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FOR REGISTRATION REGISTER OF DEEDS
TAMMY THEUSCH BEASLEY
NEW HANOVER COUNTY, NC
2014 AUG 14 12 22 05 PM
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INSTRUMENT # 2014021340

RETURN TO Hague H. II, LLP

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

AFFIDAVIT

SS.

The undersigned, being first duly sworn, says and alleges that

1. The undersigned is a Member-Manager of S & D Enterprises of Wilmington, LLC, of which the Trustees in Bankruptcy of Donn Stanley Evans and H. Stanley Rudd are the sole Members and Managers,
2. That Donn Stanley Evans and H Stanley Rudd have each filed Chapter 7 Bankruptcy, but S & D Enterprises of Wilmington, LLC, has not filed Chapter 7 Bankruptcy, while in a state of administrative dissolution, has power and authority pursuant to NCGS '57D-6-04 to execute a deed conveying the real property owned by it, and the Trustees in bankruptcy are authorized to act as Member-Managers or as Managers in the execution of a deed conveying the real property owned by it
3. That the attached unsigned operating agreement, marked as Exhibit A, is the only operating agreement of S & D Enterprises of Wilmington, LLC, and has not been amended or rescinded, and remains in effect.
4. That the proposed sale of real property of S & D Enterprises of Wilmington, LLC, to IDR, LLC, is in the act of winding up the affairs of S & D Enterprises of Wilmington, LLC, following its dissolution, and the proposed sale of real property of S & D Enterprises of Wilmington, LLC, to IDR, LLC, is business appropriate to wind up and liquidate the business and affairs of S & D Enterprises of Wilmington, LLC, and is authorized under North Carolina General Statutes § 57D-6-04
5. This affidavit is given with the understanding that IDR, LLC, and its lender(s) and title insurer(s) will rely upon this affidavit in their respective decisions to purchase real property from S & D Enterprises of Wilmington, LLC, to accept such real property as collateral for a loan or loans, and to insure title to such real property under owners' policies of title insurance issued to IDR, LLC, and under lenders' policies of title insurance issued to such lenders

FURTHER AFFIANT SAYETH NOT

This the 5th day of August, 2014
Donn Stanley Evans
Donn Stanley Evans

SWORN TO AND SUBSCRIBED
BEFORE ME, THIS THE 5th DAY

August, 2014
Elizabeth Downing
Notary Public

My commission expires, 2-29-2016

ELIZABETH DOWNING
Notary Public
New Hanover County, NC

EXHIBIT A

Operating Agreement

of

S & D Enterprises of Wilmington, LLC

(A North Carolina Limited Liability Company)

DATED:

THE LLC MEMBERSHIP INTERESTS REPRESENTED BY THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE NORTH CAROLINA SECURITIES ACT, OR SIMILAR LAWS OR ACTS OF OTHER STATES IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. THE SALE OR OTHER DISPOSITION OF THE MEMBERSHIP INTERESTS IS RESTRICTED AS STATED IN THIS OPERATING AGREEMENT, AND IN ANY EVENT IS PROHIBITED UNLESS THE LLC RECEIVES AN OPINION OF COUNSEL SATISFACTORY TO IT AND ITS COUNSEL THAT SUCH SALE OR OTHER DISPOSITION CAN BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY APPLICABLE STATE SECURITIES ACTS AND LAWS BY ACQUIRING THE MEMBERSHIP INTEREST REPRESENTED BY THIS OPERATING AGREEMENT, THE MEMBER REPRESENTS THAT IT WILL NOT SELL OR OTHERWISE DISPOSE OF ITS MEMBERSHIP INTERESTS WITHOUT REGISTRATION OR OTHER COMPLIANCE WITH THE AFORESAID ACTS AND THE RULES AND REGULATIONS ISSUED THEREUNDER.

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*Schedule I Names, Addresses, Initial Capital Contributions, and Membership
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**Operating Agreement
of
S & D Enterprises of Wilmington, LLC**

(A North Carolina Limited Liability Company)

DATED:

THIS OPERATING AGREEMENT of **S & D Enterprises of Wilmington, LLC** (the "Company"), a limited liability company organized pursuant to the North Carolina Limited Liability Company Act, is executed effective as of the date set forth on the cover page of this Agreement, by and among the Company and the Persons executing this Agreement as the initial Members (as defined below).

**ARTICLE I
FORMATION OF THE COMPANY**

1.1 *Formation* The Company was formed on or about June 26, 2001, upon the filing with the Secretary of State of the Articles of Organization of the Company. In consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that the rights and obligations of the parties and the administration and termination of the Company shall be governed by this Agreement, the Articles of Organization, and the Act.

1.2. *Name* The name of the Company is as set forth on the cover page of this Agreement. The Members may change the name of the Company from time to time as they deem advisable, provided appropriate amendments to this Agreement and the Articles of Organization and necessary filings under the Act are first obtained.

1.3 *Registered Office and Registered Agent* The Company's registered office within the State of North Carolina and its registered agent at such address shall be as the Members may from time to time deem necessary or advisable.

1.4. *Principal Place of Business* The principal place of business of the Company within the State of North Carolina shall be at such place or places as the Members may from time to time deem necessary or advisable.

1.5 *Purposes and Powers*

(a) The purpose and business of the Company shall be to engage in any lawful business for which limited liability companies may be organized under the Act.

(b) The Company shall have any and all powers which are necessary or desirable to carry out the purposes and business of the Company, to the extent the same may be legally exercised by limited liability companies under the Act

1.6 *Term* The Company shall continue in existence as specified in the Company's Articles of Organization, unless the Company is earlier dissolved and its affairs wound up in accordance with the provisions of this Agreement or the Act

1.7 *Nature of Members' Interests* The interests of the Members in the Company shall be personal property for all purposes. Legal title to all Company assets shall be held in the name of the Company. Neither any Member, nor a successor, representative, or assign of such Member, shall have any right, title, or interest in or to any Property owned by the Company or the right to partition any Property owned by the Company

1.8 *Classification of the Company* The Members hereby acknowledge that the Company will not make an election with the Internal Revenue Service to be treated as an association taxed as a corporation and thus will be taxed as a partnership for federal income tax purposes and that no member is authorized to make such election unless all of the members agree to do so

ARTICLE II DEFINITIONS

2.1 *Definitions* The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein)

"Act" means the North Carolina Limited Liability Company Act, as the same may be amended from time to time

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments

(a) Credit to such Capital Account any amounts to which such Member is obligated to restore or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), and

(b) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith

"Adjusted Capital Contributions" means, as of any day, a Member's Capital Contributions adjusted as follows

(a) Increased by the amount of any Company liabilities which, in connection with Distributions, are assumed by such Member or are secured by any Property distributed to such Member; and

(b) Reduced by the amount of cash and the Gross Asset Value of any Property distributed to such Member and the amount of any liabilities of such Member assumed by the Company or which are secured by any Property contributed by such Member to the Company.

In the event any Member transfers all or any portion of its Membership Interest in accordance with the terms of this Agreement, the Member's transferee shall succeed to the Adjusted Capital Contribution of the transferor to the extent it relates to the transferred Membership Interest or portion thereof

"Affiliate" of a specified Person means (i) any Person directly or indirectly controlling, controlled by, or under common control with the specified Person; (ii) any Person owning or controlling ten percent or more of the outstanding voting securities of the specified Person, (iii) any officer, director, or partner of the specified Person, or (iv) if the specified Person is an officer, director, or partner, any entity for which the specified Person acts in such capacity

"Agreement" means this Operating Agreement, as amended from time to time.

"Articles of Organization" means the Articles of Organization of the Company filed with the Secretary of State, as amended or restated from time to time

"Buy-Sell Event" has the meaning assigned to it in Section 9 1

"Buy-Sell Notice" has the meaning assigned to it in Section 9 2

"Capital Account" means the account maintained by the Company for each Member in accordance with the following provisions:

(i) a Member's Capital Account shall be credited with the Member's Capital Contributions, the amount of any Company liabilities assumed by the Member (or which are secured by Company property distributed to the Member), the Member's allocable share of Profit, and any item in the nature of income or gain specially allocated to such Member pursuant to the provisions of Article VI (other than Section 6 6), and

(ii) a Member's Capital Account shall be debited with the amount

of money and the fair market value of any Company property distributed to the Member, the Member's allocable share of Loss, and any item in the nature of expenses or losses specially allocated to the Member pursuant to the provisions of Article VI (other than Section 6.6)

If any Membership Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Membership Interest. If the book value of Company property is adjusted pursuant to Section 6.6, the Capital Account of each Member shall be adjusted to reflect the aggregate adjustment in the same manner as if the Company had recognized gain or loss equal to the amount of such aggregate adjustment. It is intended that the Capital Accounts of all Members shall be maintained in compliance with the provisions of Regulation Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Regulation.

"Capital Contribution" means all contributions of cash or property (valued for this purpose at initial Gross Asset Value) made by a Member or its predecessor in interest.

"Capital Proceeds" means the net cash proceeds resulting from a Capital Transaction.

"Capital Transaction" means any transactions undertaken by the Company or by any entity in which the Company owns an interest, which, were it to generate proceeds, would produce Company Sales Proceeds or Company Refinancing Proceeds.

"Closing" has the meaning assigned to it in Section 9.6.

"Code" means the Internal Revenue Code of 1986, as amended from time to time (and any corresponding provisions of succeeding law).

"Company Cash Flow" for any period means the excess, if any, of (A) the sum of (i) all gross receipts from any source for such period, other than from Company loans, Capital Transactions, and Capital Contributions, and (ii) any funds released by the Company from previously established reserves, over (B) the sum of (i) all cash expenses paid by the Company for such period, (ii) all amounts paid by the Company in such period on account of the amortization of the principal of any debts or liabilities of the Company (including loans from any Member), (iii) capital expenditures of the Company, and (iv) a reasonable reserve for future expenditures as provided by Section 11.2, *provided, however*, that the amounts referred to in (B) (i), (ii), and (iii) above shall be taken into account only to the extent not funded by Capital Contributions, loans or paid out of previously established reserves. Such term shall also include all other funds deemed available for distribution and designated as Company Cash Flow by the Members.

"Company Minimum Gain" means gain as defined in Treasury Regulations Section 1.704-2(d)

"Company Refinancing Proceeds" means (i) the cash realized from the financing or refinancing of all or any portion of the Property or other Company assets, less the retirement of any related mortgage loans and the payment of all expenses relating to the transaction and a reasonable reserve for future expenditures as provided by Section 11.2 and (ii) the Company's allocable portion of cash realized by an entity in which the Company owns an interest from such entity financing or refinancing all or any portion of such entity's assets, less the retirement of any related mortgage loans and the payment of all expenses relating to such transaction and a reasonable reserve for future expenditures as provided by Section 11.2

"Company Sales Proceeds" means (i) the cash realized from the sale, exchange, condemnation, casualty, or other disposition of all or any portion of the Property or other Company assets, less the retirement of any related mortgage loans and the payment of all expenses relating to the transaction and a reasonable reserve for future expenditures as provided by Section 11.2 and (ii) the Company's allocable portion of cash realized by an entity in which the Company owns an interest from the sale, exchange, condemnation, casualty, or other disposition of all or any portion of such entity's assets, less the retirement of any related mortgage loans and the payment of all expenses relating to such transaction and a reasonable reserve for future expenditures as provided by Section 11.2

"Depreciation" means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis, *provided, however,* that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Members

"Disinterested Member" means a Member who is not related (within the meaning of Section 267(b) of the Code or Section 707(b)(1) of the Code) to either the Member whose Membership Interest is to be transferred as provided in Article VIII or the proposed transferee of such Membership Interest

"Distribution" means any money or other property distributed to a Member with respect to the Member's Membership Interest, but shall not include any payment to a Member for materials or services rendered nor any reimbursement to a Member for expenses permitted in accordance with this Agreement

"Domestic Proceeding" means any divorce, annulment, separation, or similar proceeding

"Encumbrance" means any lien, pledge, encumbrance, collateral assignment, or hypothecation

"Fiscal Year" means an annual accounting period ending December 31 of each year during the term of the Company, unless otherwise specified by the Members

"Gains from Capital Transactions" means the gains realized by the Company as a result of or upon any sale, exchange, condemnation, or other disposition of capital assets of the Company or any entity in which the Company shall own an interest (which assets shall include Code Section 1231 assets and all real and personal property) or as a result of or upon the damage to or destruction of such capital assets

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows.

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the other Members, provided that, if the contributing Member and other Members cannot agree on the fair market value of a contributed asset, such determination shall be made by appraisal,

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Members, as of the following times (i) the acquisition of an additional interest in the Company (other than upon the initial formation of the Company) by any new or existing Member in exchange for more than a de minimis Capital Contribution, (ii) the distribution by the Company to a Member of more than a de minimis amount of Company Property as consideration for an interest in the Company; and (iii) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(i)(g), provided, however, that the adjustments pursuant to clauses (i) and (ii) above shall be made only if the Members reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(c) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the other Members, provided that, if the distributee and the other Members cannot agree on the determination of the fair market value of the distributed asset, such determination shall be made by appraisal; and

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments

are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1 704-1(b)(2)(iv)(m) and Section 6 11 hereof, *provided, however*, that Gross Asset Values shall not be adjusted pursuant to this subsection (d) to the extent the Members determine that an adjustment pursuant to subsection (b) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (d)

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subsection (a), (b), or (d) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits, Gains from Capital Transactions, or Losses

"Majority in Interest" means a combination of any Members who, in the aggregate, own more than fifty percent of the Membership Interests of all Members

"Manager" means each Member of the Company in its capacity as a manager of the Company *"Managers"* refers to such Persons as a group

"Member" means each Person designated as a member of the Company on Schedule I hereto or any other Person admitted as a member of the Company in accordance with this Agreement or the Act *"Members"* refers to such Persons as a group.

"Member Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Treasury Regulations Section 1 704-2(i)

"Member Nonrecourse Debt" means any nonrecourse debt (for the purposes of Treasury Regulations Section 1 1001-2) of the Company for which any Member bears the "economic risk of loss," within the meaning of Treasury Regulations Section 1.752-2

"Member Nonrecourse Deductions" means deductions as described in Treasury Regulations Section 1 704-2(i) The amount of Member Nonrecourse Deductions with respect to Member Nonrecourse Debt for any Fiscal Year equals the excess, if any, of (A) the net increase, if any, in the amount of Member Minimum Gain attributable to such Member Nonrecourse Debt during such Fiscal Year, over (B) the aggregate amount of any Distributions during that Fiscal Year to the Member that bears the economic risk of loss for such Member Nonrecourse Debt to the extent such Distributions are from the proceeds of such Member Nonrecourse Debt and are allocable to an increase in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1 704-2(i)

"Membership Interest" means all of a Member's rights in the Company, including, without limitation, the Member's share of the Profits and Losses of the Company, the right to receive distributions of the Company's assets, any right to vote, and any right

to participate in the management of the Company as provided in the Act and this Agreement

"Nonrecourse Deductions" means deductions as set forth in Treasury Regulations Section 1 704-2(b)(1). The amount of Nonrecourse Deductions for a given Fiscal Year equals the excess, if any, of (A) the net increase, if any, in the amount of Company Minimum Gain during such Fiscal Year, over (B) the aggregate amount of any Distributions during such Fiscal Year of proceeds of a Nonrecourse Liability that are allocable to an increase in Company Minimum Gain, determined according to the provisions of Treasury Regulations Section 1 704-2(h).

"Nonrecourse Liability" means any Company liability (or portion thereof) for which no Member bears the "economic risk of loss," within the meaning of Treasury Regulations Section 1 752-2.

"Percentage Interest" means the percentage which the Capital Contributions of a Member to the Company bears to the Capital Contributions of all Members. The initial Percentage Interest of each Member is set forth opposite such Member's name on Schedule I hereto.

"Person" means an individual, a trust, an estate, a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, a foreign limited liability company, an unincorporated association, or another entity.

"Profit" and "Loss" means, for each taxable year of the Company (or other period for which Profit or Loss must be computed), the Company's taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

(a) all items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss, and

(b) any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss; and

(c) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1 704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss, and

(d) gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted

basis of the property for federal income tax purposes, and

(e) in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and

(f) notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Sections 6.2, 6.3, 6.7, 6.8, 6.9, 6.10, 6.11, and 6.12 hereof shall not be taken into account in computing Profit or Loss

"Property" means (i) any and all property acquired by the Company, real and/or personal (including, without limitation, intangible property) and (ii) any and all of the improvements constructed on any real property

"Purchase Option Assignee" has the meaning assigned to it in Section 9.4

"Purchasing Members" has the meaning assigned to it in Section 9.3

"Secretary of State" means the Secretary of State of North Carolina

"Tax Matters Partner" means such Member designated as the "tax matters partner," as that term is defined in the Code and Treasury Regulations

"Transfer" means sell, assign, transfer, lease, or otherwise dispose of property, including, without limitation, an interest in the Company

"Treasury Regulations" means the Income Tax Regulations and Temporary Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Withdrawing Member" has the meaning assigned to it in Section 9.2.

ARTICLE III MANAGEMENT OF THE COMPANY

3.1 *Management by Members.* Each Member of the Company, by virtue of its status as a Member, shall also be a Manager of the Company for all purposes. Except as otherwise expressly provided in this Agreement, the Articles of Organization, or the Act, all decisions with respect to the management of the business and affairs of the Company shall be made by action of test of the Members taken at a meeting or evidenced by a written consent executed by a Majority in Interest of the Members. Meetings of the Members may be held on such terms and after such notice as the Members may establish. A Member may vote in person or by written proxy filed with the Company before or at the time of the meeting. The Members, acting in their capacity as Managers, shall have full and complete authority, power, and discretion to manage and control the business of the Company, to

make all decisions regarding those matters, and to perform any and all other acts customary or incident to the management of the Company's business. They shall have the full power to execute and deliver, for and on behalf of the Company, any and all documents and instruments which may be necessary or desirable to carry on the business of the Company, including, without limitation, any and all deeds, contracts, leases, mortgages, deeds of trust, promissory notes, security agreements, and financing statements pertaining to the Company's assets or obligations. No person dealing with them need inquire into the validity or propriety of any document or instrument executed in the name of the Company by them, or as to the authority of them in executing the same. The Members may elect or retain one or more assistant managers, agents, or officers, who may, but need not be, Members of the Company, with such titles, duties, and compensation as may be designated by the Members, subject to any applicable restrictions specifically provided in this Agreement or contained in the Act.

3.2 Compensation and Expenses The Members shall not receive any compensation from the Company for serving as Managers, but the Company will reimburse Members for all expenses incurred by the Members in connection with their service as Managers. Nothing contained in this Section is intended to affect the Percentage Interest of the Members or the amounts that may be payable to the Members by reason of their respective Percentage Interests.

3.3 Indemnification of Members for Management Services The Company shall indemnify the Members in connection with their services as Managers of the Company to the fullest extent permitted or required by the Act, as amended from time to time, and the Company may advance expenses incurred by a Member upon the approval of the Majority in Interest of the remaining Members and the receipt by the Company of the signed statement of such Member agreeing to reimburse the Company for such advance in the event it is ultimately determined that such Member is not entitled to be indemnified by the Company against such expenses. The provisions of this Section 3.3 shall apply also to any Person to whom the Members have delegated management authority as provided in Section 3.1, whether or not such Person is a Member.

3.4 Limitation on Liability No Member of the Company shall be liable to the Company for monetary damages for an act or omission in such Member's capacity as a Manager, except as provided in the Act for (i) acts or omissions which a Member knew at the time of the acts or omissions were clearly in conflict with the interests of the Company, (ii) any transaction from which a Member derived an improper personal benefit, or (iii) acts or omissions occurring prior to the date this provision becomes effective. If the Act is amended to authorize further elimination of or limitations on the liability of Members as Managers, then the liability of Members of the Company shall be eliminated or limited to the fullest extent permitted by the Act as so amended. Any repeal or modification of this Section shall not adversely affect the right or protection of a Member existing at the time of such repeal or modification. The provisions of this Section 3.4 shall apply also to any Person to whom the Members have delegated management authority as provided in Section 3.1, whether or not such Person is a Member.

3.5 *Liability for Return of Capital Contribution* The Members shall not be liable for the return of the Capital Contributions of the Members and upon dissolution the Members shall look solely to the assets of the Company

ARTICLE IV RIGHTS AND OBLIGATIONS OF MEMBERS

4.1 *Names and Addresses of Members* The names, addresses, and Membership Interests of the Members are as reflected in *Schedule I* attached hereto and made a part hereof, which Schedule the Company shall amend as of the effectiveness of any transfer or subsequent issuance of any Membership Interest

4.2 *Limited Liability* The Members shall not be required to make any contribution to the capital of the Company except as set forth in Article V, nor shall the Members in their capacity as such be bound by, or personally liable for, any expense, liability, or obligation of the Company except to the extent of their interest in the Company and the obligation to return Distributions made to them under certain circumstances as required by the Act. The Members shall be under no obligation to restore a deficit Capital Account upon the dissolution of the Company or the liquidation of any of their Membership Interests

4.3 *Bankruptcy or Incapacity of a Member* A Member shall cease to have any power as a Member or Manager, any voting rights or rights of approval hereunder upon death, bankruptcy, insolvency, dissolution, assignment for the benefit of creditors, or legal incapacity; and the Member, its personal representative, estate, or successor upon the occurrence of any such event shall have only the rights, powers, and privileges of a transferee enumerated in Section 8.4, and shall be liable for all obligations of the Member under this Agreement. In no event, however, shall a personal representative or successor become a substitute Member unless the requirements of Section 8.3 are satisfied

4.4 *Withdrawing Event*

4.5 *Voting of Members* Except as provided in the articles of organization or a written operating agreement, the affirmative vote, approval, agreement, or consent of all members shall be required to

- (1) Adopt or amend an operating agreement;
- (2) Admit any person as a member,
- (3) Sell, transfer, or otherwise dispose of all or substantially all of the assets of the limited liability company prior to the dissolution of the limited liability company

ARTICLE V
CAPITAL CONTRIBUTIONS AND LOANS

5.1 *Initial Capital Contributions* Contemporaneously with the execution of this Agreement, the Members have each contributed cash to the Company in the respective amounts set forth as the initial Capital Contribution opposite their names on *Schedule I* attached hereto

5.2 *Additional Funds* In the event that the Members determine at any time (or from time to time) that additional funds are required by the Company for or in respect of its business or to pay any of its obligations, expenses, costs, liabilities, or expenditures (including, without limitation, any operating deficits), then the Members may agree by unanimous action to make additional contributions to the capital of the Company or may, acting in their capacity as Managers, borrow all or part of such additional funds on behalf of the Company, with interest payable at then-prevailing rates, from one or more of the Members or from commercial banks, savings and loan associations, or other commercial lending institutions

5.3. *Additional Capital Contributions* If the Members determine that additional funds are required for the purposes set forth in Section 5.2 above and that all or any portion of such additional funds should be contributed to the Company as additional Capital Contributions, the Members, in the absence of any written agreement between them to the contrary, shall make the necessary additional Capital Contributions to the Company in proportion to their respective Percentage Interests

5.4 *No Interest on Capital Contributions.* No interest shall be paid on any contribution to the capital of the Company

5.5 *Capital Accounts* A Capital Account shall be established for each Member and shall be credited with each Member's initial and any additional Capital Contributions. In addition, each Member's Capital Account shall be subject to such other adjustments as may be required in order to comply with the capital account maintenance requirements of Section 704(b) of the Code. In the event that the Members shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed Property or that are assumed by the Company or the Members), are computed in order to comply with such Treasury Regulations, the Members may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member upon dissolution of the Company. The Members also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g) and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with

ARTICLE VI
ALLOCATIONS, ELECTIONS, AND REPORTS

6.1 *Profits and Losses*

(a) Except as otherwise provided herein, Profits and Losses of the Company and all items of tax credit and tax preference shall be allocated among the Members in accordance with their respective Percentage Interests. In the event the Percentage Interests vary during any Fiscal Year, Profits and Losses and all items of tax credit and tax preference for such Fiscal Year shall be allocated among the Members on a daily basis in accordance with their varying Percentage Interests during the Fiscal Year.

(b) Losses allocated pursuant to this Section 6.1 shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to this Section 6.1, the limitation set forth in this Section 6.1 shall be applied on a Member by Member basis so as to allocate the maximum possible Losses to each Member under Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

6.2 *Nonrecourse Deductions* Nonrecourse Deductions shall be allocated among the Members in accordance with their respective Percentage Interests.

6.3 *Member Nonrecourse Deductions.* Any Member Nonrecourse Deductions shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

6.4 *Allocations Between Transferor and Transferee* In the event of the Transfer of all or any part of a Member's Membership Interest (in accordance with the provisions of this Agreement) at any time other than at the end of a Fiscal Year or the admission of a new Member (in accordance with the terms of this Agreement), the Transferring Member or new Member's share of the Company's income, gain, loss, deductions, and credits, as computed both for accounting purposes and for federal income tax purposes, shall be allocated between the transferor Member and the transferee Member, or the new Member and the other Members, as the case may be, in the same ratio as the number of days in such Fiscal Year before and after the date of the Transfer or admission, *provided, however,* that if there has been a sale or other disposition of the assets of the Company (or any part thereof) during such Fiscal Year, then upon the mutual agreement of all the Members (excluding the new Member and the transferring Member), the Company shall treat the periods before and after the date of the Transfer or admission as separate Fiscal Years and allocate the Company's net income, gain, net loss, deductions, and credits for

each of such deemed separate Fiscal Years. Notwithstanding the foregoing, the Company's "allocable cash basis items," as that term is used in Section 706(d)(2)(B) of the Code, shall be allocated as required by Section 706(d)(2) of the Code and the Treasury Regulations thereunder.

6.5 Gains from Capital Transactions Gains from Capital Transactions during any Fiscal Year shall be allocated as follows:

(a) First, to those Members whose Capital Accounts immediately prior to the Capital Transaction were negative, in an amount sufficient to increase the Capital Accounts to zero, but in the event sufficient gain is not recognized to do so, then among them pro rata in proportion to their negative Capital Accounts,

(b) Second, to the Members in an amount equal to the difference between the Company Sales Proceeds to be distributed to each of the Members as provided in Section 7.3 and the Capital Accounts of each respective Member as adjusted (if necessary) by paragraph (a) above, but in the event sufficient gain is not recognized to do so, then among the Members in an amount which, when credited to the Capital Accounts of the Members, results in the Members' Capital Accounts' bearing the same ratio to one another as the ratio of the distribution of Company Sales Proceeds to each of the Members, as provided in Section 7.3, and thereafter.

(c) Any remaining gain shall be allocated among the Members in accordance with their respective Percentage Interests as of the date of the Capital Transaction giving rise to the gain.

6.6 Contributed Property and Book-Ups In accordance with Code Section 704(c) and the Regulations thereunder, as well as Regulation Section 1.704-1(b)(2)(iv)(d)(3), income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of the property to the Company for federal income tax purposes and its Gross Asset Value at the date of contribution (or deemed contribution). If the adjusted book value of any Company asset is adjusted as provided herein, subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take account of any variation between the adjusted basis of the asset for federal income tax purposes and its adjusted book value in the manner required under Code Section 704(c) and the Regulations thereunder.

6.7 Minimum Gain Chargeback If there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulation Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be

determined in accordance with Treasury Regulations Sections 1 704-2(f) and 1 704-2(j)(2) This Section 6 7 is intended to comply with the minimum gain chargeback requirement in Treasury Regulation 1 704-2(f) and shall be interpreted consistently therewith

6 8. *Member Minimum Gain Chargeback* If there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt, as defined in Treasury Regulations Section 1 704-2(i)(4), during any Fiscal Year, each Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1 704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1 704-2(i)(4) and (5) Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1 704-2(i)(4) This Section 6 8 is intended to comply with the Member Minimum Gain chargeback requirement in Treasury Regulations Section 1 704(i)(4) and shall be interpreted consistently therewith

6 9 *Qualified Income Offset* If any Member unexpectedly receives an adjustment, allocation, or distribution as described in Treasury Regulations Section 1 704-1(b)(2)(ii)(d)(4) through (6) which causes or increases a deficit capital account balance in such Member's Capital Account (as determined in accordance with such Regulations), items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 6 9 shall be made if and only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article VI have been tentatively made as if this Section 6 9 were not in the Agreement This provision is intended to be a "qualified income offset," as defined in Treasury Regulation Section 1 704-1(b)(2)(ii)(d), such Regulations being specifically incorporated herein by reference

6 10 *Gross Income Allocation* In the event any Member has a deficit Capital Account at the end of any Company Fiscal Year which is in excess of the sum of (i) the amount such Member is obligated to restore and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1 704-2(g)(1) and 1 704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 6.10 shall be made if and only to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article VI have been tentatively made as if this Section 6 10 and Section 6 9 hereof were not in this Agreement

6 11 *Section 754 Adjustment* To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a Distribution to a Member in complete liquidation of its interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event that Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Members to whom such distribution was made in the event that Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies

6 12 *Curative Allocations* The allocations set forth in Sections 6.1(b), 6.2, 6.3, 6.7, 6.8, 6.9, 6.10, 6.11 hereof (the "Regulatory Allocations") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 6.12. Therefore, notwithstanding any other provision of this Article VI (other than the Regulatory Allocations), the Members shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner they determine appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Section 6.1(a). In exercising their discretion under this Section 6.12, the Members shall take into account future Regulatory Allocations under Sections 6.7 and 6.8 that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 6.2 and 6.3.

6 13 *Compliance with Treasury Regulations.* The above provisions of this Article VI notwithstanding, it is specifically understood that the Members may make such elections, tax allocations, and adjustments, including amendments to this Agreement, as the Members deem necessary or appropriate to maintain to the greatest extent possible the validity of the tax allocations set forth in this Agreement, particularly with regard to Treasury Regulations under Code Section 704(b).

6 14 *Tax Withholding* The Company shall be authorized to pay, on behalf of any Member, any amounts to any federal, state, or local taxing authority, as may be necessary for the Company to comply with tax withholding provisions of the Code or the North Carolina General Statutes or other income tax or revenue laws of any taxing authority. To the extent the Company pays any such amounts that it may be required to pay on behalf of a Member, such amounts shall be treated as a cash Distribution to such Member and shall reduce the amount otherwise distributable to such Member.

ARTICLE VII DISTRIBUTIONS

7.1. *Company Cash Flow.* Company Cash Flow for each taxable year of the Company shall be distributed to the Members in proportion to their Percentage Interest no later than seventy-five (75) days after the end of the Fiscal Year

7.2. *Capital Proceeds* Capital Proceeds shall be distributed and applied by the Company in the following order and priority

(i) to the payment of all expenses of the Company incident to the Capital Transaction, then

(ii) to the payment of debts and liabilities of the Company then due and outstanding (including all debts due to any Member), then

(iii) to the establishment of any reserves which the Members deem necessary for liabilities or obligations of the Company, then

(iv) the balance shall be distributed as follows

(a) to the Members in proportion to their Adjusted Capital Contributions, until their remaining Adjusted Capital Contributions have been paid in full;

(b) if any Member has a positive Capital Account after the distributions made pursuant to this Section 7.2 and before any further allocation of Profit pursuant to Section 6.5(c), to those Members in proportion to their Positive Capital Accounts, then

(c) the balance, to the Members in proportion to their Percentage Interests.

7.3. *Distributions in Liquidation* Upon liquidation of the Company, all of the Property shall be sold as provided in Section 10.2 and Profits and Losses allocated accordingly. Proceeds from the liquidation of the Company shall be distributed in accordance with the provisions of Section 10.2

7.4. *Limitation upon Distributions.* No Distribution shall be declared and paid if payment of such Distribution would cause the Company to violate any limitation on Distributions provided in the Act

ARTICLE VIII TRANSFER OF INTERESTS AND ADMISSION OF MEMBERS

8.1 *Restrictions on Transfer* Without the prior written consent of a Majority in Interest of the Disinterested Members (which consent may be given or withheld in their sole discretion), no Person may be admitted to the Company as a Member. Except for withdrawals in connection with a Transfer of a Membership Interest permitted by this Agreement, no Member may withdraw from the Company without the consent of a Majority in Interest of the Disinterested Members. A member may transfer the economic benefits, as represented by his Capital Account, to which the member may be entitled to without the consent of any member, but in no event does the transferee become a member unless all of the requirements of Section 8.3 are satisfied. A member may transfer his ownership rights and benefits as represented by his Capital Account to which the member may be entitled to

8.2 *Conditions Precedent to Transfers* Any purported Transfer or Encumbrance otherwise complying with Section 8.1 will be ineffective until the transferor and the proposed transferee furnish to the Company the instruments and assurances the Members may request, including, without limitation, if requested, an opinion of counsel satisfactory to the Company that the interest in the Company being Transferred or Encumbered has been registered or is exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), and applicable state securities laws. No Transfer or Encumbrance will be effective if it would result in the "termination" of the Company under Section 708 of the Code unless all of the Members give their prior written consent to the Transfer or Encumbrance.

8.3 *Substituted Members.* No assignee or transferee of a Membership Interest shall be admitted as a substituted Member of the Company unless, in addition to compliance with the conditions set forth in Sections 8.1 and 8.2, all of the following conditions are satisfied:

(a) The assignee has executed and delivered all documents deemed appropriate by the Company to reflect the assignee's admission to the Company and its agreement to be bound by this Agreement;

(b) A Majority in Interest of the Disinterested Members shall have consented in writing to such substitution, the granting or denial of which shall be in the sole discretion of such Disinterested Members; and

(c) Payment has been made to the Company of all costs and expenses of admitting any such transferee or assignee as a substituted Member.

8.4 *Rights of Transferee.* Unless admitted to the Company in accordance with Section 8.3, the transferee of a Membership Interest or a part thereof shall not be entitled to any of the rights, powers, or privileges of its predecessor in interest, except that it shall be entitled to receive and be credited or debited with its proportionate share of Profits, Losses, Gains from Capital Transactions, Company Cash Flow, Company Sales Proceeds, Company Refinancing Proceeds, and Distributions in liquidation.

ARTICLE IX
BUY-SELL

9.1 *Buy-Sell* Each of the following events shall constitute a "Buy-Sell Event" for purposes of this Agreement.

(a) The death, declaration of legal incompetence, or dissolution and winding up of a Member,

(b) A judicial determination of the insolvency of any Member,

(c) Any filing of a petition or suit under the bankruptcy laws by or against a Member that is not dismissed within sixty (60) days,

(d) Any purported voluntary or involuntary Transfer or Encumbrance of all or any part of a Member's Membership Interest in a manner not expressly permitted by this Agreement,

(e) Any material breach of this Agreement by a Member which is not cured within ten (10) days after the Company delivers written notice of such breach to the Member;

(f) Any instance in which the spouse of a Member commences against a Member, or a Member is named in, a Domestic Proceeding, or

(g) Any withdrawal by a Member from the Company other than as may be expressly permitted by this Agreement

9.2 *Buy-Sell Notice* Upon the occurrence of a Buy-Sell Event, the Member to whom such event has occurred (the "Withdrawing Member"), or its executor, administrator, or other legal representative in the event of death or declaration of legal incompetency, shall give notice of the Buy-Sell Event (the "Buy-Sell Notice") to the other Members within ten (10) days after its occurrence. If the Withdrawing Member fails to give the Buy-Sell Notice, any other Member (other than a Withdrawing Member) may give the notice at any time thereafter and by so doing commence the buy-sell procedure provided for in this Article IX

9.3 *Member's Purchase Option.* Upon the occurrence of a Buy-Sell Event, each of the Members, except the Withdrawing Member and any other Withdrawing Member, shall have an option to purchase (the "Purchase Option") the Withdrawing Member's Membership Interest at Closing on the terms and conditions set forth in this Article IX. This right will be allocated among the Members who elect to purchase (the "Purchasing Members") in the proportion they mutually agree upon, or, in the absence of agreement, in the ratio that each of the Purchasing Member's Percentage Interest bears to the aggregate Percentage Interests of all Purchasing Members. The Purchasing Members

must give notice of their election to exercise their Purchase Option to the Withdrawing Member and all other Members within thirty (30) days following delivery of the Buy-Sell Notice

9.4 *Assignment of Purchase Option* If, at the occurrence of a Buy-Sell Event, there exist only two (2) then-current Members (including the Withdrawing Member), the Member that is not withdrawing shall have the option during the thirty (30) day period set forth in Section 9.3 to assign all or a part of its Purchase Option to any Person other than the Withdrawing Member (the "Purchase Option Assignee") by notifying the Withdrawing Member and the Company of such assignment in writing. After delivery of such notice, the Purchase Option Assignee shall have the option to purchase the Withdrawing Member's Membership Interest (to the extent so assigned) on the same terms and conditions as would apply to the Member from which the Purchase Option was assigned; *provided, however*, that the Purchase Option Assignee shall not have the rights of assignment set forth in this Section 9.4. Notwithstanding any other provision of Article VIII or this Article IX, any Purchase Option Assignee which exercises its Purchase Option, as provided herein, (i) shall only have those rights as specified in Section 8.4 above, (ii) shall not be admitted as a substitute Member without full compliance with Section 8.3; and (iii) shall be subject to the Buy-Sell restrictions imposed under this Article IX. In the event the Purchase Option Assignee does not exercise the Purchase Option, the Purchase Option Assignee shall have no further rights under this Agreement.

9.5 *Agreement on Valuation* Unless otherwise agreed in writing by the purchaser(s) and seller within sixty (60) days of the receipt of a Buy-Sell Notice, the purchase price for the Withdrawing Member's Membership Interest shall be determined by a single appraisal of the value of Withdrawing Member's Membership Interest, as of the date the Buy-Sell Event occurs, made by an appraiser agreed upon by the purchaser(s) and seller, which appraisal shall be final. If the parties cannot agree on a single appraiser, the purchase price shall be determined by three appraisers, one selected by the purchaser(s), one selected by the seller, and the third selected by the two appraisers. The value determined as of the date of the Buy-Sell Event by a majority of the appraisers will be final. The costs of appraisal shall be borne equally between the purchaser(s) as a group and the seller. The purchase price to be paid for the Withdrawing Member's Membership Interest will be reduced by the amount of any Distributions made by the Company to the Withdrawing Member from the date the Buy-Sell Event occurred with respect to the Withdrawing Member to the Closing.

9.6 *Closing*. The closing (the "Closing") of the purchase of any Membership Interest pursuant to this Article IX shall take place on the date agreed upon by the purchaser(s) and seller, but not later than ninety (90) days after the delivery of the Buy-Sell Notice. The purchase price for each Membership Interest being purchased will be payable in full in cash at Closing. The purchase price will bear interest from the date of the occurrence of the Buy-Sell Event until Closing at an interest rate equal to the prime rate of interest charged by Wachovia Bank, N.A., last published prior to the occurrence of the Buy-Sell Event. Upon payment of the purchase price, the Member selling its Membership

Interest shall execute and deliver such assignments and other instruments as may be reasonably necessary to evidence and carry out the transfer of such Membership Interest to the purchaser(s). In connection with the sale of any Membership Interest under this Article IX, unless otherwise agreed by the purchaser(s) and seller, the purchaser(s) will assume the seller's allocable portion of Company obligations to the extent related to the transferred interest as well as the seller's individual obligations to the extent related to the transferred interest, other than income tax liabilities of the seller. Notwithstanding any other provision of Article VIII or this Article IX, any transferee, assignee, or purchaser of a Member's interest, as provided herein, shall only have those rights as specified in Section 8.4 above, and shall not be admitted as a substitute Member without full compliance with Section 8.3.

9.7 *Effect of the Rule Against Perpetuities* Notwithstanding any other provision of this Agreement, all options and rights to purchase or sell created by this Agreement shall expire on the later of (a) twenty-one (21) years after the death of the last remaining child, living as of the date of this Agreement, of any Member who is a member of the Company at the time of its organization, or (b) twenty-one (21) years after the death of the last to die of the individual Members who are members of the Company at the time of its organization.

9.8 *Effect on Withdrawing Member's Interest* From the date of the occurrence of the Buy-Sell Event to the earlier of (i) ninety (90) days after the delivery of the Buy-Sell Notice, or (ii) the date of the transfer of the Withdrawing Member's Membership Interest at Closing under this Article IX, the Percentage Interest represented by the Withdrawing Member's Membership Interest will be excluded from any calculation of aggregate Percentage Interests for purposes of any approval required of Members under this Agreement. Without limiting the generality of any other provision of this Agreement, upon the exercise of the Purchase Option, the Withdrawing Member, without further action, will have no rights in the Company or against the Company or any Member other than the right to receive payment for its Membership Interest in accordance with this Article IX.

9.9 *Failure to Exercise Purchase Option* In the event the Members or Purchase Option Assignee, if any, do not exercise their Purchase Options, the Withdrawing Member or its executor, administrator, or other legal representative in the event of death or declaration of legal incompetency, may transfer its economic rights in the Membership Interest of the Withdrawing Member to any Person; provided, however that any transferee of the Withdrawing Member's Membership Interest, as provided herein, (i) shall only have those rights as specified in Section 8.4, (ii) shall not be admitted as a substitute Member without full compliance with Section 8.3; and (iii) shall be subject to the buy-sell restrictions imposed under this Article IX.

ARTICLE X DISSOLUTION AND LIQUIDATION OF THE COMPANY

10.1 *Dissolution Events* The happening of an event of withdrawal with respect to

a Member shall not cause the dissolution of the Company. The Company will only be dissolved upon the happening of any of the following events:

- (a) The written consent of all members,
- (b) A limited liability company shall not be dissolved and is not required to be wound up by reason of any event of withdrawal of the last remaining member if, within 90 days after the event of withdrawal, the assignee or fiduciary of the estate of the last remaining member agrees in writing that the business of the limited liability company may be continued until the admission of the assignee or the fiduciary of the estate of the member or its designee to the limited liability company as a member, effective as of the occurrence of the event that causes the withdrawal of the last remaining member;
- (c) All or substantially all of the assets of the Company are sold, exchanged, or otherwise transferred (unless the Members have elected to continue the business of the Company pursuant to Section 10.2 hereof),
- (d) All Members sign a document stating their election to dissolve the Company,
- (e) The entry of a final judgment, order, or decree of a court of competent jurisdiction adjudicating the Company to be bankrupt and the expiration without appeal of the period, if any, allowed by applicable law in which to appeal,
- (f) The expiration of the term of the Company as set forth in Section 1.6,
- or
- (g) The entry of a decree of judicial dissolution or the issuance of a certificate for administrative dissolution under the Act.

10.2 Liquidation. Upon the happening of any of the events specified in Section 10.1, the Members, or any liquidating trustee elected by a Majority in Interest of the Members, will commence as promptly as practicable to wind up the Company's affairs unless the Members or the liquidating trustee (either, the "Liquidator") determines that an immediate liquidation of Company assets would cause undue loss to the Company, in which event the liquidation may be deferred for a time determined by the Liquidator to be appropriate. Assets of the Company may be liquidated or distributed in kind, as the Liquidator determines to be appropriate. The Members will continue to share Company Cash Flow, Profits, and Losses during the period of liquidation in the manner set forth in Articles VI and VII of this Agreement. The proceeds from liquidation of the Company, including repayment of any debts of Members to the Company, and any Company assets that are not sold in connection with the liquidation will be applied in the following order of priority:

- (a) To payment of the debts and satisfaction of the other obligations of the Company, including, without limitation, debts and obligations to Members,
- (b) To the establishment of any reserves deemed appropriate by the Liquidator for any liabilities or obligations of the Company, which reserves will be held for the purpose of paying liabilities or obligations and, at the expiration of a period the

Liquidator deems appropriate, will be distributed in the manner provided in Section 10.2(c), and thereafter

(c) To the payment to the Members of the positive balances in their respective Capital Accounts, pro rata, in proportion to the positive balances in those Capital Accounts after giving effect to all allocations under Article VI and all Distributions under Article VII for all prior periods, including the period during which the process of liquidation occurs

10.3 *Articles of Dissolution* Upon the dissolution and commencement of the winding up of the Company, the Members shall cause Articles of Dissolution to be executed on behalf of the Company and filed with the Secretary of State, and the Members shall execute, acknowledge, and file any and all other instruments necessary or appropriate to reflect the dissolution of the Company

ARTICLE XI MISCELLANEOUS

11.1. *Records* The records of the Company will be maintained at the Company's principal place of business or at any other place the Members select, provided the Company keeps at its principal place of business the records required by the Act to be maintained there. Appropriate records in reasonable detail will be maintained to reflect income tax information for the Members. Each Member, at its expense, may inspect and make copies of the records maintained by the Company and may require an audit of the books of account maintained by the Company to be conducted by the independent accountants for the Company

(a) Each member has the right, subject to such reasonable standards (including standards governing what information and documents are to be furnished, at what time and location and at whose expense) as may be set forth in the articles of organization or a written operating agreement, to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member

- (1) Information regarding the status of the business and the financial condition of the limited liability company,
- (2) Promptly after becoming available, a copy of the limited liability company's Federal, State, and local income tax returns for each year,
- (3) A current list of the name and last known business, residence, or mailing address of each member;
- (4) A copy of the articles of organization and any written operating agreement and all amendments thereto, together with copies of any written powers of attorney pursuant to which the articles of

organization , operating agreement, and all amendments thereto have been executed;

- (5) Information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member, and the property and services that each member has agreed to contribute in the future, and the date on which each became a member, and
 - (6) Such other information regarding the affairs of the limited liability company as is just and reasonable
- (b) A limited liability company may maintain its records in other than written form if the form capable of conversion into written form within a reasonable time
 - (c) Any demand under this section shall (i) be in writing , (ii) be made in good faith and for a proper purpose, and (iii) describe with reasonable particularity the purpose and the records or information desired
 - (d) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any person for the debts and obligations of the limited liability company
 - (e) The managers shall have the right to keep confidential from members who are not managers, for such period of time as the managers deem reasonable, any information which the managers reasonably believe to be in the nature of trade secrets or other information the disclosure of which the managers in good faith believe is not in the best interest of the limited liability company

11.2 *Reserves* The Members may cause the Company to create reasonable reserve accounts to be used exclusively to fund Company operating deficits and for any other valid Company purpose. The Members shall in their sole discretion determine the amount of payments to such reserve accounts.

11.3 *Notices* Any notice or other communication required by this Agreement must be in writing. Notices and other communications will be deemed to have been given when delivered by hand or dispatched by means of electronic facsimile transmission or nationally recognized air courier, or on the third business day after being deposited in the United States mail, postage prepaid. In each case, notice hereunder shall be addressed to the Member to whom the notice is intended to be given at its address set forth on Schedule I to this Agreement or, in the case of the Company, to its principal place of business. A Member may change its notice address by notice in writing to the Company and to each other Member given in accordance with this Section 11.3.

11 4 *Amendments.* This Agreement and the Articles of Organization may be amended only by the written consent of a Majority in Interest of the Members, *provided, however,* that any provision of this Agreement requiring the consent, approval, or action of more than a Majority in Interest of the Members (or any provision of the Articles of Organization effecting any such provision of this Agreement) may be amended or waived only by a written action signed by the Members holding the required percentage of Membership Interests

11 5 *Additional Documents.* Each party hereto agrees to execute and acknowledge all documents and writings which the Members may deem necessary or expedient in the creation of the Company and the achievement of its purposes, including, but not limited to, the Articles of Organization and any amendments or cancellation thereof

11 6 *Representations of Members* Each Member represents and warrants to the Company and every other Member that it (i) is fully aware of, and is capable of bearing, the risks relating to an investment in the Company, (ii) understands that its interest in the Company has not been registered under the Securities Act or the securities law of any jurisdiction in reliance upon exemptions contained in those laws, and (iii) has acquired its interest in the Company for its own account, with the intention of holding the interest for investment and without any intention of participating directly or indirectly in any redistribution or resale of any portion of the interest in violation of the Securities Act or any applicable law

11 7 *Domestic Proceeding* Any Member named in a Domestic Proceeding shall disclose in any list of assets compiled in connection with such proceeding a statement to the effect that such Member's Membership Interest in the Company is subject to certain rights of the other Members under the terms of this Agreement

11 8 *Survival of Rights.* Except as provided herein to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

11 9 *Interpretation and Governing Law* When the context in which words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural and vice versa. The masculine gender shall include the feminine and neuter. The Article and Section headings or titles shall not define, limit, extend, or interpret the scope of this Agreement or any particular Article or Section. This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina without giving effect to the conflicts of laws provisions thereof

11 10 *Severability* If any provision, sentence, phrase, or word of this Agreement or the application thereof to any person or circumstance shall be held invalid, the remainder of this Agreement, or the application of such provision, sentence, phrase, or word to Persons or circumstances, other than those as to which it is held invalid, shall not be affected thereby

11 11 *Agreement in Counterparts* This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature pages and this Agreement may be executed by the affixing of the signatures of each of the Members to one of such counterpart signature pages, all of such signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

11 12 *Tax Matters Partner* For purposes of this Agreement, the Members shall designate one Member as the Tax Matters Partner as required by the Code and Treasury Regulations.

11 13 *Creditors Not Benefitted* Nothing in this Agreement is intended to benefit any creditor of the Company or of any Member. No creditor of the Company or of any Member will be entitled to require the Members to solicit or accept any loan or additional capital contribution for the Company or to enforce any right which the Company or any Member may have against a Member, whether arising under this Agreement or otherwise.

IN WITNESS WHEREOF, the undersigned, being all of the initial Members of the Company, have caused this Agreement to be duly adopted by the Company as of the _____ day of _____ 2002, and do hereby assume and agree to be bound by and to perform all of the terms and provisions set forth in this Agreement.

S & D Enterprises of Wilmington, LLC

By _____
H Stanley Rudd -- Manager

By _____
Donn S Evans-- Manager

MEMBERS:

H Stanley Rudd

Donn S Evans

SCHEDULE I

**Names and Addresses
of Members**

**Initial Capital
Contribution**

Membership Interest

H Stanley Rudd
6710 Market Street
Wilmington, NC 28405

\$ 50,000

50 00%

Donn S. Evans
6710 Market Street
Wilmington, NC 28405

\$ 50,000

50 00%

TOTALS

\$ 100,000

100.00%



TAMMY THEUSCH BEASLEY
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 08/14/2014 12:22:05 PM

Book: RE 5832 Page: 1635-1666

Document No.: 2014021340

32 PGS \$90.00

Recorder: HUGHLEY, CAROL

State of North Carolina, County of New Hanover

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