooker is not married and has no children or issue, the Settlor intends that at the Settlor's death, an ***equalizing distribution will be made to the Settler's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution*** will be determined as follows:
>
> (a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settler to issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., as well as the spouses of Ellen B. Corontzes and Beacham O. Brooker, Jr.
>
> (b) To such amount specified above from the date of such gift an interest rate of five (5 %) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.
>
> (c) The sum of (a) and (b) above shall be distributed to the Settler's daughter Julia B. Brooker, if she shall survive the Settlor.

26. Mother's three children were the beneficiaries of the Trust, and Beacham was its Trustee as well.

27. Despite the clear terms of the equalization provision in the Trust, Beacham took the position while acting as Trustee that Julia would be entitled to equalization for gifts made on or after the date of the October 16, 2007 forward, ignoring the language emphasized above providing

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

that the equalization provision shall make up for "***lifetime gifts made*** to" the spouses and issue of Beacham and Ellen.

28. Pursuant to Beacham's interpretation of the Trust, Beacham as Trustee verbally offered Julia as Beneficiary $300,000[3] despite the fact that Mother had made lifetime gifts of over $1.8 million to the spouses and issue of Beacham and Ellen that with the 5% interest contemplated by the Trust totaled over $2.94 million.

29. Contentious litigation ensued and culminated in a trial before the Honorable Amy W. McCullough, who subsequently ordered that Julia was entitled to over $1.47 million as her equalization distribution from the Trust (one-half of $2.94 million) as well as payment of her attorney's fees and litigation expenses.

30. That litigation continues as Beacham and Ellen appeal the orders of Judge McCullough, and to date, Julia has received only $735,954 as an equalization distribution from the Trust, for which Beacham still serves as Trustee.

31. In the meantime, Beacham as manager of the Company has continued a pattern and practice of denying Julia distributions from the Company as contemplated by the Operating Agreement, which provides as follows in this respect in Section 7.05:

> A. At periodic intervals as determined by the Managers, but no less frequently than annually, the Managers shall determine the amount of profits and losses of the Company for such period and the allocation of such profits and losses to the Member's capital accounts. The Managers shall determine in their reasonable judgment to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain and repair any Company Property, reserves

[3] Eventually, Beacham raised this offer to $525,528, but like the earlier offer of $300,000, it was contingent on Julia's releasing any and all claims to dispute the amount or request additional funds from the Trust.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

against future contingent liabilities, and the retention of funds for future investments and activities. Any Company Cash in excess of such amounts shall be distributed to the owners of the Financial Rights. All distributions must be made simultaneously to each of the owners of the Financial Rights, and must be made in proportion to the owners' Financial Rights. Such distributions may be in cash or Company Property or partly in both, as determined by the Managers. Items of Company Property need not be distributed proportionately, provided the Managers agree upon the value of the property being distributed and the value of the property and the cash received by each owner of the Financial Rights is proportionate to such owner's Financial Rights.

B. Notwithstanding anything herein to the contrary, the Company shall make a minimum pro rata distribution from the Company Cash to the Members within seventy-five (75) Days after the end of each tax year in an amount as shall be necessary to make the distributions to the Members for the entire tax year at least equal to the amount necessary to pay each Member's federal and state income taxes for that tax year attributable to their pro rata share of the Company's net income.

32. Despite these provisions and the fact that Beacham as Manager has determined that Company Cash needed to be distributed, the Company has paid over $200,000 of distributions owed to Julia to an account controlled by Beacham and Ellen without Julia's consent.

33. Despite multiple requests, Beacham and Ellen have denied Julia access to information about these deposits of funds into an account controlled by Beacham and Ellen and the Company in general.

34. In addition, Beacham has not held or conducted any annual meetings or observed corporate formalities with regard to the real estate limited liability companies held by BBB&C, namely 636 Harden LLC and 640 Harden LLC, and as a result is potentially exposing the assets of BBB&C in the event that a judgment is obtained against one or both real estate limited liability companies.

35. Section 2.07 of the Operating Agreement sets forth the purposes of the Company:

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

> The purposes of the Company are to make a profit, increase wealth, acquire, finance, develop, subdivide, exchange, manage, improve, operate, sell, rent, lease real property and to engage in a general investment business as the members shall determine from time to time; to do all things necessary and proper for the effective, efficient and productive management of Company Property; to consolidate and centralize the management of certain properties owned by the Members; to promote the efficient and economical management of the properties by holding them in a single entity; to avoid fractional ownership of certain properties of the Members in order to promote the greater sales potential of the properties; to provide an orderly buy-sell arrangement between the Members; to provide protection from creditors; to avoid potential expensive litigation and disputes over the properties of the Members by providing mechanisms for their management and procedures to resolve disputes; and to promote knowledge and communication as to Company Property.

36. Acting as manager, Beacham has also failed to profit, increase wealth, acquire, finance, develop, subdivide, exchange, manage, improve, operate, sell, rent, or lease the real property known as the Woodcreek Lake Property despite its significant carrying cost to the Company.

37. The Woodcreek Lake Property consists of two tracts of land: Tract 17 is 3.01 acres of land, and Tract 18 is 3.97 acres with a 1,368 square foot residence with a screened porch, decks, and a shed.

38. The floor plan of the residence on Tract 18 is functional for a weekend cottage but practically inefficient and not the highest and best use of the property that it is an under-improvement for the area.

39. The carrying costs for the Woodcreek Lake Property have totaled over $100,000 since the creation of the Company: $9,836 in 2014; $18,658 in 2015; $22,960 in 2016; $17,974 in 2017; $17,908 in 2018; and at least $15,000 in 2019.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

40. Instead of utilizing the property as contemplated by the Operating Agreement, Beacham and Ellen have used the Woodcreek Lake Property as a personal recreational property despite its significant carrying cost.

41. As the Company's Manager, Beacham has also failed to maintain the Company's accounting records in accordance with Section 6.04 of the Operating Agreement, which requires the Company to establish and maintain each Member's capital account in accordance with Section 704 of the Internal Revenue Code and the capital account rules set forth in Treasury Regulations Section 1.704-l(b)(2)(iv).

42. Treasury Regulations Section 1.704-l(b)(2)(iv) requires that each Member's capital account be increased by the fair market value of property contributed to the Company by such Member on the date of contribution, and such increases are not reflected in the Members' capital accounts.[4]

43. Beacham, as manager of the Company, has also failed to observe the corporate formalities of the limited liability companies owned and controlled by the Company—636 Harden LLC and 640 Harden LLC.

44. The tenants leasing the respective premises from 636 Harden LLC and 640 Harden LLC sell alcoholic beverages to their customers on those premises.

45. Accordingly, Beacham's negligent failure to maintain corporate formalities could subject the Company to additional liability, thereby needlessly exposing the Company's primary assets—29,000 shares of Lockheed Martin common stock—to potential claims.

[4] For example, only $29,000 is reflected in the Members' capital accounts with respect to the 29,000 shares of Lockheed Martin that were contributed by Mother when the fair market value of the shares was $4,285.510.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

46. Since 2015, the cash generated by 636 Harden LLC and 640 Harden LLC has greatly exceeded the cash used by the Woodcreek Lake Property and the Company's administrative expenses: by $30,476 in 2015, by $28,879 in 2016, by $34,490 in 2018, and by $34,943 in 2018.

47. Accordingly, the Company's investment in 29,000 shares of Lockheed Martin common stock and the corresponding dividends generated[5] are unnecessary to meet the current and anticipated needs of the Company based on historical operating results.

48. Section 7.05 of the Operating Agreement requires interim distribution of excess "Company Cash," that is, the amount of cash on hand that exceeds "the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain, and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities."[6]

49. After six years of operations, the Company is in substantially the same position it was when formed except for the passive and substantial increase in the value of its Lockheed Martin shares, now worth over $12 million.

50. Julia does not trust Beacham and Ellen to properly manage the Company's assets, particularly its $12 million investment in Lockheed Martin common stock.

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[5] From 2014 to 2018, the 29,000 shares of Lockheed Martin common stock generated $949,460 in dividends: $120,640 in 2014; $178,350 in 2015; $196,330 in 2016; $216,340 in 2017; and $237,800 in 2018.

[6] Excess Company Cash is the amount of cash on hand that exceeds "the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain, and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities."

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

FIRST CAUSE OF ACTION
(Dissolution Under S.C. Code Ann. § 33-44-801(4))

51. Plaintiff realleges each and every allegation set forth above as if repeated verbatim herein.

52. Section 10.01 of the Operating Agreement provides that "[t]he Company shall dissolve and its affairs shall be wound up . . . [o]n application by a Member, upon entry of a judicial decree as provided in Section 33-44-801(4) of the [South Carolina Uniform Limited Liability Company Act of 1996]."

53. Section 33-44-801(4) provides that "[a] limited liability company is dissolved, and its business must be wound up . . . on application by a member or a dissociated member, upon entry of a judicial decree that" *inter alia*:

> (a) the economic purpose of the company is likely to be unreasonably frustrated;
>
> (b) 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;
>
> (c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;
>
> * * *
>
> (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner . . . .

54. For the reasons discussed above and below, "the economic purpose of the company is likely to be unreasonably frustrated":

a. As stated above, the true purpose for the Company was its service as part of an estate planning technique to effectively decrease the value of the underlying assets for purposes of gifting Membership Shares from Janet to

her three children, and accordingly, that primary purpose behind the Company has been served and is no longer valid because Janet made contemplated gifts years ago prior to her death on April 15, 2015;

b. None of the putative purposes of the Company are being served with respect to the primary assets of the Company, $12 million worth of entirely fungible Lockheed Martin common stock, which need no form of management by the Company to make a profit and for which there is no possible concern about fractional ownership or greater sales potential; and

c. Beacham and Ellen have continued to use the Company's second most valuable asset as a personal recreational property rather than utilizing it in a manner consistent with the purpose of the Company as expressed in the Operating Agreement.

55. Therefore, the Company should be dissolved and its business wound up under Section 33-44-801(4)(a).

56. For the reasons discussed above and below, Beacham and Ellen have "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" as contemplated by Section 33-44-801(4)(b):

a. Beacham and Ellen have used the Woodcreek Lake Property as a personal recreational facility rather than making economic use of the property as contemplated by the Operating Agreement;

b. Without Julia's consent, Beacham and Ellen have diverted distributions owed to Julia under the Operating Agreement to an account managed by

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Ellen for the benefit of six properties jointly owned by Beacham, Ellen, and Julia;

c. Beacham has failed to maintain the Company's accounting records in accordance with Section 6.04 of the Operating Agreement; and

d. Beacham has failed to observe the corporate formalities of the Company as well as the limited liability companies owned and controlled by the Company—636 Harden LLC and 640 Harden LLC—and thereby, needlessly subjected the Company and its Members to potential liability.

57. Accordingly, the Company should be dissolved and its business wound up pursuant to Section 33-44-801(4)(b).

58. For the reasons discussed above and below, it is likewise "not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement":

a. There is serious and longstanding distrust and animosity between Julia and her siblings, as shown by a history of discord and litigation between them;

b. The practical economic reality of the Company's primary asset—$12 million in Lockheed Martin common stock—is entirely incongruent with the putative purposes of the Company as expressed in the Operating Agreement;

c. The practical economic reality of the Company's secondary assets is that they are completely self-sustaining without the need of the Lockheed Martin common stock or the dividends those shares provide; and

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

d. Beacham and Ellen have ignored and continue to ignore corporate formalities.

59. Therefore, the Company should be dissolved and its business wound up pursuant to Section 33-44-801(4)(c).

60. For the reasons discussed above and below, Beacham and Ellen as "the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner," Julia:

a. For nearly as long as the Company has existed, the relationship between Julia and her siblings has been marked by severe distrust and animosity;

b. Beacham and Ellen have a history of attempting to short Julia what she is entitled from Mother's estate, as shown by the results of the litigation over Mother's Trust, which result Beacham and Ellen are now appealing;

c. There has been an ongoing lack of transparency shown by Beacham and Ellen to Julia as demonstrated by their destruction of documents pertaining to Mother's finances, which could have shed light on inconsistencies in the numbers of shares of Martin Marietta and Lockheed Martin common stock owned by Father and Mother;

d. Contrary to the terms of the Operating Agreement, Beacham and Ellen have diverted distributions owed to Julia to an account maintained by Beacham and Ellen without Julia's consent; and

e. Beacham and Ellen have ignored Julia's request for additional information about these deposits of funds and the Company in general;

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

f. Beacham has failed to observe corporate formalities with regard to the real estate limited liability companies, namely 636 Harden LLC and 640 Harden LLC, and as a result is potentially exposing the assets of BBB&C in the event that a judgment is obtained against one or both real estate limited liability companies.

61. Accordingly, the Company should be dissolved and its business wound up pursuant to Section 33-44-801(4)(e).

62. Therefore, pursuant to Section 33-44-801(4) of the South Carolina Code of Laws, Julia is entitled to the entry of a judicial decree winding up and dissolving the Company, awarding proper distributions in accordance with the Operating Agreement and applicable law, and awarding the other relief requested below.

SECOND CAUSE OF ACTION
(Accounting)

63. Plaintiff realleges each and every allegation set forth above as if repeated verbatim herein.

64. Plaintiff is entitled to a full and complete accounting of all of the business affairs and financial dealings of BBB&C, together with an accounting and tracing of all dealings and transfers between BBB&C, Beacham, and Ellen.

THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty Under S.C. Code Ann. § 33-44-409(h))

65. Plaintiff realleges each and every allegation set forth above as if repeated verbatim herein.

66. As Manager of the Company, Beacham owed Julia the duties of loyalty, care, and good faith as provided by Section 33-44-409(h) of the South Carolina Uniform Limited Liability Company Act of 1996.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

67. By exercising some or all of the rights of Manager of the Company in the management and conduct of the Company's business, Ellen likewise owed Julia the duties of loyalty, care, and good faith as provided by Section 33-44-409(h).

68. By failing to abide by the Operating Agreement and failing to safeguard the profits of the Company until rightfully distributing to Julia her portion of Company Cash, Beacham and Ellen breached duties owed to Julia.

69. Beacham's and Ellen's breaches of their duties to Julia has proximately caused damages to Julia, and Julia is entitled to an award of damages as a result of Beacham's and Ellen's fiduciary misconduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. Dissolving the Company and winding up its business pursuant to Section 10.04 of the Operating Agreement, and in the alternative, removing Beacham as Manager and distributing the shares of Lockheed Martin common stock equally to the Members;

B. Ordering that a full and complete accounting be made;

C. Awarding against all of the Defendants and in favor of the Plaintiff the amount of damages sustained by the Plaintiff as a result of the Defendants' breaches of fiduciary duties;

D. Awarding pre-judgment interest;

E. Awarding punitive damages in favor of the Plaintiff;

F. Awarding the Plaintiff its costs and expenses incurred in this action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses pursuant to Section 11.02 of the Operating Agreement; and

G. Granting such other and further relief as the Arbitrators deem just and proper.

Respectfully submitted,

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Counsel for Plaintiff

Columbia, South Carolina
March 17, 2020

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10 ET SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA

OPERATING AGREEMENT, LLC OF BBB&C FAMILY LLC

This Operating Agreement ("Operating Agreement") is made and entered into this 31st day January, 2014, by and among Janet B. Brooker, Beacham O. Brooker, Jr., Julia B. Brooker and Ellen B. Corontzes, (hereinafter referred to collectively as the "Members" and individually as a "Member") and BBB&C FAMILY LLC (the "Company").

WHEREAS, the parties desire to form the Company as a limited liability company under the laws of the State of South Carolina and they wish to enter into this Operating Agreement to govern the relationship among the Members of this Company and between the Company and the Members.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

ARTICLE I
DEFINED TERMS

Section 1.01 Definitions. The terms defined in this Article I shall, for purposes of this Operating Agreement, have the meanings herein specified.

"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), and any successor statute, as amended from time to time.

"Articles" shall mean the initial, amended and restated Articles of Organization filed with the Secretary of State of South Carolina by which BBB&C FAMILY LLC was organized as a South Carolina limited liability company under and pursuant to the Act.

"Bona Fide Offer" shall mean a written offer received by a Member from a third party to purchase all or any part of that Member's Membership Shares which offer sets forth all of the material terms and conditions of the proposed purchase and is not subject to contingencies.

"Capital Contribution" shall mean the amount of cash and fair market value (at the time of contribution) of any property contributed to the Company with respect to the Membership Share held by such Member.

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

"Company" shall have the meaning set forth in the preamble hereof.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

"Company Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company, including, but not limited to, the property described on Exhibit A attached hereto. Exhibit A shall be amended from time to time as necessary to accurately reflect changes in Company Property without the need for any amendment to this Operating Agreement.

"Day" or "Days" shall mean all calendar days, whether or not such days are legal holidays under the laws of the United States or any State.

"Dispose," "Disposing," or "Disposition" shall mean to sell, assign, transfer, give, donate, exchange, bequeath, devise, mortgage, pledge, grant a security interest, or otherwise dispose or encumber, including, without limitation, on account of a court order or otherwise by operation of law (including, but not limited to, foreclosure, being subject to a charging order, or transfer incident to divorce or any similar proceeding), or the acts thereof, to any Person.

"Family Member" shall mean Janet B. Brooker and Janet B. Brooker's lineal descendants, by natural birth or legal adoption, as well as the spouses of her lineal descendants.

"Financial Rights" shall mean the right to share in the net profits, net losses and distributions of the Company. Any reference to a Member's Financial Rights shall mean the percentage of Financial Rights in the Company held by the Member.

"Manager" or "Managers" shall mean the Person(s) elected in accordance with this Operating Agreement to manage and operate the Company.

"Member" shall mean any Member named in the preamble of this Operating Agreement, and any other Person who hereafter acquires a Membership Share and is admitted to the Company as a Member as provided in this Operating Agreement, but does not include any Person who has ceased to be a Member of the Company. For purposes of this Operating Agreement, the settlor of a revocable living trust shall be considered to be the Member.

"Membership Share" shall mean all of the rights, powers, benefits, duties or obligations of a Member under this Operating Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights. The Membership Share of each Member is represented by a percentage. Each Membership Share shall have the same rights and privileges and shall rank equally and be identical in all respects as to all matters.

"Offered Membership Shares" shall mean all of the Membership Shares that are deemed to have been offered for sale to the Company and the other Members pursuant to this Operating Agreement.

"Permitted Transferee" shall mean (i) the Company; (ii) any Member; (iii) any Family Member; (iv) any estate, trust, guardianship, custodianship, conservatorship or other fiduciary arrangement for the sole benefit of any one or more of the individuals described in (ii) or (iii) above and which assures that the Membership Shares will only be held by or for the benefit of such individuals; or (v) any corporation, partnership, limited liability company or other business organization in which the individuals or entities described in (i) - (iv) above are the sole owners and the management and control of which must rest exclusively with any one or more of such individuals.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

"Person" shall mean any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, personal representative or other legal entity or organization.

"Treasury Regulations" shall mean, except where the context indicates otherwise, the permanent, proposed or temporary rules and regulations of the U.S. Department of the Treasury promulgated under the Code, as such rules and regulations may be lawfully changed from time to time.

"Voluntary Transfer" shall mean any Disposition of a Membership Share made by a Member that is not an Involuntary Transfer. An "Involuntary Transfer" is any Disposition of a Membership Share by a Member made on account of a court order or otherwise by operation of law, including, but not limited to, an occurrence of an event of bankruptcy, being subject to a charging order, or any transfer incident to any divorce or marital property settlement or any transfer pursuant to applicable community property, quasi-community property or similar state law.

"Voting Rights" shall mean the right of a Member to vote on any matter as provided in this Operating 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.

Section 1.02 Terms and Usage Generally. All references herein to an "Article," "Section" or "Exhibit" shall refer to an Article or a Section of, or an Exhibit to, this Operating Agreement. Whenever the words "include," "includes" or "including" are used in this Operating Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereto," "hereof," "herein" and "hereunder" and words of similar import when used in this Operating Agreement shall refer to this Operating Agreement as a whole and not to any particular provision of this Operating Agreement. All terms defined in this Operating Agreement shall have the defined meanings when used in any other document made or delivered pursuant hereto unless otherwise defined therein.

ARTICLE II
ORGANIZATION

Section 2.01 Name. The name of the Company is **BBB&C FAMILY LLC**.

Section 2.02 Formation. The Company shall be organized as a South Carolina limited liability company by the filing of Articles pursuant to the Act and the issuance of a Certificate of Existence for the Company by the Secretary of State of South Carolina.

Section 2.03 Designated Office. The Company shall maintain a designated office in the State of South Carolina in accordance with the Act. The designated office shall be at the address set forth in the Articles.

Section 2.04 Registered Agent and Address. The registered agent of the Company in the State of South Carolina and the street address of the registered agent shall be the Person and address set forth in the Articles.

Section 2.05 Principal Office in the United States and Other Offices. The principal office of the Company in the United States shall be at such place as the Managers may designate from time to

time, which need not be in the State of South Carolina. The Company may have such other offices as the Managers may designate from time to time.

Section 2.06 Term Company. The Company shall be a term company within the meaning of the Act. The term of the Company shall commence on the date the Articles are filed with the Secretary of State of South Carolina, unless a later effective date is specified in the Articles, and the existence of the Company shall terminate upon the expiration of its term on December 31, 2054, unless extended or sooner terminated by law or pursuant to the provisions of this Operating Agreement.

Section 2.07 Purposes. The purposes of the Company are to make a profit, increase wealth, acquire, finance, develop, subdivide, exchange, manage, improve, operate, sell, rent, lease real property and to engage in a general investment business as the members shall determine from time to time; to do all things necessary and proper for the effective, efficient and productive management of Company Property; to consolidate and centralize the management of certain properties owned by the Members; to promote the efficient and economical management of the properties by holding them in a single entity; to avoid fractional ownership of certain properties of the Members in order to promote the greater sales potential of the properties; to provide an orderly buy-sell arrangement between the Members; to provide protection from creditors; to avoid potential expensive litigation and disputes over the properties of the Members by providing mechanisms for their management and procedures to resolve disputes; and to promote knowledge and communication as to Company Property.

Section 2.08 No Liability to Third Parties. No Member, Manager or officer, solely by reason of being a Member or acting as a Manager or officer, will be subject to any liability in connection with the debts, obligations or liabilities of the Company. The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, will be solely the debts, obligations and liabilities of the Company.

Section 2.09 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. However, the Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal and state tax income purposes, and this Operating Agreement may not be construed to suggest otherwise.

ARTICLE III
MEMBERS

Section 3.01 Initial Members. The name and address of each initial Member and the percentage of Membership Shares held by such initial Member shall be as set forth on Exhibit B. Exhibit B shall be amended from time to time as necessary to accurately reflect changes in the Members and the Membership Share of any Member without the need for any amendment to this Operating Agreement.

Section 3.02 Admission of New Members. After the date of this Operating Agreement, a Person shall have the right to become a Member of the Company if such Person (i) acquires a Membership Share from a Member and obtains the written consent of all non-Disposing Members who have Voting Rights in the Company; (ii) acquires a Membership Share from a Member and such Disposition is a Permitted Transfer (as defined in Section 9.02); or (iii) is issued any Membership Shares

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

in accordance with Section 3.03. Upon compliance with Section 3.04, any such Person shall automatically be admitted as a Member of the Company and shall be entitled to all rights and powers and subject to all restrictions and liabilities of a Member.

Section 3.03 Issuance of Additional Membership Shares. The timing and terms of any new issuance of Membership Shares of the Company to any Person, including a Member, shall require the unanimous approval of the Members who have Voting Rights in the Company. A Member need give no reason for voting not to issue additional Membership Shares and a Member may unreasonably withhold his or her consent to such issuance.

Section 3.04 Additional Conditions to Recognition of Transfer or Issuance of Membership Shares. Whether or not such Person is admitted as a new Member or will merely be the owner of Financial Rights, such Person must, as a condition to recognizing the effectiveness and binding nature of such transaction:

A. Execute and deliver to the Company a written agreement that such Person has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of this Operating Agreement, as the same may have been further amended, in a form acceptable to the Company.

B. Deliver to the Company such instruments of transfer, assignment and assumption with respect to such transaction as are in form and substance reasonably satisfactory to the Company.

C. Assure compliance with any applicable state and federal laws, including securities law and regulations.

D. Pay or reimburse the Company a fee not to exceed One Thousand ($1,000.00) to cover costs and expenses incurred by the Company in preparing, executing and recording all pertinent documents.

The Company, however, may waive any requirement in this Section.

Section 3.05 Transferee of Membership Share 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, then such transferee shall be entitled to retain the Financial Rights transferred, but shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any other rights of a Member. The transferee is 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 Operating Agreement may change 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 the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred. Upon the transferee being admitted as a Member, the transferring Member shall be relieved of all obligations under this Operating Agreement. 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 the provisions of Section 3.04 of this Operating Agreement have been satisfied.

Section 3.06 No Authority of Members. Except as otherwise provided in this Operating Agreement, or as authorized by the Managers, no Member is an agent of the Company or has the

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

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authority to make any contracts, enter into any transactions, or make any commitments on behalf of the Company.

Section 3.07 No Right to Withdraw. No Member shall have any right to withdraw from the Company prior to the dissolution and winding up of the Company's business and affairs except (i) with the unanimous consent of all the remaining Members who have Voting Rights in the Company, or (ii) in connection with a transfer of its entire Membership Share in accordance with this Operating Agreement. If a Member attempts to withdraw in violation of the provisions of this Section 3.07, such act shall, as to the Company and the other Members, be void and of no force and effect, nor shall such attempted resignation entitle any Member to receive the fair value of its interest in the Company prior to the dissolution and winding up of the Company's business and affairs.

ARTICLE IV
MANAGEMENT OF COMPANY

Section 4.01 General Authority of Managers.

A. Except as otherwise expressly provided by this Operating Agreement or required by any nonwaivable provision of applicable law, all powers shall be exercised by or under the authority of, and the business and affairs of the Company shall be controlled by the Managers.

B. All actions required to be taken by the Managers hereunder shall be made by the vote of a majority of the number of Managers unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by any express provision of the statutes which are applicable to such vote unless legally overridden by the Articles or this Operating Agreement, a different vote is required, in which case such express provision shall govern and control the decision of such matter.

C. Subject to the foregoing, the Managers shall have full and complete authority, power, right and duty to manage and control the business, affairs and assets of the Company, to make all decisions regarding those matters and to perform any and all acts and activities customary or incident to the management of the Company's business. Unless authorized to do so by this Operating Agreement or by the Managers, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. Specifically, but not by way of limitation, the Managers shall be authorized for and on behalf of the Company to:

1. Borrow money for the Company from banks, other lending institutions, Managers, Members and other Persons, and in connection therewith, to hypothecate, encumber, mortgage and grant security interests in Company Property to secure payment of the borrowed sums;

2. Acquire, hold, own, invest and reinvest, purchase and sell, any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, 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, and to actively trade, speculate on, maintain and manage the same;

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3. Enter into, make, execute and perform all instruments and documents, including, but not limited to, contracts, mortgages, security agreements, deeds, financing statements, partnership agreements, leases, management contracts 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;

4. Employ from time to time persons, firms or corporations for the operation and management of various aspects of the Company's business, including, without limitation, accountants, legal counsel, managing agents, money managers, property managers, contractors, subcontractors, architects, engineers, laborers, suppliers, investment advisors and other advisors to perform services for the Company and to compensate them out of Company Property, notwithstanding the fact that any Manager or Member may have a financial interest in such firms or corporations;

5. Open and maintain bank accounts, investment accounts and other arrangements, draw checks, letters of credit, and other orders for the payment of money and designate individuals (which may be an officer, Manager, Member or any other individual) with authority to sign or give instructions with respect to those accounts and arrangements; and

6. Collect sums due and owing to the Company.

Section 4.02 Limitations on Powers. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

A. The Company shall not sell, or contract to sell, or otherwise dispose of all or substantially all of the Company Property other than in the ordinary course of Company business without the approval of those Members who own Seventy-five (75%) percent of the Voting Rights in the Company. For purposes of this subsection, all or substantially all of the Company Property means Eighty (80%) percent of such property by value in any consecutive twelve (12) month period.

B. The Company shall not hypothecate, encumber and grant a security interest in Company Property without the approval of those Members who own Seventy-five (75%) percent of the Voting Rights in the Company.

C. The Company shall not materially deviate from the purposes of the Company as set forth in this Operating Agreement without the approval of those Members who own Seventy-five (75%) percent of the Voting Rights in the Company.

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 Seventy-five (75%) percent of the Voting Rights in the Company.

Section 4.03 Delegation of Authority and Duties. In managing the business and affairs of the Company and exercising its powers, the Managers may act through Managers or officers to whom authority and duties have been delegated in accordance with this Section.

A. The Managers may, from time to time, delegate to one or more Managers such authority and duties as the Managers may deem necessary or desirable in furtherance of any action that they have authorized on behalf of the Company. Such delegation shall be made by delivering to the

Manager or Managers to whom such powers and duties are delegated written notice specifying the powers and duties delegated and the period of such delegation.

B. The Managers may designate one or more individuals to be officers of the Company. No officer need be a resident of the State of South Carolina, a Manager or a Member. Any officers so designated shall have such authority and perform such duties as the Managers may, from time to time, delegate to them. The Managers may assign titles (including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer) to particular officers. Unless the Managers decide otherwise, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made pursuant to Section 4.03(A). The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Managers. No officer shall be prevented from receiving a salary by reason of the fact that such officer is also a Manager or Member.

Section 4.04 Election of Manager, Number and Term of Office. The Members shall elect one or more Persons as Managers. The initial Manager of the Company shall be Beacham O. Brooker, Jr. Each Manager shall hold office until such Manager dies, is removed pursuant to Section 4.05 or resigns pursuant to Section 4.06. The number of Managers shall be fixed from time to time by the Members, but in no instance shall there be less than one Manager. A Manager need not be a Member or resident of the State of South Carolina.

Section 4.05 Removal. Any and all Managers may be removed, either with or without cause, by a vote of the Members (including a Manager, if such Manager is also a Member with Voting Rights) who own Seventy-five (75%) percent of the Voting Rights in the Company. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member.

Section 4.06 Resignation. Any Manager may resign at any time by giving written notice to each Member. Such resignation shall take effect upon the delivery of the notice to the Members or at such later time as shall be specified in such notice. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member.

Section 4.07 Vacancies. Any vacancy occurring for any reason in the number of Managers shall be filled by a vote of the Members (determined without regard to any Voting Rights owned by a Member who was a Manager but was removed pursuant to Section 4.05 of this Operating Agreement during the preceding 24 month period), unless one or more other Persons then serve as Manager and the Members determine not to fill such vacancy.

Section 4.08 Execution of Documents and Other Actions. Pursuant to Section 4.03, the Managers may act through Managers or officers to whom authority and duties have been delegated. In the absence of such delegation, the signature, authorization or actions of only those number of Managers sufficient to approve such action had such action been properly voted on at a duly called meeting of the Managers shall be required.

Section 4.09 Single Manager. If at any time there is only one Person serving as a Manager, such Manager shall be entitled to exercise all powers of the Managers set forth in this Article IV, and all

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references in this Article IV and otherwise in this Operating Agreement to Managers shall be deemed to refer to such single Manager.

Section 4.10 Place and Manner of Meetings. It is not contemplated that there will be regular meetings of the Managers. However, meetings of the Managers may be called at any time by any Manager. All meetings of the Managers shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by all Managers. Managers may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.11 Notice of Meetings and Record Date. Written notice stating the time, date, place and purpose of the meeting shall be delivered at least ten (10) Days but no more than sixty (60) Days in advance of the proposed meeting date, either personally or by mail, by or at the direction of the Manager calling the meeting, to each Manager. An affidavit of the mailing or other means of giving any notice of any Managers meeting shall be executed by the Person giving such notice, and shall be filed and maintained in the books and records of the Company. When a meeting of the Managers is adjourned, notice need not be given of any such adjourned meeting if the date, time and place thereof are announced at the meeting at which the adjournment is taken. For the purpose of determining the Managers entitled to notice of or to vote at any meeting of Managers or any adjournment thereof, or in order to make a determination of Managers for any other purpose, the record date shall be the date on which notice of the meeting is mailed or the date on which the resolution of the Managers declaring such action is adopted, as the case may be. When a determination of Managers entitled to vote at any meeting of Managers has been made as provided in this Section 4.11, such determination shall apply to any adjournment thereof.

Section 4.12 Waiver of Notice. When any notice is required to be given to any Manager, a waiver thereof in writing signed by the Manager entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice. In addition, a Manager who attends a meeting waives his or her right to assert any lack of notice, or defect in notice, of the meeting unless he or she states such objection at the outset of the meeting.

Section 4.13 Action without Meeting. The Managers may take action without notice and without a meeting if a consent or consents in writing, setting forth the action so taken, is signed by a sufficient number of Managers, as the case may be, to approve such action had such action been properly voted on at a duly called meeting of the Managers. Every written consent pursuant to this Section shall be signed, dated and delivered to the Company and shall become effective when the requisite number of Managers, as the case may be, have signed the consent, unless the consent specifies a different effective date. The date for determining the Managers entitled to take action without a meeting shall be the date the first Manager signs a written consent. A telegram, telex, cablegram, or similar transmission by a Manager, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a Manager, shall be regarded as signed by the Manager for purposes of this Section. Prompt notice of the taking of any action by the Managers without a meeting by less than unanimous written consent shall be given by the Managers who signed the written consent to those Managers who did not consent in writing to the action.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Section 4.14 Meeting of all Managers. If all of the Managers shall meet at any time and place, either within or outside of the State of South Carolina, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

Section 4.15 Compensation and Reimbursement. The Company shall reimburse a Manager for all reasonable out-of-pocket expenses incurred by the Manager in managing and conducting the Company's business. The compensation of the Managers shall be fixed from time to time by a vote of the Members, and no Manager shall be prevented from receiving such compensation by reason of the fact that he or she is also a Member.

Section 4.16 Liability for Certain Acts. The Managers do not in any way guarantee the return of the Members' Capital Contribution or a profit for the Members from the operations of the Company. No Manager shall be liable or accountable to the Company or to the other Members, in damages or otherwise, for any error in judgment, for any mistake of fact or of law, or for any other act or thing that the Manager may do or refrain from doing in connection with the business and affairs of the Company, except for willful misconduct, gross negligence, fraud, deceit or breach of fiduciary duty, and further for breaches of contractual obligations or agreements between the Managers and the Company or the Managers themselves.

Section 4.17 Indemnity. The Company shall indemnify and hold harmless each Manager for all expenses, costs, losses, liabilities, and damages paid or accrued by such Manager in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State of South Carolina, except to the extent the claim for which indemnification is sought results from an act or omission for which the Manager may be held liable to the Company, a Member or a Manager under Section 4.16 above. Any such indemnification under this Section shall be made by the Company only if authorized by a vote of the Members (determined without regard to any Voting Rights owned by a Member who is also a Manager seeking indemnification). The foregoing rights of indemnification shall not be exclusive of any other rights to which the Managers may be entitled.

Section 4.18 Interested Managers, Officers and Members. No contract or transaction between this Company and one or more of its Managers, officers or Members, or between this Company and any other limited liability company, corporation, partnership, association, or other organization in which one or more of its managers, officers, members or partners are Managers, officers or Members of this Company or have a financial interest in this Company, shall be void or voidable solely because the Manager, officer or Member is present at, participates in, or votes at the meeting which authorizes the contract or transaction if:

A. The contract or transaction is fair as to this Company as of the time it is authorized, approved, or ratified; and

B. The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Managers, officers or Members and the Managers, officers or Members in good faith authorize the contract or transaction.

This Section shall not be construed to invalidate any contract or transaction which would be valid in the absence of this Section.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Section 4.19 Business Pursuits of Managers and Members. The Managers and Members may engage in other business activities and the Managers shall be obligated by reason of this Operating Agreement to devote only as much of their time to the Company's business as shall be reasonably required in light of the Company's business and objectives and the responsibilities undertaken or assigned to the Managers. This Operating Agreement shall not preclude or limit in any respect the right of any Manager or Member to engage in or invest in any business activity of any nature or description, whether or not competitive with the business of the Company and a Manager or Member shall have no obligation to offer any opportunity to the Company, the other Managers or the other Members. Any such activity may be engaged in independently or with other Managers and Members. No Manager or Member shall have the right, by virtue of this Operating Agreement or the relationship created hereby, to any interest in such other ventures or activities or to the income or proceeds derived therefrom. The pursuit of such other ventures shall not be deemed wrongful or improper and any Manager or Member shall have the right to participate in or to recommend to others any such investment opportunity. The Company and each Manager and Member hereby expressly consents to the continued and future ownership and operation by the other Managers and Members of such businesses and activities and waives any claim for damages or otherwise, or rights to participate therein or with respect to the operation and profits or losses thereof.

Section 4.20 Books and Records. The Managers shall cause the Company to maintain at its principal place of business the following Company records:

A. A current list of the full name and last known mailing address of each Member and his or her Membership Share.

B. A current list of the full name and last known mailing address of each Manager.

C. A copy of the Articles and this Operating Agreement, together with all amendments thereto.

D. Copies of the Company's federal, state and local income tax returns and reports for the three (3) most recent fiscal years.

E. Original or copies of all minutes, actions by written consent, notice of meetings and waivers of notices.

Each Member, or the legal representative of such Member, may, at any time during normal business hours, inspect and copy the books and records of the Company. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

ARTICLE V
ACTIONS OF MEMBERS

Section 5.01 No Required Meetings. It is not contemplated that there will be regular meetings of the Members. However, meetings may be called at any time by any Manager or by any Member or Members who own Fifty (50%) percent of the Voting Rights in the Company. All meetings

shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by all Members.

Section 5.02 Notice of Meetings. Written notice stating the time, date, place and purpose of the meeting shall be delivered at least ten (10) Days but no more than sixty (60) Days in advance of the proposed meeting date, either personally or by mail, by or at the direction of the Persons calling the meeting, to each Member entitled to vote as such meeting, provided that such notice may be waived as provided in this Operating Agreement. An affidavit of the mailing or other means of giving any notice of any Members' meeting shall be executed by the Person giving such notice, and shall be filed and maintained in the books and records of the Company. When a meeting of the Members is adjourned, notice need not be given of any such adjourned meeting if the date, time and place thereof are announced at the meeting at which the adjournment is taken; provided, however, that if a new record date must be fixed for the adjourned meeting in accordance with Section 5.03, then notice of the adjourned meeting shall be given as in the case of an original meeting.

Section 5.03 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members, or any adjournment thereof, to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the record date shall be the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution or action is adopted, as the case may be. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section 5.03, such determination shall apply to any adjournment thereof; provided, however, that if a meeting is adjourned for more than forty-five (45) days, a new record date must be fixed.

Section 5.04 Conduct of Meetings. All meetings of the Members shall be presided over by the chairman of the meeting who shall be a Member designated by a majority of the Members at the meeting. The chairman of the meeting shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion.

Section 5.05 Member Voting. All actions required to be taken by the Members shall be made by the vote of the Members who own more than Fifty (50%) percent of the Voting Rights in the Company, unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by any express provision of the statutes which are applicable to such vote unless legally overridden by the Articles or this Operating Agreement, a different percentage is required, in which case such express provision shall govern and control the decision of such matter.

Section 5.06 Participation in Meetings. Members may participate in such meetings of the Members by means of conference telephone or similar communications equipment by means of which all Members participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 5.07 Proxies. Each Member may authorize any Person to act for him or her by proxy on all matters in which a Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be in writing and signed by the Member or his or her attorney-in-fact or other legal representative. The proxy shall be delivered to a Manager of the

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Company at or before the meeting at which the appointment is to be effective and shall not be valid after the final adjournment of the meeting.

Section 5.08 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the Member entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice. A Member who attends a meeting waives his or her right to assert any lack of notice, or defect in notice, of the meeting unless he or she states such objection at the outset of the meeting.

Section 5.09 Action Without Meeting. The Members may take action without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the Members holding sufficient Voting Rights, as the case may be, to approve such action had such action been properly voted on at a duly called meeting of the Members. Every written consent pursuant to this Section shall be signed, dated and delivered to the Company and shall become effective when the Members with requisite Voting Rights, as the case may be, have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent. Prompt notice of the taking of any action by Members without meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action.

ARTICLE VI
CAPITAL ACCOUNTS AND CONTRIBUTIONS

Section 6.01 Initial Contributions. Upon the execution of this Operating Agreement, each initial Member shall contribute to the Company the monies and/or properties which are specified in Exhibit A as that Member's initial Capital Contribution in exchange for the issuance by the Company of Membership Shares to each such initial Member as set forth on Exhibit B. No Membership Shares shall be issued to an initial Member until the full amount of consideration therefore has been paid.

Section 6.02 Subsequent Contributions.

A. Mandatory Contributions. The Members recognize that the income produced by the Company's business may be insufficient to pay the operating costs of the Company. Without creating any rights in favor of any third party, if the Managers determine that additional funds from the Members are necessary and appropriate for the conduct of the Company's business (including without limitation, any funds needed for working capital, any operating deficit or the purchase, lease, acquisition, expansion or construction of additional Company Property), then upon the Managers making such determination, the Managers shall provide written notice of such request for additional Capital Contributions to each Member, which notice must include the aggregate amount of the Capital Contributions and a statement in reasonable detail of the proposed uses of the Capital Contributions. Any such additional Capital Contributions shall require the approval of those Members who own more than fifty (50%) percent of the Voting Rights in the Company. Upon such approval, the Managers shall notify each Member in writing of the date (which date may be no earlier than fifteen (15) Days following the date of the Members' approval) before which the Capital Contributions must be made. Additional Capital Contributions shall be contributed by the Members, in cash, on or before the date specified in the written notice, in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. If any Member makes a Capital Contribution to the Company, such Capital Contribution shall increase only that Member's capital account and such Capital Contribution shall in no event be

allocated pro rata to the capital accounts of the other Members. Solely for purposes of this Section, a Member who has transferred his or her Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

B. Default. If a Member does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Operating Agreement, that Member is in default ("Defaulting Member"). If the Defaulting Member fails to cure the default in full within thirty (30) Days of the date such contribution was due, the Defaulting Member shall pay to the Company a late fee of Two Hundred ($200.00) Dollars. If the defaulting Member has failed to cure the default in full (any unpaid contribution and late fee) within sixty (60) Days of the date the contribution was due, the Defaulting Member shall not have any Voting Rights and shall not be entitled to participate in the management of the Company until such default is fully cured.

C. Extended Default. If, within ninety (90) Days after the due date of the contribution, the Defaulting Member has not completely cured his or her default (any unpaid contribution and late fee), such Defaulting Member shall be notified in writing by the Company that his or her default has exceeded ninety (90) Days and that he or she is in extended default. By execution of this Operating Agreement, each Member expressly agrees and understands that, in the event such Member thereafter receives written notice that he or she is in extended default, the Company may exercise one or more of the following remedies:

1. The Members who made their Capital Contribution may, but shall not be required to, make further additional contributions in such proportion as they might agree among themselves, or in the absence of any such agreement, in proportion to their Financial Rights, up to the full amount not contributed by the Defaulting Member. After such contribution is made, each Member's Membership Share shall be adjusted and determined by dividing the aggregate contributions of all the Members since the inception of the Company into the aggregate contribution of each Member. The resulting quotient with respect to each Member shall be the adjusted Membership Share of the Member.

2. The amount that the Defaulting Member is in default may be considered a loan made by the Company to the Defaulting Member ("Deficit Loan"). A Defaulting Member's Deficit Loan shall be payable on demand of the Company as well as out of distributions from the Company otherwise payable to the Defaulting Member (whether before or after dissolution of the Company). Said loan shall bear interest, per annum, at a rate of two (2%) percent above the prime rate as published in the Wall Street Journal as of the day following the expiration of the ninety (90) Day period or, if greater, the rate of interest applicable under Section 1274 of the Code, adjusted each January 1 the Deficit Loan is outstanding. The Defaulting Member shall not be entitled to receive any distributions from the Company until the Deficit Loan of the Defaulting Member has been paid in full. The Defaulting Member hereby grants to the Company a security interest in his or her Membership Shares to the extent of the Defaulting Member's Deficit Loan. If the Defaulting Member fails to satisfy his Deficit Loan within thirty (30) Days after the Company's demand for payment, the Defaulting Member shall forfeit his or her Membership Shares to the extent of any unpaid obligations. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture. To the extent the Defaulting Member's Deficit Loan remains unsatisfied, the Deficit Loan of the Defaulting Member shall be a personal debt obligation of the Defaulting Member, and the Company may resort to any available legal or equitable remedy to enforce said obligation.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

D. Continuing Liability of Member in Default. A Member who is in default or extended default under this Section shall in no way be relieved of his or her obligation to pay additional contributions which accrue either before or after the date of such default.

Section 6.03 Return of Capital. No interest shall accrue on any Capital Contribution and except as specifically provided in this Operating Agreement, no Member shall be entitled to withdraw or obtain a return of any Capital Contribution or, when such withdrawal of capital is permitted, to demand a distribution of property other than cash.

Section 6.04 Capital Accounts. The Company shall establish and maintain for each Member a separate 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)(2)(iv). Each Member's capital account shall be adjusted as necessary to reflect the economic conditions of the Membership Shares. These adjustments shall include, but are not limited to, the following:

A. Adjustments to reflect each Member's distributive share of Company profits and losses, including capital gains and losses and tax-exempt income;

B. Adjustments to reflect each Member's additional contributions to the Company; and

C. Adjustments to reflect distributions made by the Company to each Member.

Section 6.05 Transferee Capital Accounts. In the event of a Disposition of a Membership Share in accordance with the terms of this Operating Agreement, the capital account of the transferring Member shall become the capital account of the transferee to the extent it relates to the transferred Membership Share.

Section 6.06 Compliance with Section 704(b) of the Code. The provisions of this Article VI 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 and credit pursuant to this Operating Agreement to have substantial economic effect under Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. Notwithstanding anything herein to the contrary, no Member shall have any obligation to restore all or any portion of a deficit balance in such Member's capital account.

ARTICLE VII
ALLOCATIONS AND DISTRIBUTIONS

Section 7.01 Allocation of Profits and Losses. The Company's net profits and net losses (and each item of income, deduction, gain, loss and credit that makes up net profits and net losses) shall be computed in accordance with professionally accepted accounting principles, consistently applied and appropriate for the method of accounting selected by the Members for use by the Company. Except as provided in Sections 7.02 and 7.03, the net profits and net losses and other items of income, gain, loss, deduction and credit shall be apportioned among the Members in accordance with their Financial Rights in the Company.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Section 7.02 Regulatory Allocations. Notwithstanding anything to the contrary herein, any special allocations required to be made pursuant to the Treasury Regulations promulgated under Section 704 of the Code, including those related to minimum gain chargebacks and qualified income offsets, which qualified income offset rules of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations are hereby incorporated by reference, shall be made prior to the allocations set forth in Section 7.01 and in the order of priority set forth in the Treasury Regulations. It is the intent of the Members that, to the maximum extent possible, all regulatory allocations will be offset either by other regulatory allocations or special allocations of other items of Company income, gain, loss or deduction such that, after all such regulatory allocations are made, each Member's capital account balance is, to the maximum extent possible, equal to the capital account balance that such Member would have had if the regulatory allocations were not contained in this Operating Agreement, and all allocations were made pursuant to Section 7.01 hereof.

Section 7.03 Section 704(c) of the Code. The Company shall cause depreciation and/or cost recovery deductions and gain or loss with respect to each item of property to be allocated among the Members for income tax purposes in accordance with the principles of Section 704(c) of the Code and Treasury Regulations promulgated thereunder using the "traditional" method as defined in Section 1.704-3(b) of the Treasury Regulations. Allocations pursuant to this Section 7.03 are solely for purposes of federal and state income taxes and shall not affect, or in any way be taken into account in computing, any Member's capital account or share of profits, losses, other items, or distribution pursuant to any provisions of this Operating Agreement.

Section 7.04 Allocations Attributable to Particular Periods. If Financial Rights are transferred, or are increased or decreased by reason of the admission of a new Member or otherwise, at any time other than the end of a tax year, the share of profits, losses or any other items to be allocated (in respect of the Financial Rights so transferred) shall be allocated between the transferor and the transferee in the same ratio as the number of days in such fiscal year before and after the effective date of such transfer. The provisions of this Section 7.04 shall not apply to any profit or loss attributable to a sale or other disposition of all or substantially all of the Company Property, or to other extraordinary non-recurring items. Such profit and loss shall be allocated to the owner of the Financial Rights as of the date of closing of the sale or other disposition, or, with respect to other extraordinary non-recurring items, the date the profit is realized or the loss is incurred, as the case may be.

Section 7.05 Interim Distributions. Interim distributions to the owners of the Financial Rights shall be made in accordance with the following:

A. At periodic intervals as determined by the Managers, but no less frequently than annually, the Managers shall determine the amount of profits and losses of the Company for such period and the allocation of such profits and losses to the Member's capital accounts. The Managers shall determine in their reasonable judgment to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities. Any Company Cash in excess of such amounts shall be distributed to the owners of the Financial Rights. All distributions must be made simultaneously to each of the owners of the Financial Rights, and must be made in proportion to the owners' Financial Rights. Such distributions may be in cash or Company Property or partly in both, as determined by the Managers. Items of Company Property need not be distributed proportionately, provided the Managers agree upon the value

of the property being distributed and the value of the property and the cash received by each owner of the Financial Rights is proportionate to such owner's Financial Rights.

B. Notwithstanding anything herein to the contrary, the Company shall make a minimum pro rata distribution from the Company Cash to the Members within seventy-five (75) Days after the end of each tax year in an amount as shall be necessary to make the distributions to the Members for the entire tax year at least equal to the amount necessary to pay each Member's federal and state income taxes for that tax year attributable to their pro rata share of the Company's net income.

Section 7.06 Distribution in Kind. Except as provided by the Articles or this Operating Agreement, a Member, regardless of the nature of the Member's contribution, may not demand to receive a distribution from this Company in any form other than cash.

Section 7.07 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution shall be declared and paid if payment of such distribution would cause the Company to violate any limitations on distributions provided in the Act.

Section 7.08 Right to Set-Off. Except as otherwise provided in this Operating Agreement, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE VIII
TAX MATTERS

Section 8.01 Preparation of Tax Returns. The Managers shall arrange for the preparation and timely filing of all returns of Company income, gains, deductions, losses and other items required of the Company for federal, state and local income tax purposes, and the delivery to the Members of all tax information reasonably required by the Members for federal, state and local income tax reporting purposes.

Section 8.02 Tax Elections. The Managers shall determine whether to make any available election (including, without limitation, the election under Section 754 of the Code) or choose any available reporting method pursuant to the Code or state or local tax law. The Managers shall have the right to seek to revoke any such election (including, without limitation, the election under Section 754 of the Code) or change any reporting method.

Section 8.03 Tax Matters Partner. Beacham O. Brooker, Jr. shall be the initial "tax matters partner" of the Company within the meaning of Section 6231(a)(7) of the Code, and as such, shall be solely responsible for representing the Company (at the Company's expense) in all dealings with the U.S. Internal Revenue Service and any state, local and foreign tax authorities. If Beacham O. Brooker, Jr. is no longer a Member or resigns as the tax matters partner, the Members shall designate one Member as the successor tax matters partner. The tax matters partner shall comply with the provisions of this Operating Agreement in the performance of its duties as tax matters partner. The tax matters partner shall receive no compensation for serving as tax partner. All costs and expenses incurred by the tax matters partner in performing its duties as such (including legal and accounting fees) shall be borne by the Company. Nothing herein shall be construed to restrict the Company from engaging an accounting firm to assist the tax matters partner in discharging its duties hereunder.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ARTICLE IX
TRANSFER OF MEMBERSHIP SHARES

Section 9.01 Transfer of Membership Shares Generally. Except for a Disposition specifically permitted by this Article IX, no Member shall Dispose of any Membership Shares held by such Member without the written consent of all non-Disposing Members who have Voting Rights in the Company. If such consent is obtained, then the following Sections of this Article IX shall be of no effect, and the provisions of Article III shall govern the rights of the transferor and transferee. With regards to all other Dispositions, the provisions of this Article IX shall control, and any attempted Disposition of Membership Shares in contravention of this Article IX shall be null and void, and neither the Company nor the Members shall recognize the same. Any Member who Disposes or attempts to Dispose any Membership Share except in compliance herewith shall be liable to, and shall indemnify and hold harmless, the Company and other Members for all costs, expenses, damages and other liabilities resulting therefrom.

Section 9.02 Permitted Transfers. Any Member may at any time Dispose of all or any portion of his or her Membership Shares if such Disposition is a Permitted Transfer. For purposes of this Operating Agreement, a Permitted Transfer is the Voluntary Transfer by a Member of his or her Membership Share to a Permitted Transferee. Any Disposition that is a Permitted Transfer shall be effective to assign the right to become a Member, and, without the need for any action or consent of any other Person, a transferee of such Membership Share shall be admitted as a Member upon the transferee's compliance with Section 3.04 hereof.

Section 9.03 Right of First Refusal. If a Member attempts to Dispose of (other than in a Permitted Transfer) all or any portion of his or her Membership Shares without obtaining the written consent of all non-Disposing Members, such Member (the "Offering Member") is deemed to have offered to the Company, then to all of the remaining Members (the "Remaining Members"), on a pro rata basis, the right to purchase all, but not less than all, of the Membership Shares owned by the Offering Member at a price determined in accordance with Section 9.05 and upon the terms contained in Section 9.06; provided, however, that if a Member attempts to Dispose of only a portion of his or her Membership Shares, then the Company's and the Members' options shall apply only to the portion of the Membership Shares that is proposed to be transferred.

Section 9.04 Exercise of Right of First Refusal.

A. Upon the occurrence of an event specified in Section 9.03 above, the Offering Member, or their legal representative, must give written notice of such event to the Company and each Remaining Member (the "First Refusal Notice"), which notice must contain a description of the Membership Shares to be transferred, the name, address and business occupation of the proposed transferee, the proposed sales price or other consideration, the proposed sales terms (including the relative percentages of cash and debt instruments, and the duration, interest rate, and payment schedule of any such debt instruments) and a copy of the Bona Fide Offer, if applicable.

B. The Managers shall have until the later of (i) thirty (30) Days following the date the First Refusal Notice was delivered to the Company, and (ii) fifteen (15) Days after the purchase price is determined pursuant to Section 9.05 (such period, the "Original Option Period") in which to notify the Offering Member and the Remaining Members in writing whether the Company elects to purchase all or any part of the Offered Membership Shares.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

C. If the Managers do not elect to purchase all of the Offered Membership Shares within the Original Option Period (the Offered Membership Shares which the Company elects not to purchase being referred to as the "Refused Shares"), each Remaining Member shall have fifteen (15) Days following the end of the Original Option Period (such period, the "Second Option Period") in which to notify the Offering Member in writing whether it elects to purchase all or any part of its pro rata share (based on the percentage of the Membership Shares owned by such Remaining Member bears to the percentage of Membership Shares owned by all Remaining Members) of the Refused Shares.

D. If a Remaining Member does not elect to purchase all of its pro rata share of the Refused Shares within the Second Option Period, the Offering Member must immediately give written notice of such event to each Remaining Member who elected to purchase all of its pro rata share of the Refused Shares (the "Second Refusal Notice"). Each such Remaining Member shall have fifteen (15) Days from the date the Second Refusal Notice is given (such period, the "Third Option Period") in which to notify the Offering Member in writing whether it elects to purchase its pro rata share (based on the percentage of the Membership Shares owned by such Remaining Member bears to the percentage of Membership Shares owned by all Remaining Members then entitled to an option) of the Refused Shares previously rejected by a Remaining Member. Subject to the condition that each Remaining Member so entitled to an option shall first be permitted to purchase or reject the maximum number of Membership Shares to which he or she is entitled pursuant to the ratios hereinbefore described, such Remaining Members shall be free to mutually agree by unanimous consent to the portion of Refused Shares to be purchased by each.

E. If the Remaining Members do not elect to purchase all (but not less than all) of the Refused Shares by the expiration of the Third Option Period, the Offering Member may, during the thirty (30) Days following the expiration of the Third Option Period, complete the intended Disposition of all (but not less than all) of the Offered Membership Shares to the proposed transferee upon the terms and conditions specified in the First Refusal Notice. Unless and until the proposed transferee is admitted as a Member in accordance with Section 3.02, the rights of the proposed transferee are as provided in Section 3.05. If the Disposition is not completed within the thirty (30) Day period described above, any attempted Disposition will be deemed pursuant to a new offer and this Section shall again apply.

Section 9.05 Purchase Price.

A. If the transaction described in the First Refusal Notice is a proposed transfer of the Membership Shares pursuant to a Bona Fide Offer, then the purchase price shall be at the price and on the terms and conditions, proportionately, as were contained in the Bona Fide Offer; provided, however, that if any consideration to be paid pursuant to the Bona Fide Offer is other than cash or an obligation to pay money, the purchasing party shall have the option to pay either such non-cash consideration or the fair market value thereof.

B. If the event giving rise to the option is not pursuant to a Bona Fide Offer (for example, a gift or a pledge of the Membership Shares, a transfer incident to or by virtue of divorce or equitable distribution proceedings, or the occurrence of an event of bankruptcy with respect to the Member), then the purchase price shall be the fair market value of the Offered Membership Shares as of the date of event giving rise to the options.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

1. The Offering Member and the Managers (excluding the Offering Member, if the Offering Member is also a Manager) shall attempt to agree in writing as to the fair market value of the Offered Membership Shares.

2. If no such agreement can be reached within fifteen (15) Days following the date the First Refusal Notice was delivered to the Company, then the fair market value (taking into account all applicable valuation discounts, including but not limited to, minority, lack of marketability, undivided interests in real estate, voting versus non-voting interest, and all costs, expenses and damages sustained by the Company and the Remaining Members as a result of a Member's wrongful dissociation) for the Offered Membership Shares shall be determined by the agreement of two (2) appraisers. The Offering Member shall name one appraiser and the Managers (excluding the Offering Member, if the Offering Member is also a Manager) shall name the other appraiser. Both appraisers must have at least five (5) years experience valuing Membership Shares similar to the one being offered hereunder. The parties must appoint their respective appraiser by delivering written notice of the name, address and telephone number of their appraiser to each other within seven (7) Days after the expiration of the above referenced fifteen (15) Day period. If either party fails to appoint an appraiser within the time period required herein, the appraiser appointed by the other party shall unilaterally establish the fair market value of the Offered Membership Shares by written opinion. If both parties appoint an appraiser within the seven (7) Day period, these two appraisers shall establish the fair market value of the Offered Membership Shares in a single written opinion agreed on by both of them. If the two appraisers cannot agree on the fair market value within thirty (30) Days after the last of them is appointed, each appraiser shall render their own written opinion and the fair market value shall be the average of the two opinions. The fees and costs of the appraiser appointed by the Offering Member shall be paid by the Offering Member. The fees and costs of the appraiser appointed by the Managers shall be paid by the Company. Fair market value is defined as the cash equivalent price at which property would change hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of relevant facts. The hypothetical buyer and seller are assumed to be able, as well as willing, to trade and are assumed to be well-informed about the property and the market for such property. The purchase price as determined herein shall be conclusive and binding upon the parties, their legal representative, personal representative, heirs, transferees, successors and assigns.

If the Offering Member is also the sole Manager, then the actions of the Managers under this Section 9.05(B) shall be taken by the Members.

Section 9.06 Payment of Purchase Price.

A. If the purchase relates to a proposed transfer of the Offered Membership Shares due to a Bona Fide Offer, the purchase price for the Offered Membership Shares shall be paid in accordance with the terms, proportionately, as were contained in the Bona Fide Offer.

B. If the event giving rise to the option is not pursuant to a Bona Fide Offer, then unless the parties mutually agree to different terms, the purchase price shall be paid in one hundred twenty (120) equal and consecutive monthly installments of principal plus interest commencing on the first day of the month after the date of the closing. Each purchaser shall execute and deliver to the seller a separate promissory note made payable to the order of the seller which shall bear interest, per annum, at the prime rate as published in the Wall Street Journal at the date of the closing. The purchaser shall have the right to prepay all or any part of the principal of the note at any time without penalty or premium. All payments, when received, shall be applied first to accrued interest and then to principal. The note shall

provide that immediately 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 delivery of the note, the Offered Membership Shares shall be conveyed to the purchaser. The purchaser's payment obligations under the note will be secured by a security interest in the Offered Membership Shares.

Section 9.07 Closing. The purchase of the Offered Membership Shares shall take place at a closing to be held not later than the thirtieth (30th) Day after the last option period is exercised or lapses, at the Company's primary place of business, or at any other place to which the parties agree. At the closing, each purchaser will pay for the Offered Membership Shares in accordance with Section 9.06 and the seller will deliver such instruments of transfer, assignment and assumption with respect to such transaction and shall transfer such interest free and clear of any liens, encumbrances or any interests of any third party. Each Member appoints the Company as his or her agent and attorney-in-fact to execute and deliver all documents needed to convey his or her Offered Membership Shares if such selling Member is not present at the closing. This power of attorney is coupled with an interest and does not terminate on the Member's disability or death, and continues for so long as this Operating Agreement is in effect.

ARTICLE X
DISSOLUTION, LIQUIDATION, AND TERMINATION

Section 10.01 Dissolution. The Company shall dissolve and its affairs shall be wound up upon the first to occur of the following:

A. The written consent of all Members;

B. The expiration of the period fixed for the duration of the Company set forth in the Articles;

C. Upon an event 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;

D. On application by a Member, upon entry of a judicial decree as provided in Section 33-44-801(4) of the Act; or

E. Upon an administrative dissolution as provided in Section 33-44-809 of the Act, but if the Company is reinstated pursuant to Section 33-44-811 of the Act, the reinstatement is effective retroactively to the date of the administrative dissolution.

Section 10.02 Date of Dissolution. Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until the assets of the Company shall have been distributed as provided herein and the Articles of Termination have been filed with the Secretary of State of South Carolina. Notwithstanding the dissolution of the Company, prior to the termination of the Company, as aforesaid, the business of the Company and the affairs of the Members, as such, shall continue to be governed by this Operating Agreement.

Section 10.03 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,

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

the Members may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (i) 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 (ii) the rights of a third party accruing under 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.

Section 10.04 Winding Up and Termination. On dissolution of the Company, if the Members do not continue the Company's business under Section 10.03, the Managers shall appoint one or more Managers to serve as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company with all of the power and authority of the Managers. The steps to be accomplished by the liquidator are as follows:

A. First, sell or otherwise liquidate any or all of the Company's assets, except to the extent that the liquidator may determine to distribute in kind any assets to the Members;

B. Second, pay, satisfy or discharge from Company Property all of the debts, liabilities and obligations of the Company (including liabilities to Members who are also creditors, to the extent permitted by law) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent or unforeseen liabilities or obligations in such amount and for such term as the liquidator may reasonably determine);

C. Third, the assets of the Company shall be distributed proportionately among the Members in accordance with their positive capital account balances as determined after taking into account all capital account adjustments for the taxable year of the Company during which the liquidation of the Company occurs, as necessary to bring the balance of all capital accounts to zero. Any such distributions to the Members in respect to their capital accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations.

D. Fourth, all remaining assets shall be distributed proportionately among the Members based on their respective percentages of Financial Rights.

Section 10.05 Termination of Company. When all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, have been distributed to the Members in the manner provided for in this Operating Agreement, the Company's affairs shall terminate and the liquidator shall file the Articles of Termination with the Secretary of State of South Carolina, as well as any and all other documents required to effectuate the termination of the Company under the Act.

Section 10.06 Distribution in Kind. The liquidator may distribute assets in kind to the Members or to satisfy any or all of its obligations. If the liquidator distributes 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 in question. The fair market value of each asset or group of assets appraised shall be the average of the two appraisals.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Section 10.07 Gain or Loss. Any gain or loss on the disposition of Company Property in the process of liquidation shall be credited and charged to the Members in proportion to their respective percentage of Membership Shares, except that gain or loss with respect to property contributed to the Company by a Member shall be shared among the Members so as to take account of any variation between the basis of the property so contributed and its fair market value at the time of contribution, in accordance with any applicable Treasury Regulations. Any property distributed in kind in the liquidation shall be valued and treated as though it were sold and the cash proceeds distributed.

Section 10.08 Deficit Capital Accounts. Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from deductions and losses of the Company (including non-cash items such as depreciation) or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective interest in the Company, upon dissolution of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's capital account to zero.

Section 10.09 Company's Assets Sole Source. The Members shall look solely to the assets of the Company for the payment of any debts and liabilities owed by the Company to the Members and for the return of their Capital Contributions and liquidation amounts. If the Company Property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of one or more Members, such Member shall have no recourse against the Company or any other Member, except to the extent that such other Member may have outstanding debts or obligations owing to the Company.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01 Arbitration. Any dispute or controversy between the parties hereto arising out of, under, or in connection with, or in relation to, this Operating Agreement shall be submitted to binding arbitration in accordance with South Carolina Code Sections 15-48-10, et seq., as such may be amended from time to time (the South Carolina Uniform Arbitration Act, "SCUAA"). All arbitration proceedings shall be conducted in Barnwell County, South Carolina, or by mutual agreement of the parties, wherever else is most convenient for a rapid resolution of the matter. Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding. The arbitrators shall be selected as provided in the SCUAA, and the arbitrators shall render a decision on any dispute within one hundred twenty (120) Days after the last of the arbitrators has been selected. If any party to this Operating Agreement fails to select an arbitrator with regard to any dispute submitted to arbitration under this Section 11.01 within thirty (30) Days after receiving notice of the submission to arbitration of such dispute, then the other party shall select an arbitrator for such non-selecting party. The decision of the arbitrators shall be final and binding on the parties, who specifically renounce any judicial review of the award, and agree that judgment on the award may be enforceable in any court of competent jurisdiction.

Section 11.02 Proceeding Expenses. In any controversy, claim or dispute arising out of, or relating to, this Operating Agreement or the method or manner of the performance hereof, the prevailing party shall be entitled to, in addition to any other relief, recovery of proceeding expenses. In determining the award of proceeding expenses, attorney's fees, arbitrator fees, proceeding costs, cost of investigation and other reasonable expenses shall be included. For the purposes of this provision, the term

"proceeding" shall include arbitration, administrative, bankruptcy and judicial proceedings, including appeals therefrom or enforcement of decisions thereof.

Section 11.03 Amendment or Modification. This Operating Agreement and the Articles may be amended and modified from time to time only by a written instrument unanimously adopted and executed by all Members.

Section 11.04 Construction. The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation. Whenever the context so requires, the gender of all words used in this Operating Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All such Exhibits read as of the date of this Operating Agreement or, as to any Exhibits bearing a particular date, as of any other date specified therein.

Section 11.05 Severability. If any provision of this Operating Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Operating Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

Section 11.06 Entire Agreement; Supersedure. This Operating Agreement cancels and supersedes all prior written or oral agreements among the parties hereto respecting the within contained subject matter and represents the entire agreement between the parties hereto with respect to the transactions contemplated hereby.

Section 11.07 Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

Section 11.08 Binding Effect. All rights, obligations and duties provided for in this Operating Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors and permitted assigns; provided, however, that all rights, obligations and duties of the Members shall be personal to each of them and, except as herein expressly provided, may not be assigned or transferred.

Section 11.09 Governing Law. This Operating Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of South Carolina, without regard to its conflicts of laws principles. In the event of a direct conflict between the provisions of this Operating Agreement and (i) a mandatory provision of the Articles, or (ii) any mandatory provision of the Act, the applicable provision of the Articles or the Act shall control.

Section 11.10 Notices. Except as otherwise provided in this Operating Agreement, any notice, offer, acceptance, right, option or other communication required or permitted under this Operating Agreement shall be exercisable and made only upon the giving/delivery of written notice to the other party, and shall be deemed given/delivered when personally delivered or, if mailed, three (3) Days after

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

the date it was postmarked by the United States Postal Service, if it was sent by first class mail, with postage prepaid. Notice to any Member is valid if sent to him or her at such Member's address as it appears in the Company's records. Notice to any Manager is valid if sent to him or her at such Manger's address as it appears in the Company's records. Notice to the Company is valid if sent to it at the Company's designated office as set forth in the Articles.

Section 11.11 Counterparts. This Operating Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

Section 11.12 Conflicting Provisions. To the extent that one or more provisions in this Operating Agreement appear to be in conflict with one another, then the Company shall have the right to choose which of the conflicting provisions are to be enforced. Wide latitude is given to the Company in interpreting the provisions of this Operating Agreement to accomplish the purposes and objectives of the Company, and the Company may apply this Operating Agreement in such a manner as to be in its best interest, even if such interpretation or choice of conflicting provisions to enforce is detrimental to one or more Members.

Section 11.13 Effective Date. This Operating Agreement shall become effective upon the execution of this Operating Agreement by all the parties hereto.

ARTICLE XII
DISCLOSURE

The parties acknowledge that the law firm of Todd & Johnson, L.L.P. (the "Law Firm") prepared this Operating Agreement on behalf of the parties hereto. There is an inherent potential for conflicts of interest among the parties to the Operating Agreement because the Operating Agreement establishes the rights and obligations of each of the parties to the Operating Agreement. Due to such potential conflicts of interest, the Law Firm hereby advises each of the parties that it would be in their best interest to obtain the services of their independent legal counsel to review this document. The parties hereby waive any potential conflicts of interest that may arise as a result of the above actions by the Law Firm, whether or not one or more of the parties to this Operating Agreement may have consulted with separate legal counsel concerning the Operating Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Operating Agreement the day and year first written above.

WITNESSES:

BBB&C FAMILY LLC

By: _____
Beacham O. Brooker, Jr., Manager

MEMBERS:

Janet B. Brooker, by Beacham O. Brooker, Jr. as attorney-in-fact under power of attorney recorded in Richland County, SC in Book 1368 at Page 495

Beacham O. Brooker, Jr.

Julia B. Brooker

Ellen B. Corontzes

The undersigned, who is the duly elected manager of the Company, hereby agrees to be bound by the provisions of this Operating Agreement, and any amendments thereto.

2/16/14
Date

Beacham O. Brooker, Jr.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

EXHIBIT A

COMPANY PROPERTY

Property		Value
Initial Capital Contribution		
Janet B. Brooker 29,000 shares of Lockheed Martin, common stock (valued on date articles of organization filed with Secretary of State)		$4,285,910.00
Initial Capital Contribution of Acreage:		
Approximately 7 acres in Pontiac		$ 518,000.00
100% interest in 636 Harden LLC (LLC owns a one-half interest in property Appraised at $570,000)		$ 285,000.00
100% interest in 640 Harden LLC		$ 176,000.00
Beacham O. Brooker, Jr. Julia B. Brooker Ellen B. Corontzes	1/3 1/3 1/3	
		$5,264,910.00

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

EXHIBIT B

MEMBERS AND MEMBERSHIP SHARES

Name and Address of Initial Members	Membership Shares	
	Voting Rights	Financial Rights
Janet B. Brooker [redacted] Columbia, SC 29206	81.40 %	81.40%
Beacham O. Brooker, Jr. [redacted] Columbia, SC 29205	6.20%	6.20%
Julia B. Brooker [redacted] Columbia, SC 29206	6.20%	6.20%
Ellen B. Corontzes [redacted] Columbia, SC 29205	6.20%	6.20%

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2020-CP-40-02040
	)	
Beacham O. Brooker; Jr.; Ellen B. Corontzes; and BBB&C Family, LLC	)	
	)	
Petitioners	)	
	)	
vs.	)	
	)	
Julia B. Brooker,	)	
	)	
Respondent	)	

Exhibit B to Memorandum of Law in Support of Petition and Amended Motion to Stay and in Opposition to Respondent's Motion to Dismiss Petition and Motion to Stay, Motion to Compel Arbitration, and Motion for an Award of Attorney's Fees and Expenses

Order Calculating Equalization Distribution of Lifetime Gifts

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA)	**IN THE PROBATE COURT**
)	**Estate Number: 2017-GC-40-36**
COUNTY OF RICHLAND)	
IN THE MATTER OF THE JANET B. BROOKER TRUST	**ORDER CALCULATING EQUALIZATION DISTRIBUTION OF LIFETIME GIFTS**
Julia B. Brooker, Petitioner,	
v.	
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust; and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust, Respondents.	

FILED
2019 JUN 20 P 5:18
AMY W. McCULLOUGH
PROBATE JUDGE
RICHLAND COUNTY, SC

THIS MATTER COMES BEFORE THE COURT upon the filing of a Summons and Petition for Declaratory Relief by Julia B. Brooker (hereinafter "Julia" or "Petitioner"), through her attorneys James M. Griffin, and Margaret N. Fox, on March 17, 2017. In the Petition, the Petitioner asks this Court to determine the intent of Janet B. Brooker (hereinafter also "Decedent" or "Settlor") in the equalization clause of the Janet B. Brooker Trust and Decedent's meaning of the words *lifetime gifts,* as it is used within the Decedent's Trust document, to calculate the amount that should be paid to Julia to equalize her share of the Janet B. Brooker Trust. Beacham O. Brooker (hereinafter "Beacham") and Ellen B. Corontzes (hereinafter "Ellen") (hereinafter collectively "Respondents") are the only other beneficiaries of the Janet B. Brooker Trust.

Beacham and Ellen were served with the Summons and Petition by certified mail as evidenced by the signed Certified Return Receipts filed with the Court on March 29, 2017 and April 3, 2017 respectively.

Respondents are represented by Thornwell F. "Biff" Sowell, III and Bess J. DuRant. Respondents filed an Answer to the Petition on May 17, 2017. The Respondents contend that their understanding and interpretation of the lifetime gift provision should control, and

1 & 10 am

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

additionally, that the amount of $525,528.08 offered to Julia as her disputed equalization share of the Janet B. Brooker Trust is accurate.

A bench trial was scheduled for and held on February 4, 2019. All parties were mailed Notice of Hearing and all parties were present with their attorneys. Additional witnesses were certified forensic accountant, George Durant and attorneys, W. Steven Johnson and William H. Reynolds, III.

Summary of Facts

The Decedent died on April 15, 2015. At her death she had three children: Beacham, Ellen, and Julia. Beacham is married to Beth Brooker and his children are Elizabeth Brooker and Grace Brooker. Ellen is married to Dino Corontzes and her children are Arthur Corontzes and Beacham Corontzes. Julia is not married and does not have children.

Before her death, the Decedent was represented by attorney W. Steven Johnson of the law firm of Todd and Johnson, LLP, in the creation of her 2007 estate planning documents. The Last Will and Testament of the Decedent, executed on October 16, 2007, names Beacham to serve as the Personal Representative and transfers the assets of the Decedent's Estate into a Trust known as the Janet B. Brooker Trust (hereinafter the "Trust"). Upon the death of the Decedent, the Trust was fully funded from the Estate. The beneficiaries of the Trust are her three children, Beacham, Ellen, and Julia. Beacham is the Trustee of the Trust. At the same time the Will and Trust were executed, the Decedent also appointed Beacham as her Agent under a Durable Power of Attorney.

All parties agree that a family meeting occurred on September 25, 2016 where all parties were present with W. Steven Johnson. All parties agree that Mr. Johnson advised them about an aggressive gifting program to the spouses and issue of Beacham and Ellen in an effort to minimize the amount of estate taxes that could be levied against the Decedent's estate at her death. As a part of this plan, all children of the Decedent received equal gifts, the additional gifts to the spouses and issue of Beacham and Ellen were to be equalized for Julia at the death of the Decedent. To accomplish this, the Trust provides for an equalization distribution that reads as follows:

(2) **Equalization distribution to the Settlor's Daughter Julia B. Brooker**. The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlors children, the Settlors issue and spouses of the Settlor's children.

2 @ 10 am

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Because the Settlor's daughter Julia B. Brooker is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., as well as the spouses of Ellen B. Corontzes and Beacham O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5 %) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter Julia B. Brooker, if she shall survive the Settlor.

Argument of the Petitioner

Petitioner argues that an examination of the plain language found within the four corners of the Trust necessitates a finding that Petitioner is entitled to an equalizing share equivalent to the sum of **all** lifetime gifts to Respondents' spouses and children, with five (5%) percent interest applied to the amount of each gift. Petitioner believes that the first sentence of the applicable provision in Settlor's Trust that reads that the Settlor "*previously made lifetime gifts* and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children" is evidence of her intent that gifts made prior to the Trust's creation should be included in the equalization calculation.

Petitioner argues that Respondents rely on the following Trust language, "[f]rom the date of this trust forward, the Trustee shall determine the date and the amount of any lifetime gifts" to take the position that the calculation should be only gifts made after the Trust's creation. Petitioner believes that the language "from the date of this trust forward," merely establishes the date on which Beacham could begin exercising the authority delegated to him as Trustee to determine the date and amount of lifetime gifts.

Petitioner believes that if the Decedent had intended otherwise, the Trust language would have been worded in the future tense, such as "Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts [***to be made***], [***that will be made***], [***that Settlor intends to make pursuant to the gifting program***] to such daughter's siblings' spouses or siblings' issue."

3 & 10 am

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Petitioner believes that the use of past tense "**lifetime gifts made** to such daughter's siblings' spouses or siblings' issue" is clear.

Finally, Petitioner argues that pursuant to the plain language of the Trust document, Petitioner's Equalizing Share is calculated by adding the (a) the sum of all lifetime gifts to Respondents' Children and Spouses and (b) five (5%) percent interest from there date of such gift to the date of distribution. Petitioner's position is that Respondent "cannot create ambiguity in contract when it does not exist within the four corners…[h]ence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed." Silver v. Abstract Pool & Spas, 658 S.E.2d 539 (S.C. Ct. App. 2008) (quoting McPherson v. J.E. Sirrine & Co., 33 S.E.2d 501, 509 (1945).

Pursuant to this method of calculating, Petitioner believes she should receive the total of gifts made to Ellen's spouse and children prior to October 16, 2007 of $502,755.92 and after October 16, 2007 of $396,305.23 plus the total of gifts made to Beacham's spouse and children prior to October 16, 2007 of $495,113.92 and after October 16, 2007 of $408,194.00 for a total of $1,802,369.07 plus interest of $1,139,694.81 (as of the date of the hearing) for a final total of **$2,942,063.87**.

Argument of the Respondents

Respondents argue that the unambiguous terms of the Trust provide that Petitioner is entitled to a distribution from the date of the Trust until the death of the Settlor as the plain language of the Trust provides that "[f]rom the date of this trust forward," the Trustee shall determine the amount of the gifts made to the children and spouses. Respondents point to *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003) "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect.".

Respondents' position is that Petitioner is entitled to the sum of all gifts made to the children and spouses from October 16, 2007 until the date of Decedent's death on April 16, 2015, divided by two (2), with the addition of interest in the amount of 5%. To make the point of their calculation, Respondents by example argue that Petitioner is not entitled to the sum of all gifts made to the grandchildren and spouses, plus 5% interest, because to do so would bestow a great windfall to the Petitioner. For example, under Petitioner's construction of the Trust, if Beacham's family received $100,000.00 and Ellen's family received $100,000.00, Julia would

4 @ 10 am

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

receive $200,000.00 plus the 5% interest. Consequently, Julia would receive a windfall of $100,000.00 because Beacham's family received $100,000.00, Ellen's received $100,000.00, yet Julia received $200,000.00. Therefore, Respondents believe that the payment of **$525,528.08, plus some calculation of interest after death,** is correct.

Summary of Issues to be Resolved

1. **Did the offer of $525,528.08 include all gifts? As stipulated by Mr. Sowell at the trial, it did not.**
2. **What time frame did the Decedent mean by lifetime gifts – all lifetime gifts or only gifts after the creation of the Trust?**
3. **How is the equalization to be calculated – add all gifts together to equalize, add all gifts together then divide by two, or add the gifts of Ellen's family and separately add the gifts of Beacham's family and determine which is larger and equalize Julia by the larger?**

Findings by the Court during the Hearing

During the hearing, this court made certain findings with regard to the offer of $525,528.08 and interest related to when that offer was officially rejected. This Court also indicated to the parties that only after Trust gifts were being considered. After a full review of the hearing, the testimony, and the exhibits in evidence, those decisions are amended as the remainder of this order will document.

Testimony

Julia testified about her family, the manner in which their parents acquired their wealth, the individual trusts for each child created in 1997 by her parents, the trusts for each grandchild created close to their births by the Decedent, the Family Partnership, and what she believed to be her mother's intent with her estate plan as to the 2007 estate plan and the Trust that is the source of this litigation. She believes that the calculation of Decedent's lifetime gifts should include all gifts.

George Durant, a certified forensic accountant, testified, over the objection of Respondents' counsel, regarding his review of Decedent's brokerage statements, bank records and checks, Decedent's gift tax returns, deposition transcripts, and other spreadsheets and his calculations regarding the equalization for Petitioner, as directed by Mr. Griffin. Mr. Durant described how he calculated the amounts of the lifetime gifts received by the spouses and issue

5 & 10 am

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

of Beacham and Ellen. Mr. Durant provided the Court with a list of all documents reviewed and a table showing all the lifetime gifts given by the Decedent before the execution of the Trust and the interest of that amount calculated at five percent (5%) until the day of the trial. He also provided the same calculations for gifts given after the execution of the Trust as well as the addition of those figures representing the total lifetime gift amounts given.

Over the initial objection and disagreement of Respondents, payments made to Hammond School, the school attended by all of the grandchildren, totaling $437,445.48, were included in Mr. Durant's calculations as gifts. Respondents argued that those payments should not be included because Mr. Durant could not determine what was tuition payments versus what were donations made by the Decedent. The court requested that Respondents review their tuition invoices for those years to be able to separate any donations. This court allowed all payments to Hammond School as gifts to the grandchildren to be included in the equalization calculations.

Additionally, at the time of his original calculation offered into evidence by the Petitioner, Mr. Durant included the following in his pre-Trust calculation: $24,000.00 ($12,00.00 x 2) for annual gifts to spouses made by Beacham on September 26, 2007 and $240,000.00 paid into 529 plans for grandchildren made by Beacham on October 1, 2007. After the court's request to include these gifts with the gifts made after the Trust's creation, as Beacham had included them in his original gift calculations as they were made in anticipation of the Trust's creation, all parties were in agreement to the accuracy of the numbers and calculations provided by Mr. Durant. These calculations have now become less relevant as the findings below will show.

Mr. Durant's testimony and calculations were relied on heavily by this court and ultimately agreed upon by all parties. All documents that were reviewed by Mr. Durant were admitted as a flash drive as Respondents Exhibit 8. These same documents were available for all parties throughout the discovery and deposition phase of this litigation.

W. Steven Johnson, estate planning attorney for the Decedent, testified about his conversations with the Decedent and her intent regarding the equalizing distribution summarized as follows:

- Beginning in September 2007, there was a heightened awareness of a need to make gifts on behalf of Decedent to lessen the estate taxes.
- In September of 2007, Mr. Johnson met with the Brooker family to discuss the need to accelerate the gifts that the Decedent needed to make to children, grandchildren and spouses of children, to

6 of 10 am

include college and private school tuition and 529 plans for the grandchildren.

- Decedent did not want to disadvantage Julia so Mr. Johnson said he could put a provision in the will or trust to "catch up" Julia for any gifts made to her children's spouses and children.
- Decedent did not want Julia to suffer as a result of these gifts.
- He does not recall if the meaning of lifetime gifts was ever discussed or if he defined that for the Decedent or the family at the family meeting.
- Mr. Johnson spoke with his law partner Mr. Reynolds about the equalization provision he drafted because he wanted a second set of eyes to review the language of the Trust.
- He does not recall the Decedent asking any questions about the lifetime gift equalization but he does remember that their conversations were about prospective gifts, not retrospective gifts.
- If there had been a discussion about prior gifts, Mr. Johnson would have recommended to the Decedent to catch up Julia for the prior gifts at that time, not at the Decedent's death.
- Mr. Johnson was not aware that the Decedent had already given large sums as gifts to the spouses and children of Beacham and Ellen before the creation of the Trust.
- The way the equalization was to be calculated was from the date of the Trust forward to take the larger of the two gifting groups, Beacham's spouse and children versus Ellen's spouse and children, and then add the interest to achieve Petitioner's share.
- The calculation of the equalization amount offered of $525,528.08 was made based on the numbers Beacham provided to the paralegal for Mr. Johnson.
- Neither Mr. Johnson nor his paralegal were given the bank statements or tax returns to calculate the equalization amount.
- In a document from Mr. Johnson's file that he explained was created by his paralegal as a to do list, appearing to be created post death of the Decedent, noted is "to determine gifts made to the spouse and children of Beach and Ellen from May of 1997 forward to be distributed with five (5) percent interest to Julia". Mr. Johnson explained that he told his paralegal that was incorrect.

William H. Reynolds, III, Mr. Johnson's law partner, supported Mr. Johnson's testimony because he reviewed the draft of the equalization provision. He testified that if a client wanted to look back, he would want to capture what those gifts had been to calculate the number to equalize. Mr. Reynolds agreed that the Petitioner should be equalized with the higher amount given to Beacham or Ellen.

7 8 10 am

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Beacham testified he made the following pre-Trust gifts after the family meeting with Mr. Johnson in anticipation of the creation of the Trust: $24,000.00 ($12,00.00 x 2) for annual gifts to spouses on September 26, 2007 and $240,000.00 for 529 plans for grandchildren on October 1, 2007, and agreed they should be included in the equalization calculation that he offered Petitioner but that after the lawsuit he withdrew that as part of his calculation. On October 16, 2007, he became Trustee of the Trust; however, the Trust was not funded until the death of the Decedent in April of 2016. Beacham began the accelerated gifting program as the Decedent's signatory or agent under a Power of Attorney and does not remember if the Decedent individually continued gifting after the Trust. Specifically, Beachum reviewed the financial documents and could not find where she independently acted or gifted after the Trust's creation.

Beacham testified that he relied heavily on Dino Corontzes, who was the broker for the Decedent's investment accounts and the husband of Ellen, to make the annual gifts. Beacham agreed that the Decedent paid full tuition to Hammond School for his children and Ellen's children before the creation of the Trust and that he considered the payments a gift. He further stated that while he continued to pay Hammond School tuition for the grandchildren as signatory on the Decedent's account after the creation of the Trust, he did not consider it to be a part of the definition of lifetime gift for equalization in the Trust. He testified that he is not aware of other donations the Decedent made to Hammond School.

Beacham, after a one-day recess during the trial and his ability to go back through his records, agreed to Mr. Durant's review of the financial documents and Mr. Durant's calculations. Based on Mr. Durant's review and calculation, from the time Beacham took over managing the Decedent's gifting in September of 2007, the gift amount totaled $804,499.23. Of that total gift amount, $396,305.23 was received by the spouse, and issue of Ellen, and $408,194.00 was received by the spouse and issue of Beacham. Prior to the creation of the Trust, the Decedent had previously given gifts in the amount of $997,869.83. Of this prior gift amount, $495,113.92 was received by the spouse and issue of Beacham and $502,755.92 was received by the spouse and issue Ellen.

On May 31, 2016, an email was sent by Beacham offering the equalization distribution to his sister Julia in the amount of $525,528.08. This offer was a result of calculations by Mr. Johnson's paralegal based on numbers she received from Beacham regarding annual gift amounts to each spouse and their issue. While there is some disagreement about when the offer

8 of 10 am

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

was received or when the offer was officially rejected, it is clear that the Petitioner received the offer and wanted additional documents to review to be able to determine if the amount was correct. This equalization distribution was ultimately rejected by Julia on or about August 31, 2016, due to her own investigation of previous lifetime gifts she believed should have been included in the equalization distribution calculation.

Having carefully considered all testimony, exhibits, and arguments presented at the hearing and the other submissions of the parties, the Court makes the following:

FINDING OF FACTS AND CONCLUSIONS OF LAW

1. Janet B. Brooker died on April 16, 2015 as a resident of Richland County, South Carolina, therefore the Probate Court has subject matter jurisdiction pursuant to S.C. Code Ann. § 62-1-302(a) and § 62-1-302(a)(3), 1976, as amended and venue is proper pursuant to S.C. Code Ann. 62-3-201(a)(1), 1976, as amended.
2. The Last Will and Testament of Janet B. Brooker, executed October 27, 2007, provides that the totality of her estate be poured over into the Janet B. Brooker Trust, established October 27, 2007.
3. Pursuant to S.C. Code Ann. § 62-7-201, 1976, as amended, the Probate Court has exclusive jurisdiction, to "ascertain beneficiaries, determine a question arising in the administration or distribution of a trust including, questions of construction of trust instruments..."
4. The Janet B. Brooker Trust is governed by the laws of the State of South Carolina.
5. The beneficiaries of the Trust are the children of Janet B. Brooker: Beacham, Ellen, and Julia.
6. The Trust provides for an equalization distribution for the Settlor's daughter Julia upon the Settlor's death, for all lifetime gifts given to the spouses and issue of Beacham and Ellen.
7. Prior to the October 16, 2007 execution of the Trust, W. Steven Johnson, as drafting attorney, represented the Settlor and met with the family to explain the Decedent's estate plan.
8. At the time of the execution of the Trust instrument, the Decedent had previously given lifetime gifts in the amount of $997,869.83 to the spouses and issue of Beacham and Ellen.
9. These previous gifts were not discussed with Mr. Johnson.
10. The Decedent did not want Julia to be disadvantaged or treated differently because she did not have a spouse or children.
11. The Decedent wanted Julia equalized at her death.

9 & 10 am

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

12. Mr. Durant was able to capture gifts to the spouses and issue of Beacham and Ellen from approximately 1992 forward by a review of all account statements and tax returns available.
13. The phrase in the Trust document that "the Settlor has previously given lifetime gifts and will continue" is evidence that the Settlor intended that the previous lifetime gifts be included in the equalization calculation for Julia and comports with her desire for Julia to be treated the same.
14. Gifts such as private school tuition, college plan contributions, and college tuition are to be included as gifts in the equalization calculation.
15. The sum total of the lifetime gifts to the spouses and issue of Beacham and Ellen, as calculated by Mr. Durant is $1,802,369.07, with $899,061.15 to spouse and issue of Ellen and $903,307.92 to the spouse and issue of Beacham.
16. Five percent interest on that amount through the date of February 5, 2019 was $1,139,694.81.
17. The total of $2,942,063.88 will be divided by two to allow for Julia to be equalized to but not receive more than either the spouse and issue of Ellen or Beacham.
18. As of the trial date, the amount owed to Julia to equalize her to the lifetime gifts to her siblings' spouses and children was $1,471,031.94 ($2,942,063.88 / 2).
19. This same formula shall be used to calculate date of payment amount.

THEREFORE, IT IS HEREBY ORDERED THAT:

A. Julia B. Brooker was entitled to $1,471,031.94 as of February 5, 2019, as her equalization distribution of the Janet B. Brooker Trust.

B. The Trustee of the Janet B. Brooker Trust shall pay the amount due to Julia B. Brooker using the formula as outlined above to calculate interest and final payment.

IT IS SO ORDERED.

Amy W. McCulloch Judge
Richland County Probate Court

June 22, 2019
Columbia, South Carolina

10 & 10 am

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2020-CP-40-02040
	)	
Beacham O. Brooker; Jr.; Ellen B. Corontzes; and BBB&C Family, LLC	)	
	)	
Petitioners	)	
	)	
vs.	)	
	)	
Julia B. Brooker,	)	
	)	
Respondent	)	

Exhibit C to Memorandum of Law in Support of Petition and Amended Motion to Stay and in Opposition to Respondent's Motion to Dismiss Petition and Motion to Stay, Motion to Compel Arbitration, and Motion for an Award of Attorney's Fees and Expenses

Order Consolidating Appeals and Briefing Schedule, filed Nov. 11, 2019

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF RICHLAND	)	Estate No.: 2017-GC-40-0036
	)	
IN THE MATTER OF:	)	Civil Action Number: 2019-CP-40-03582
	)	Civil Action Number: 2019-CP-40-04463
	)	Civil Action Number: 2019-CP-40-06229
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	
	)	
Julia B. Brooker,	)	
Petitioner,	)	
	)	
vs.	)	
	)	**ORDER CONSOLIDATING APPEALS**
Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust,	)	**AND BRIEFING SCHEDULE**
	)	
Respondents.	)	
	)	

This matter came before the Court upon Consent Motion of Petitioner Julia B. Brooker ("Julia") and Respondents Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust ("Beach") and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust ("Ellen") to consolidate three appeals by Beach and Ellen of three probate court orders ("Orders") and for a briefing schedule for the consolidated appeal pursuant to Rule 214 of the South Carolina Appellate Rules. Because the three appeals of three orders involve the same questions and issues, it is hereby

ORDERED the three appeals be consolidated under the first appeal filed bearing case number 2019-CP-40-03582.

In addition, the following briefing schedule based on Section 62-1-308 is hereby ordered under case number 2019-CP-40-03582:

1. The Amended Statement Issues on Appeal shall be filed within 30 days after this Order is entered;
2. Beach and Ellen shall file their brief and Designation of Matter within 30 days after the Amended Statement of Issues on Appeal is filed.
3. Julia shall file her brief within 30 days after the service of Beach and Ellen's brief; and,
4. Beach and Ellen shall file their Reply Brief within 10 days after service of Julia's brief; and
5. Beach and Ellen shall file the Record on Appeal within 30 days after service of Julia's brief.

IT IS HEREBY ORDERED.

The Honorable Jocelyn Newman
Chief Administrative Judge
Fifth Judicial Circuit

November _____, 2019
Columbia, South Carolina

FILED ELECTRONICALLY IN COMMON PLEAS - CASE# 2019CP4006229 - 2019 Nov 18 4:38 PM - RICHLAND COUNTY

Richland Common Pleas

Case Caption: Beacham O Brooker Jr , plaintiff, et al VS Julia B Brooker

Case Number: 2019CP4006229

Type: Order/Consolidate

So Ordered

Jocelyn Newman, Chief Judge for Administrative Purposes, Court of Common Pleas, 5th Judicial Circuit

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2020-CP-40-02040
	)	
Beacham O. Brooker; Jr.; Ellen B. Corontzes; and BBB&C Family, LLC	)	
	)	
Petitioners	)	
	)	
vs.	)	
	)	
Julia B. Brooker,	)	
	)	
Respondent	)	

Exhibit D to Memorandum of Law in Support of Petition and Amended Motion to Stay and in Opposition to Respondent's Motion to Dismiss Petition and Motion to Stay, Motion to Compel Arbitration, and Motion for an Award of Attorney's Fees and Expenses

South Carolina Supreme Court's Order Re: Operation of the Trial Courts During the Coronavirus Emergency (As Amended April 22, 2020)

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Court News ...

2020-04-22-01

The Supreme Court of South Carolina

RE: Operation of the Trial Courts During the Coronavirus Emergency
(As Amended April 22, 2020)[1]

Appellate Case No. 2020-000447

ORDER

(a) Purpose. The purpose of this order is to provide guidance on the continued operation of the trial courts during the current coronavirus (COVID-19) emergency. The measures contained in this order are intended to allow essential operations to continue while minimizing the risk to the public, litigants, lawyers and court employees.

In the past, the South Carolina Judicial Branch has shown great resilience in responding to hurricanes, floods, and other major disasters, and this Court is confident that the same will be true in this emergency. This emergency, however, differs from these prior emergencies in many aspects. The current emergency will significantly impact every community in South Carolina while the prior emergencies, although potentially horrific for the individuals and communities directly impacted, did not. The impact of the prior emergencies could be minimized or avoided by traveling away from the site of the disaster; this is not the case for the current emergency. Further, in the prior emergencies, the circumstances giving rise to the emergency involved a single event with a beginning and a predictable end. This is not the case for the coronavirus, and even conservative estimates indicate the direct impacts of this pandemic will continue for many months.

In light of the extraordinary challenges presented by the current emergency, this Court finds it necessary to supplement and, in some situations, to alter significantly, the current practices regarding the operation of the trial courts. In the event of a conflict between this order and the South Carolina Rules of Civil Procedure (SCRCP), the South Carolina Rules of Criminal Procedure (SCRCrimP), the South Carolina Rules of Family Court (SCRFC), the South Carolina Rules of Probate Court (SCRPC), the South Carolina Rules of Magistrates Court (SCRMC), the South Carolina Court-Annexed Alternative Dispute Resolution Rules (SCADR), South Carolina Rules of Evidence (SCRE) or any other rule or administrative order regarding the operation of a trial court, this order shall control.

(b) Terminology. The following terminology is used in this order.

(1) Judge: a judge of the circuit court, family court, probate court, magistrate court and municipal court, including masters-in-equity and special referees.

(2) Remote Communication Technology: technology such as video conferencing and teleconferencing which allows audio and/or video to be shared at differing locations in real time.

(3) Summary Court: the magistrate and municipal courts.

(4) Trial Court: the circuit court (including masters-in-equity court), family court, probate court, magistrate court and municipal court.

(c) General Guidance. This section provides general guidance applicable to all trial courts or to several court types, and later sections will provide guidance that is limited to one court type. While this order remains in effect, the following general guidance shall apply:

(1) Jury Trials. All jury selections and jury trials in all criminal and civil cases are continued until further notice.

(2) Non-Jury Trials. The appropriate Chief Judge for Administrative Purposes, or in the case of any court that does not have a Chief Judge for Administrative Purposes, the appropriate judge responsible for scheduling matters, may authorize a non-jury trial to occur if the parties consent, or the matter involves an emergency or other circumstance warranting immediate resolution. To proceed, the Chief Judge or the appropriate judge responsible for scheduling matters must find that the trial can be conducted in a manner to minimize the risk such as limiting the persons present to the parties, counsel and necessary witnesses, or that the trial may be conducted using remote communication technology to avoid the need for a physical appearance of all or some of the parties, counsel or witnesses. If an in-person non-jury trial is conducted, only attorneys, the parties, and necessary witnesses will be allowed to appear. Hearings must be staggered to minimize the number of people appearing at the same time.

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(3) Hearings. A hearing on a motion or other matter may be conducted using remote communication technology to avoid the need for a physical appearance by any party, witness or counsel. Only if a judge determines that the hearing cannot be conducted adequately using remote communication technology and the matter involves an emergency or other circumstance warranting immediate determination, will an in-person hearing be conducted. If an in-person hearing is conducted, only attorneys, the parties, and necessary witnesses will be allowed to appear. The total number of participants should not exceed ten (10) people. Hearings must be staggered to minimize the number of people appearing at the same time.

(4) Minimizing Hearings on Motions. While the practice has been to conduct hearings on virtually all motions, this will not be possible during this emergency. If, upon reviewing a motion, a judge determines that the motion is without merit, the motion may be denied without waiting for any return or other response from the opposing party or parties. In all other situations except those where a motion may be made on an ex parte basis, a ruling shall not be made until the opposing party or parties have had an opportunity to file a return or other response to the motion. A trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers. If a hearing is held, the hearing shall be conducted in the manner specified by (c)(3) above. Consent motions should be decided without a hearing; in the event a party believes that the order issued exceeds the scope of the consent, the party must serve and file a motion raising that issue within ten (10) days of receiving written notice of entry of the order.

(5) Determination of Probable Cause Following Warrantless Arrest. When a warrantless arrest has occurred, the arresting officer shall provide the appropriate judge with an affidavit or a written statement with the certification provided by section (c)(16) below setting forth the facts on which the warrantless arrest was made within eight (8) hours of the arrest. The judge shall consider this affidavit or written statement with the certification and, if appropriate, may have the officer or others supplement the affidavit or written statement with the certification with sworn testimony given over the telephone or other remote communication technology. The judge may administer any necessary oath using the telephone or other remote communication technology. If the judge finds a lack of probable cause for the arrest, the defendant shall be released. The goal is to have this determination of probable cause be made within twenty-four (24) hours of the arrest. Only in the most extraordinary and exceptional circumstances should this determination not be made within forty-eight (48) hours of the arrest. If this determination is not made within forty-eight (48) hours after arrest, the judge making the determination shall explain in writing the facts and circumstances giving rise to this delay, and a copy of this explanation shall be provided to the Office of Court Administration.

(6) Preliminary Hearings in Criminal Cases. Until further order of this Court, preliminary hearings will not be conducted.

(7) Remote Administration of Oaths. Where this order authorizes a hearing, trial or other matter to be conducted using remote communication technology, any oath necessary during that hearing, trial or other matter may be administered by the same remote communication technology. While it is preferable that the person administering the oath have both audio and visual communication with the person taking the oath, the oath may be administered if only audio communication is available, provided the person administering the oath can reasonably verify the identity of the person taking the oath. Notaries who are authorized to administer oaths may administer oaths utilizing remote communication technology in the case of depositions. Nothing in this order shall be construed as authorizing remote administration of oaths for any other purpose than those contained in this order.

(8) Scheduling Orders. All deadlines under all existing scheduling orders are hereby stayed, retroactive to March 13, 2020. Forty-five (45) days following the date on which the Governor lifts or rescinds the emergency orders relating to the coronavirus emergency, this stay shall end. While a judge may issue a new or amended scheduling order which will not be subject to this stay, both the decision to issue such an order and the terms of that order must consider the impact the emergency has on the ability of the parties and counsel to proceed. Judges are encouraged to seek input from the parties and counsel before issuing a new or amended scheduling order.

(9) Extensions of Time and Forgiveness of Procedural Defaults.

(A) Extensions of Time. This crisis will increase the need for extensions to be granted. While this order remains in effect, no filing fee will be required for a motion for an extension for any motion filed on or after the date of this order. Further, since it is important for lawyers and self-represented litigants appearing before the trial courts to have time to take actions to protect themselves and their families, the due dates for all trial court filings due on or after the effective date of this order are hereby extended for thirty (30) days.

(B) Forgiveness of Procedural Defaults Since March 13, 2020. In the event a party to a case or other matter pending before a trial court was required to take certain action on or after March 13, 2020, but failed to do so, that procedural default is hereby forgiven, and the required action shall be taken within thirty (30) days of the date of this order. If a dismissal or other adverse action has been taken, that adverse action shall be rescinded.

(C) Extensions by Consent. The provision in Rule 6(b), SCRCP, which permits the granting of only one extension of time by agreement of counsel, is suspended. Counsel may agree to further extensions of time without seeking permission from the court, and parties are strongly encouraged to do so upon request.

(D) Limitation. The provisions of (A) thru (C) above shall not extend or otherwise affect the time for taking action under Rules 50(b), 52(b), 59, and 60(b), SCRCP, or Rule 29, SCRCrimP. Further, these

provisions do not extend or otherwise affect the time for the serving of a notice of appeal under the South Carolina Appellate Court Rules, or the time to appeal from a lower court to the circuit court.

(10) Alternatives to Court Reporters and Digital Courtrooms. A trial or hearing in the court of common pleas (including the master-in-equity court), the court of general sessions or the family court is usually attended by a court reporter (before the master-in-equity this is usually a private court reporter) or is scheduled in one of the digital courtrooms with a court reporter or court monitor. While every effort will be made to continue these practices, this may not be possible as this emergency progresses. In the event such resources are not reasonably available, a trial or hearing authorized under this order may proceed if a recording (preferably both audio and video) is made. The judge shall conduct the proceedings in a manner that will allow a court reporter to create a transcript at a later date. This would include, but is not limited to, making sure the names and spelling of all of the persons speaking or testifying are placed on the record; ensuring exhibits or other documents referred to are clearly identified and properly marked; controlling the proceeding so that multiple persons do not speak at the same time; and noting on the record the start times and the time of any recess or adjournment.

(11) Courthouses.

(A) Filings. To the extent possible, courthouses should remain open to accept filings and payments, and to report criminal information to the South Carolina Law Enforcement Division and the National Crime Information Center. For the acceptance of documents or payments submitted by delivery to the courthouse, this may be accomplished by providing access to a portion of the courthouse even if the rest of the courthouse is closed to the public; providing an alternate location where the documents or payments may be delivered; or by providing a drop box where filings may be deposited. Adequate signage should be provided at the courthouse to alert persons about how to make filings by delivery, and this information should also be posted to the court's website, if available.

(B) Closure. In the event of the closure of a courthouse, information about the closure shall be provided by signage at the courthouse, and on the court's website if available.

(C) Quarantine of Incoming Paper Documents. To protect the safety of the staff of the trial courts, incoming paper documents, whether delivered or mailed to the trial court, may be quarantined for a period of up to forty-eight (48) hours once the documents are physically received by the trial court.[2] Once the quarantine period has ended, these documents will be file stamped with the date on which they were received, and court staff will then process the documents.

(12) Statute of Limitations, Repose and Other Similar Statutes. This Court is aware this emergency has already affected the ability of litigants to commence legal actions and this adverse impact will most likely increase significantly as this pandemic progresses. The Judicial Branch has raised this concern to the leadership of the General Assembly as this issue relates to the statute of limitations, statutes of repose and similar statutes such as S.C. Code Ann. § 15-36-100. While this Court has recognized the existence of judicial authority to toll a statute of limitations in other situations, it would be inappropriate for this Court to consider at this time what relief, if any, may be afforded to a litigant who is unable to file a civil action or take other actions under these statutory provisions due to this emergency.

(13) Service Using AIS Email Address. A lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS).[3] For attorneys admitted pro hac vice, service on the associated South Carolina lawyer under this method of service shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney. For documents that are served by email, a copy of the sent email shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. This method of service may not be used for the service of a summons and complaint, subpoena, or any other pleading or document required to be personally served under Rule 4 of the South Carolina Rules of Civil Procedure, or for any document subject to mandatory e-filing under Section 2 of the South Carolina Electronic Filing Policies and Guidelines. In addition, the following shall apply:

(A) Documents served by email must be sent as an attachment in PDF or a similar format unless otherwise agreed by the parties.

(B) Service by email is complete upon transmission of the email. If the serving party learns the email did not reach the person to be served, the party shall immediately serve the pleading or paper by another form of service in Rule 5(b)(1), SCRCP, or other similar rule, together with evidence of the prior attempt at service by email.

(C) In those actions governed by the South Carolina Rules of Civil Procedure, Rule 6(e), SCRCP, which adds five days to the time a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, shall also apply when service is made by email under this provision.

(D) Lawyers are reminded of their obligation under Rule 410(g), SCACR, to ensure that their AIS information is current and accurate at all times.

(14) Signatures of Lawyers on Documents. A lawyer may sign documents using "s/[typed name of lawyer]," a signature stamp, or a scanned or other electronic version of the lawyer's signature. Regardless of form, the signature shall still act as a certificate under Rule 11, SCRCP, that the lawyer has read the

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

document; that to the best of the lawyer's knowledge, information, and belief there is good ground to support it; and that the document is not interposed for delay.

(15) Optional Filing Methods. During this emergency, clerks of the trial courts may, at their option, permit documents to be filed by electronic methods such as fax and email. If the clerk elects to do so, the clerk will post detailed information on the court's website regarding the procedure to be followed, including any appropriate restrictions, such as size limitations, which may apply. Documents filed by one of these optional filing methods shall be treated as being filed when received by the clerk of court and a document received on or before 11:59:59 p.m., Eastern Standard Time, shall be considered filed on that day. These optional filing methods shall not be used for any document that can be e-filed under the South Carolina Electronic Filing Policies and Guidelines. If a trial court does not have a clerk of court, the court shall determine whether to allow the optional filing methods provided by this provision.

(16) Certification in Lieu of Affidavit. If a statute, court rule or other provision of law requires an affidavit to be filed in an action, the requirement of an affidavit may be satisfied by a signed certification of the maker stating, "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt."

(17) Arrest and Search Warrants. Due to this emergency, it may not be possible for an officer seeking an arrest warrant or a search warrant to appear before the judge to be sworn and sign the warrant. Therefore, a judge may use the procedures provided in section (c)(7) above to remotely administer the oath to the officer and, if appropriate, the judge may take sworn testimony using remote communication technology to supplement the allegations in the warrant. The judge shall make a notation on the warrant indicating the oath was administered remotely and the officer was not available to sign the warrant in the presence of the judge. If probable cause is found, the judge shall sign the warrant and return the warrant to the officer for execution. While the officer may sign the warrant when it is returned, the failure to do so shall not affect the validity of the warrant. The warrant may be transmitted to the judge and returned to the officer by e-mail, fax or other electronic means. For the purpose of this section, the term "search warrant" shall also include applications under South Carolina Homeland Security Act, S.C. Code Ann. §§ 17-30-10 to -145.

(d) Court of General Sessions. The following additional guidance is provided regarding the Court of General Sessions:

(1) Rule 3(c), SCRCrimP. Based on this emergency, the ninety (90) day period provided by Rule 3(c), SCRCrimP, is hereby increased to one-hundred and twenty (120) days.

(2) County Grand Juries. While a physical meeting of the members of the county grand jury shall not be held, the Solicitor or the Attorney General is hereby authorized to present an indictment to the grand jury using remote communication technology such as video conferencing and teleconferencing, and any necessary oath may be administered using this same remote communication technology pursuant to (c)(7) above.

(3) Guilty Pleas. If consented to by both the defendant and the prosecutor, a hearing on a guilty plea may be held subject to the standards specified in (c)(3) above. If the defendant will participate by remote communication technology, the trial court must make a determination that the defendant is knowingly and intelligently waiving his right to be physically present for the plea. If the defendant's counsel will participate by remote communication technology, the trial court must determine that the defendant is knowingly and intelligently waiving any right to have counsel physically present, and the court must ensure that the defendant has the ability to consult privately with counsel during the plea proceeding as may be necessary. Finally, if other persons will address the court or testify during the plea proceedings by remote communication technology, the court must find that the defendant is knowingly and intelligently waiving any right to have those persons physically present for the plea.

(e) Court of Commons Pleas. The following additional guidance is provided regarding the Court of Common Pleas, including the Master-in-Equity Courts:

(1) Isolation and Quarantine Orders. As this pandemic continues, it is possible the provisions of the South Carolina Emergency Health Powers Act, S.C. Code Ann. §§ 44-4-100 to 44-4-570, may be triggered as it relates to isolation and quarantine orders. Therefore, the Chief Judges for Administrative Purposes for Common Pleas should familiarize themselves with the procedures for judicial review and petitions under that Act, most notably section 44-5-540, and begin to formulate a strategy to meet the timelines specified in that statute for judicial action.

(2) Procedural Guidance Regarding Filing. While the trial court case management system does not have a case type and subtype for these matters, the clerks of court should use "Nature of Action Code 699 (Special/Complex Other)" for these matters, and these matters will be exempt from any ADR requirement. Detailed instructions for attorneys to Electronically File in these cases are available at https://www.sccourts.org/efiling/ARGs/ARG-26%20Quarantine%20Petitions.pdf. It is also anticipated that all of these hearings will be conducted using remote communication technology. In coordination with the Pro Bono Program of the South Carolina Bar, a list of lawyers willing to serve as counsel for individuals or groups of individuals who are or are about to be isolated and quarantined under section 44-5-540(F), has been compiled.

(f) Family Court. The following additional guidance is provided regarding the Family Court:

(1) Granting of Uncontested Divorces. The Family Court may grant an uncontested divorce without holding a hearing where:

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

(A) The parties submit written testimony in the form of affidavits or certifications of the parties and corroborating witnesses that address jurisdiction and venue questions, date of marriage, date of separation, the impossibility of reconciliation and the alleged divorce grounds.

(B) The written testimony must include copies of the parties' and witnesses' state-issued photo identifications.

(C) Any decree submitted by any attorney shall be accompanied by a statement, as an officer of the court, that all counsel approve the decree and that all waiting periods have been satisfied.

(D) Should either party request a name change in connection with a request for divorce agreement approval, that party shall submit written testimony to the Family Court in the form of an affidavit or certification addressing the appropriate questions for name change and the name which he or she wishes to resume. This relief shall be included in any proposed Order submitted to the Court for approval at the time of the submission of the documents related to the relief requested.

(2) Approval of Settlement Agreements and Consent Orders without a Hearing.

(A) General Orders. Consent orders resolving all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without the necessity of holding a hearing. Examples include consent orders resolving motions to compel, discovery disputes, motions to be relieved as counsel, or consent Orders appointing a Guardian ad Litem or addressing Guardian ad Litem fee caps. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed.

(B) Temporary Orders. Temporary consent orders resolving all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without requiring a hearing. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed, and may be submitted and issued without the necessity of filing supporting affidavits, financial declarations or written testimony.

(C) Final Orders. Final consent orders approving final agreements in all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without requiring a hearing. These final consent orders include marital settlement agreements, custody and visitation settlement agreements and enforcement agreements. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed.

These Consent Orders shall be submitted together with all of the following:

(i) The final agreement, such as a marital settlement agreement, signed by the attorneys and the parties.

(ii) Updated signed Financial Declarations for each party.

(iii) An affidavit or certification from the Guardian ad Litem, if one has been appointed, addressing the best interests of the children.

(iv) Written testimony of all parties in the form of affidavit or certification addressing and answering all questions the Family Court would normally ask the parties on the record, including but not limited to affirmations from the parties that:

a. The party has entered into the Agreement freely and voluntarily, understands the Agreement, and desires for the Agreement to be approved by the Court, without the necessity of a hearing.

b. Setting forth the education level obtained by the party, the employment status of the party and the health of the party.

c.There are no additional agreements, and neither party has been promised anything further than that set out in the Agreement.

d. The party fully understands the financial situation of each of the parties, the underlying facts, terms and effect of the Agreement.

e. The party has given and received full financial disclosure.

f.The party has had the benefit of an experienced family law attorney.

g. The party has had the opportunity to ask any questions relating to procedures and the effect of the Agreement.

h.The party is not acting under coercion or duress, and the party is not under the influence of any alcohol or drug.

i. That the Agreement is fair and equitable, it was reached by the parties through arms-length negotiations by competent attorneys and the agreement represents some sacrifices and compromises by each party.

j. The Agreement is in the best interests of the children, if there are any.

k. That the parties have entered into a marital settlement agreement in full and final settlement of all issues arising from the marriage which have been raised or which could have been raised in the proceeding, other than issues relating to grounds for divorce.

l.The party is aware of the applicable contempt sanctions associated with non-compliance.

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

(D) Consent Orders under S.C. Code Ann. § 63-7-1700(D). Where all the parties consent and the Family Court determines a child may be safely maintained in the home in that the parent has remedied the conditions that caused the removal, and the return of the child to the child's parent would not cause an unreasonable risk of harm to the child's life, physical health, safety, or mental well-being, the Family Court may order the child returned to the child's parent without holding a hearing.

(3) Hearings Generally. With respect to all contested hearings in family court, including agency matters and private actions, both temporary and permanent, all hearings should be conducted in accordance with section (c)(3) of this order.

(g) Probate Court. The following additional guidance is provided:

Certification in Lieu of Affidavit. In the probate court, the certificate in section (c)(16) may also be used for a marriage license application under S.C. Code Ann.§ 20-1-230, including any application which may be submitted electronically, or for any of the probate court forms available at www.sccourts.org/forms which are either an affidavit or require an oath or affirmation to be administered.

(h) Summary Court. The following additional guidance is provided regarding the Summary Courts:

(1) Bond Hearings in Criminal Cases. Bond hearings, which shall be conducted in the manner specified by (c)(3) above, should be held at least once a day. In addition to the normal factors for determining whether the defendant will be required to post a bond or will be released on a personal recognizance, the judge should consider the need to minimize the detention center population during this emergency. Further, judges should consider home detention or other options to help reduce detention center population. The summary court shall uphold victims' rights in accordance with the South Carolina Constitution, including seeking to ensure that a victim advocate/notifier is available for all bond hearings, subject to the rights of the defendant under the United States Constitution and the South Carolina Constitution.

(2) Transmission of Warrants for General Sessions Offenses. Warrants for general sessions offenses shall continue to be forwarded to the clerk of the court of general sessions as provided for Rule 3, SCRCrimP. As to an arrest warrant for a defendant who is already in the custody of the South Carolina Department of Corrections, or a detention center or jail in South Carolina, this Court hereby authorizes these defendants to be served with the warrant by mail. Therefore, if it is determined that the defendant is already in custody, the judge shall annotate the warrant to reflect that a copy has been mailed to the defendant, mail a copy of the annotated warrant to the defendant, and immediately forward the annotated warrant and any allied documents to the clerk of the court of general sessions for processing under Rule 3, SCRCrimP.

(3) Guilty Pleas. If consented to by both the defendant and the prosecutor, a hearing on a guilty plea may be held by the summary court. If the defendant will participate by remote communication technology, the trial court must make a determination that the defendant is knowingly and intelligently waiving his right to be physically present for the plea. If the defendant's counsel will participate by remote communication technology, the trial court must determine that the defendant is knowingly and intelligently waiving any right to have counsel physically present, and the court must ensure that the defendant has the ability to consult privately with counsel during the plea proceeding as may be necessary. Finally, if other persons will address the court or testify during the plea proceedings by remote communication technology, the court must find that the defendant is knowingly and intelligently waiving any right to have those persons physically present for the plea.

(i) Effective Date and Revocation of Prior Order and Memoranda. This order is effective immediately. It shall remain in effect until modified or rescinded by this Court. This order replaces the following order and memoranda previously issued.

(1) Memoranda of the Chief Justice dated March 16, 2020, which are labeled as "Trial Courts Coronavirus Memo," and "Summary Courts Coronavirus Memo."

(2) Order dated March 18, 2020, and labeled "Statewide Family Court Order."

[1] This order was initially filed on April 3, 2020, and has been amended twice. On April 14, 2020, changes were made to sections (c)(5) and (c)(8). On April 22, 2020, section (c)(17) was added.

[2] One scientific study has reported that the coronavirus can live for up to 24 hours on cardboard. https://www.medrxiv.org/content/10.1101/2020.03.09.20033217v1.full.pdf

[3] The email addresses for lawyers admitted in South Carolina can be accessed utilizing the Attorney Information Search at: https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm.

s/Donald W. Beatty C.J.
s/John W. Kittredge J.
s/Kaye G. Hearn J.
s/John Cannon Few J.
s/George C. James, Jr. J.

Columbia, South Carolina

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

April 3, 2020

As Amended April 22, 2020

ELECTRONICALLY FILED - 2020 Apr 29 4:39 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159

Case No. 2020-CP-40-02040

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC, ... Respondents

v.

Julia B. Brooker,..... Appellant

EXHIBIT H TO MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

Renewed Motion to Dismiss Petition and Amended Motion to Stay, Motion to Compel Arbitration and Motion for Attorney Fee's and Expenses ("Julia's Renewed Motions")

ELECTRONICALLY FILED - 2020 May 01 6:15 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CASE NO. 2020-CP-40-02040
Beacham O. Brooker, Jr.; Ellen B. Corontzes; and BBB&C Family, LLC, Petitioners, v. Julia B. Brooker, Respondent.	**RESPONDENT'S RENEWED MOTION TO DISMISS PETITION AND AMENDED MOTION TO STAY, MOTION TO COMPEL ARBITRATION, AND MOTION FOR AN AWARD OF ATTORNEY'S FEES AND EXPENSES**

Respondent Julia B. Brooker, by and through undersigned counsel, hereby submits her Renewed Motion to Dismiss Petitioners' Petition and Amended Motion to Stay, her Motion to Compel Arbitration, and her Motion for an Award of Attorney's Fees and Expenses.

Respondent hereby moves for the dismissal of Petitioners' Petition and Amended Motion to Stay Respondent's arbitration demand pursuant to Rule 12(b)(6), SCRCP; S.C. Code Ann. § 15-48-20; and "the South Carolina Uniform Arbitration Act, *in toto*" (*see* Pet. and Am. Mot. to Stay 1). On April 29, 2020, Petitioner filed a Petition and Amended Motion to Stay, purportedly "because a prior draft of the motion was inadvertently filed instead of the final draft." (*Id.*) Petitioner's amended filing fares no better than its first because Section 15-48-20(b) is the only provision of the South Carolina Uniform Arbitration (the "Act") that contemplates the relief sought here—an order staying an arbitration proceeding. Accordingly, because Petitioners concede the existence of a valid and enforceable arbitration agreement between the parties, their Petition and Amended Motion to Stay fails to state facts supporting the relief they seek. Therefore, their Petition should be dismissed pursuant to Rule 12(b)(6), and their Amended Motion to Stay should be denied.

ELECTRONICALLY FILED - 2020 May 01 6:15 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Respondent further moves the Court, pursuant to Section 15-48-20(a) of the Act, S.C. Code Ann. § 15-48-20(a), for an order compelling the arbitration of claims asserted in Respondent's arbitration demand. All such claims arise out of the Operating Agreement of BBB&C Family LLC executed by Petitioners Beacham O. Brooker, Jr. and Ellen B. Corontzes and Respondent Julia B. Brooker on January 31, 2014. That Operating Agreement requires that "[a]ny dispute or controversy between the parties hereto arising out of, under, or in connection with, or in relation to, this Operating Agreement shall be submitted to binding arbitration in accordance with South Carolina Code Sections 15-48-10, et seq." It further provides that "[a]ny dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding." By filing their Petition and Motion to Stay, Petitioners have refused to arbitrate. Because there is a valid and enforceable arbitration agreement between Petitioners and Respondent and because the former have refused to arbitrate, Respondent is entitled to an order compelling arbitration of the claims asserted in the Arbitration Demand, as well as Petitioners' request for a stay of that arbitration.

Respondent seeks an award of attorney's fees and expenses associated with this judicial proceeding to be paid by Petitioners Beacham O. Brooker, Jr. ("Beacham") and Ellen B. Corontzes ("Ellen"), to be proved immediately prior to its conclusion by Respondent's submission of verified time and expense reports. Pursuant to the Operating Agreement, "[i]n any controversy, claim or dispute arising out of, or relating to, this Operating Agreement or the method or manner of the performance hereof, the prevailing party shall be entitled to, in addition to other relief, recovery of proceeding expenses." The Operating Agreement further provides that "[i]n determining the award of proceeding expenses, attorney's fees . . . and other reasonable expenses shall be included." In this regard, "the term 'proceeding' shall include . . . judicial proceedings."

Petitioners Beacham and Ellen's Petition and Motion to Stay initiated a judicial proceeding that concerns a controversy relating to the Operating Agreement, and accordingly, Respondent should be entitled to attorney's fees and expenses under the Operating Agreement if the Court dismisses Petitioners' Petition and Motion to Stay and compels the parties to arbitrate.

Finally, Respondent respectfully requests that the Court determine Respondent's Motion to Dismiss and Motion to Compel Arbitration on an expedited basis, ideally based on the submissions alone and without a hearing. Such summary and expedited relief is contemplated by Section 15-48-20(a), which provides that "[o]n application of a party showing an agreement described in § 15-48-10, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration." S.C. Code Ann. § 15-48-20(a). Respondent also respectfully suggests that the Court should exercise its discretion to determine these matters "without further input from the lawyers," as contemplated by the Supreme Court of South Carolina's Order No. 2020-04-22-01, RE: Operation of the Trial Courts During the Coronavirus Emergency (as amended April 22, 2020) (stating that "[a] trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers."). In the alternative, Respondent respectfully requests an expedited hearing on Respondent's pending motions, particularly the motion to compel arbitration under Section 15-48-20(a) of the Act, which contemplates expedited relief by its terms.

In support of her Motions, Respondent relies on the supporting Memorandum of Law and exhibits submitted herewith and the verified time and expense reports to be submitted upon further direction by the Court.

ELECTRONICALLY FILED - 2020 May 01 6:15 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Respectfully submitted,

s/ Badge Humphries

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May 1, 2020

ELECTRONICALLY FILED - 2020 May 01 6:15 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CASE NO. 2020-CP-40-02040
Beacham O. Brooker, Jr.; Ellen B. Corontzes; and BBB&C Family, LLC, Petitioners, v. Julia B. Brooker, Respondent.	**RESPONDENT'S MOTION TO DISMISS PETITION AND MOTION TO STAY, MOTION TO COMPEL ARBITRATION, AND MOTION FOR AN AWARD OF ATTORNEY'S FEES AND EXPENSES**

Respondent Julia B. Brooker, by and through undersigned counsel, hereby submits her Motion to Dismiss Petitioners' Petition and Motion to Stay, her Motion to Compel Arbitration, and her Motion for an Award of Attorney's Fees and Expenses.

Respondent hereby moves for the dismissal of Petitioners' Petition and Motion to Stay Respondent's arbitration demand pursuant to Rule 12(b)(6), SCRCP, and S.C. Code Ann. § 15-48-20(b). Respondent further moves the Court, pursuant to S.C. Code Ann. § 15-48-20(a), for an order compelling the arbitration of claims asserted in Respondents' arbitration demand, all of which arise out of the Operating Agreement of BBB&C Family LLC executed by Petitioners Beacham O. Brooker, Jr. and Ellen B. Corontzes and Respondent Julia B. Brooker on January 31, 2014. That Operating Agreement requires that "[a]ny dispute or controversy between the parties hereto arising out of, under, or in connection with, or in relation to, this Operating Agreement shall be submitted to binding arbitration in accordance with South Carolina Code Sections 15-48-10, et seq." It further provides that "[a]ny dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding." By filing their Petition and Motion to Stay, Petitioners have refused to arbitrate.

Respondent respectfully requests that the Court determine Respondents' Motion to Dismiss and Motion to Compel Arbitration based on the submissions alone and without a hearing because such summary relief is contemplated by Section 15-48-20. S.C. Code Ann. § 15-48-20(a) ("On application of a party showing an agreement described in § 15-48-10, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration . . . ."). Respondent also respectfully suggests that the Court should exercise its discretion to determine these matters "without further input from the lawyers," as contemplated by the Supreme Court of South Carolina's Order No. 2020-04-14-01, RE: Operation of the Trial Courts During the Coronavirus Emergency (as amended April 14, 2020) (stating that "[a] trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers.").

Finally, Respondent seeks an award of attorney's fees and expenses associated with this judicial proceeding to be paid by Petitioners Beacham O. Brooker, Jr. and Ellen B. Corontzes, to be proved immediately prior to its conclusion by Respondent's submission of verified time and expense reports. Pursuant to the Operating Agreement, "[i]n any controversy, claim or dispute arising out of, or relating to, this Operating Agreement or the method or manner of the performance hereof, the prevailing party shall be entitled to, in addition to other relief, recovery of proceeding expenses." The Operating Agreement further provides that "[i]n determining the award of proceeding expenses, attorney's fees . . . and other reasonable expenses shall be included." In this regard, "the term 'proceeding' shall include . . . judicial proceedings."

In support of her Motions, Respondent relies on the supporting Memorandum of Law and exhibits submitted herewith and the verified time and expense reports to be submitted upon further direction by the Court.

Respectfully submitted,

s/ Badge Humphries

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Counsel for Respondent

Columbia, South Carolina
April 24, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159

Case No. 2020-CP-40-02040

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC, ... Respondents

v.

Julia B. Brooker,..... Appellant

EXHIBIT I TO MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

Order Granting Petitioner's Motion to Stay dated July 17, 2020

ELECTRONICALLY FILED - 2020 Jul 17 1:34 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Beacham O. Brooker, Jr.; Ellen B. Corontzes; and BBB&C Family, LLC, Petitioners vs. Julia B. Brooker, Respondent	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT Case No. 2020-CP-40-02040 **ORDER GRANTING PETITIONERS' MOTION TO STAY**

This matter came before the Court on cross motions of the parties; Petitioners' Motion for Stay filed on April 21, 2020 and Respondent's Motion to Dismiss filed April 24, 2020.[1] The Court heard oral arguments via WebEx technology on June 24, 2020. Present for the hearing were Gray T. Culbreath, Esquire on behalf of BBB&C Family, LLC and James M. Griffin, Esquire on behalf of Respondent. Thornwell F. Sowell and Bess J. DuRant also appeared on behalf of Beacham O. Brooker Jr. and Ellen B. Corontzes. After consideration of the memoranda submitted by the parties in advance of the hearing and the arguments of counsel, the Court hereby grants the Petitioners' Motion for Stay.

FACTUAL AND PROCEDURAL HISTORY

The matter currently before the Court as the result of an arbitration demand filed by the Respondent on or about March 17, 2020. A copy of that demand was made an exhibit to both parties' filings. While the demand seeks the dissolution of the BBB&C Family, LLC, it makes repeated references to acts and transactions which currently the subject of a probate matter

[1] The parties filed an Amended Motion to Stay on April 29 and a Renewed Motion to Dismiss on May 2020 respectively.

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bearing civil action number 2019-CP-40-03582. Counsel for the Respondent described the matter as "related." That related matter is an appeal of a probate trial before the Honorable Amy McCullough which involved disposition of certain assets of the Trust of the late Janet Brooker which includes issues which are the subject of the arbitration demand. The arbitration demand, which is comprised of 69 paragraphs, contains at least ten paragraphs which specifically reference the Trust, the probate action or disposition of assets. It should be noted that the LLC was not a party to the probate matter nor was the LLC's counsel, Mr. Culbreath.[2]

DISCUSSION

The Petitioners seek a stay of the demand for arbitration pending the disposition of the probate court appeal. The Respondent, on the other hand, has moved pursuant to South Carolina Rule of Civil Procedure 12(b)(6) to dismiss the petition contending that nothing in the law of South Carolina allows for a stay of an arbitration where there is an agreement to arbitrate. The Court disagrees with the Respondent's position.

Mindful of the dictates of SCRCP 1 which provides that the Rules of Civil Procedure "shall be construed to secure the just, speed and inexpensive determination of every action," the Court finds that a stay pending the probate court appeal would serve the tenets of Rule 1. Respondent filed her arbitration demand eight months after the appeal of the probate matter filed in July of 2019. As set forth above, ten paragraphs of the arbitration demand specifically reference as a ground for the arbitration either some estate planning mechanism or the probate litigation itself.[3] Given the allegations made by the arbitration demand, it appears clear that elements of the probate case are implicated. The Court cannot judge to what extent they are but suffice it to say discovery of those issues will necessarily need to be had. To allow the

[2] The underlying probate action arises from the Estate Number 2017-GC-40-36. The trial of that matter was held on February 5 and 7, 2019.
[3] Paragraphs 11, 12, 17, 18, 24, 25, 27, 29, and 30 of the arbitration demand.

ELECTRONICALLY FILED - 2020 Jul 17 1:34 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

arbitration to proceed at this time while the probate appeal is pending would necessarily result in duplicative discovery or result in findings by an arbitration panel that could be undone by a final decision in the probate appeal. Accordingly, based on the evidence before the Court a stay is appropriate consistent with the tenets of Rule 1 of the South Carolina Rules of Civil Procedure.

Respondent argues that South Carolina law does not allow a stay of an arbitration where there is an agreement to arbitrate. In making this argument, Respondent relies generally upon S.C. Code § 15-48-20, which is South Carolina's version of the Uniform Arbitration Act. A stay is defined by Black's Law Dictionary as a "temporary suspension," which is what the Petitioners in this case seek. Both parties rely on S.C. Code § 15-48-20(b) which allows for a court to stay an arbitration proceeding but then goes on to premise it on the absence of an agreement to arbitrate. However, those provisions are inconsistent. It is undisputed that there is an agreement to arbitrate. What is at issue is whether or not this court has the power to order a stay or temporary suspension pending the disposition of the probate appeal. Based on the record before the Court, a stay under these circumstances is appropriate.

Respondent seeks attorney's fees which the court denies. However, if the court had not stayed this matter, the court declined award of attorney's fees and instead leave that issue to the duly appointed arbitrators.

Accordingly, for the reasons set forth herein, the court grants the Petition for Stay and orders that the arbitration demand be stayed pending the disposition of the probate appeal.

IT IS SO ORDERED.

L. Casey Manning
Circuit Court Judge, Fifth Judicial Circuit

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Richland Common Pleas

Case Caption: Beacham O Brooker Jr , plaintiff, et al vs Julia B Brooker

Case Number: 2020CP4002040

Type: Order/Stay

So Ordered

s/L. Casey Manning, 2061

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159

Case No. 2020-CP-40-02040

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC, ... Respondents

v.

Julia B. Brooker,..... Appellant

EXHIBIT J TO MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

Motion to Reconsider

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CASE NO. 2020-CP-40-02040
Beacham O. Brooker, Jr.; Ellen B. Corontzes; and BBB&C Family, LLC, Petitioners, v. Julia B. Brooker, Respondent.	**RESPONDENT'S MOTION PURSUANT TO RULES 52(b) AND 59(a), SCRCP, TO ALTER OR AMEND ORDER GRANTING PETITIONERS' MOTION TO STAY**

Comes Respondent, Julia B. Brooker, by and through undersigned counsel, and hereby submits this Motion to Alter or Amend the Court's Order Granting Petitioners' Motion to Stay, pursuant to Rules 52(b) and 59(a), SCRCP. Respondent received written notice of the entry of the Order on July 17, 2020. For the reasons set forth below, the Order should be altered and amended to deny Petitioner's unsupported request to stay the arbitration pending resolution of an appeal of a probate court ruling that is independent of, and will not determine the outcome of, the arbitration proceeding.

I. ARGUMENT

A. There is no discovery in an appeal of a probate court decision and no way that the findings of the arbitration panel could be undone by a final decision in the probate appeal.

The Court erroneously based its decision on a fallacy devoid of any proof. The Court, by signing the proposed order submitted by Petitioners, incorrectly concluded:

> Given the allegations made by the arbitration demand, it appears clear that elements of the probate case are implicated. ***The Court cannot judge to what extent they are*** but suffice it to say discovery of those issues will necessarily need to be had. ***To allow arbitration to proceed would necessarily result in duplicative discovery*** or result in findings by an arbitration panel that could be undone by a final decision in the probate appeal.

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

(Order 3) (emphasis added). In so doing, the Order illustrates that Petitioners had not met any burden of proving their entitlement to a stay, evidences its incorrect assumption that discovery would be available in the appeal of the probate matter, and without any explanation, surmises that the appeal of the probate matter could somehow undo the panel's decision in the arbitration proceeding.

First, by candidly stating that the Court "cannot judge to what extent" the appeal of the probate matter and the arbitration proceeding overlap, the Court's Order demonstrates that the Petitioners have not met any burden of proving their entitlement to a stay of the proceeding. In analogous situations where a party seeks a stay of discovery, a movant carries the heavy burden of proving that a stay is warranted.[1] Given state and federal policy favoring the enforcement of agreements to arbitrate, as discussed below, at least the same burden is warranted here. This is especially true whereas here Petitioners are asking the Court to potentially stay the arbitration for years while appeals run their course. Despite that fact, the Court impermissibly concluded that it need not make any analysis or subject Petitioners to any burden of proof before staying the

[1] For example, for a motion to stay discovery pending a ruling on a motion to dismiss, "[t]he moving party bears the burden of showing good cause and that a stay of discovery is reasonable." *Brown-Thomas v. Hynie*, No. 1:18-CV-02191-JMC, 2019 WL 1043724, at *4 (D.S.C. Mar. 5, 2019) (citing *Kron Med. Corp. v. Groth*, 119 F.R.D. 636, 637 (M.D.N.C. 1988)); *see Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) ("Since our Rules of Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure." (citing H. Lightsey & J. Flanagan, *South Carolina Civil Procedure*, (2d ed. 1985))).). In evaluating such motion to stay, "the Court must take a 'preliminary peek' at the merits of a dispositive motion to see if it 'appears to be clearly meritorious and truly case dispositive.'" *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006) (quoting *Feldman v. Flood*, 176 F.R.D. 651, 652-53 (M.D.Fla.1997)); *see also Brown-Thomas*, 2019 WL 1043724, at *7 ("[U]pon taking a careful 'peek' at the pending Motions to Dismiss . . . there is no indication that they are 'clearly meritorious and truly case dispositive' . . . ." (quoting *McCabe*, 233 F.R.D. at 685)); *Baker v. Swift Pork Co.*, C/A No. 3:15–CV–663–JHM, 2015 WL 6964702, at *1 (W.D. Ky. Nov. 10, 2015) (denying a motion to stay discovery when it was "not patently apparent" whether a dispositive motion would be granted or denied).

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

arbitration proceeding. Instead, the Court based its conclusion on the number of paragraphs Petitioners could count in the arbitration demand that reference estate planning or the appeal of the probate matter. (Order 2.) In granting a stay on this basis, the Court plainly allowed Petitioners to skirt any burden of proving entitlement to a stay.

Second, the Court's Order is wrongly premised on the notion that there could be duplicative discovery as between the arbitration proceeding and the appeal of the probate matter. There can be no discovery in the appeal of the probate matter, so there is no possibility of duplicative discovery. *See* S.C. Code Ann. § 62-1-308 (explaining that "[t]he hearing must be strictly on appeal and no new evidence may be presented"). Accordingly, this underlying premise of the Court's Order is unfounded.

Third, the Court's Order is also premised on the false notion that the appeal could somehow undo the decision of arbitration panel. This idea is incorrect as a matter of fact and law, and the Court's Order is devoid of any reasoning as to how it could possibly be the case. The question at issue in the arbitration proceeding—whether to dissolve the BBB&C LLC—is not at issue in the appeal of the probate matter, which deals exclusively with the interpretation of a trust agreement. Accordingly, no findings by the arbitration panel could possibly be undone by a final decision in the probate appeal.

Moreover, the outcome of the appeal cannot change the fact that Petitioners Beacham and Ellen paid Respondent $735,954 after Julia was forced to retained counsel and file suit in probate court. *See Correspondence from B. Sowell to J. Griffin (12/12/19)*, attached hereto as **Exhibit A**. Prior to the commencement of the probate litigation, Petitioners previously took the position that Julia was entitled to approximately $420,000. *See* Dep. B. Brooker, Jan. 24, 2018, 28:15-30:15, 44:7-25, excerpts attached hereto as **Exhibit B**; Dep. Ex. 17 to B Brooker Deposition, attached

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hereto as **Exhibit C**. In this respect, Petitioners even disagreed with prior counsel for the Estate who concluded that Julia was owed approximately $584,000 under Petitioners' interpretation of the Trust provision. *See* **Exhibit C** (setting forth the calculation prepared by counsel for the Trust based upon incomplete records provided by Petitioners that purports to show what Julia was owed under Petitioners' interpretation of the Trust provision).[2] The only reason that the appeal of the probate matter is mentioned at all in the arbitration demand is to show how Petitioners Beacham and Ellen have attempted to cheat Julia at every turn. That fact supports dissolving the BBB&C Family LLC because it shows that "the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial" to Julia. *See* S.C. Code Ann. § 33-44-801(4)(e). Nothing that happens in the appeal of the probate court's decision can change the indisputable fact that Petitioners attempted to cheat Julia out of at least $300,000, because Petitioners Beacham and Ellen asserted that Julia was only entitled to approximately $420,000 under their mother's trust, but subsequently conceded she was owed $735,954 after Julia was forced to retain the undersigned counsel and sue Petitioners in probate court.

Accordingly, with its Order, the Court wrongly subjects Petitioners to no burden of proof, bases its decision on a false belief that discovery could somehow be duplicative as between the arbitration proceeding and the appeal of probate matter, and misunderstands what is at issue in the two cases.

[2] Judge McCulloch rejected Petitioners' interpretation.

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

B. The stay could last for years, which is anathema to applicable law and the parties' agreement.

The appeal of the probate matter could last for years. Currently, briefing is complete and pending in Circuit Court awaiting the scheduling of oral argument. A ruling from the Circuit Court will likely result in subsequent appeals. Accordingly, the Court's Order could stay the arbitration proceeding for years.

As such, this stay clearly "frustrate[s] the statutory policy of rapid and unobstructed enforcement of arbitration agreements." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 23, 103 S. Ct. 927, 941, 74 L. Ed. 2d 765 (1983). Indeed, "[b]oth state and federal policy favor arbitration of disputes." *Aiken v. World Fin. Corp. of S.C.*, 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007). Accordingly, "unless a court can say with positive assurance that the arbitration clause is not susceptible to any interpretation that covers the dispute, arbitration should generally be ordered." *Id.* Here, the Court concluded that "[i]t is undisputed that there is an agreement to arbitrate." (Order 3.) With that conclusion, the decision to issue a stay should be left for the arbitration panel to determine.

The Court's Order also undermines the parties' agreement to arbitrate, which contemplates a prompt and final resolution of their dispute. The Operating Agreement of BBB&C Family LLC contemplates that the arbitration panel is selected promptly and that it completes its work within four months with no chance for appeal:

> The arbitrators shall be selected as provided in the SCUAA, and ***the arbitrators shall render a decision on any dispute within one hundred twenty (120) Days*** after the last of the arbitrators has been selected. If any party to this Operating Agreement fails to select an arbitrator with regard to any dispute submitted to arbitration under this Section 11.01 within thirty (30) Days after receiving notice of the submission to arbitration of such dispute, then the other party shall select an arbitrator for such non-selecting party. ***The decision of the arbitrators shall be final and binding on the parties, who specifically renounce any judicial review of the award***, and agree that judgment on the award may be enforceable in any court of competent jurisdiction.

Operating Agreement, § 11.01 (attached as **Exhibit D**) (emphasis added).

This matter has now been pending before this Court for more than three months. That is over half the time allotted by the agreement to arbitrate for the panel to be selected and to render a decision. *Id.* Now, with its Order, the Court has extended that period indefinitely and potentially for years, contrary to the agreement of the parties. Unless the Court grants this motion and remedies its Order, this matter will be headed to the Court of Appeals. As evidenced in the clear and plain language of the Operating Agreement, the parties clearly sought to avoid litigating this matter in any court whatsoever and particularly sought to avoid the time and expense of litigating an appeal. Accordingly, the Court's Order undermines the primary objective of the parties' agreement to promptly and definitely arbitrate the underlying dispute and should be reconsidered.

II. CONCLUSION

For these reasons, Respondent Julia requests that the Court reconsider its Order Granting Petitioners' Motion to Stay and enter an Order compelling Petitioners to arbitrate.

Respectfully submitted,

s/ James M. Griffin
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Margaret N. Fox (S.C. Bar # 76228)
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Columbia, South Carolina
July 27, 2020

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Exhibit A

Sowell to Griffin, December 12, 2019

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SOWELL • DuRANT

December 12, 2019

VIA EMAIL

James M. Griffin, Esquire
GRIFFIN DAVIS
4408 Forest Drive
Suite 300
Columbia, SC 29206

Re: In the Matter of The Janet B. Brooker Trust; Julia Brooker v. Beacham O. Brooker, Jr. et al.
Case No.: 2017-GC-40-0036

Dear Jim:

This confirms our telephone conference today. We are wiring to your trust account the funds we believe are due to make up for the post- October 2007 gifts referenced in Judge McCulloch's orders. At the same time this payment is conditioned upon our clients' reservation of their rights under their appeals of Judge McCulloch's orders with respect to the pre-October 2007 gifts, the attorneys' fee award, and any other rights encompassed in our appeals.

Please confirm receipt of the funds ($735,954.00) and your client's agreement that the estate and other beneficiaries are entitled to a credit for the amount paid, and she otherwise agrees with the terms of this payment, which is made to cut off the interest running on the referenced amount.

Very truly yours,

Thornwell F. Sowell III

TFS:aak

c: Beach Brooker
Ellen Corontzes

CONFIRMED AND AGREED:

_____
James M. Griffin, Esquire

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Exhibit B

Deposition Excerpts of B. Brooker, Jr.

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STATE OF SOUTH CAROLINA
IN THE PROBATE COURT
COUNTY OF RICHLAND

IN THE MATTER OF:
THE JANET B. BROOKER TRUST
(C.A. NO. 2015-ES40-00662)

JULIA B. BROOKER,

Petitioner,

vs. C.A. 2017-GC-40-0036

BEACHAM O. BROOKER, JR., IN HIS OFFICIAL CAPACITY AS TRUSTEE AND INDIVIDUALLY AS A BENEFICIARY OF THE JANET B. BROOKER TRUST; AND ELLEN B. CORONTZES INDIVIDUALLY AS A BENEFICIARY OF THE JANET B. BROOKER TRUST,

Respondents.

DEPOSITION OF: BEACHAM O. BROOKER, JR.

DATE: January 24, 2018

TIME: 2:02 P.M.

LOCATION: Law Offices of Griffin Davis
1116 Blanding Street
Columbia, SC

TAKEN BY: Counsel for the Petitioner

REPORTED BY: Wanda K. Cecil
Certified Court Reporter

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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Page 26

BY MS. FOX:

Q. These were notes provided by Steve Johnson's office taken at that family meeting. If you'll look at the second page at the bottom.

A. (Complying.)

Q. Is that diagram something that Steve drew at that meeting?

A. It could have been him. It could have been his associate, Artie. Artie somebody.

Q. Okay. But that was meant to explain how the trust would work?

A. Yes.

Q. Okay.

A. Artie White, I think it was.

Q. Okay. Did you discuss the --

(Off-the-record conference.)

BY MS. FOX:

Q. The diagram, does it refer to the family limited partnership or your family trusts, the individual family trusts?

A. FLP would seem to stand for family limited partnership.

Q. Okay. Do you recall any discussion about the equalization clause?

A. Not in much detail. I've read it.

Page 27

Q. Okay: You indicated earlier it was discussed at the meeting. Is that accurate?

A. Sure.

Q. Do you remember the contents of those discussions?

A. No. Just that we would begin an aggressive gifting to non-blood relatives, spouses and grandchildren, and then would catch Julia up in the unequal amount upon her mother's death.

Q. Okay. What was your understanding as to the date that the equalization provision began?

A. The date of the trust.

Q. Where did you get that understanding?

A. Because there was no equalization provision in any of the estate documents prior to that time.

Q. Did anyone tell you that date?

A. The date of the trust? I have a copy of it.

Q. Right. I'm asking if an individual ever said to you that October 16, 2007 is the date that the equalization provision begins?

A. No. But it's obvious from the face of the document.

Q. All right. Did you attend any other meetings when the equalization provision was discussed?

A. Not that I know of, no.

Q. I asked because your response to one of your requests for -- to our interrogatories, excuse me, did not list the conversation that you just mentioned. So I just want to make sure that there are no other instances in which you had a conversation about the equalizing provision.

A. I remember a meeting at Steve Johnson's office where we executed all of these latest estate documents, the will and the trust, and that was when he explained everything to us, how it would work.

Q. He explained it the day that you signed it?

A. I think so. Well, I don't know. According to this, it was in September. The execution of the trust was in late October, I believe.

Q. Okay.

(Off-the-record conference.)

BY MS. FOX:

Q. In response to one of my questions regarding the equalization clause, you indicated that your understanding was that it was meant to facilitate aggressive gift giving to non-blood family members and grand kids?

A. That's correct.

Q. Okay. Was the funding of $240,000 for the 529 education plans part of that?

A. No. No, it's not.

Q. Why?

A. Because the 529 plan was funded prior to the revocable trust being established.

Q. Do you know when it was funded?

A. Early October of 2007, I believe.

Q. So it was funded after the meeting on 9/25?

A. Yes, I believe that's correct.

Q. Okay. And this was the meeting in which you discussed that the goal was aggressive gift giving?

A. Correct.

Q. Also in that meeting, you said that you discussed the will; correct?

A. Correct.

Q. Do you ever remember any mention of a codicil?

A. No, I do not.

Q. Okay. Let me --

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

A. Let me back up and amend an answer I gave you a minute ago of, no, the 529 funding was not part of this, what I referred to as aggressive gift giving to spouses and children. It's a separate gift tax exemption that we took advantage of. We were doing other things other than the annual exclusionary gifting. The QPRTs with the two homes and that sort of thing. The family limited partnership, which was called BBB&C, that was part of it as well.

Q. So is it your position that tuition payments are not gifts?

A. They are not part of the aggressive gifting that we established in that trust going forward.

Q. And your position is based on what?

A. Well, based on the fact that the Internal Revenue Service Code allows grandparents or anyone, I would presume, to fund education without exceeding the annual exclusion for gift tax.

Q. Okay.

A. In other words, on top of the annual exclusion.

MR. GRIFFIN: Let's take a quick break.

(A recess transpired.)

BY MS. FOX:

Q. Go back on the record. Did you have any conversations with your mother about the $240,000 tuition payment made to the grandchildren?

A. Not specifically as to that dollar figure, but I presume that is some IRS limit, 60,000 per child.

Q. So that's a no?

A. No.

(PET. EXH. 11, Respondents' Answers to Petitioner's First Set of Interrogatories, was marked for identification.)

BY MS. FOX:

Q. And in your -- I'm going to hand you what I'm marking as Petitioner's Exhibit 11.

A. (Reviewing.)

Q. If you'll look at Number 4, your response to Number 4.

A. Yes. (Complying.)

MR. GRIFFIN: That's Exhibit 9?

THE COURT REPORTER: Eleven.

MR. GRIFFIN: Eleven? I'm sorry.

THE WITNESS: I've read it.

BY MS. FOX:

Q. Do you have personal knowledge of the oral statements referred to in this answer between Janet Brooker and Steve Johnson?

A. I do not.

Q. So what information and belief is the this based upon?

A. I do not know.

Q. But your mother never had a discussion with you about whether the $240,000 was intended to be a gift?

A. Well, it didn't -- if you're talking about gifts as defined by the Internal Revenue Service Code, then you have a $13,000 -- and it has changed over the years. I believe at some time it was a $10,000 annual exclusion that doesn't trigger a gift tax. A contribution to a 529 plan is a separate section of the IRS Code, which, yes, it is a gift; but it is not a gift in the terms of pay outs under the $13,000 annual gift tax exclusion.

Q. Okay. My question has nothing to do with tax consequences.

A. Right.

Q. Regardless of what the IRS Code says, did your mother ever have a conversation with you wherein she said the $240,000 that was put into the 529 accounts for the grandchildren was not part of the aggressive gift giving that you referred to when you answered my question earlier?

A. Did she ever say that that was not part of the aggressive gift giving?

Q. Yes.

A. No.

Q. Okay. All right. Did I give you 12 yet? I don't think I did.

(PET. EXH. 12, Todd & Johnson Invoice to Janet B. Brooker, Dated October 29, 2007, was marked for identification.)

BY MS. FOX:

Q. I've marked this as Exhibit 12.

A. (Reviewing.)

Q. I'm going to hand you --

MR. GRIFFIN: And I'll leave you alone.

MS. FOX: You promise?

MR. GRIFFIN: Yes, I promise.

(PET. EXH. 13, First Codicil to Last Will and Testament of Janet Bloom Brooker, was marked for identification.)

BY MS. FOX:

Q. I'm going to hand you 13 as well. Look at that in conjunction.

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

A. Yes. I don't know what the questions were.

(PET. EXH. 16, Janet Brooker Estate - needed information, Bates Stamped T&J_01017, was marked for identification.)

BY MS. FOX:

Q. Look at you anticipating my exhibit. This is Number 16.

A. (Reviewing.)

Q. Do these appear to be the questions that she's answering in Petitioner's 15?

A. Yes.

Q. I'll represent that 16 came out of an attorney notes file produced to us by Steve Johnson. Let me ask you, did you produce this e-mail to your attorney?

A. I believe I did, yes.

Q. Did you produce other e-mails to your attorney?

A. Possibly. I don't remember.

Q. Do you know whether a privilege log was created?

A. No, I don't.

Q. Do you know of any reason we would not

have been provided with those e-mails?

A. This is an e-mail that came from my account at a former employer, which longer exists. So at the time we were responding to your discovery, I did not have access to them, had been erased.

Q. Okay. Well, that's as to this e-mail; but as to the other e-mails you just told me you produced to your counsel, why would we not have those?

A. I'm sorry. I just told you what?

Q. No. I was just asking you if you produced other e-mails to your counsel in response to our discovery?

A. I don't recall.

Q. So you did or you did not produce e-mails to your counsel?

A. I believe I found one.

Q. Okay. You just said that this one, you did not have access to?

A. No. That's correct.

Q. So can you think of a reason why we would not have the one e-mail that you provided to counsel?

A. I think you do.

Q. If we don't, do you know if a privilege

log has been created?

A. No, I don't.

Q. Okay. All right. Looking at 15. If the cutoff date is October 2007, why would Steve be sending a request for info back to May of 1997?

A. I have no idea.

(PET. EXH. 17, Janet B. Booker Estate, Gifts made from 2007 through 2015, was marked for identification.)

BY MS. FOX:

Q. All right. Seventeen. Here you go.

A. (Reviewing.)

Q. Have you seen this chart before?

A. Yes, I think I have.

Q. Where did you see it?

A. I believe it came from Steve Johnson's office.

Q. Who prepared it?

A. I don't know.

Q. Are the amounts on this spreadsheet reflective of those that should be included in calculating the equalizing distribution to Julia?

A. No. All, with the exception of the third item, 240,000, which would not impact the equalization.

Q. Okay. So just that entry?

A. Yes.

Q. Let's see. Your mother had several estate accounts; correct?

A. Three that I can think of.

Q. Okay. Did you have signatory authority on any of them?

A. I had signatory authority with her checking accounts, yes. And I had a power of attorney allowing me to sign things for the Stephens' accounts.

Q. Okay. Did you have any debit cards to any of your mother's accounts?

A. No.

(PET. EXH. 18, Pages Bates Stamped T&J_01028 through 01031, was marked for identification.)

BY MS. FOX:

Q. Let me go to -- mark Petitioner's 18. This document was produced to us by Steve Johnson from his file.

A. (Reviewing.)

Q. Have you seen this before?

A. I have not. (Reviewing.) I've not seen this before.

Exhibit C

Exhibit 17 to B. Brooker, Jr.'s Deposition

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Janet B. Brooker Estate

Gifts made from 2007 through 2015

		Gifts	Interest	Total
09/26/07	Tuition for grandchildren	85,850.00		
Interest	Interest from 9/26/07 to 4/16/15		32,446.60	118,296.60
09/26/07	$12,000 X 2	24,000.00		
Interest	Interest from 9/26/07 to 4/16/15		9,070.68	33,070.68
10/01/07	$60,000 X 4	240,000.00		
Interest	Interest from 10/1/07 to 4/16/15		90,542.47	330,542.47
01/09/08	$12,000 X 2	24,000.00		
Interest	Interest from 1/5/08 to 4/16/15		8,725.48	32,725.48
01/08/09	$13,000 X 6	78,000.00		
Interest	Interest from 1/5/09 to 4/16/15		24,457.81	102,457.81
01/05/10	$13,000 X 6	78,000.00		
Interest	Interest from 1/5/10 to 4/16/15		20,589.86	98,589.86
01/05/11	$13,000 X 6	78,000.00		
Interest	Interest from 1/5/11 to 4/16/15		16,689.86	94,689.86
01/05/12	$13,000 X 6	78,000.00		
Interest	Interest from 1/5/12 to 4/16/15		12,789.86	90,789.86
01/02/13	$14,000 X 6	84,000.00		
Interest	Interest from 1/2/13 to 4/16/15		9,596.71	93,596.71
01/02/14	$14,000 X 6	84,000.00		
Interest	Interest from 1/2/14 to 4/16/15		5,396.71	89,396.71
01/02/15	$14,000 X 6	84,000.00		
Interest	Interest from 1/2/15 to 4/16/15		1,196.71	85,196.71
	Total Gifts and Interest	**937,850.00**	**231,502.75**	**1,169,352.75**
	One half given is Ellen's family		**584,676.37**	
	One half given is Beach's family		**584,676.37**	1,169,352.74
	Amount due to Julia to equalize		**584,676.38**	

PETITIONER'S EXHIBIT 4/4/18

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Janet B. Brooker Estate

Gifts made from 2007 through 2015

	Gifts	Interest	Total

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Exhibit D

Operating Agreement

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10 ET SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA

OPERATING AGREEMENT, LLC OF BBB&C FAMILY LLC

This Operating Agreement ("Operating Agreement") is made and entered into this 31st day January, 2014, by and among Janet B. Brooker, Beacham O. Brooker, Jr., Julia B. Brooker and Ellen B. Corontzes, (hereinafter referred to collectively as the "Members" and individually as a "Member") and BBB&C FAMILY LLC (the "Company").

WHEREAS, the parties desire to form the Company as a limited liability company under the laws of the State of South Carolina and they wish to enter into this Operating Agreement to govern the relationship among the Members of this Company and between the Company and the Members.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

ARTICLE I
DEFINED TERMS

Section 1.01 Definitions. The terms defined in this Article I shall, for purposes of this Operating Agreement, have the meanings herein specified.

"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), and any successor statute, as amended from time to time.

"Articles" shall mean the initial, amended and restated Articles of Organization filed with the Secretary of State of South Carolina by which BBB&C FAMILY LLC was organized as a South Carolina limited liability company under and pursuant to the Act.

"Bona Fide Offer" shall mean a written offer received by a Member from a third party to purchase all or any part of that Member's Membership Shares which offer sets forth all of the material terms and conditions of the proposed purchase and is not subject to contingencies.

"Capital Contribution" shall mean the amount of cash and fair market value (at the time of contribution) of any property contributed to the Company with respect to the Membership Share held by such Member.

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

"Company" shall have the meaning set forth in the preamble hereof.

"Company Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company, including, but not limited to, the property described on Exhibit A attached hereto. Exhibit A shall be amended from time to time as necessary to accurately reflect changes in Company Property without the need for any amendment to this Operating Agreement.

"Day" or "Days" shall mean all calendar days, whether or not such days are legal holidays under the laws of the United States or any State.

"Dispose," "Disposing," or "Disposition" shall mean to sell, assign, transfer, give, donate, exchange, bequeath, devise, mortgage, pledge, grant a security interest, or otherwise dispose or encumber, including, without limitation, on account of a court order or otherwise by operation of law (including, but not limited to, foreclosure, being subject to a charging order, or transfer incident to divorce or any similar proceeding), or the acts thereof, to any Person.

"Family Member" shall mean Janet B. Brooker and Janet B. Brooker's lineal descendants, by natural birth or legal adoption, as well as the spouses of her lineal descendants.

"Financial Rights" shall mean the right to share in the net profits, net losses and distributions of the Company. Any reference to a Member's Financial Rights shall mean the percentage of Financial Rights in the Company held by the Member.

"Manager" or "Managers" shall mean the Person(s) elected in accordance with this Operating Agreement to manage and operate the Company.

"Member" shall mean any Member named in the preamble of this Operating Agreement, and any other Person who hereafter acquires a Membership Share and is admitted to the Company as a Member as provided in this Operating Agreement, but does not include any Person who has ceased to be a Member of the Company. For purposes of this Operating Agreement, the settlor of a revocable living trust shall be considered to be the Member.

"Membership Share" shall mean all of the rights, powers, benefits, duties or obligations of a Member under this Operating Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights. The Membership Share of each Member is represented by a percentage. Each Membership Share shall have the same rights and privileges and shall rank equally and be identical in all respects as to all matters.

"Offered Membership Shares" shall mean all of the Membership Shares that are deemed to have been offered for sale to the Company and the other Members pursuant to this Operating Agreement.

"Permitted Transferee" shall mean (i) the Company; (ii) any Member; (iii) any Family Member; (iv) any estate, trust, guardianship, custodianship, conservatorship or other fiduciary arrangement for the sole benefit of any one or more of the individuals described in (ii) or (iii) above and which assures that the Membership Shares will only be held by or for the benefit of such individuals; or (v) any corporation, partnership, limited liability company or other business organization in which the individuals or entities described in (i) - (iv) above are the sole owners and the management and control of which must rest exclusively with any one or more of such individuals.

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

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"Person" shall mean any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, personal representative or other legal entity or organization.

"Treasury Regulations" shall mean, except where the context indicates otherwise, the permanent, proposed or temporary rules and regulations of the U.S. Department of the Treasury promulgated under the Code, as such rules and regulations may be lawfully changed from time to time.

"Voluntary Transfer" shall mean any Disposition of a Membership Share made by a Member that is not an Involuntary Transfer. An "Involuntary Transfer" is any Disposition of a Membership Share by a Member made on account of a court order or otherwise by operation of law, including, but not limited to, an occurrence of an event of bankruptcy, being subject to a charging order, or any transfer incident to any divorce or marital property settlement or any transfer pursuant to applicable community property, quasi-community property or similar state law.

"Voting Rights" shall mean the right of a Member to vote on any matter as provided in this Operating 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.

Section 1.02 Terms and Usage Generally. All references herein to an "Article," "Section" or "Exhibit" shall refer to an Article or a Section of, or an Exhibit to, this Operating Agreement. Whenever the words "include," "includes" or "including" are used in this Operating Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereto," "hereof," "herein" and "hereunder" and words of similar import when used in this Operating Agreement shall refer to this Operating Agreement as a whole and not to any particular provision of this Operating Agreement. All terms defined in this Operating Agreement shall have the defined meanings when used in any other document made or delivered pursuant hereto unless otherwise defined therein.

ARTICLE II
ORGANIZATION

Section 2.01 Name. The name of the Company is **BBB&C FAMILY LLC**.

Section 2.02 Formation. The Company shall be organized as a South Carolina limited liability company by the filing of Articles pursuant to the Act and the issuance of a Certificate of Existence for the Company by the Secretary of State of South Carolina.

Section 2.03 Designated Office. The Company shall maintain a designated office in the State of South Carolina in accordance with the Act. The designated office shall be at the address set forth in the Articles.

Section 2.04 Registered Agent and Address. The registered agent of the Company in the State of South Carolina and the street address of the registered agent shall be the Person and address set forth in the Articles.

Section 2.05 Principal Office in the United States and Other Offices. The principal office of the Company in the United States shall be at such place as the Managers may designate from time to

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

time, which need not be in the State of South Carolina. The Company may have such other offices as the Managers may designate from time to time.

Section 2.06 Term Company. The Company shall be a term company within the meaning of the Act. The term of the Company shall commence on the date the Articles are filed with the Secretary of State of South Carolina, unless a later effective date is specified in the Articles, and the existence of the Company shall terminate upon the expiration of its term on December 31, 2054, unless extended or sooner terminated by law or pursuant to the provisions of this Operating Agreement.

Section 2.07 Purposes. The purposes of the Company are to make a profit, increase wealth, acquire, finance, develop, subdivide, exchange, manage, improve, operate, sell, rent, lease real property and to engage in a general investment business as the members shall determine from time to time; to do all things necessary and proper for the effective, efficient and productive management of Company Property; to consolidate and centralize the management of certain properties owned by the Members; to promote the efficient and economical management of the properties by holding them in a single entity; to avoid fractional ownership of certain properties of the Members in order to promote the greater sales potential of the properties; to provide an orderly buy-sell arrangement between the Members; to provide protection from creditors; to avoid potential expensive litigation and disputes over the properties of the Members by providing mechanisms for their management and procedures to resolve disputes; and to promote knowledge and communication as to Company Property.

Section 2.08 No Liability to Third Parties. No Member, Manager or officer, solely by reason of being a Member or acting as a Manager or officer, will be subject to any liability in connection with the debts, obligations or liabilities of the Company. The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, will be solely the debts, obligations and liabilities of the Company.

Section 2.09 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. However, the Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal and state tax income purposes, and this Operating Agreement may not be construed to suggest otherwise.

ARTICLE III
MEMBERS

Section 3.01 Initial Members. The name and address of each initial Member and the percentage of Membership Shares held by such initial Member shall be as set forth on Exhibit B. Exhibit B shall be amended from time to time as necessary to accurately reflect changes in the Members and the Membership Share of any Member without the need for any amendment to this Operating Agreement.

Section 3.02 Admission of New Members. After the date of this Operating Agreement, a Person shall have the right to become a Member of the Company if such Person (i) acquires a Membership Share from a Member and obtains the written consent of all non-Disposing Members who have Voting Rights in the Company; (ii) acquires a Membership Share from a Member and such Disposition is a Permitted Transfer (as defined in Section 9.02); or (iii) is issued any Membership Shares

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

in accordance with Section 3.03. Upon compliance with Section 3.04, any such Person shall automatically be admitted as a Member of the Company and shall be entitled to all rights and powers and subject to all restrictions and liabilities of a Member.

Section 3.03 Issuance of Additional Membership Shares. The timing and terms of any new issuance of Membership Shares of the Company to any Person, including a Member, shall require the unanimous approval of the Members who have Voting Rights in the Company. A Member need give no reason for voting not to issue additional Membership Shares and a Member may unreasonably withhold his or her consent to such issuance.

Section 3.04 Additional Conditions to Recognition of Transfer or Issuance of Membership Shares. Whether or not such Person is admitted as a new Member or will merely be the owner of Financial Rights, such Person must, as a condition to recognizing the effectiveness and binding nature of such transaction:

A. Execute and deliver to the Company a written agreement that such Person has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of this Operating Agreement, as the same may have been further amended, in a form acceptable to the Company.

B. Deliver to the Company such instruments of transfer, assignment and assumption with respect to such transaction as are in form and substance reasonably satisfactory to the Company.

C. Assure compliance with any applicable state and federal laws, including securities law and regulations.

D. Pay or reimburse the Company a fee not to exceed One Thousand ($1,000.00) to cover costs and expenses incurred by the Company in preparing, executing and recording all pertinent documents.

The Company, however, may waive any requirement in this Section.

Section 3.05 Transferee of Membership Share 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, then such transferee shall be entitled to retain the Financial Rights transferred, but shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any other rights of a Member. The transferee is 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 Operating Agreement may change 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 the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred. Upon the transferee being admitted as a Member, the transferring Member shall be relieved of all obligations under this Operating Agreement. 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 the provisions of Section 3.04 of this Operating Agreement have been satisfied.

Section 3.06 No Authority of Members. Except as otherwise provided in this Operating Agreement, or as authorized by the Managers, no Member is an agent of the Company or has the

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

authority to make any contracts, enter into any transactions, or make any commitments on behalf of the Company.

Section 3.07 No Right to Withdraw. No Member shall have any right to withdraw from the Company prior to the dissolution and winding up of the Company's business and affairs except (i) with the unanimous consent of all the remaining Members who have Voting Rights in the Company, or (ii) in connection with a transfer of its entire Membership Share in accordance with this Operating Agreement. If a Member attempts to withdraw in violation of the provisions of this Section 3.07, such act shall, as to the Company and the other Members, be void and of no force and effect, nor shall such attempted resignation entitle any Member to receive the fair value of its interest in the Company prior to the dissolution and winding up of the Company's business and affairs.

ARTICLE IV
MANAGEMENT OF COMPANY

Section 4.01 General Authority of Managers.

A. Except as otherwise expressly provided by this Operating Agreement or required by any nonwaivable provision of applicable law, all powers shall be exercised by or under the authority of, and the business and affairs of the Company shall be controlled by the Managers.

B. All actions required to be taken by the Managers hereunder shall be made by the vote of a majority of the number of Managers unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by any express provision of the statutes which are applicable to such vote unless legally overridden by the Articles or this Operating Agreement, a different vote is required, in which case such express provision shall govern and control the decision of such matter.

C. Subject to the foregoing, the Managers shall have full and complete authority, power, right and duty to manage and control the business, affairs and assets of the Company, to make all decisions regarding those matters and to perform any and all acts and activities customary or incident to the management of the Company's business. Unless authorized to do so by this Operating Agreement or by the Managers, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. Specifically, but not by way of limitation, the Managers shall be authorized for and on behalf of the Company to:

1. Borrow money for the Company from banks, other lending institutions, Managers, Members and other Persons, and in connection therewith, to hypothecate, encumber, mortgage and grant security interests in Company Property to secure payment of the borrowed sums;

2. Acquire, hold, own, invest and reinvest, purchase and sell, any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, 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, and to actively trade, speculate on, maintain and manage the same;

3. Enter into, make, execute and perform all instruments and documents, including, but not limited to, contracts, mortgages, security agreements, deeds, financing statements, partnership agreements, leases, management contracts 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;

4. Employ from time to time persons, firms or corporations for the operation and management of various aspects of the Company's business, including, without limitation, accountants, legal counsel, managing agents, money managers, property managers, contractors, subcontractors, architects, engineers, laborers, suppliers, investment advisors and other advisors to perform services for the Company and to compensate them out of Company Property, notwithstanding the fact that any Manager or Member may have a financial interest in such firms or corporations;

5. Open and maintain bank accounts, investment accounts and other arrangements, draw checks, letters of credit, and other orders for the payment of money and designate individuals (which may be an officer, Manager, Member or any other individual) with authority to sign or give instructions with respect to those accounts and arrangements; and

6. Collect sums due and owing to the Company.

Section 4.02 Limitations on Powers. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

A. The Company shall not sell, or contract to sell, or otherwise dispose of all or substantially all of the Company Property other than in the ordinary course of Company business without the approval of those Members who own Seventy-five (75%) percent of the Voting Rights in the Company. For purposes of this subsection, all or substantially all of the Company Property means Eighty (80%) percent of such property by value in any consecutive twelve (12) month period.

B. The Company shall not hypothecate, encumber and grant a security interest in Company Property without the approval of those Members who own Seventy-five (75%) percent of the Voting Rights in the Company.

C. The Company shall not materially deviate from the purposes of the Company as set forth in this Operating Agreement without the approval of those Members who own Seventy-five (75%) percent of the Voting Rights in the Company.

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 Seventy-five (75%) percent of the Voting Rights in the Company.

Section 4.03 Delegation of Authority and Duties. In managing the business and affairs of the Company and exercising its powers, the Managers may act through Managers or officers to whom authority and duties have been delegated in accordance with this Section.

A. The Managers may, from time to time, delegate to one or more Managers such authority and duties as the Managers may deem necessary or desirable in furtherance of any action that they have authorized on behalf of the Company. Such delegation shall be made by delivering to the

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Manager or Managers to whom such powers and duties are delegated written notice specifying the powers and duties delegated and the period of such delegation.

B. The Managers may designate one or more individuals to be officers of the Company. No officer need be a resident of the State of South Carolina, a Manager or a Member. Any officers so designated shall have such authority and perform such duties as the Managers may, from time to time, delegate to them. The Managers may assign titles (including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer) to particular officers. Unless the Managers decide otherwise, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made pursuant to Section 4.03(A). The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Managers. No officer shall be prevented from receiving a salary by reason of the fact that such officer is also a Manager or Member.

Section 4.04 Election of Manager, Number and Term of Office. The Members shall elect one or more Persons as Managers. The initial Manager of the Company shall be Beacham O. Brooker, Jr. Each Manager shall hold office until such Manager dies, is removed pursuant to Section 4.05 or resigns pursuant to Section 4.06. The number of Managers shall be fixed from time to time by the Members, but in no instance shall there be less than one Manager. A Manager need not be a Member or resident of the State of South Carolina.

Section 4.05 Removal. Any and all Managers may be removed, either with or without cause, by a vote of the Members (including a Manager, if such Manager is also a Member with Voting Rights) who own Seventy-five (75%) percent of the Voting Rights in the Company. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member.

Section 4.06 Resignation. Any Manager may resign at any time by giving written notice to each Member. Such resignation shall take effect upon the delivery of the notice to the Members or at such later time as shall be specified in such notice. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member.

Section 4.07 Vacancies. Any vacancy occurring for any reason in the number of Managers shall be filled by a vote of the Members (determined without regard to any Voting Rights owned by a Member who was a Manager but was removed pursuant to Section 4.05 of this Operating Agreement during the preceding 24 month period), unless one or more other Persons then serve as Manager and the Members determine not to fill such vacancy.

Section 4.08 Execution of Documents and Other Actions. Pursuant to Section 4.03, the Managers may act through Managers or officers to whom authority and duties have been delegated. In the absence of such delegation, the signature, authorization or actions of only those number of Managers sufficient to approve such action had such action been properly voted on at a duly called meeting of the Managers shall be required.

Section 4.09 Single Manager. If at any time there is only one Person serving as a Manager, such Manager shall be entitled to exercise all powers of the Managers set forth in this Article IV, and all

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

references in this Article IV and otherwise in this Operating Agreement to Managers shall be deemed to refer to such single Manager.

Section 4.10 Place and Manner of Meetings. It is not contemplated that there will be regular meetings of the Managers. However, meetings of the Managers may be called at any time by any Manager. All meetings of the Managers shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by all Managers. Managers may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.11 Notice of Meetings and Record Date. Written notice stating the time, date, place and purpose of the meeting shall be delivered at least ten (10) Days but no more than sixty (60) Days in advance of the proposed meeting date, either personally or by mail, by or at the direction of the Manager calling the meeting, to each Manager. An affidavit of the mailing or other means of giving any notice of any Managers meeting shall be executed by the Person giving such notice, and shall be filed and maintained in the books and records of the Company. When a meeting of the Managers is adjourned, notice need not be given of any such adjourned meeting if the date, time and place thereof are announced at the meeting at which the adjournment is taken. For the purpose of determining the Managers entitled to notice of or to vote at any meeting of Managers or any adjournment thereof, or in order to make a determination of Managers for any other purpose, the record date shall be the date on which notice of the meeting is mailed or the date on which the resolution of the Managers declaring such action is adopted, as the case may be. When a determination of Managers entitled to vote at any meeting of Managers has been made as provided in this Section 4.11, such determination shall apply to any adjournment thereof.

Section 4.12 Waiver of Notice. When any notice is required to be given to any Manager, a waiver thereof in writing signed by the Manager entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice. In addition, a Manager who attends a meeting waives his or her right to assert any lack of notice, or defect in notice, of the meeting unless he or she states such objection at the outset of the meeting.

Section 4.13 Action without Meeting. The Managers may take action without notice and without a meeting if a consent or consents in writing, setting forth the action so taken, is signed by a sufficient number of Managers, as the case may be, to approve such action had such action been properly voted on at a duly called meeting of the Managers. Every written consent pursuant to this Section shall be signed, dated and delivered to the Company and shall become effective when the requisite number of Managers, as the case may be, have signed the consent, unless the consent specifies a different effective date. The date for determining the Managers entitled to take action without a meeting shall be the date the first Manager signs a written consent. A telegram, telex, cablegram, or similar transmission by a Manager, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a Manager, shall be regarded as signed by the Manager for purposes of this Section. Prompt notice of the taking of any action by the Managers without a meeting by less than unanimous written consent shall be given by the Managers who signed the written consent to those Managers who did not consent in writing to the action.

Section 4.14 Meeting of all Managers. If all of the Managers shall meet at any time and place, either within or outside of the State of South Carolina, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

Section 4.15 Compensation and Reimbursement. The Company shall reimburse a Manager for all reasonable out-of-pocket expenses incurred by the Manager in managing and conducting the Company's business. The compensation of the Managers shall be fixed from time to time by a vote of the Members, and no Manager shall be prevented from receiving such compensation by reason of the fact that he or she is also a Member.

Section 4.16 Liability for Certain Acts. The Managers do not in any way guarantee the return of the Members' Capital Contribution or a profit for the Members from the operations of the Company. No Manager shall be liable or accountable to the Company or to the other Members, in damages or otherwise, for any error in judgment, for any mistake of fact or of law, or for any other act or thing that the Manager may do or refrain from doing in connection with the business and affairs of the Company, except for willful misconduct, gross negligence, fraud, deceit or breach of fiduciary duty, and further for breaches of contractual obligations or agreements between the Managers and the Company or the Managers themselves.

Section 4.17 Indemnity. The Company shall indemnify and hold harmless each Manager for all expenses, costs, losses, liabilities, and damages paid or accrued by such Manager in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State of South Carolina, except to the extent the claim for which indemnification is sought results from an act or omission for which the Manager may be held liable to the Company, a Member or a Manager under Section 4.16 above. Any such indemnification under this Section shall be made by the Company only if authorized by a vote of the Members (determined without regard to any Voting Rights owned by a Member who is also a Manager seeking indemnification). The foregoing rights of indemnification shall not be exclusive of any other rights to which the Managers may be entitled.

Section 4.18 Interested Managers, Officers and Members. No contract or transaction between this Company and one or more of its Managers, officers or Members, or between this Company and any other limited liability company, corporation, partnership, association, or other organization in which one or more of its managers, officers, members or partners are Managers, officers or Members of this Company or have a financial interest in this Company, shall be void or voidable solely because the Manager, officer or Member is present at, participates in, or votes at the meeting which authorizes the contract or transaction if:

A. The contract or transaction is fair as to this Company as of the time it is authorized, approved, or ratified; and

B. The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Managers, officers or Members and the Managers, officers or Members in good faith authorize the contract or transaction.

This Section shall not be construed to invalidate any contract or transaction which would be valid in the absence of this Section.

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Section 4.19 Business Pursuits of Managers and Members. The Managers and Members may engage in other business activities and the Managers shall be obligated by reason of this Operating Agreement to devote only as much of their time to the Company's business as shall be reasonably required in light of the Company's business and objectives and the responsibilities undertaken or assigned to the Managers. This Operating Agreement shall not preclude or limit in any respect the right of any Manager or Member to engage in or invest in any business activity of any nature or description, whether or not competitive with the business of the Company and a Manager or Member shall have no obligation to offer any opportunity to the Company, the other Managers or the other Members. Any such activity may be engaged in independently or with other Managers and Members. No Manager or Member shall have the right, by virtue of this Operating Agreement or the relationship created hereby, to any interest in such other ventures or activities or to the income or proceeds derived therefrom. The pursuit of such other ventures shall not be deemed wrongful or improper and any Manager or Member shall have the right to participate in or to recommend to others any such investment opportunity. The Company and each Manager and Member hereby expressly consents to the continued and future ownership and operation by the other Managers and Members of such businesses and activities and waives any claim for damages or otherwise, or rights to participate therein or with respect to the operation and profits or losses thereof.

Section 4.20 Books and Records. The Managers shall cause the Company to maintain at its principal place of business the following Company records:

A. A current list of the full name and last known mailing address of each Member and his or her Membership Share.

B. A current list of the full name and last known mailing address of each Manager.

C. A copy of the Articles and this Operating Agreement, together with all amendments thereto.

D. Copies of the Company's federal, state and local income tax returns and reports for the three (3) most recent fiscal years.

E. Original or copies of all minutes, actions by written consent, notice of meetings and waivers of notices.

Each Member, or the legal representative of such Member, may, at any time during normal business hours, inspect and copy the books and records of the Company. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

ARTICLE V
ACTIONS OF MEMBERS

Section 5.01 No Required Meetings. It is not contemplated that there will be regular meetings of the Members. However, meetings may be called at any time by any Manager or by any Member or Members who own Fifty (50%) percent of the Voting Rights in the Company. All meetings

shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by all Members.

Section 5.02 Notice of Meetings. Written notice stating the time, date, place and purpose of the meeting shall be delivered at least ten (10) Days but no more than sixty (60) Days in advance of the proposed meeting date, either personally or by mail, by or at the direction of the Persons calling the meeting, to each Member entitled to vote as such meeting, provided that such notice may be waived as provided in this Operating Agreement. An affidavit of the mailing or other means of giving any notice of any Members' meeting shall be executed by the Person giving such notice, and shall be filed and maintained in the books and records of the Company. When a meeting of the Members is adjourned, notice need not be given of any such adjourned meeting if the date, time and place thereof are announced at the meeting at which the adjournment is taken; provided, however, that if a new record date must be fixed for the adjourned meeting in accordance with Section 5.03, then notice of the adjourned meeting shall be given as in the case of an original meeting.

Section 5.03 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members, or any adjournment thereof, to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the record date shall be the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution or action is adopted, as the case may be. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section 5.03, such determination shall apply to any adjournment thereof; provided, however, that if a meeting is adjourned for more than forty-five (45) days, a new record date must be fixed.

Section 5.04 Conduct of Meetings. All meetings of the Members shall be presided over by the chairman of the meeting who shall be a Member designated by a majority of the Members at the meeting. The chairman of the meeting shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion.

Section 5.05 Member Voting. All actions required to be taken by the Members shall be made by the vote of the Members who own more than Fifty (50%) percent of the Voting Rights in the Company, unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by any express provision of the statutes which are applicable to such vote unless legally overridden by the Articles or this Operating Agreement, a different percentage is required, in which case such express provision shall govern and control the decision of such matter.

Section 5.06 Participation in Meetings. Members may participate in such meetings of the Members by means of conference telephone or similar communications equipment by means of which all Members participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 5.07 Proxies. Each Member may authorize any Person to act for him or her by proxy on all matters in which a Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be in writing and signed by the Member or his or her attorney-in-fact or other legal representative. The proxy shall be delivered to a Manager of the

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Company at or before the meeting at which the appointment is to be effective and shall not be valid after the final adjournment of the meeting.

Section 5.08 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the Member entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice. A Member who attends a meeting waives his or her right to assert any lack of notice, or defect in notice, of the meeting unless he or she states such objection at the outset of the meeting.

Section 5.09 Action Without Meeting. The Members may take action without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the Members holding sufficient Voting Rights, as the case may be, to approve such action had such action been properly voted on at a duly called meeting of the Members. Every written consent pursuant to this Section shall be signed, dated and delivered to the Company and shall become effective when the Members with requisite Voting Rights, as the case may be, have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent. Prompt notice of the taking of any action by Members without meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action.

ARTICLE VI
CAPITAL ACCOUNTS AND CONTRIBUTIONS

Section 6.01 Initial Contributions. Upon the execution of this Operating Agreement, each initial Member shall contribute to the Company the monies and/or properties which are specified in Exhibit A as that Member's initial Capital Contribution in exchange for the issuance by the Company of Membership Shares to each such initial Member as set forth on Exhibit B. No Membership Shares shall be issued to an initial Member until the full amount of consideration therefore has been paid.

Section 6.02 Subsequent Contributions.

A. **Mandatory Contributions.** The Members recognize that the income produced by the Company's business may be insufficient to pay the operating costs of the Company. Without creating any rights in favor of any third party, if the Managers determine that additional funds from the Members are necessary and appropriate for the conduct of the Company's business (including without limitation, any funds needed for working capital, any operating deficit or the purchase, lease, acquisition, expansion or construction of additional Company Property), then upon the Managers making such determination, the Managers shall provide written notice of such request for additional Capital Contributions to each Member, which notice must include the aggregate amount of the Capital Contributions and a statement in reasonable detail of the proposed uses of the Capital Contributions. Any such additional Capital Contributions shall require the approval of those Members who own more than fifty (50%) percent of the Voting Rights in the Company. Upon such approval, the Managers shall notify each Member in writing of the date (which date may be no earlier than fifteen (15) Days following the date of the Members' approval) before which the Capital Contributions must be made. Additional Capital Contributions shall be contributed by the Members, in cash, on or before the date specified in the written notice, in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. If any Member makes a Capital Contribution to the Company, such Capital Contribution shall increase only that Member's capital account and such Capital Contribution shall in no event be

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

allocated pro rata to the capital accounts of the other Members. Solely for purposes of this Section, a Member who has transferred his or her Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

B. Default. If a Member does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Operating Agreement, that Member is in default ("Defaulting Member"). If the Defaulting Member fails to cure the default in full within thirty (30) Days of the date such contribution was due, the Defaulting Member shall pay to the Company a late fee of Two Hundred ($200.00) Dollars. If the defaulting Member has failed to cure the default in full (any unpaid contribution and late fee) within sixty (60) Days of the date the contribution was due, the Defaulting Member shall not have any Voting Rights and shall not be entitled to participate in the management of the Company until such default is fully cured.

C. Extended Default. If, within ninety (90) Days after the due date of the contribution, the Defaulting Member has not completely cured his or her default (any unpaid contribution and late fee), such Defaulting Member shall be notified in writing by the Company that his or her default has exceeded ninety (90) Days and that he or she is in extended default. By execution of this Operating Agreement, each Member expressly agrees and understands that, in the event such Member thereafter receives written notice that he or she is in extended default, the Company may exercise one or more of the following remedies:

1. The Members who made their Capital Contribution may, but shall not be required to, make further additional contributions in such proportion as they might agree among themselves, or in the absence of any such agreement, in proportion to their Financial Rights, up to the full amount not contributed by the Defaulting Member. After such contribution is made, each Member's Membership Share shall be adjusted and determined by dividing the aggregate contributions of all the Members since the inception of the Company into the aggregate contribution of each Member. The resulting quotient with respect to each Member shall be the adjusted Membership Share of the Member.

2. The amount that the Defaulting Member is in default may be considered a loan made by the Company to the Defaulting Member ("Deficit Loan"). A Defaulting Member's Deficit Loan shall be payable on demand of the Company as well as out of distributions from the Company otherwise payable to the Defaulting Member (whether before or after dissolution of the Company). Said loan shall bear interest, per annum, at a rate of two (2%) percent above the prime rate as published in the Wall Street Journal as of the day following the expiration of the ninety (90) Day period or, if greater, the rate of interest applicable under Section 1274 of the Code, adjusted each January 1 the Deficit Loan is outstanding. The Defaulting Member shall not be entitled to receive any distributions from the Company until the Deficit Loan of the Defaulting Member has been paid in full. The Defaulting Member hereby grants to the Company a security interest in his or her Membership Shares to the extent of the Defaulting Member's Deficit Loan. If the Defaulting Member fails to satisfy his Deficit Loan within thirty (30) Days after the Company's demand for payment, the Defaulting Member shall forfeit his or her Membership Shares to the extent of any unpaid obligations. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture. To the extent the Defaulting Member's Deficit Loan remains unsatisfied, the Deficit Loan of the Defaulting Member shall be a personal debt obligation of the Defaulting Member, and the Company may resort to any available legal or equitable remedy to enforce said obligation.

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

D. Continuing Liability of Member in Default. A Member who is in default or extended default under this Section shall in no way be relieved of his or her obligation to pay additional contributions which accrue either before or after the date of such default.

Section 6.03 Return of Capital. No interest shall accrue on any Capital Contribution and except as specifically provided in this Operating Agreement, no Member shall be entitled to withdraw or obtain a return of any Capital Contribution or, when such withdrawal of capital is permitted, to demand a distribution of property other than cash.

Section 6.04 Capital Accounts. The Company shall establish and maintain for each Member a separate 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)(2)(iv). Each Member's capital account shall be adjusted as necessary to reflect the economic conditions of the Membership Shares. These adjustments shall include, but are not limited to, the following:

A. Adjustments to reflect each Member's distributive share of Company profits and losses, including capital gains and losses and tax-exempt income;

B. Adjustments to reflect each Member's additional contributions to the Company; and

C. Adjustments to reflect distributions made by the Company to each Member.

Section 6.05 Transferee Capital Accounts. In the event of a Disposition of a Membership Share in accordance with the terms of this Operating Agreement, the capital account of the transferring Member shall become the capital account of the transferee to the extent it relates to the transferred Membership Share.

Section 6.06 Compliance with Section 704(b) of the Code. The provisions of this Article VI 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 and credit pursuant to this Operating Agreement to have substantial economic effect under Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. Notwithstanding anything herein to the contrary, no Member shall have any obligation to restore all or any portion of a deficit balance in such Member's capital account.

ARTICLE VII
ALLOCATIONS AND DISTRIBUTIONS

Section 7.01 Allocation of Profits and Losses. The Company's net profits and net losses (and each item of income, deduction, gain, loss and credit that makes up net profits and net losses) shall be computed in accordance with professionally accepted accounting principles, consistently applied and appropriate for the method of accounting selected by the Members for use by the Company. Except as provided in Sections 7.02 and 7.03, the net profits and net losses and other items of income, gain, loss, deduction and credit shall be apportioned among the Members in accordance with their Financial Rights in the Company.

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Section 7.02 Regulatory Allocations. Notwithstanding anything to the contrary herein, any special allocations required to be made pursuant to the Treasury Regulations promulgated under Section 704 of the Code, including those related to minimum gain chargebacks and qualified income offsets, which qualified income offset rules of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations are hereby incorporated by reference, shall be made prior to the allocations set forth in Section 7.01 and in the order of priority set forth in the Treasury Regulations. It is the intent of the Members that, to the maximum extent possible, all regulatory allocations will be offset either by other regulatory allocations or special allocations of other items of Company income, gain, loss or deduction such that, after all such regulatory allocations are made, each Member's capital account balance is, to the maximum extent possible, equal to the capital account balance that such Member would have had if the regulatory allocations were not contained in this Operating Agreement, and all allocations were made pursuant to Section 7.01 hereof.

Section 7.03 Section 704(c) of the Code. The Company shall cause depreciation and/or cost recovery deductions and gain or loss with respect to each item of property to be allocated among the Members for income tax purposes in accordance with the principles of Section 704(c) of the Code and Treasury Regulations promulgated thereunder using the "traditional" method as defined in Section 1.704-3(b) of the Treasury Regulations. Allocations pursuant to this Section 7.03 are solely for purposes of federal and state income taxes and shall not affect, or in any way be taken into account in computing, any Member's capital account or share of profits, losses, other items, or distribution pursuant to any provisions of this Operating Agreement.

Section 7.04 Allocations Attributable to Particular Periods. If Financial Rights are transferred, or are increased or decreased by reason of the admission of a new Member or otherwise, at any time other than the end of a tax year, the share of profits, losses or any other items to be allocated (in respect of the Financial Rights so transferred) shall be allocated between the transferor and the transferee in the same ratio as the number of days in such fiscal year before and after the effective date of such transfer. The provisions of this Section 7.04 shall not apply to any profit or loss attributable to a sale or other disposition of all or substantially all of the Company Property, or to other extraordinary non-recurring items. Such profit and loss shall be allocated to the owner of the Financial Rights as of the date of closing of the sale or other disposition, or, with respect to other extraordinary non-recurring items, the date the profit is realized or the loss is incurred, as the case may be.

Section 7.05 Interim Distributions. Interim distributions to the owners of the Financial Rights shall be made in accordance with the following:

A. At periodic intervals as determined by the Managers, but no less frequently than annually, the Managers shall determine the amount of profits and losses of the Company for such period and the allocation of such profits and losses to the Member's capital accounts. The Managers shall determine in their reasonable judgment to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, all amounts necessary to preserve, maintain and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities. Any Company Cash in excess of such amounts shall be distributed to the owners of the Financial Rights. All distributions must be made simultaneously to each of the owners of the Financial Rights, and must be made in proportion to the owners' Financial Rights. Such distributions may be in cash or Company Property or partly in both, as determined by the Managers. Items of Company Property need not be distributed proportionately, provided the Managers agree upon the value

of the property being distributed and the value of the property and the cash received by each owner of the Financial Rights is proportionate to such owner's Financial Rights.

B. Notwithstanding anything herein to the contrary, the Company shall make a minimum pro rata distribution from the Company Cash to the Members within seventy-five (75) Days after the end of each tax year in an amount as shall be necessary to make the distributions to the Members for the entire tax year at least equal to the amount necessary to pay each Member's federal and state income taxes for that tax year attributable to their pro rata share of the Company's net income.

Section 7.06 Distribution in Kind. Except as provided by the Articles or this Operating Agreement, a Member, regardless of the nature of the Member's contribution, may not demand to receive a distribution from this Company in any form other than cash.

Section 7.07 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution shall be declared and paid if payment of such distribution would cause the Company to violate any limitations on distributions provided in the Act.

Section 7.08 Right to Set-Off. Except as otherwise provided in this Operating Agreement, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE VIII
TAX MATTERS

Section 8.01 Preparation of Tax Returns. The Managers shall arrange for the preparation and timely filing of all returns of Company income, gains, deductions, losses and other items required of the Company for federal, state and local income tax purposes, and the delivery to the Members of all tax information reasonably required by the Members for federal, state and local income tax reporting purposes.

Section 8.02 Tax Elections. The Managers shall determine whether to make any available election (including, without limitation, the election under Section 754 of the Code) or choose any available reporting method pursuant to the Code or state or local tax law. The Managers shall have the right to seek to revoke any such election (including, without limitation, the election under Section 754 of the Code) or change any reporting method.

Section 8.03 Tax Matters Partner. Beacham O. Brooker, Jr. shall be the initial "tax matters partner" of the Company within the meaning of Section 6231(a)(7) of the Code, and as such, shall be solely responsible for representing the Company (at the Company's expense) in all dealings with the U.S. Internal Revenue Service and any state, local and foreign tax authorities. If Beacham O. Brooker, Jr. is no longer a Member or resigns as the tax matters partner, the Members shall designate one Member as the successor tax matters partner. The tax matters partner shall comply with the provisions of this Operating Agreement in the performance of its duties as tax matters partner. The tax matters partner shall receive no compensation for serving as tax partner. All costs and expenses incurred by the tax matters partner in performing its duties as such (including legal and accounting fees) shall be borne by the Company. Nothing herein shall be construed to restrict the Company from engaging an accounting firm to assist the tax matters partner in discharging its duties hereunder.

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ARTICLE IX
TRANSFER OF MEMBERSHIP SHARES

Section 9.01 Transfer of Membership Shares Generally. Except for a Disposition specifically permitted by this Article IX, no Member shall Dispose of any Membership Shares held by such Member without the written consent of all non-Disposing Members who have Voting Rights in the Company. If such consent is obtained, then the following Sections of this Article IX shall be of no effect, and the provisions of Article III shall govern the rights of the transferor and transferee. With regards to all other Dispositions, the provisions of this Article IX shall control, and any attempted Disposition of Membership Shares in contravention of this Article IX shall be null and void, and neither the Company nor the Members shall recognize the same. Any Member who Disposes or attempts to Dispose any Membership Share except in compliance herewith shall be liable to, and shall indemnify and hold harmless, the Company and other Members for all costs, expenses, damages and other liabilities resulting therefrom.

Section 9.02 Permitted Transfers. Any Member may at any time Dispose of all or any portion of his or her Membership Shares if such Disposition is a Permitted Transfer. For purposes of this Operating Agreement, a Permitted Transfer is the Voluntary Transfer by a Member of his or her Membership Share to a Permitted Transferee. Any Disposition that is a Permitted Transfer shall be effective to assign the right to become a Member, and, without the need for any action or consent of any other Person, a transferee of such Membership Share shall be admitted as a Member upon the transferee's compliance with Section 3.04 hereof.

Section 9.03 Right of First Refusal. If a Member attempts to Dispose of (other than in a Permitted Transfer) all or any portion of his or her Membership Shares without obtaining the written consent of all non-Disposing Members, such Member (the "Offering Member") is deemed to have offered to the Company, then to all of the remaining Members (the "Remaining Members"), on a pro rata basis, the right to purchase all, but not less than all, of the Membership Shares owned by the Offering Member at a price determined in accordance with Section 9.05 and upon the terms contained in Section 9.06; provided, however, that if a Member attempts to Dispose of only a portion of his or her Membership Shares, then the Company's and the Members' options shall apply only to the portion of the Membership Shares that is proposed to be transferred.

Section 9.04 Exercise of Right of First Refusal.

A. Upon the occurrence of an event specified in Section 9.03 above, the Offering Member, or their legal representative, must give written notice of such event to the Company and each Remaining Member (the "First Refusal Notice"), which notice must contain a description of the Membership Shares to be transferred, the name, address and business occupation of the proposed transferee, the proposed sales price or other consideration, the proposed sales terms (including the relative percentages of cash and debt instruments, and the duration, interest rate, and payment schedule of any such debt instruments) and a copy of the Bona Fide Offer, if applicable.

B. The Managers shall have until the later of (i) thirty (30) Days following the date the First Refusal Notice was delivered to the Company, and (ii) fifteen (15) Days after the purchase price is determined pursuant to Section 9.05 (such period, the "Original Option Period") in which to notify the Offering Member and the Remaining Members in writing whether the Company elects to purchase all or any part of the Offered Membership Shares.

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

C. If the Managers do not elect to purchase all of the Offered Membership Shares within the Original Option Period (the Offered Membership Shares which the Company elects not to purchase being referred to as the "Refused Shares"), each Remaining Member shall have fifteen (15) Days following the end of the Original Option Period (such period, the "Second Option Period") in which to notify the Offering Member in writing whether it elects to purchase all or any part of its pro rata share (based on the percentage of the Membership Shares owned by such Remaining Member bears to the percentage of Membership Shares owned by all Remaining Members) of the Refused Shares.

D. If a Remaining Member does not elect to purchase all of its pro rata share of the Refused Shares within the Second Option Period, the Offering Member must immediately give written notice of such event to each Remaining Member who elected to purchase all of its pro rata share of the Refused Shares (the "Second Refusal Notice"). Each such Remaining Member shall have fifteen (15) Days from the date the Second Refusal Notice is given (such period, the "Third Option Period") in which to notify the Offering Member in writing whether it elects to purchase its pro rata share (based on the percentage of the Membership Shares owned by such Remaining Member bears to the percentage of Membership Shares owned by all Remaining Members then entitled to an option) of the Refused Shares previously rejected by a Remaining Member. Subject to the condition that each Remaining Member so entitled to an option shall first be permitted to purchase or reject the maximum number of Membership Shares to which he or she is entitled pursuant to the ratios hereinbefore described, such Remaining Members shall be free to mutually agree by unanimous consent to the portion of Refused Shares to be purchased by each.

E. If the Remaining Members do not elect to purchase all (but not less than all) of the Refused Shares by the expiration of the Third Option Period, the Offering Member may, during the thirty (30) Days following the expiration of the Third Option Period, complete the intended Disposition of all (but not less than all) of the Offered Membership Shares to the proposed transferee upon the terms and conditions specified in the First Refusal Notice. Unless and until the proposed transferee is admitted as a Member in accordance with Section 3.02, the rights of the proposed transferee are as provided in Section 3.05. If the Disposition is not completed within the thirty (30) Day period described above, any attempted Disposition will be deemed pursuant to a new offer and this Section shall again apply.

Section 9.05 Purchase Price.

A. If the transaction described in the First Refusal Notice is a proposed transfer of the Membership Shares pursuant to a Bona Fide Offer, then the purchase price shall be at the price and on the terms and conditions, proportionately, as were contained in the Bona Fide Offer; provided, however, that if any consideration to be paid pursuant to the Bona Fide Offer is other than cash or an obligation to pay money, the purchasing party shall have the option to pay either such non-cash consideration or the fair market value thereof.

B. If the event giving rise to the option is not pursuant to a Bona Fide Offer (for example, a gift or a pledge of the Membership Shares, a transfer incident to or by virtue of divorce or equitable distribution proceedings, or the occurrence of an event of bankruptcy with respect to the Member), then the purchase price shall be the fair market value of the Offered Membership Shares as of the date of event giving rise to the options.

1. The Offering Member and the Managers (excluding the Offering Member, if the Offering Member is also a Manager) shall attempt to agree in writing as to the fair market value of the Offered Membership Shares.

2. If no such agreement can be reached within fifteen (15) Days following the date the First Refusal Notice was delivered to the Company, then the fair market value (taking into account all applicable valuation discounts, including but not limited to, minority, lack of marketability, undivided interests in real estate, voting versus non-voting interest, and all costs, expenses and damages sustained by the Company and the Remaining Members as a result of a Member's wrongful dissociation) for the Offered Membership Shares shall be determined by the agreement of two (2) appraisers. The Offering Member shall name one appraiser and the Managers (excluding the Offering Member, if the Offering Member is also a Manager) shall name the other appraiser. Both appraisers must have at least five (5) years experience valuing Membership Shares similar to the one being offered hereunder. The parties must appoint their respective appraiser by delivering written notice of the name, address and telephone number of their appraiser to each other within seven (7) Days after the expiration of the above referenced fifteen (15) Day period. If either party fails to appoint an appraiser within the time period required herein, the appraiser appointed by the other party shall unilaterally establish the fair market value of the Offered Membership Shares by written opinion. If both parties appoint an appraiser within the seven (7) Day period, these two appraisers shall establish the fair market value of the Offered Membership Shares in a single written opinion agreed on by both of them. If the two appraisers cannot agree on the fair market value within thirty (30) Days after the last of them is appointed, each appraiser shall render their own written opinion and the fair market value shall be the average of the two opinions. The fees and costs of the appraiser appointed by the Offering Member shall be paid by the Offering Member. The fees and costs of the appraiser appointed by the Managers shall be paid by the Company. Fair market value is defined as the cash equivalent price at which property would change hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of relevant facts. The hypothetical buyer and seller are assumed to be able, as well as willing, to trade and are assumed to be well-informed about the property and the market for such property. The purchase price as determined herein shall be conclusive and binding upon the parties, their legal representative, personal representative, heirs, transferees, successors and assigns.

If the Offering Member is also the sole Manager, then the actions of the Managers under this Section 9.05(B) shall be taken by the Members.

Section 9.06 Payment of Purchase Price.

A. If the purchase relates to a proposed transfer of the Offered Membership Shares due to a Bona Fide Offer, the purchase price for the Offered Membership Shares shall be paid in accordance with the terms, proportionately, as were contained in the Bona Fide Offer.

B. If the event giving rise to the option is not pursuant to a Bona Fide Offer, then unless the parties mutually agree to different terms, the purchase price shall be paid in one hundred twenty (120) equal and consecutive monthly installments of principal plus interest commencing on the first day of the month after the date of the closing. Each purchaser shall execute and deliver to the seller a separate promissory note made payable to the order of the seller which shall bear interest, per annum, at the prime rate as published in the Wall Street Journal at the date of the closing. The purchaser shall have the right to prepay all or any part of the principal of the note at any time without penalty or premium. All payments, when received, shall be applied first to accrued interest and then to principal. The note shall

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

provide that immediately 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 delivery of the note, the Offered Membership Shares shall be conveyed to the purchaser. The purchaser's payment obligations under the note will be secured by a security interest in the Offered Membership Shares.

Section 9.07 Closing. The purchase of the Offered Membership Shares shall take place at a closing to be held not later than the thirtieth (30th) Day after the last option period is exercised or lapses, at the Company's primary place of business, or at any other place to which the parties agree. At the closing, each purchaser will pay for the Offered Membership Shares in accordance with Section 9.06 and the seller will deliver such instruments of transfer, assignment and assumption with respect to such transaction and shall transfer such interest free and clear of any liens, encumbrances or any interests of any third party. Each Member appoints the Company as his or her agent and attorney-in-fact to execute and deliver all documents needed to convey his or her Offered Membership Shares if such selling Member is not present at the closing. This power of attorney is coupled with an interest and does not terminate on the Member's disability or death, and continues for so long as this Operating Agreement is in effect.

ARTICLE X
DISSOLUTION, LIQUIDATION, AND TERMINATION

Section 10.01 Dissolution. The Company shall dissolve and its affairs shall be wound up upon the first to occur of the following:

A. The written consent of all Members;

B. The expiration of the period fixed for the duration of the Company set forth in the Articles;

C. Upon an event 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;

D. On application by a Member, upon entry of a judicial decree as provided in Section 33-44-801(4) of the Act; or

E. Upon an administrative dissolution as provided in Section 33-44-809 of the Act, but if the Company is reinstated pursuant to Section 33-44-811 of the Act, the reinstatement is effective retroactively to the date of the administrative dissolution.

Section 10.02 Date of Dissolution. Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until the assets of the Company shall have been distributed as provided herein and the Articles of Termination have been filed with the Secretary of State of South Carolina. Notwithstanding the dissolution of the Company, prior to the termination of the Company, as aforesaid, the business of the Company and the affairs of the Members, as such, shall continue to be governed by this Operating Agreement.

Section 10.03 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,

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

the Members may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (i) 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 (ii) the rights of a third party accruing under 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.

Section 10.04 Winding Up and Termination. On dissolution of the Company, if the Members do not continue the Company's business under Section 10.03, the Managers shall appoint one or more Managers to serve as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company with all of the power and authority of the Managers. The steps to be accomplished by the liquidator are as follows:

A. First, sell or otherwise liquidate any or all of the Company's assets, except to the extent that the liquidator may determine to distribute in kind any assets to the Members;

B. Second, pay, satisfy or discharge from Company Property all of the debts, liabilities and obligations of the Company (including liabilities to Members who are also creditors, to the extent permitted by law) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent or unforeseen liabilities or obligations in such amount and for such term as the liquidator may reasonably determine);

C. Third, the assets of the Company shall be distributed proportionately among the Members in accordance with their positive capital account balances as determined after taking into account all capital account adjustments for the taxable year of the Company during which the liquidation of the Company occurs, as necessary to bring the balance of all capital accounts to zero. Any such distributions to the Members in respect to their capital accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations.

D. Fourth, all remaining assets shall be distributed proportionately among the Members based on their respective percentages of Financial Rights.

Section 10.05 Termination of Company. When all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, have been distributed to the Members in the manner provided for in this Operating Agreement, the Company's affairs shall terminate and the liquidator shall file the Articles of Termination with the Secretary of State of South Carolina, as well as any and all other documents required to effectuate the termination of the Company under the Act.

Section 10.06 Distribution in Kind. The liquidator may distribute assets in kind to the Members or to satisfy any or all of its obligations. If the liquidator distributes 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 in question. The fair market value of each asset or group of assets appraised shall be the average of the two appraisals.

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

Section 10.07 Gain or Loss. Any gain or loss on the disposition of Company Property in the process of liquidation shall be credited and charged to the Members in proportion to their respective percentage of Membership Shares, except that gain or loss with respect to property contributed to the Company by a Member shall be shared among the Members so as to take account of any variation between the basis of the property so contributed and its fair market value at the time of contribution, in accordance with any applicable Treasury Regulations. Any property distributed in kind in the liquidation shall be valued and treated as though it were sold and the cash proceeds distributed.

Section 10.08 Deficit Capital Accounts. Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from deductions and losses of the Company (including non-cash items such as depreciation) or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective interest in the Company, upon dissolution of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's capital account to zero.

Section 10.09 Company's Assets Sole Source. The Members shall look solely to the assets of the Company for the payment of any debts and liabilities owed by the Company to the Members and for the return of their Capital Contributions and liquidation amounts. If the Company Property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of one or more Members, such Member shall have no recourse against the Company or any other Member, except to the extent that such other Member may have outstanding debts or obligations owing to the Company.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01 Arbitration. Any dispute or controversy between the parties hereto arising out of, under, or in connection with, or in relation to, this Operating Agreement shall be submitted to binding arbitration in accordance with South Carolina Code Sections 15-48-10, et seq., as such may be amended from time to time (the South Carolina Uniform Arbitration Act, "SCUAA"). All arbitration proceedings shall be conducted in Barnwell County, South Carolina, or by mutual agreement of the parties, wherever else is most convenient for a rapid resolution of the matter. Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding. The arbitrators shall be selected as provided in the SCUAA, and the arbitrators shall render a decision on any dispute within one hundred twenty (120) Days after the last of the arbitrators has been selected. If any party to this Operating Agreement fails to select an arbitrator with regard to any dispute submitted to arbitration under this Section 11.01 within thirty (30) Days after receiving notice of the submission to arbitration of such dispute, then the other party shall select an arbitrator for such non-selecting party. The decision of the arbitrators shall be final and binding on the parties, who specifically renounce any judicial review of the award, and agree that judgment on the award may be enforceable in any court of competent jurisdiction.

Section 11.02 Proceeding Expenses. In any controversy, claim or dispute arising out of, or relating to, this Operating Agreement or the method or manner of the performance hereof, the prevailing party shall be entitled to, in addition to any other relief, recovery of proceeding expenses. In determining the award of proceeding expenses, attorney's fees, arbitrator fees, proceeding costs, cost of investigation and other reasonable expenses shall be included. For the purposes of this provision, the term

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

"proceeding" shall include arbitration, administrative, bankruptcy and judicial proceedings, including appeals therefrom or enforcement of decisions thereof.

Section 11.03 Amendment or Modification. This Operating Agreement and the Articles may be amended and modified from time to time only by a written instrument unanimously adopted and executed by all Members.

Section 11.04 Construction. The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation. Whenever the context so requires, the gender of all words used in this Operating Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All such Exhibits read as of the date of this Operating Agreement or, as to any Exhibits bearing a particular date, as of any other date specified therein.

Section 11.05 Severability. If any provision of this Operating Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Operating Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

Section 11.06 Entire Agreement; Supersedure. This Operating Agreement cancels and supersedes all prior written or oral agreements among the parties hereto respecting the within contained subject matter and represents the entire agreement between the parties hereto with respect to the transactions contemplated hereby.

Section 11.07 Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

Section 11.08 Binding Effect. All rights, obligations and duties provided for in this Operating Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors and permitted assigns; provided, however, that all rights, obligations and duties of the Members shall be personal to each of them and, except as herein expressly provided, may not be assigned or transferred.

Section 11.09 Governing Law. This Operating Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of South Carolina, without regard to its conflicts of laws principles. In the event of a direct conflict between the provisions of this Operating Agreement and (i) a mandatory provision of the Articles, or (ii) any mandatory provision of the Act, the applicable provision of the Articles or the Act shall control.

Section 11.10 Notices. Except as otherwise provided in this Operating Agreement, any notice, offer, acceptance, right, option or other communication required or permitted under this Operating Agreement shall be exercisable and made only upon the giving/delivery of written notice to the other party, and shall be deemed given/delivered when personally delivered or, if mailed, three (3) Days after

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

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the date it was postmarked by the United States Postal Service, if it was sent by first class mail, with postage prepaid. Notice to any Member is valid if sent to him or her at such Member's address as it appears in the Company's records. Notice to any Manager is valid if sent to him or her at such Manger's address as it appears in the Company's records. Notice to the Company is valid if sent to it at the Company's designated office as set forth in the Articles.

Section 11.11 Counterparts. This Operating Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

Section 11.12 Conflicting Provisions. To the extent that one or more provisions in this Operating Agreement appear to be in conflict with one another, then the Company shall have the right to choose which of the conflicting provisions are to be enforced. Wide latitude is given to the Company in interpreting the provisions of this Operating Agreement to accomplish the purposes and objectives of the Company, and the Company may apply this Operating Agreement in such a manner as to be in its best interest, even if such interpretation or choice of conflicting provisions to enforce is detrimental to one or more Members.

Section 11.13 Effective Date. This Operating Agreement shall become effective upon the execution of this Operating Agreement by all the parties hereto.

ARTICLE XII
DISCLOSURE

The parties acknowledge that the law firm of Todd & Johnson, L.L.P. (the "Law Firm") prepared this Operating Agreement on behalf of the parties hereto. There is an inherent potential for conflicts of interest among the parties to the Operating Agreement because the Operating Agreement establishes the rights and obligations of each of the parties to the Operating Agreement. Due to such potential conflicts of interest, the Law Firm hereby advises each of the parties that it would be in their best interest to obtain the services of their independent legal counsel to review this document. The parties hereby waive any potential conflicts of interest that may arise as a result of the above actions by the Law Firm, whether or not one or more of the parties to this Operating Agreement may have consulted with separate legal counsel concerning the Operating Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Operating Agreement the day and year first written above.

WITNESSES:

BBB&C FAMILY LLC

By: _____
Beacham O. Brooker, Jr., Manager

MEMBERS:

Janet B. Brooker, by Beacham O. Brooker, Jr. as attorney-in-fact under power of attorney recorded in Richland County, SC in Book 1368 at Page 495

Beacham O. Brooker, Jr.

Julia B. Brooker

Ellen B. Corontzes

The undersigned, who is the duly elected manager of the Company, hereby agrees to be bound by the provisions of this Operating Agreement, and any amendments thereto.

2/16/14
Date

Beacham O. Brooker, Jr.

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

EXHIBIT A

COMPANY PROPERTY

Property		Value
Initial Capital Contribution		
Janet B. Brooker 29,000 shares of Lockheed Martin, common stock (valued on date articles of organization filed with Secretary of State)		$4,285,910.00
Initial Capital Contribution of Acreage:		
Approximately 7 acres in Pontiac		$ 518,000.00
100% interest in 636 Harden LLC (LLC owns a one-half interest in property Appraised at $570,000)		$ 285,000.00
100% interest in 640 Harden LLC		$ 176,000.00
Beacham O. Brooker, Jr.	1/3	
Julia B. Brooker	1/3	
Ellen B. Corontzes	1/3	
		$5,264,910.00

ELECTRONICALLY FILED - 2020 Jul 27 11:29 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

EXHIBIT B

MEMBERS AND MEMBERSHIP SHARES

Name and Address of Initial Members	Membership Shares	
	Voting Rights	Financial Rights
Janet B. Brooker 1705 Graeme Drive Columbia, SC 29206	81.40 %	81.40%
Beacham O. Brooker, Jr. 754 Kilbourne Road Columbia, SC 29205	6.20%	6.20%
Julia B. Brooker 1325 Sinkler Road Columbia, SC 29206	6.20%	6.20%
Ellen B. Corontzes 809 Woodland Drive Columbia, SC 29205	6.20%	6.20%

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159

Case No. 2020-CP-40-02040

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC, ... Respondents

v.

Julia B. Brooker,..... Appellant

EXHIBIT K TO MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

Reconsideration Order

ELECTRONICALLY FILED - 2020 Aug 24 11:25 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2020-CP-40-02040
	)	
Beacham O. Brooker; Jr.; Ellen B. Corontzes; and BBB&C Family, LLC	)	
	)	
Petitioners	)	**ORDER DENYING RESPONDENT'S MOTION PURSUANT TO RULES 52(b) AND 59(a), SCRCP, TO ALTER OR AMEND ORDER GRANTING PETITIONERS' MOTION TO STAY**
	)	
vs.	)	
	)	
Julia B. Brooker,	)	
	)	
Respondent	)	
	)	

This matter came before me on Respondent's Motion Pursuant to Rules 52(b) and 59(a), SCRCP, to Alter or Amend Order Granting Petitioners' Motion to Stay ("Motion"), filed on July 27, 2020. Because Respondent presented no grounds to warrant altering or amending the order and because Rule 59(g) was not satisfied, this Court DENIES the Motion.

The arguments made in Respondent's Motion are not convincing and are not new.[1] Respondent's own arbitration demand references several aspects of the current probate appeal, suggesting that the arbitration demand necessarily involves issues raised in the probate appeal. Respondent, herself, has intertwined the arbitration demand with the probate appeal. This Court has the authority to stay the arbitration while the issues raised in the probate appeal resolve themselves in the appeal. Allowing the arbitration to continue would thwart the principles of the first rule of civil procedure, which states that all rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." Rule 1, SCRCP. To permit the arbitration to

[1] Additionally, the Motion for Reconsideration was not sent to the undersigned within the ten-day requirement under Rule 59(g), SCRCP. The undersigned was to receive a copy of the Motion on or before August 6, 2020 but did not receive it until August 18, 2020. This is a separate ground for denying the Motion to Reconsider.

proceed, while the related probate appeal is waiting for adjudication, hinders judicial efficiency and economy and unnecessarily increases the expenditure of the parties' resources.

For the above reasons, I DENY the Respondent's Motion Pursuant to Rules 52(b) and 59(a), SCRCP, to Alter or Amend Order Granting Petitioners' Motion to Stay.

IT IS SO ORDERED.

L. Casey Manning
Circuit Court Judge, Fifth Judicial Circuit

ELECTRONICALLY FILED - 2020 Aug 24 11:25 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4002040

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Richland Common Pleas

Case Caption: Beacham O Brooker Jr , plaintiff, et al vs Julia B Brooker

Case Number: 2020CP4002040

Type: Order/Other

So Ordered

s/L. Casey Manning, 2061

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159

Case No. 2020-CP-40-02040

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC, ... Respondents

v.

Julia B. Brooker,..... Appellant

CERTIFICATE OF SERVICE

I certify that I have caused the service of the Motion to Dismiss Appeal and Memorandum In Support by emailing and by depositing a copy of it in the United States Mail, postage prepaid, on December 31, 2020, to the addresses listed below:

James M. Griffin, Esquire
Margaret N. Fox, Esquire
GRIFFIN DAVIS LLC
4408 Forest Drive, Suite 300
Columbia, SC 29206

Gray T. Culbreath, Esquire
Gallivan White & Boyd, P.A.
P.O. Box 7368
Columbia, SC 29202

Badge Humphries, Esquire
GRIFFIN HUMPHRIES LLC
2113 Middle Street, Suite 305
Sullivan's Island, SC 29482

s/Bess J. DuRant
Bess J. DuRant

December 31, 2020

SOWELL • DuRANT

RECEIVED
JAN 07 2021
SC Court of Appeals

December 31, 2020

VIA EMAIL AND U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Beacham O. Brooker, Jr., Ellen B. Corontzes; and BBB&C Family, LLC v. Julia B. Brooker
Appellate Case No. 2020-001159

Dear Ms. Kitchings:

Enclosed for filing is Respondent's Motion to Dismiss Appeal and Memorandum in Support in this case. We are mailing in the $50.00 filing fee.

Please let me know if you have any questions. Thank you for your assistance.

Very truly yours,

Bess J. DuRant

BJD:aak

Enclosures

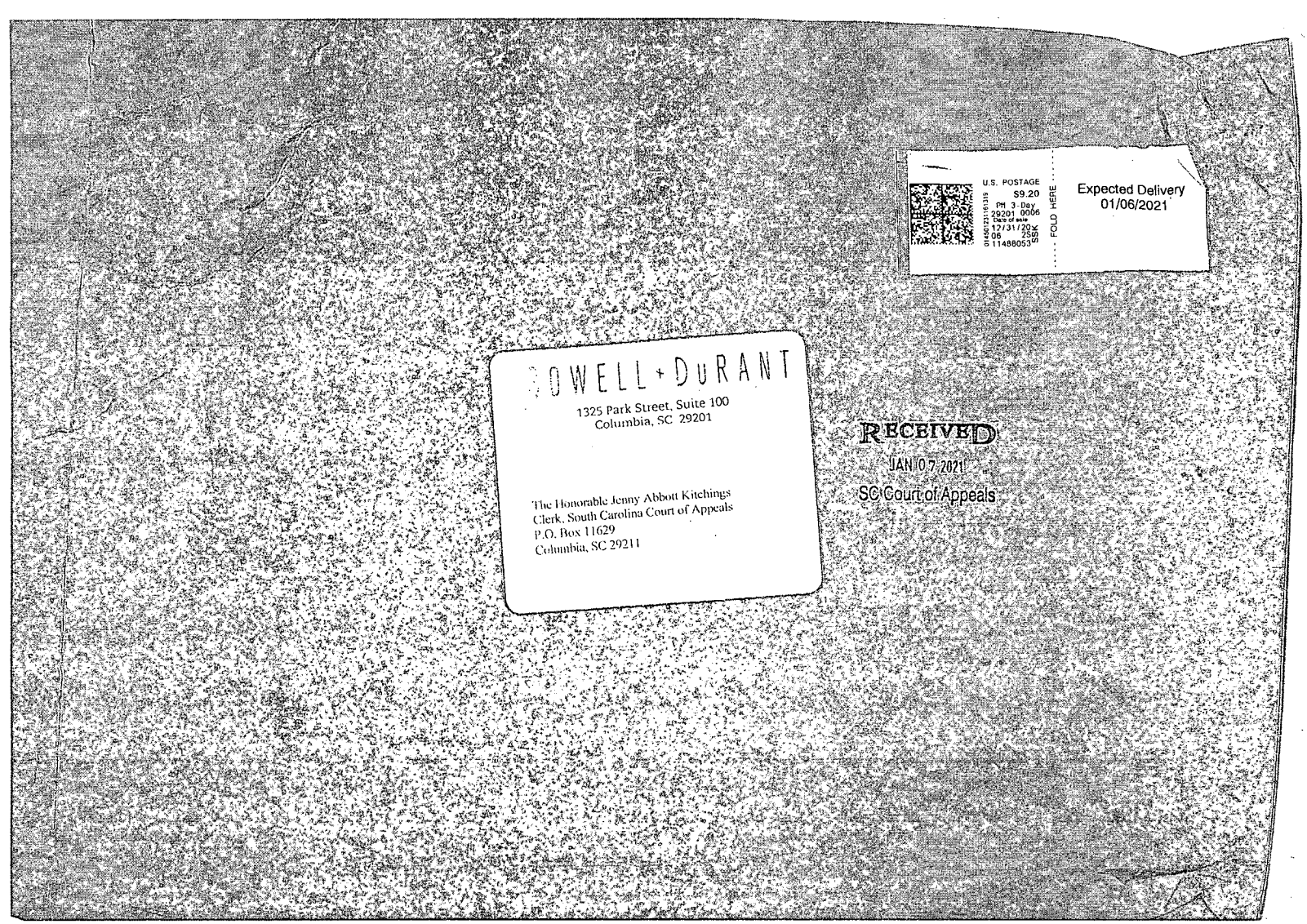
cc: James M. Griffin, Esq. (via e-mail and U.S. Mail)
Margaret N. Fox, Esq. (via e-mail and U.S. Mail)
Badge Humphries, Esq. (via e-mail and U.S. Mail)
Gray T. Culbreath, Esq. (via e-mail and U.S. Mail)

BESS J. DuRANT
Member

sowelldurant.com
803.722.1100

803-722-1102 (direct)
bdurant@sowelldurant.com

1325 Park Street, Suite 100
Columbia, SC 29201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OWELL + DuRANT
1325 Park Street, Suite 100
Columbia, SC 29201
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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