

payment of any distribution of Cash Flow or the allotment of any rights, or any other action. When a determination of Members of record entitled to notice of, or to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof, unless the Members fix a new record date under this Section for the adjourned date.

I. The Company shall be entitled to treat the holder of record of any membership interest as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such membership interest on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the Act.

ARTICLE V **Management**

A. Management of the Company shall be vested in all of the Members who shall also serve as Operating Managers of the Company. The Operating Managers shall vote in proportion to their Membership Interests in the Company. Except as otherwise provided in this Agreement, all decisions of the Operating Managers shall be by a majority in interest of the Members. All Operating Managers must be Members of the Company. No Member will take part in or interfere in any manner with the conduct or control of the business of the Company or have any right or authority to act for or bind the Company except as provided in this Agreement.

B. The Operating Managers shall hold office for the term for which elected and until a successor has been elected and qualified. A vacancy in the office of Operating Manager arising from any cause may be filled for the unexpired portion of the term by the Members.

C. Any Operating Manager may resign at any time by giving written notice to the Members. Any such resignation shall take effect at the time specified therein or, if the time is not specified therein, upon the receipt thereof, irrespective of whether any such resignations shall have been accepted.

D. The Company shall be managed by the Operating Managers and the conduct of the Company's business shall be controlled and conducted solely and exclusively by the Operating Managers in accordance with this Agreement. In addition to and not in limitation of any rights and powers conferred by law or other provisions of this Agreement, the Operating Managers shall have and may exercise on behalf of the Company all powers and rights necessary, proper, convenient or advisable to effectuate and carry out the purposes, business and objectives of the Company, and to maximize Company profits. Such powers shall include, without limitation, the following:

- 1) To open accounts and deposit and maintain funds in the name of the Company in banks or savings and loan associations.
- 2) To determine the appropriate accounting method or methods to be used by the Company.
- 3) To commence lawsuits and other proceedings.
- 4) To retain accountants, attorneys or other agents to act on behalf of the Company.
- 5) To execute, acknowledge and deliver any and all instruments to effectuate the foregoing, and to take all such action in connection therewith as the Operating Managers deem necessary or appropriate.

E. Notwithstanding the foregoing, the Operating Managers may not make any of the following management decisions without obtaining the consent of two-thirds in interest of the Members:

- 1) To acquire, sell, assign, or otherwise transfer any interest in any property.
- 2) To create any indebtedness for borrowed money whether or not secured.
- 3) To make, execute or deliver on behalf of the Company any assignment for the benefit of creditors or any guarantee, indemnity bond, or surety bond.
- 4) To obligate the Company or any Member as a surety, guarantor or accommodation party to any obligation.
- 5) To confess any judgment on behalf of the Company.
- 6) To do any act which makes it impossible to carry on the ordinary business of the Company.
- 7) To make any decisions regarding any employee.
- 8) To obligate the Company in any manner for a liability in excess of \$10,000.

F. The Operating Manager shall serve as Tax Matters Member.

G. Any person made or threatened to be made a party to an action or proceeding, whether civil or criminal, by reason of the fact that he, his testator or in testate, then, is, or was a manager, Member, employee or agent of the company, or then serves or has served on behalf of the company in any capacity at the request of the Company, shall be indemnified by the Company against reasonable expenses, judgments, fines, and amounts actually and necessarily incurred in connection with the defense of such action or proceeding or in connection with an appeal therein, to the fullest extent permissible by the Act. Such right of indemnification shall not be deemed exclusive or any other rights to which such person may be entitled.

ARTICLE VI

Capital

A. The Members have contributed to the Company in exchange for their membership interests; interests in cash and other property as set forth on Schedule A, annexed hereto.

B. The fair market value and the adjusted basis of the contributing Member of any property other than cash contributed to the Company by a Member shall be set forth on Schedule A, annexed hereto.

C. Except as expressly provided in the Agreement, no Member shall be required to make any additional contributions to the capital of the Company.

D. No interest shall be paid on the Capital Account of any Member.

E. A Capital Account shall be established for each Member on the books and records of the Company in accordance with section 1.1.B. If any assets of the Company are distributed to the Members in kinds, the Capital Accounts of the Members shall be adjusted to reflect the difference between the fair market value of such assets on the date of distribution and the basis of the Company in such assets.

ARTICLE VII
Distributions of Cash

A. The Company shall distribute to the Members from time to time all cash (regardless of the source thereof) of the Company which is not required for the operation or the reasonable working capital requirements of the Company, (such cash is sometimes referred to herein as "Cash Flow"). For purposes of this Agreement all Cash Flow allocated to the Members shall be allocated among them in the ration in which the total Capital Contributed by each Member pursuant to Section 6.1 on the last day of each calendar month during the year bears to the total Capital Contributed by all Members pursuant to Section 6.1 on such date without regard to the number of days during such month in which such a person was Member.

B. Distribution of Cash Flow shall be made from time to time in such manner as determined by the Operating Managers.

ARTICLE VIII
Profits and Losses

A. The Net Profits and Losses of the Company shall be the net profits and net losses of the Company as determined for Federal income tax purposes.

B. The Net Profits and Net Losses of the Company and each item of income, gain, loss, deduction or credit entering into the computation thereof, shall be allocated to the Members in the same proportions that they would have shared if there had been Cash Flow.

C. References herein to "reg. Sec." are to the regulations promulgated by the United States Treasury to the Code. "No recourse liability" means any liability with respect to which no Member bears the risk of loss. The following special allocations shall be made in the following order:

1. If there is a net decrease in minimum gain, during the fiscal year of the Company, each Member, shall be specially allocated items of gross income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to that Member's share of the net decrease of minimum gain. Allocations in accordance with this Section shall be made first from the disposition of Company assets, subject to nonrecourse liabilities, to the extent of the minimum gain attributable to those assets, to the and thereafter, from a pro-rata portion of the Company's other items of income and gain for the taxable year.
2. If there is a net decrease in a Member's nonrecourse liability minimum gain attributable to Members' nonrecourse liabilities during any fiscal year, each Member who has a share of the Member's nonrecourse liability minimum gain attributable to Member nonrecourse liability shall be specially allocated items of gross income and gain for such fiscal year (and, if necessary subsequent fiscal years) in an amount equal to that Member's share of the net decrease in Members' nonrecourse debt minimum gain attributable to such Member nonrecourse debt. Allocations pursuant to this Section shall be made first from gain recognized from the disposition of Company assets subject to Member nonrecourse liabilities to the extent of member minimum gain attributable to those assets, and thereafter, from a pro-rata portion of the Company's other times of income and gain for the fiscal year.
3. A Member who unexpectedly receives an adjustment, allocation or distribution will be allocated items of income and gain in an amount and manner sufficient to eliminate such deficit balance as quickly as possible. An allocation shall be made pursuant to this Section and if and to the extent a Member would have a deficit in his adjusted Capital Account after all other allocations were made as if this paragraph were not in the agreement.
4. Nonrecourse deductions shall be allocated among the Members in the same proportion in which they share the Cash Flow of the Company.