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**OPERATING AGREEMENT OF  
RADLand, LLC**

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**September 9, 2014**

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## **OPERATING AGREEMENT OF RADLand, LLC**

THIS OPERATING AGREEMENT ("Agreement") is made and entered into as of the day of August 15, 2014 by and among (i) JOHN R. O'NEIL, (ii) KAREN E. CRAWFORD, (iii) MARK T. RUST, (iv) MICHAEL B. MILLS, (v) CHARLES D. CULP, (vi) JANET F. BAKER, and (vii) DANIEL G. HOOVER. The foregoing parties are collectively referred to herein as "Members" and individually as a "Member." For purposes of this Agreement, the term "Members" include all persons then acting in such capacity in accordance with the terms of this Agreement.

### **1 FORMATION**

#### *1.1 Formation*

The Members do hereby form a limited liability company ("Company") pursuant to the provisions of the Kentucky Limited Liability Company Act ("Act").

### **2 NAME AND OFFICE**

#### *2.1 Name*

The name of the Company shall be RADLand, LLC.

#### *2.2 Principal Office*

The principal office of the Company shall be at 11450 Watterson Court, Louisville, Kentucky 40299, or at such other place as shall be determined by the Board of Directors of the Company ("Board") from time to time with notice to the Members. The books of the Company shall be maintained at such principal place of business or such other place that the Board shall deem appropriate. The Company shall designate an agent for service of process in Kentucky in accordance with the provisions of the Act. The Company shall maintain, at the Company's principal office, those items referred to in KRS 275.185(1).

### **3 PURPOSES AND TERMS**

#### *3.1 Purposes*

The purposes of the Company are as follows:

- (a) To own and lease real and personal property.
- (b) To engage in such other lawful activities as may be unanimously agreed to by the Members.
- (c) To do all other things necessary or desirable in connection with the foregoing, or otherwise contemplated in this Agreement.

### 3.2 *Company's Power*

In furtherance of the purposes of the Company as set forth in Section 3.1, the Company shall have the power to do any and all things whatsoever necessary, appropriate or advisable in connection with such purposes, or as otherwise contemplated in this Agreement. The Company shall not engage in any business other than as set forth in Section 3.1, nor take any action not contemplated in this Agreement.

### 3.3 *Term*

The term of the Company shall commence as of the filing of Articles of Organization with the Kentucky Secretary of State's Office, and shall continue until dissolved in accordance with Section 12.

## 4 **CAPITAL**

### 4.1 *Initial Capital Contributions*

Upon request of the Board, the Members shall contribute to the capital of the Company the amounts set forth below opposite each of their respective names:

Member	Amount
John R. O'Neil	\$30,000
Karen E. Crawford	\$30,000
Mark T. Rust	\$30,000
Michael B. Mills	\$22,500
Charles D. Culp	\$15,000
Janet F. Baker	\$15,000
Daniel G. Hoover	\$7,500

### 4.2 *Additional Capital Contributions*

If the Board determines that the Company needs additional capital, the Company shall give notice thereof to each of the Members and assignees of interests in the Company who are not admitted as substitute Members (Members and such un-admitted assignees are hereinafter collectively referred to as "Interest Holders") not less than thirty (30) days before such capital is to be contributed, setting forth the reason therefore and the amount required. Each of the Interest Holders shall be permitted, but shall not be required, to contribute an amount equal to their respective Percentage Interests (as hereinafter defined) of the total additional capital required. If any Interest Holder fails to make the additional capital contribution permitted to be made by such Interest Holder, then the other Interest Holders making their respective capital contributions shall be entitled to make the capital contributions not made by the noncontributing Interest Holders in accordance with their respective Percentage Interests among themselves or in such other percentages as they shall unanimously agree. The provisions of this Section 4.2 are not for the benefit of any third parties and no person shall be considered a third party beneficiary thereof.

#### 4.3 *Loans*

If the Company has a temporary need for funds, the Company may borrow such funds from one or more of its Interest Holders on such terms and conditions as shall be agreed to by the Board and such Interest Holders.

#### 4.4 *No Liability of Members*

Except as otherwise specifically provided in the Act, no Interest Holder shall have any personal liability for the obligations of the Company. Except as provided in Section 4.1, no Interest Holder shall be obligated to contribute funds or loan money to the Company.

#### 4.5 *No Interest on Capital Contributions.*

No Interest Holder shall be entitled to interest on any capital contributions made to the Company.

#### 4.6 *Withdrawal of Capital.*

No Interest Holder shall be entitled to withdraw any part of such Interest Holder's capital contributions to the Company, except as provided in Sections 9 and 12. No Interest Holder shall be entitled to demand or receive any property from the Company other than cash, except as otherwise expressly provided for herein.

#### 4.7 *Capital Account.*

There shall be established on the books of the Company a capital account ("Capital Account") for each Interest Holder. It is the intention of the Members that such Capital Account be maintained in accordance with the provisions of Treas. Reg. §1.704-1(b)(2)(iv), and this Agreement shall be so construed. Accordingly, such Capital Account shall initially be credited with the initial capital contribution of the Interest Holder and thereafter shall be increased by (i) any cash or the fair market value of any property contributed by such Interest Holder (net of any liabilities assumed by the Company or to which the contributed property is subject) and (ii) the amount of all net income (whether or not exempt from tax) and gain allocated to such Interest Holder hereunder, and decreased by (i) the amount of all net losses allocated to such Interest Holder hereunder (including expenditures described in Section 705(a)(2)(B) of the Internal Revenue Code of 1986, as amended ("Code"), or treated as such an expenditure by reason of Treas. Reg. § 1.704-1(b)(2)(iv)(i)) and (ii) the amount of cash, and the fair market value of property (net of any liabilities assumed by such Interest Holder or to which the distributed property is subject), distributed to such Interest Holder pursuant to Sections 9 and 12. If the Company makes an election under section 754(c) of the Code, Capital Accounts shall also be adjusted to the extent required by Treas. Reg. § 1.704-1(b)(2)(iv)(m). If an Interest Holder transfers all or any part of such Interest Holder's interest in the Company ("Company Interest") in accordance with the terms of this Agreement, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent of the Company Interest transferred.

## 5 ACCOUNTING

#### 5.1 *Books and Records*

The Company shall maintain full and accurate books of the Company at the Company's principal place of business, or such other place as the Board shall determine, showing all receipts and expenditures, assets and liabilities, net income and loss, and all other records



necessary for recording the Company's business and affairs, including those sufficient to record the allocations and distributions provided for in Sections 7, 9 and 12. Except as otherwise specifically provided herein, such books and records shall be maintained, and the net income and net loss of the Company shall be determined, in the same manner as the Company computes its income and expenses for Federal income tax purposes; provided, however, that (i) the installment method shall not be used for book purposes, (ii) gain or loss from the disposition of an asset shall be determined by reference to the adjusted book value of the asset, rather than its adjusted basis and (iii) depreciation, amortization or cost recovery deductions shall be based upon the adjusted book value of an asset, rather than its adjusted basis. Such books and records shall be open to the inspection and examination of all Members in person or by their duly authorized representatives at all reasonable times and may be copied at the expense of the Member.

#### *5.2 Fiscal Year*

The fiscal year of the Company shall be the calendar year ("Fiscal Year").

#### *5.3 Reports*

(a) Within seventy-five (75) days after the close of each Fiscal Year of the Company, the Company shall furnish to each person who was an Interest Holder at any time during such Fiscal Year all the information relating to the Company which shall be necessary for the preparation by each such person of their Federal and state income or other tax returns.

(b) Within seventy-five (75) days after the close of each Fiscal Year of the Company, the Company shall furnish to each Member a report of the business and operations of the Company during such Fiscal Year. Such report shall contain unaudited financial statements, including a balance sheet and statement of Company net income or net loss for such Fiscal Year and such other information as in the judgment of the Board shall be reasonably necessary for the Members to be advised of the results of the Company's operations.

#### *5.4 Revaluation of Company Property*

If there shall occur (i) an acquisition of a Company Interest for more than a de minimis capital contribution, or (ii) a distribution (other than a de minimis distribution) to an Interest Holder in consideration for a Company Interest, the Board may revalue the assets of the Company at their then fair market value and adjust the Capital Accounts of the Interest Holders in the same manner as provided in Section 9. 2 in the case of a property distribution. If there is a reallocation pursuant to this Section 5.4, then net income and net loss shall thereafter be adjusted for allocations of depreciation (cost recovery) and gain or loss in accordance with the provisions of Treas. Reg. § 1.704-1(b)(2)(iv)(f) and (g), and the Members' distributive shares of depreciation (cost recovery) and gain or loss computed in accordance with the principles of section 704(c) of the Code and the regulations promulgated there under using the method selected by the Board.

## **6 BANK ACCOUNTS**

#### *6.1 Bank Accounts*

All funds of the Company shall be deposited in its name into such checking, savings and/or money market accounts or time certificates as shall be designated by the Board.

Withdrawals there from shall be made upon such signature or signatures as the Board may designate. Company funds shall not be commingled with those of any other person or entity.

## **7 ALLOCATION OF NET INCOME AND NET LOSS**

### *7.1 Net Income and Net Loss*

(a) Except as otherwise provided herein, the net income and net loss of the Company for each Fiscal Year shall be allocated among the Interest Holders in accordance with the percentage which the Capital Account of each Interest Holder bears to the aggregate Capital Accounts of all Interest Holders (such percentages are hereinafter referred to as the Member's "Percentage Interests").

(b) Notwithstanding anything herein to the contrary, if an Interest Holder has a deficit balance in such Interest Holder's Capital Account (excluding from such Interest Holder's deficit Capital Account any amount which such Interest Holder is obligated to restore in accordance with Treas. Reg. § 1.704-1(b)(2)(ii)(c), as well as any amount such Interest Holder is treated as obligated to restore under Treas. Reg. §§ 1.704-2(g)(1) and 1.704-2(i)(5)) and unexpectedly receives an adjustment, allocation or distribution described in Treas. Reg. § 1.704-1(b)(2)(ii)(d)(4), (5) or (6), then such Interest Holder will be allocated items of income and gain in an amount and manner sufficient to eliminate the deficit balance in such Interest Holder's Capital Account as quickly as possible. If there is an allocation to an Interest Holder pursuant to this Section 7.1(b), then future allocations of net income pursuant to Section 7.1 shall be adjusted so that those Interest Holders who were allocated less income, or a greater amount of loss, by reason of the allocation made pursuant to this Section 7.1(b), shall be allocated additional net income in an equal amount. It is the intention of the parties that the provisions of this Section 7.1(b) constitute a "qualified income offset" within the meaning of Treas. Reg. § 1.704-1(b)(2)(ii)(d), and such provisions shall be so construed.

(c) If there is a net decrease in the Company's Minimum Gain (within the meaning of Treas. Reg. § 1.704-2(b)(2)) or Partner Nonrecourse Debt Minimum Gain (within the meaning of Treas. Reg. § 1.704-2(i)(3)) during any Fiscal Year, each Interest Holder shall be allocated, before any other allocations hereunder, items of income and gain for such Fiscal Year (and subsequent Fiscal Years, if necessary), in an amount equal to such Interest Holder's share (determined in accordance with Treas. Reg. §§ 1.704-2(g) and 1.704-2(i)(5), as applicable) of the net decrease in the Company's Minimum Gain or Partner Nonrecourse Debt Minimum Gain, as applicable, for such Fiscal Year; provided, however, that no such allocation shall be required if any of the exceptions set forth in Treas. Reg. § 1.704-2(t) apply. It is the intention of the parties that this provision constitute a "minimum gain chargeback" within the meaning of Treas. Reg. §§ 1.704-2(t) and 1.704-2(i)(4), and this provision shall be so construed.

(d) Notwithstanding anything herein to the contrary, the Company's partner nonrecourse deductions (within the meaning of Treas. Reg. § 1.704-2(i)(2)) shall be allocated solely to the Interest Holder who has the economic risk of loss with respect to the partner nonrecourse liability related thereto in accordance with the provisions of Treas. Reg. § 1.704-2(i)(1).

(e) Notwithstanding the provisions of Section 7.1(a), no net losses shall be allocated to an Interest Holder if such allocation would result in such Interest Holder having a deficit balance in such Interest Holder's Capital Account (excluding from such Interest Holder's deficit Capital Account any amount such Interest Holder is obligated to restore in accordance with Treas. Reg. § 1.704-1(b)(2)(ii)(c), as well as any amount such Interest Holder is treated as obligated to restore under Treas. Reg. §§ 1.704-2(g)(1) and 1.704-2(i)(5)). In such case, the net loss that would have been allocated to such Interest Holder shall be allocated to the other Interest Holders to whom such loss can be allocated without violation of the provisions of this Section 7.1(e) in proportion to their respective Percentage Interests among themselves.

(f) Notwithstanding the provisions of Section 7.1, to the extent losses are allocated to the Interest Holders by virtue of Section 7.1(e), the net income of the Company thereafter recognized shall be allocated to such Interest Holders (in proportion to the losses previously allocated to them pursuant to Section 7.1(e)) until such time as the net income of the Company allocated to them pursuant to this Section 7.1(f) equals the net losses allocated to them pursuant to Section 7.1(e).

(g) For Federal, state and local income tax purposes only, with respect to any assets contributed by an Interest Holder to the Company ("Contributed Assets") which have an agreed fair market value on the date of their contribution which differs from the Interest Holder's adjusted basis therefore as of the date of contribution, the allocation of depreciation and gain or loss with respect to such Contributed Assets shall be determined in accordance with the provisions of section 704(c) of the Code and the regulations promulgated there under using the traditional method with curative allocations within the meaning of Treas. Reg. § 1.704-3(c). For purposes of this Agreement, an asset shall be deemed a Contributed Asset if it has a basis determined, in whole or in part, by reference to the basis of a Contributed Asset (including an asset previously deemed to be a Contributed Asset pursuant to this sentence). Notwithstanding the foregoing, if the gain from the sale of any Contributed Asset is being reported on the installment method for income tax purposes, then the total amount of gain which is to be recognized by each of the Interest Holders in accordance with the above provision in all taxable years shall be computed and the amount of gain to be recognized by each of the Interest Holders in each taxable year shall be in proportion to the total gain to be recognized by each of the Interest Holders in all taxable years.

#### *7.2 Allocation of Excess Nonrecourse Liabilities.*

For purposes of section 752 of the Code and the regulations there under, the excess nonrecourse liabilities of the Company (within the meaning of Treas. Reg. § 1.752-3(a)(3)), if any, shall be allocated to the Interest Holders in accordance with their respective Percentage Interests.

#### *7.3 Allocations in Event of Transfer, Admission of New Member, Etc.*

In the event of the transfer of all or any part of an Interest Holder's Company Interest (in accordance with the provisions of this Agreement), the admission of a new Member or disproportionate capital contributions, at any time other than at the end of a Fiscal Year, the transferring Interest Holder's, new Member's or Interest Holders' shares of the Company's income, gain, loss, deductions and credits allocable to such Company Interest, as computed both for accounting purposes and for Federal income tax purposes, shall be allocated between the

transferor Interest Holder and the transferee Interest Holder (or Interest Holders), the new Member and the other Interest Holders, or among the Interest Holders, as the case may be, in the same ratio as the number of days in such Fiscal Year before and after the date of such transfer, admission or disproportionate capital contributions; provided, however, that the Board shall have the option to treat the periods before and after the date of such transfer, admission or disproportionate capital contributions 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 in accordance with the Interest Holders' respective interests in the Company for such deemed separate Fiscal Years. Notwithstanding the foregoing, if the Company uses the cash receipts and disbursements method of accounting, 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 706(d)(2) of the Code and the regulations promulgated there under.

## **8     DISTRIBUTIVE     SHARES     AND     FEDERAL     INCOME     TAX ELECTIONS**

### *8.1     Distributive Shares*

For purposes of Subchapter K of the Code, the distributive shares of the Interest Holders of each item of Company taxable income, gains, losses, deductions or credits for any Fiscal Year shall be in the same proportions as their respective shares of the net income or net loss of the Company allocated to them pursuant to Section 7.1. Notwithstanding the foregoing, to the extent not inconsistent with the allocation of gain provided for in Section 7.1, gain recognized by the Company which represents recapture of depreciation or cost recovery deductions for Federal income tax purposes shall be allocated among the Interest Holders in accordance with the provisions of Treas. Reg. §1.1245-1(e) (without regard to whether the property is personal property or real property).

### *8.2     Elections*

The election permitted to be made by section 754 of the Code, and any other elections required or permitted to be made by the Company under the Code, shall be made in such a manner as shall be determined by the Board.

### *8.3     Partnership Tax Treatment*

It is the intention of the Members that the Company be treated as a partnership for Federal, state and local income tax purposes, and the Interest Holders shall not take any position or make any election, in a tax return or otherwise, inconsistent with such treatment.

## **9     DISTRIBUTIONS**

### *9.1     Cash Distributions*

The Board shall determine from time to time the distributions which shall be made to the Interest Holders. All distributions (other than in connection with the liquidation of the Company, which distributions shall be made in accordance with Section 12.3) shall be made to the Interest Holders in accordance with their respective Percentage Interests as of the date of the distribution. Notwithstanding the foregoing, the Company shall distribute, not later than 90 days after the close of each Fiscal Year; an amount which the Board determines is necessary for the Interest Holders to pay their income tax on their distributive shares of the Company's income to

the extent the Company has sufficient net cash flow with respect to such Fiscal Year. In determining the income taxes of the Interest Holders on their distributive shares of the Company's income, the Board shall assume that all Interest Holders are individuals in the highest marginal income tax brackets and are residents of Jefferson County, Kentucky.

### *9.2 Property Distributions*

If any property of the Company other than cash is distributed by the Company to an Interest Holder (in connection with the liquidation of the Company or otherwise), the fair market value of such property shall be used for purposes of determining the amount of such distribution. The difference, if any, of such fair market value over (or under) the value at which such property is carried on the books of the Company shall be credited or charged to the Capital Accounts of the Interest Holders in accordance with the ratio in which the Interest Holders share in the gain and loss of the Company pursuant to Section 7.1. The fair market value of the property distributed shall be agreed to by the Board and the distributee Interest Holder in good faith. If any such property distribution is made other than in exchange for a Company Interest, such property shall be distributed in the same manner as an equivalent amount of cash would be distributed.

## **10 BOARD OF DIRECTORS**

### *10.1 General Powers*

Except as otherwise provided herein, all powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company managed under the direction of, its Board.

### *10.2 Number, Election and Term*

The Board shall consist of three individuals, each of whom are Members. Directors shall be elected at each annual meeting. Each director shall hold office until the next annual meeting of Members or until removed. Despite the expiration of a director's term, such director shall continue to serve until the director's successor is elected and qualifies or until the director is removed. The initial directors are JOHN O'NEIL, KAREN CRAWFORD and MICHAEL MILLS.

### *10.3 Resignation of Directors*

A director may resign at any time by delivering written notice to the Board, its Chairman or the Company. A resignation shall be effective when the notice is delivered unless the notice specifies a later effective date.

### *10.4 Removal of Directors by Members*

A director may be removed by the Members, but only at a meeting called for the purpose of removing such director and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director. The Members may remove one or more directors with or without cause.

#### *10.5 Vacancy on Board*

If a vacancy occurs on the Board, the Members shall fill the vacancy. A vacancy that will occur at a specific later date may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

#### *10.6 Compensation of Directors*

The Members may fix the compensation of directors. No such compensation shall preclude any director from serving the Company in any other capacity and from receiving compensation therefore. If any such compensation is paid, it is intended that such compensation be considered as occurring between the Company and one who is not a partner within the meaning of section 707(a) of the Code, or as a guaranteed payment within the meaning of section 707(c) of the Code, deductible in arriving at the taxable income or loss of the Company and in arriving at the net income or net loss of the Company for book purposes (unless required to be capitalized).

#### *10.7 Meetings*

The Board may hold regular or special meetings in or out of the Commonwealth of Kentucky. The Board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means shall be deemed to be present in person at the meeting.

#### *10.8 Special Meetings*

Special meetings of the Board may be called by, or at the request of, any director. All special meetings of the Board shall be held at the principal office of the Company or such other place as may be specified in the notice of the meeting.

#### *10.9 Action Without Meetings*

Any action required or permitted to be taken at a Board meeting may be taken without a meeting if the action is taken by not less than the minimum number of directors that would be necessary to approve the action at a meeting of the Board at which all directors were present and voted. The action shall be evidenced by one or more written consents describing the action taken, signed by each director approving the action, and delivered to the Company for inclusion in the minutes or for filing with the Company records reflecting the action taken. Action taken under this Section 10.9 shall be effective when the last director signs the consent, unless the consent specifies a different effective date.

#### *10.10 Notice of Meeting*

Regular meetings of the Board may be held without notice of the date, time, place or purpose of the meeting. Special meetings of the Board shall be preceded by at least two days notice of the date, time and place of the meeting. The notice shall not be required to describe the purpose of the special meeting. The notice provisions of Section 11.6 shall be applicable to notices given to directors.

#### *10.11 Waiver of Notice*

A director may waive any notice required by this Agreement before or after the date and time stated in the notice. Except as otherwise provided in this Section 10.11, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or Company records. A director's attendance at or participation in a meeting shall waive any required notice to such director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

#### *10.12 Quorum and Voting*

A majority of the number of directors shall constitute a quorum of the Board. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present shall be the act of the Board. A director who is present at a meeting of the Board when action is taken shall be deemed to have assented to the action taken unless (i) the director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding it or transacting business at the meeting or (ii) the director's dissent or abstention from the action taken is entered in the minutes of the meeting or the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the Company immediately after adjournment of the meeting. The right of dissent or abstention shall not be available to a director who votes in favor of the action taken. If any matter brought before the Board receives an equal number of votes for and against the matter, then any director may request that the matter be voted upon by the Members with the decision of the Members being final.

#### *10.13 Chairman and Vice-Chairman of the Board*

The Board may appoint one of its members Chairman of the Board. The Board may also appoint one of its members as Vice-Chairman of the Board, and such individual shall serve in the absence of the Chairman and perform such additional duties as may be assigned to such person by the Board.

#### *10.14 Director Conflict of Interest*

The provisions of KRS 271B.8-310 shall apply to the same extent they would apply if the Company were a Kentucky corporation.

#### *10.15 Limitations on Board's Authority*

Notwithstanding anything herein to the contrary, the Board may not, without the consent of the majority of the percentage ownership of the Members, do the following:

- (a) Merge the Company with another entity.
- (b) Sell all, or substantially all, of the assets of the Company.
- (c) File a voluntary petition in bankruptcy.
- (d) Dissolve the Company.

#### *10.16 Taking of Action; Execution of Documents*

Except as otherwise provided herein, each director shall have the right, power and authority on behalf of the Company, and in its name, to exercise all of the rights, power and authority which may be possessed by a manager pursuant to the Act. Each director, when acting in accordance with the decision of the Board, may execute any document or take any action on behalf of the Company and such execution or action shall be binding upon the Company. In dealing with the directors, no person shall be required to inquire into the authority of a director to bind the Company. The Board may delegate the Board's authority hereunder to third parties (who need not be Members) in which event such third parties shall have such authority as is delegated to them.

#### *10.17 Standard of Care of Directors; Indemnification*

(a) The directors shall not be liable, responsible or accountable in damages to any Interest Holder or the Company for any act or omission on behalf of the Company performed or omitted by a director in good faith and in a manner reasonably believed by the director to be within the scope of the authority granted to the directors by this Agreement and in the best interests of the Company, unless the director has been guilty of gross negligence or willful misconduct with respect to such acts or omissions.

(b) To the full extent permitted by the Act, the Company shall indemnify the directors for, and hold the directors harmless from, any loss or damage incurred by a director by reason of any act or omission so performed or omitted by the director (and not involving gross negligence or willful misconduct). To the full extent authorized or permitted by the Act, the Company shall pay or reimburse reasonable expenses (including reasonable attorneys' fees) incurred by a director who is a party to a proceeding in advance of final disposition of such proceeding provided such director executes such undertaking as the Board shall deem acceptable pursuant to which such director agrees to reimburse the Company for all such advances if it is ultimately determined that such director was not entitled to be indemnified as provided herein. The Company may purchase and maintain insurance on behalf of the directors against any liability asserted against or incurred by a director as a result of being a director, whether or not the Company would have the power to indemnify such person against the same liability under the provisions of this Section 10.17(b) or the Act.

#### *10.18 Other Activities; Related Party Transactions*

(a) The directors shall devote such of the directors' time to the affairs of the Company's business as the directors shall deem necessary. The Interest Holders and their Affiliates (as hereinafter defined) may engage in, or possess an interest in, other business ventures of any nature and description, independently or with others, regardless of whether such activities are competitive with those of the Company. Neither the Company, nor any Interest Holder shall have any rights by virtue of this Agreement in and to such independent ventures, or to the income or profits derived there from. No Interest Holder shall be obligated to present any particular business opportunity of a character which, if presented to the Company, could be taken by the Company and each Interest Holder and their Affiliates shall have the right to take for their own account, or to recommend to others, any such particular business opportunity to the exclusion of the Company and the Interest Holders. For purposes of this Agreement, the term



"Affiliate" shall mean any person, corporation, partnership, limited liability company, trust or other entity (directly or indirectly) controlling, controlled by, or under common control with, an Interest Holder.

(b) The fact that a director or a director's Affiliates are directly or indirectly interested in, or connected with, any person, firm or corporation employed by the Company to render or perform a service, or to or from whom the Company may purchase, sell or lease property, shall not prohibit the Board from employing any such person, firm or corporation, or from otherwise dealing with him or it, and neither the Company nor any of the Interest Holders, shall have any rights in or to any income or profits derived there from. All such dealings with a director or a director's Affiliates will be on terms which are competitive with amounts paid to independent third parties in the location involved.

#### *10.19 Reimbursement of Expenses of Directors*

Regardless of whether any distributions are made to the Interest Holders, the Company shall reimburse the directors, at the directors' cost, for the direct expenses which a director incurs in performing services on behalf of the Company, including, without limitation, costs of (i) accounting, statistical or bookkeeping services, (ii) computing or accounting equipment and (iii) travel, telephone, postage, legal, accounting and other expenses relating to the operation of the business of the Company.

## **11 MEMBERS**

#### *11.1 Annual Meeting*

The annual meeting of the Members shall be held at such time, place and on such date as the Board may designate within or without the Commonwealth of Kentucky. The purpose of such meeting shall be the election of directors and the transaction of such other business as may properly come before it. If the election of directors shall not be held on the day designated for an annual meeting, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the Members to be held as soon thereafter as may be practicable.

#### *11.2 Special Meeting*

Special meetings of the Members may be called by the Board, and shall be called by the Board at the demand of the holders of at least 33-1/3% of the Percentage Interests, provided that such requisite number of Members sign, date and deliver to the Company one or more written demands for the meeting describing the purpose or purposes for which it is to be held. Unless otherwise fixed in this Agreement, the record date for determining Members entitled to demand a special meeting shall be the date the first Member signs the demand.

#### *11.3 Place of Members' Meeting*

The Board may designate any place within or without the Commonwealth of Kentucky as the place for any meeting of Members called by the Board. If no designation of a place is properly made, the place of the meeting shall be at the principal office of the Company. If a meeting is called at the demand of the Members and they designate any place, either within or without the Commonwealth of Kentucky, as the place for the holding of such meeting, the meeting shall take place at the place designated. If no designation is properly made, the place of meeting shall be at the principal office of the Company.

#### *11.4 Action Without Meeting*

(a) *Action.* Any action required or permitted by the Act or this Agreement to be taken at a Members' meeting may be taken without a meeting and without prior notice if the action is taken by Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Member were present and voted. The action taken under this Section 11.4 shall be evidenced by one or more written consents describing the action taken, signed by the Members taking the action, and delivered to the Company for inclusion in the minutes or filing with the Company records. Action taken under this Section 11.4 shall be effective when consents representing the votes necessary to take the action are delivered to the Company, or upon delivery of the consents representing the necessary votes, or such different date specified in the consent. A consent under this Section 11.4 shall have the effect of a vote at a meeting and may be described as such in any document.

(b) *Notice to Other Members.* Prompt notice of the taking of any action by Members without a meeting under this Section 11.4 by less than unanimous written consent of the Members shall be given to those Members who have not consented in writing.

#### *11.5 Notice of Meeting.*

The Company shall notify Members of the date, time and place of each annual or special Members' meeting no fewer than 10, nor more than 60, days before the meeting date. Unless the Act or this Agreement requires otherwise, the Company shall be required to give notice only to Members and notice of an annual meeting shall not be required to include a description of the purpose or purposes for which the meeting is called. Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

#### *11.6 Form of Notice*

Notice under this Agreement shall be in writing unless oral notice is reasonable under the circumstances. Notice may be communicated in person, by email, telephone, telegraph, teletype, telephonic facsimile transmission or other form of wire or wireless communication, or by mail or local private courier service or by a nationally recognized overnight courier service. Written notice by the Company to its Members, if in a comprehensible form, shall be effective when mailed, if mailed postpaid and correctly addressed to the Member's address shown in the Company's current record of Members. Written notice to the Company shall be addressed to the Company at the Company's principal office. Except as otherwise provided in this Section 11.6, written notice, if in a comprehensible form, shall be effective at the earliest of (i) when received, or (ii) five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed or on the date shown on the return receipt, if sent by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee. Oral notice shall be effective when communicated if communicated in a comprehensible manner.

#### *11.7 Waiver of Notice*

A Member may waive any notice required by this Agreement before or after the date and time stated in the notice. The waiver shall be in writing, be signed by the Member entitled to the notice and be delivered to the Company for inclusion in the minutes or filing with the Company records. A Member's attendance at a meeting shall waive objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting

objects to holding the meeting or transacting business at the meeting. A Member's attendance at a meeting shall be deemed a waiver of any objection to the consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

#### *11.8 Record Date*

The Board may fix a record date of Members of not more than 70 days before the meeting or action requiring a determination of Members in order to determine the Members entitled to notice of a Members' meeting, to demand a special meeting, to vote or to take any other action. A determination of Members entitled to notice of, or to vote at, a Members' meeting shall be effective for any adjournment of the meeting unless the Board fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting. If not otherwise fixed by the Board in accordance with this Agreement, the record date for determining Members entitled to notice of, and to vote at, an annual or special Members' meeting shall be the day before the first notice is delivered to members, and the record date for any consent action taken by Members without a meeting and evidenced by one or more written consents shall be the first date upon which a signed written consent setting forth such action is delivered to the Company at its principal office shown in its most recent Annual Report.

#### *11.9 Members' List for Meeting*

After fixing a record date for a meeting, the Company shall prepare a complete list of the names of all the Members who are entitled to notice of a Members' meeting. The list shall show the address of, and Percentage Interest of, each Member. The Members' list shall be available for inspection by any Member beginning five business days before the meeting for which the list was prepared and continuing through the meeting, at the Company's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A Member, or the Member's agent or attorney, shall be entitled on written demand to inspect and to copy the list, during regular business hours and at the Member's expense, during the period it is available for inspection. The Company shall make the list of Members available at the meeting and any Member, or the Member's agent or attorney, shall be entitled to inspect the list at any time during the meeting or any adjournment. Refusal or failure to prepare or make available the Members' list shall not affect the validity of any action taken at the meeting.

#### *11.10 Proxies*

At all meetings of Members, the Members may vote in person or by proxy. A Member may appoint a proxy to vote or otherwise act for the Member by signing an appointment form, either personally or by the Member's duly authorized attorney-in-fact. An appointment of a proxy shall be effective when the appointment form is received by the Company, or an agent authorized to tabulate votes. An appointment shall be valid for 11 months unless a longer, or shorter, period is expressly provided in the appointment form. An appointment of proxy shall be revocable by the Member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. The revocation of an appointment of proxy shall not be effective until the Company or an agent authorized to tabulate votes has received written notice thereof. All proxies shall be filed with the Company or the person authorized to tabulate votes before or at the time of the meeting.

### *11.11 Quorum and Voting Requirements*

Each Member shall be entitled to cast a number of votes equal to such Member's Percentage Interest multiplied by 100. A majority of those votes entitled to be cast on the matter by the Members shall constitute a quorum for action on that matter. Once a Member is represented for any purpose at a meeting, such Member shall be deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting. For the approval of any action by the Members of the LLC, said action must have the approval of a majority vote of the percentage of ownership in the LLC.

### *11.12 Greater Quorum or Voting Requirements*

An amendment to this Agreement that adds, changes or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirements then in effect.

## **12 DISSOLUTION**

### *12.1 When Dissolution Occurs*

(a) Except as otherwise provided in the Act, and specifically KRS 275.285 pertaining to dissolution, the Company shall dissolve upon, but not before, the first to occur of the following:

(1) The decision of the Members owning at least 60% of the Percentage Interests to dissolve the Company,

(2) The sale or other disposition of all, or substantially all, of the assets of the Company and the sale and/or collection of any evidences of indebtedness received in connection therewith.

Dissolution of the Company shall be effective upon the date on which the event giving rise to the dissolution occurs, but the Company shall not terminate until the assets of the Company shall have been distributed as provided in Section 12.3. Notwithstanding dissolution of the Company, prior to the liquidation and termination of the Company, the business of the Company and the affairs of the Members, as such, shall continue to be governed by this Agreement.

### *12.2 Sale of Assets Upon Dissolution*

Following the dissolution of the Company, the Company shall be wound up and the Board shall determine whether the assets of the Company are to be sold or whether some or all of such assets are to be distributed to the Interest Holders in kind in liquidation of the Company.

### *12.3 Distributions Upon Dissolution*

Upon the dissolution of the Company, the properties of the Company to be sold shall be liquidated in orderly fashion and the proceeds thereof, and the property to be distributed in kind, shall be distributed on or before the later to occur of (i) the close of the Company's taxable year, or (ii) 90 days following the date of such dissolution, as follows:

(a) First, to the payment and discharge of all of the Company's debts and liabilities, to the necessary expenses of liquidation and to the establishment of any cash reserves which the Board determines to create for unmatured and/or contingent liabilities or obligations of the Company.

(b) Second, to the Interest Holders, in accordance with their respective Capital Accounts; provided, however, that if the Board establishes any reserves in accordance with the provisions of Section 12.3(a), then the distributions pursuant to this Section 12.3(b) (including distributions of such reserve) shall be pro rata in accordance with the balances of the Interest Holders' Capital Accounts.

No Interest Holder shall be required to contribute any property to the Company or any third party by reason of having a negative Capital Account.

#### *12.4 Liquidation of an Interest Holder's Interest.*

If an Interest Holder's Company Interest is to be liquidated by agreement between the Company and such Interest Holder (the Company being under no obligation to do so), the Interest Holder shall be entitled to receive in liquidation an amount equal to the amount of such Interest Holder's Capital Account at such time. For purposes of determining the Capital Account of such Interest Holder, (i) the net income or net loss of the Company to the date of liquidation shall be allocated to such Interest Holder and (ii) if the Board determines to revalue the assets of the Company in accordance with Section 5.4, the Interest Holders' Capital Accounts shall be adjusted as provided in Section 5.4.

### **13 WITHDRAWAL, ASSIGNMENT AND ADDITION OF MEMBERS**

#### *13.1 Assignment of an Interest Holder's Company Interest*

The Interest Holders may not sell, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of their Company Interest, nor withdraw from the Company, except as provided in Section 13. Any purported transfer or withdrawal which is not in compliance with the provisions of Section 13 shall be null and void ab initio and of no force or effect.

#### *13.2 Voluntary Transfers*

(a) If any Interest Holder ("Selling Party") receives a bona fide written offer ("Offer") to purchase any part of the Selling Party's Company Interest which the Selling Party wishes to accept, the Selling Party shall first offer to sell all of the Company Interest covered by the Offer to the other Members, and the other Members shall have the option to purchase such Company Interest at the price and upon the terms and conditions set forth in the Offer; provided, however, that if the purchase price provided for in the Offer is payable in property other than cash or an evidence of indebtedness of the purchaser and it would be difficult for the other Members to obtain such property, then the value of such property shall be substituted and paid in cash ("Voluntary Option"). Each of the other Members shall have the right to purchase the Selling Party's Company Interest offered for sale in accordance with their respective Percentage Interests among themselves, or in such other percentages as the other Members shall unanimously agree. If not all of the other Members exercise their Voluntary Options, those Members exercising their Voluntary Options shall be entitled to purchase the balance in

accordance with their respective Percentage Interests among themselves, or in such other percentages as they shall unanimously agree.

(b) Notice of the Voluntary Option shall be given in writing to the other Members. Such notice shall state the Company Interest being offered and shall contain a copy of the Offer. The Voluntary Option period shall commence upon the date of the proper delivery of the notice and shall terminate, unless exercised, 30 days thereafter, unless sooner terminated by written refusal of the other Members. An election to exercise a Voluntary Option shall be made in writing and transmitted to the Selling Party.

(c) Upon the failure or neglect of the other Members to purchase all of the Company Interest offered in accordance with Section 13.2(a), the Selling Party shall, for a period of 60 days from the date when the Voluntary Option expired, have the right to sell the Company Interest covered by the Offer to the person or entity making such Offer upon the exact terms and conditions set forth in such Offer. Notwithstanding the foregoing, if the Selling Party is a Member, the transferee of the Company Interest shall not become a substitute Member unless the requirements of Section 13.6 are met, but the transferee shall nevertheless be subject to the provisions of this Agreement. For all purposes of this Agreement, a transferee who is not admitted as a substitute Member shall only be entitled to receive the distributions to which the assignor would have been entitled with respect to the Company Interest assigned and, in such circumstances, the transferor shall not be entitled to any voting rights with respect to the Company Interest assigned. If the Selling Party fails to so sell such Company Interest within such 60-day period, or if any material term of the Offer is changed, modified or supplemented, then such Company Interest may not be sold without first again giving the other Members a Voluntary Option with respect thereto.

### *13.3 Involuntary Transfers*

(a) If any Interest Holder's Company Interest is sought to be transferred by any involuntary means (other than death or adjudication of incompetency or insanity), including, but not by way of limitation, attachment, garnishment, execution, levy, bankruptcy, seizure or transfer in connection with a divorce or other marital property settlement, then the other Members shall have the option ("Involuntary Option") to purchase all or any portion of the Company Interest sought to be involuntarily transferred at the price and upon the terms and conditions set forth in Section 13.4. Each of the other Members shall have the right to purchase such Company Interest in accordance with their respective Percentage Interests among themselves, or in such other percentages as the other Members shall unanimously agree. If not all of the other Members exercise their Involuntary Options, then those Members exercising their Involuntary Options shall be entitled to purchase the balance in accordance with their respective Percentage Interests among themselves, or in such other percentages as they shall unanimously agree.

(b) The Involuntary Option period shall commence upon receipt by the other Members of actual notice of the attempted involuntary transfer and terminate, unless exercised, 60 days thereafter, unless sooner terminated by written refusal of the other Members. An election to exercise any Involuntary Option shall be made in writing and transmitted to the Interest Holder whose Company Interest is sought to be involuntarily transferred.

(c) Upon the failure or neglect of the other Members to purchase all of the Company Interest sought to be involuntarily transferred in accordance with this Section 13.3, the unpurchased Company Interest may be involuntarily transferred, but such transferee may not become a substitute Member unless the conditions of Section 13.6 have been complied with.

(d) If, notwithstanding the provisions of this Section 13.3, any Company Interest is transferred by involuntary means without compliance with the provisions of Section 12.3(a), then the Involuntary Option shall be to purchase such Company Interest from the transferee(s).

#### *13.4 Purchase Price and Terms*

(a) The purchase price for all of an Interest Holder's Company Interest to be purchased pursuant to the exercise of the Involuntary Option shall be the Capital Account of such Interest Holder as of the close of the month following the exercise of the Involuntary Option ("Effective Date"), prorated if less than all of an Interest Holder's Company Interest is to be purchased; provided, however, that if an Interest Holder has a zero or negative Capital Account, the purchase price for the Interest Holder's entire Company Interest shall be One Dollar. Such Capital Account shall be adjusted to reflect the profit or loss of the Company through the Effective Date and contributions by, and distributions to, the Interest Holder since the close of the Company's last Fiscal Year to the extent such adjustments have not already been reflected in the Capital Account of the Interest Holder on the books of the Company.

(b) The purchase price shall, at the option of the purchaser, be paid either (i) by cashier's or certified check on the closing date, or (ii) at least 20% by cashier's or certified check on the closing date, with the balance represented by a promissory note of the purchaser, bearing interest at the applicable Federal rate (within the meaning of section 1274(d) of the Code), payable in not more than five equal annual installments of principal together with accrued interest.

(c) The closing date shall occur on or before 30 days following the exercise of the Involuntary Option. At the closing, the selling Interest Holder shall execute such instruments of assignment as shall be requested by the purchaser conveying the Company Interest purchased free and clear of all liens and encumbrances whatsoever. If the selling Interest Holder fails to execute such document, the directors may do so pursuant to the power of attorney granted in Section 15.1(a).

#### *13.5 Substitute Member.*

No assignee of a Member's Company Interest shall have the right to become a substitute Member unless all of the following conditions are satisfied:

(a) except in the case of death or adjudication of incompetency or insanity, the fully executed and acknowledged written instrument of assignment has been filed with the Company setting forth the intention of the assignor that the assignee become a substitute Member in place of the assignor with respect to the Company Interest assigned;

(b) the assignor and assignee execute and acknowledge such other instruments as the Board deems necessary or desirable to effect such admission, including, but not limited to, the written acceptance and adoption by the assignee of the provisions of this Agreement; and

(c) the Board has consented to the assignment and substitution, which shall be in the Board's sole and absolute discretion.

#### *13.6 Occurrence of Certain Events*

Upon the occurrence of any of the events set forth in KRS 275.280(l) (d) through g), the successor-in-interest of such Interest Holder shall have all of the rights of an Interest Holder and, if the Interest Holder was a Member, upon compliance with the provisions of Section 13.6, such successor-in-interest may become a substitute Member. In all of the above events, the successor-in-interest shall not have the right to demand payment for the Company Interest.

#### *13.7 Admission of New Member*

No new Member may be admitted to the Company without the unanimous consent of all of the Members. For purposes of this Section 13. 8, a substitute Member shall not be considered a new Member.

### **14 TAX MATTERS PARTNER**

#### *14.1 Tax Matters Partner*

(a) The tax matters partner ("TMP") for the Company shall be the Member designated by the Board from time to time. The TMP may be removed, and a new TMP selected, by the Board at any time. The TMP shall have such authority as is granted a TMP under the Code, but the TMP shall not take any action which purports to bind any of the Interest Holders without the consent of the affected Interest Holder.

(b) The TMP shall employ experienced tax counsel to represent the Company in connection with any audit or investigation of the Company by the Internal Revenue Service and in connection with all subsequent administrative and judicial proceedings arising out of such audit. The fees and expenses of such counsel, as well as all other expenses incurred by the TMP in serving as the TMP, shall be a Company expense and shall be paid by the Company.

(c) The Company shall indemnify the TMP for, and hold the TMP harmless from, any and all judgments, fines, amounts paid in settlement and expenses (including attorneys' fees) reasonably incurred by the TMP in any civil, criminal or investigative proceeding in which the TMP is involved or threatened to be involved by reason of being the TMP, provided that the TMP acted in good faith, within what the TMP reasonably believed to be within the scope of the TMP's authority and for a purpose which the TMP reasonably believed to be in the best interests of the Company or the Interest Holders. The TMP shall not be indemnified under this provision against any liability to the Company or its Members to which the TMP would otherwise be subject by reason of willful misconduct in the TMP's duties involved in acting as TMP.

(d) Nothing herein shall constitute an election by the Company to be subject to the partnership level audit procedures of section 6221 et seq.



## **15 POWER OF ATTORNEY**

### *15.1 Power of Attorney*

(a) Each Member, as well as any person who becomes a party to this Agreement or subject to its provisions after the date hereof, hereby irrevocably constitutes and appoints each of the directors, with full power of substitution, as such Interest Holder's true and lawful attorney-in-fact, with full power and authority, in such Interest Holder's name, place and stead, to make, execute, consent to, swear to, acknowledge, record and file with respect to the Company, the following:

(1) Any certificate or other instrument which may be required to be filed by the Company or the Interest Holders under the laws of any state, or any other jurisdiction in which the Company is conducting, or proposes to conduct, business.

(2) Any and all amendments or modifications of the instruments described in Section 15.1(a)(1).

(3) All instruments of assignment as contemplated in Sections 13.4(b) and 13.5(e) if the selling Interest Holder fails to do so.

## **16 REPRESENTATIONS, WARRANTIES AND COVENANTS OF MEMBERS**

### *16.1 Representations, Warranties and Covenants of Members*

Each of the Members hereby represents and warrants to, and agrees with, the Company that:

(a) The Member has the full right, power and authority to execute, deliver and perform the terms of this Agreement.

(b) This Agreement has been duly executed and delivered on behalf of the Member and constitutes the valid and binding obligation of the Member in accordance with its terms.

(c) The Member is not subject to any restriction or agreement which prohibits or would be violated by the execution hereof or the consummation of the transactions contemplated herein or pursuant to which the consent of any third person, firm or corporation is required in order to give effect to the transactions contemplated herein.

(d) The Member has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Company, or has obtained the advice of an advisor who is so qualified.

(e) The Member has been advised that the Company Interests have not been registered under the Securities Act of 1933, as amended ("Securities Act"), or under the laws of any other jurisdiction, nor does the Company contemplate registering the Company Interests. Accordingly, the Company Interests must be held by the Member indefinitely unless such

Company Interests are subsequently registered under the Securities Act or an exemption from such registration is available.

(f) The Company Interests are being acquired for the Member's own account, solely for investment purposes and not with a view toward resale, distribution or other disposition and will not be sold, transferred or disposed of except pursuant to an effective registration statement under the Securities Act or an exemption there from, as determined by, or with the approval of, counsel satisfactory to the Company.

(g) The Member recognizes that an investment in the Company involves great risks, including a possible total loss of the Member's investment, and the Member has taken full cognizance of, and understands all of, the risk factors related to such investment.

(h) The Member or, if applicable, the Member's advisor, has had full access to all information necessary to make a determination of whether to invest in the Company and has had an opportunity to ask questions of the Company concerning an investment in the Company.

## **17 GENERAL**

### *17.1 Notices*

(a) All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing and be personally delivered, delivered to a reputable messenger service (such as Federal Express, DHL Courier, United Parcel Service, etc.) for overnight delivery, transmitted by confirmed telephonic facsimile (fax), by email, or transmitted by mail, registered, express or certified, return receipt requested, postage prepaid, addressed as follows:

(1) If given to the Company, to the Company at its principal office;

(2) If given to an Interest Holder, to the Interest Holder at the address set forth in the records of the Company or to a known email address.

(b) All notices, demands and requests shall be effective upon being personally delivered, upon being delivered to a reputable messenger service, upon transmission of a confirmed fax, or upon being deposited in the United States mail in the manner provided in Section 17.1(a). However, the time period in which a response to any such notice, demand or request must be given shall commence to run from the date of personal delivery, the date of delivery by a reputable messenger service, the date on the confirmation of a fax, or the date on the return receipt, as applicable.

### *17.2 Amendment*

(a) Except as provided in Section 17.2(b), this Agreement may be modified or amended from time to time only upon the consent of the Members owning a majority of the Percentage Interests.

### *17.3 Captions; Section References*

Section titles or captions contained in this Agreement are inserted only as a matter of convenience and reference, and in no way define, limit, extend or describe the scope of this Agreement, or the intent of any provision hereof. All references herein to Sections shall refer to Sections of this Agreement unless the context clearly otherwise requires.

### *17.4 Number and Gender*

Unless the context otherwise requires, when used herein, the singular shall include the plural, the plural shall include the singular, and all nouns, pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, as the identity of the person or persons may require.

### *17.5 Severability*

If any provision of this Agreement, or the application thereof to any person, entity or circumstances, shall be invalid or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to other persons, entities or circumstances, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

### *17.6 Arbitration*

If any dispute shall arise between the Interest Holders as to their rights or liabilities under this Agreement, the dispute shall be exclusively determined, and the dispute shall be settled, by arbitration in accordance with the commercial rules of the American Arbitration Association. The arbitration shall be held in Louisville, Kentucky before a panel of three arbitrators, all of whom shall be chosen from a panel of arbitrators selected by the American Arbitration Association. The decision of the arbitrators shall be final and binding upon the Interest Holders and the Company and judgment thereon may be entered in any court of competent jurisdiction. Each of the Interest Holders hereby acknowledges that this provision constitutes a waiver of their right to commence a lawsuit in any jurisdiction with respect to the matters which are required to be settled by arbitration as provided in this Section 17.6.

### *17.7 Binding Agreement*

Except as otherwise provided herein, this Agreement shall be binding upon, and inure to the benefit of, the parties hereto, and their respective executors, administrators, heirs, successors and assigns.

### *17.8 Applicable Law*

This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky without regard to its conflict of laws rules.

### *17.9 Entire Agreement*

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof.

### *17.10 Counterparts*

This Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement, binding upon the parties hereto, notwithstanding that all parties are not signatory to the same counterpart.

#### *17.11 No Right of Partition*

The Interest Holders hereby agree that the Company's properties are not, and will not be, suitable for partition. Accordingly, each of the Interest Holders hereby irrevocably waives any and all rights which such Interest Holder may have to maintain an action for partition of any of the Company's properties.

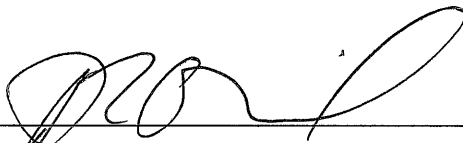
#### *17.12 Confidentiality.*

(a) Each Interest Holder agrees not to divulge, communicate, use to the detriment of the Company or for the benefit of any other person, or misuse in any way, any confidential information or trade secrets of the Company, including personnel information, secret processes, know-how, customer lists, formulas or other technical data, except as may be required by law; provided, however, that this prohibition shall not apply to (i) any information which, through no improper action of such Interest Holder, is publicly available or generally known in the industry or (ii) any information which is disclosed upon the consent of the Board. Each Interest Holder acknowledges and agrees that any information or data such Interest Holder has acquired on any of these matters or items were received in confidence and as a fiduciary of the Company.

(b) It is agreed between the parties that the Company would be irreparably damaged by reason of any violation of the provisions of Section 17.12(a), and that any remedy at law for a breach of such provisions would be inadequate. Therefore, the Company shall be entitled to seek and obtain injunctive or other equitable relief (including, but not limited to, a temporary restraining order, a temporary injunction or a permanent injunction) against any Interest Holder, for a breach or threatened breach of such provisions and without the necessity of proving actual monetary loss. It is expressly understood among the parties that this injunctive or other equitable relief shall not be the Company's exclusive remedy for any breach of Section 17.12(a) and the Company shall be entitled to seek any other relief or remedy that the Company may have by contract, statute, law or otherwise for any breach hereof, and it is agreed that the Company shall also be entitled to recover its attorneys' fees and expenses in any successful action or suit against any Interest Holder relating to any such breach.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date and year first above written.

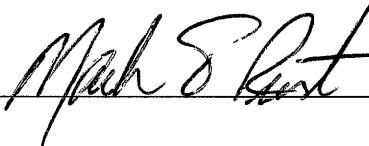
John R. O'Neil



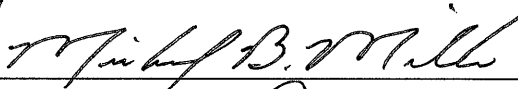
Karen E. Crawford



Mark T. Rust



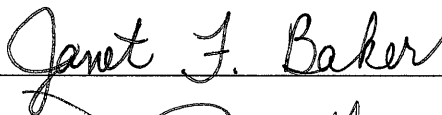
Michael B. Mills



Charles D. Culp



Janet F. Baker



Daniel G. Hoover

