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IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

A. HEATH ABSHURE,
ARKANSAS SECURITIES COMMISSIONER **PLAINTIFF**

vs. **No.**

SKB PARTNERS, LLC;
MAVERICK INVESTMENTS, LLC;
SCOTT A. SMITH **DEFENDANTS**

COMPLAINT

COMES NOW the Plaintiff, A. Heath Abshure, Arkansas Securities Commissioner, by and through counsel, J. Campbell McLaurin III, and for his Complaint states the following:

PARTIES

1. A. Heath Abshure ("Commissioner") is the Arkansas Securities Commissioner, duly appointed in accordance with Ark. Code Ann. § 23-42-201(a). The Commissioner is charged with the administration of the Arkansas Securities Act ("Act"), codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509.

2. SKB Partners, LLC ("SKB") is a limited liability company organized and existing under the laws of the state of Arkansas. SKB has a principal place of business located at 22461 Interstate 30 South, Bryant, Arkansas 72022. Defendant Scott A. Smith is the registered agent, owner, and chief officer of SKB.

3. Maverick Investments, LLC ("Maverick") is a limited liability company organized and existing under the laws of the state of Arkansas. Maverick has a principal place of

business located at 2411 Defoe Circle, Bryant, Arkansas 72022. Defendant Scott A. Smith is the registered agent, an owner, and a chief officer of Maverick.

4. Scott A. Smith ("Smith") is an individual resident of Saline County, Arkansas. Smith is a licensed insurance agent with the state of Arkansas and is the registered agent, an owner, and a chief officer of corporate Defendants SKB and Maverick.

JURISDICTION AND VENUE

5. The Commissioner brings this action pursuant to Ark. Code Ann. § 23-42-209, which permits the Commissioner to seek injunctive relief and relief ancillary to injunctive relief as may be appropriate in the public interest, including but not limited to obtaining an accounting, receivership, disgorgement, and the assessment of a fine. The Commissioner is therefore the proper party to bring this action.

6. This Court is the proper venue for this action pursuant to Ark. Code Ann. § 23-42-209(a)(3), which specifically names the Pulaski County Circuit Court as the appropriate forum under the statute.

7. The Defendants, in connection with their activities in the offer and sale of unregistered securities in and from Arkansas while being unregistered to do so and by means of securities fraud, are subject to the provisions of the Act. The Defendants are therefore subject to the jurisdiction of this Court and to service of summons within or outside the state of Arkansas.

FACTUAL ALLEGATIONS

THE FEDERAL RESERVE SCHEME

8. New York Resident One ("NY1") is a residential real estate developer and property manager in the New York City area. A mutual acquaintance introduced NY1 to Smith in July 2011. After their introduction, Smith began to characterize himself to NY1 as a financial

analyst and project manager for large-scale real estate construction projects. He also told NY1 that he was politically connected in Arkansas to such politicians as former United States President William Jefferson Clinton and that these connections had afforded him unique investment opportunities for his businesses. Smith later used these initial representations about himself as a foundation to pitch a fraudulent investment scheme to NY1.

9. Smith claimed to NY1 that his elite political connections had afforded him privileged access to an elaborate and highly confidential financial opportunity endorsed by the Federal Reserve Bank. As told by Smith to NY1, the basic details of the program through the Federal Reserve Bank were as follows:

(a) According to Smith, foreign banks engage in a private internal securities trading program in overseas financial markets. Through what is referred to as a "Private Placement Program" ("PPP"), these foreign banks offer select individuals the opportunity to purchase bank-issued securities at a discount from face value. The purchased securities are then traded multiple times over between some of the world's most respected financial institutions for an increased price on each trade. The securities are traded on this primary market until they reach a price that is acceptable for an investor on the retail or secondary market who is interested in a moderate return on investment. Although the increased price of the security is minimal on each trade, the profits rendered by a trade are highly lucrative given that the securities are priced for institutional investors in multi-million dollar amounts.

(b) Smith alleged that the Federal Reserve Bank makes large sums of money available to privileged individuals to be used as an economic stimulus incentive in order to fund infrastructure and create jobs. Select individuals with viable political connections and the ability to orchestrate large-scale construction projects were given access to reserve funds to be used as

collateral in the overseas PPP. The Federal Reserve funds would secure the investor's funds and could be used by the investors to obtain bank loans for investment in the PPP. The profits derived from the PPP investment would later be used by the investors to fund construction projects which would provide revenue, infrastructure, and jobs for the benefit of the United States government. If, for whatever reason, the construction projects failed then the Federal Reserve funds could be used to pay the banks and investors back, leaving no risk to the investors on their original investment.

10. Smith told NY1 that he had access to ten billion dollars in reserve funds at the Federal Reserve Bank and that he was in the process of brokering a deal using the funds on reserve in his name. Smith was pooling investors to acquire the funds necessary to invest billions in the PPP overseas. The principal and interest generated in the PPP would be used to fund construction projects managed by Smith. Smith supplied NY1 with a list of projects he was slated to manage and operate with funds generated through investment in the PPP. As purported evidence of the funds being held at the Federal Reserve Bank in his name, Smith provided NY1 with a Reserved Funds Letter, Confidential Memo, Letter and Safekeeping Receipt, and DTC WI 2037, which are attached hereto as composite Exhibit "A" and are incorporated herein by reference for all purposes. Smith also supplied NY1 a list of the real estate projects that were slated for completion as part of the investment. The list of real estate projects provided to NY1 by Smith is attached hereto as Exhibit "B" and is incorporated herein by reference for all purposes.

11. In addition to the above-detailed misrepresentations made directly by Smith to NY1, Smith engaged third parties to impersonate respected financial figures during phone conversations with NY1. On one occasion, Smith solicited an accomplice to impersonate

George Gleason, Chairman and CEO of Bank of the Ozarks, Inc., during a phone conversation with NY1. The Gleason impostor sought to convince NY1 that the PPP existed and that NY1 would stand to make substantial profits through any investment with Smith. During several other phone conversations, Smith convinced a third party to impersonate John Miller, a former Director and Chairman of the Federal Reserve Bank of Cleveland. Among other things, the Miller impostor told NY1 that he knew Smith through their mutual connection to former United States President William Jefferson Clinton and that the Federal Reserve funds were legitimately on hold for Smith's use.

12. Smith offered NY1 the opportunity to buy into the "deal" by putting up a portion of the total funds to be used in the PPP. In exchange for his investment, NY1 would receive a percentage of the return of interest funds earned after the investment started producing profits through the slated real estate deals. Over approximately the next 18 months, Smith and NY1 negotiated back-and-forth regarding the principal amount of investment and percentage interest in SKB that NY1 would receive under the arranged deal. During those negotiations, the amounts of principal to be invested by NY1 varied from the multiple millions to hundreds of thousands of dollars.

13. In the end, NY1 gave Smith and SKB a total of $475,000.00 for a 10% interest in SKB's net earnings derived through the business projects supported by the Federal Reserve Funds. Smith told NY1 that the 10% interest received in SKB would result in a return of multiple millions of dollars on the initial investment. A Participation Agreement drafted by Smith and dated January 28, 2012 memorializes the business dealings of the parties and consummates the terms of their agreement. The Participation Agreement reflects the total investment made by NY1 and states that Deutschebank, UniCredit Bank of Austria, the FED and

the European Central Bank have all granted final approval for the investment in the PPP to move forward. The Participation Agreement further references the Reserved Funds Letter, Confidential Memo, DTC WI 2037, and Safe Keeping Receipt. A copy of the Participation Agreement is attached hereto as Exhibit "C" and is incorporated herein by reference for all purposes.

14. The type of scheme Smith described to NY1 is what securities regulators commonly refer to as a "prime bank scheme." The perpetrator of the scheme lures in investors while promising unrealistic returns from investment in fictional overseas markets. Once the investment is made, the perpetrator converts the investor's funds for personal use. In this case, the investment opportunity offered by Smith to NY1 does not exist. There is no PPP, and there is no confidential reserved funds program offered through the Federal Reserve. Smith fabricated the aforementioned Federal Reserve documents for the sole purpose of inducing NY1 into investment. On its website found at http://www.ny.frb.org/banking/frscams.html, the Federal Reserve Bank of New York warns against scams and frauds operating under the Federal Reserve name. The website for the Federal Reserve Bank of New York makes the following pertinent statements with regard to the subject "deal" offered to NY1 by Smith:

> "For more than a decade, the Federal Reserve has been warning the public about fraudulent investment schemes that go by various names, but generically are known as High Yield Investment Programs (also known as 'Private Placement Programs'). These schemes continue to be used to target innocent investors. The programs purport to be highly secretive, but the marketer of the fraud scheme claims to have connections to the Federal Reserve. The marketer claims that through these connections, members of the public can participate in very lucrative programs of investments involving various types of financial instruments. These fraudulent 'programs' are presented as legitimate investment vehicles being offered by traders or marketers with special 'invitation only' access to the secret program operated by the U.S. Federal Reserve. Fraudsters claim that proceeds from the programs are slated for investment, often overseas. Fictitious letters with seemingly convincing letterhead are often used to convince targets that the programs are legitimate. *Employees of the Federal Reserve Bank of New York and the Federal Reserve System will not offer investments to the general public. Furthermore, the*

Federal Reserve does not authorize, license, or sanction agents or traders to deal with the general public for High Yield Investment Programs."

15. As of the filing of this Complaint, NY1 has not received any refund or return on his investment with Smith and SKB. The Staff of the Arkansas Securities Department found through an analysis of applicable bank records that Smith converted the funds received from NY1 for his personal use. Among other items, Smith expended NY1's funds on a $125,000.00 home renovation/addition and purchased a $58,000.00 automobile. He tendered $20,000.00 in rent payments for his Benton insurance office, paid $32,000.00 on a home mortgage, and made $19,000.00 in personal credit card payments. Smith spent the remainder of the funds on cash withdrawals, meals, entertainment, utility payments, and other miscellaneous personal expenses.

16. The investment offered and sold by Smith and SKB was not registered as a security pursuant to the Act. Regarding this investment, the Department found no record of a filing evidencing a proof of exemption in accordance with the Act and no notice filing pursuant to federal law in connection with a covered security.

THE FLORIDA HOME CARE COMPANY SCHEME

17. Arkansas Resident One ("AR1") is a medical doctor currently residing in northwest Arkansas. AR1 worked with Smith's mother, who was an emergency room nurse in the hospital where AR1 was employed. AR1 met Smith through his employment relationship with Smith's mother. Smith held himself out to AR1 as a business consultant and financial expert. In the spring of 2006, Smith approached AR1 with the opportunity to invest in a home healthcare company that was taking start-up investors in Florida.

18. Smith told AR1 that he was looking for investors to invest together with him in a Florida home healthcare company known as Village Home Care of Palm Beaches, LLC ("VHC"). Smith represented that he had run the financial numbers being projected by VHC in

its business plan and that AR1 could expect an investment return of ten times the initial amount invested. Smith further claimed that he was prepared to put in at least $350,000.00 of his own funds into VHC.

19. Based on Smith's claims, AR1 agreed to invest a total of $250,000.00 in VHC. AR1 formed a limited liability company to serve as a corporate vehicle for his investment. Smith then undertook the steps necessary to form Maverick, which was to serve as the investment company for his combined investment with AR1. The Operating Agreement for Maverick reflects that Smith was to capitalize Maverick with $350,000.00 of his own funds for investment in VHC. Smith and the limited liability company set up by AR1 were to share equal ownership and management interests in Maverick. A copy of the Operating Agreement for Maverick is attached hereto as Exhibit "D" and is incorporated herein by reference for all purposes.

20. AR1 has not received any return on the above-detailed investment. Despite his representations to the contrary, Smith did not invest any of his own funds in VHC. Not only did Smith fail to invest in VHC himself, he converted the majority of AR1's investment for his personal use. Smith spent the $250,000.00 received from AR1 in the following manner: $99,000 was converted to Smith's various personal accounts and expended in a personal manner; $11,000.00 was withdrawn by Smith in cash; $25,000.00 was used to purchase new uniforms and equipment for Smith's child's youth sports team; $20,000.00 was paid back to a previous investor with Smith from another investment; and $94,000.00 was sent for investment in VHC. Subsequently, Smith was unable to meet a capital call issued by VHC for the additional investment funds promised by Maverick. Another investor eventually bought out Maverick's interest in VHC, and Smith received a return of approximately $20,000.00 on AR1's original

$94,000.00 investment. Smith did not return the $20,000.00 received as a result of the buyout but, rather, again converted the funds for personal use.

21. With regard to the subject investment transaction described herein, a search of Department records by the Staff revealed no registration or proof of exemption in accordance with the Act and no notice filing pursuant to federal law in connection with a covered security.

FIRST CAUSE OF ACTION

VIOLATION OF ARK. CODE ANN. § 23-42-501
OFFERING AND/OR SELLING UNREGISTERED SECURITIES

22. The Commissioner realleges and incorporates all the factual allegations set out above in paragraphs eight through twenty-one.

23. Ark. Code Ann. § 23-42-501 provides that it is unlawful for any person to transfer or sell any security unless it is registered, exempt, or a covered security.

24. The investment offered by Defendants SKB and Smith to NY1 as discussed above in paragraphs eight through sixteen was a security as defined under Ark. Code Ann. § 23-42-102(15)(A).

25. The security offered and sold by Defendants SKB and Smith, directly or indirectly, personally or through agents, has neither been registered under the Act, nor effectively qualifies for any exemption from registration available under the Act or any federal statute or rule.

26. By reason of the foregoing, Defendants SKB and Smith have violated, are violating, and unless enjoined, will continue to violate Ark. Code Ann. § 23-42-501.

SECOND CAUSE OF ACTION

VIOLATION OF ARK. CODE ANN. § 23-42-501
OFFERING AND/OR SELLING UNREGISTERED SECURITIES

27. The Commissioner realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

28. Ark. Code Ann. § 23-42-501 provides that it is unlawful for any person to transfer or sell any security unless it is registered, exempt, or a covered security.

29. The investment offered by Defendants Maverick and Smith to AR1 as discussed above in paragraphs seventeen through twenty-one was a security as defined under Ark. Code Ann. § 23-42-102(15)(A).

30. The security offered and sold by Defendants Maverick and Smith, directly or indirectly, personally or through agents, has neither been registered under the Act, nor effectively qualifies for any exemption from registration available under the Act or any federal statute or rule.

31. By reason of the foregoing, Defendants Maverick and Smith have violated, are violating, and unless enjoined, will continue to violate Ark. Code Ann. § 23-42-501.

THIRD CAUSE OF ACTION

VIOLATIONS OF ARK. CODE ANN. § 23-42-507(2)
UNTRUE STATEMENTS OF MATERIAL FACTS AND OMISSIONS OF MATERIAL FACTS IN CONNECTION WITH THE OFFER, SALE, OR PURCHASE OF SECURITIES

32. The Commissioner realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

33. Defendants SKB and Smith, in connection with the offer, sale, or purchase of a security, made untrue statements of material fact to NY1, including, but not being limited to, the following:

A. Defendant Smith was politically connected to such important politicians as former United States President William Jefferson Clinton and that his political connections afforded him unique business and investment opportunities;

B. Defendant Smith had access to a highly confidential financial opportunity offered through the United States Federal Reserve;

C. Defendant Smith had access to an overseas PPP where foreign financial institutions exchanged privately issued securities for enormous profits;

D. Defendant Smith had a list of construction projects waiting to be commenced with principal and interest generated through the PPP;

E. Defendant Smith had lined up a group of wealthy investors who were willing to obtain loans and invest billions of dollars in the PPP;

F. Defendant Smith had connections with George Gleason, Chairman and CEO of Bank of the Ozarks, Inc., who was willing to verify the existence of the PPP and Smith's privileged access to it through the Federal Reserve program;

G. Defendant Smith had connections with John Miller, former Director and Chairman of the Federal Reserve Bank of Cleveland, who was willing to verify the existence of the PPP and Smith's privileged access to it through the Federal Reserve program;

H. Defendant Smith would use funds received from NY1 to invest in the PPP and that NY1 would receive millions of dollars on his investment in the form of an ownership interest derived in Smith's business.

34. By reason of the foregoing, Defendants SKB and Smith, directly or indirectly, have violated, are violating, and unless enjoined, will continue to violate Ark. Code Ann. § 23-42-507(2).

FOURTH CAUSE OF ACTION

VIOLATIONS OF ARK. CODE ANN. § 23-42-507(2)
UNTRUE STATEMENTS OF MATERIAL FACTS AND OMISSIONS OF MATERIAL FACTS IN CONNECTION WITH THE OFFER, SALE, OR PURCHASE OF SECURITIES

35. The Commissioner realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

36. Defendants Maverick and Smith, in connection with the offer, sale, or purchase of a security, made untrue statements of material fact to AR1, including, but not being limited to, the following:

A. Defendant Smith was to invest $350,000.00 of his own funds in VHC;

B. AR1 stood to make a profit of ten times his original investment in VHC;

C. Defendant Smith would invest all funds received from AR1 in VHC.

37. By reason of the foregoing, Defendants Maverick and Smith, directly or indirectly, have violated, are violating, and unless enjoined, will continue to violate Ark. Code Ann. § 23-42-507(2).

FIFTH CAUSE OF ACTION

VIOLATIONS OF ARK. CODE ANN. § 23-42-507(3)
ENGAGING IN ANY ACT, PRACTICE, OR COURSE OF BUSINESS WHICH OPERATES OR WOULD OPERATE AS A FRAUD OR DECEIT UPON ANY PERSON

38. The Commissioner realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

39. Defendants SKB and Smith, in connection with the offer, sale, or purchase of a security, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon NY1 by converting investment funds for the unauthorized personal use of Defendant Smith, a purpose not disclosed as a use for the funds when the security was advertised, marketed, and sold to the investor.

40. By reason of the foregoing, Defendants SKB and Smith, directly or indirectly, have violated, are violating, and unless enjoined, will continue to violate Ark. Code Ann. § 23-42-507(3).

SIXTH CAUSE OF ACTION

VIOLATIONS OF ARK. CODE ANN. § 23-42-507(3)
ENGAGING IN ANY ACT, PRACTICE, OR COURSE OF BUSINESS WHICH OPERATES OR WOULD OPERATE AS A FRAUD OR DECEIT UPON ANY PERSON

41. The Commissioner realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

42. Defendants Maverick and Smith, in connection with the offer, sale, or purchase of a security, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon AR1 by converting investment funds for the unauthorized personal use of Defendant Smith, a purpose not disclosed as a use for the funds when the security was advertised, marketed, and sold to the investor.

43. By reason of the foregoing, Defendants Maverick and Smith, directly or indirectly, have violated, are violating, and unless enjoined, will continue to violate Ark. Code Ann. § 23-42-507(3).

CLAIM FOR RELIEF

44. Pursuant to Ark. Code Ann. § 23-42-209(a)(3), the Commissioner may apply to this Court for injunctive relief to permanently enjoin any act or practice found to be in violation of the Act and to enforce compliance with the Act, regardless of whether a cease and desist order has been issued.

45. Pursuant to Ark. Code Ann. § 23-42-209(b), the Commissioner may apply to this Court for relief ancillary to injunctive relief as may be appropriate in the public interest, including, but not being limited to, an accounting, appointment of a receiver, disgorgement of

profits, restitution to investors, and the assessment of a fine in an amount of not more than the total amount of money received in connection with violations of the Act.

46. The facts set forth in paragraphs eight through forrty-three demonstrate that, unless restrained and enjoined, the Defendants will continue to illegally offer and sell unregistered securities by means of securities fraud. Additionally, the facts show that an award of ancillary relief in this case is appropriate and in the public interest.

RELIEF REQUESTED

WHEREFORE, the Commissioner respectfully requests this Court to award the following relief:

A. Order the Defendants to immediately cease and desist from offering or selling any security in the Arkansas unless and until the security is properly registered or is offered or sold pursuant to an exemption from registration under the Act;

B. Order the Defendants to immediately cease and desist from engaging in any fraudulent activity in connection with the offer or sale of any security in Arkansas;

C. Order the Defendants to disgorge all ill-gotten gains and make restitution to investors for all monies received as a result of selling unregistered securities by means of securities fraud;

D. Order the Defendants to pay a civil penalty in an amount equal to the total amount of money received in connection with violations of the Act; and

E. Any and all such other and further relief to which the Commissioner may be entitled as the Court deems just and appropriate under the facts and circumstances.

Respectfully Submitted,

A. Heath Abshure
Arkansas Securities Commissioner

By: /s/ J. CAMPBELL MCLAURIN III .

J. Campbell McLaurin III (No. 08-280)
Arkansas Securities Department
201 East Markham Street, Suite 300
Little Rock, Arkansas 72201
Telephone: (501) 324-8670
Facsimile: (501) 324-9268
cmclaurin@securities.arkansas.gov

The Federal Reserve Board

FEDERAL RESERVE BANK
33 LIBERTY STREET
NEW YORK, NEW YORK, 10045, U.S.A.
PHONE : (212) 720 5000 FAX : (212) 720 6331

Date : August 10, 2011
Ref. : FRNY/0137752-09

To: SKB Partners, LLC.
Represented by Mr. Scott A. Smith
U.S.A. Passport Number 402829477
Custodial Trustee
Custodial Account No.: 021088506

Dear Mr. Scott A. Smith,

Reserved Funds Letter

With reference to your request, we hereby confirm with full authority and bank responsibility that the Federal Reserve Bank, New York has blocked and reserved your U.S. Treasury Check Numbers 2122 10566101 up to 2122 10566120 inclusively with a total amount of Ten Billion United States Dollars (USD 10,000,000,000.00) for the benefit of SKB Partners, LLC., Represented by Mr. Scott A. Smith, U.S.A. Passport Number 402829477.

These U.S. Treasury Checks have been blocked and reserved from the date of this letter for one year and one day renewable up to Ten (10) years. We further confirm that these Treasury Checks can be verified through a responsible bank inquiry.

Yours Sincerely,

Ben S. Bernanke
Chairman

Janet Louise Yellen
Vice Chairman

EXHIBIT
"A"

The Federal Reserve Board

We confirm that we have performed all political, economic, and financial due diligence, including but not limited to due diligence in compliance with Articles 2 to 5 of the Agreement of Due Diligence of 1977, Articles 305bis and 305ter of Swiss Criminal Code and the US Federal Banking Commission circular of December 1998, and in compliance with the International Counter Money Laundering Act (United States H.R. 3886 and United States S,2972), and in compliance with the Wolfsberg Treaty. The European Government Council Resolution Number 921, Wolfgang Convention of 4th May 2002, the USA Patriot Act, as well as all Treasury, Federal and Cantonal Laws of Switzerland, and affirm, with full banking authority that all laws have been complied with good, clean, cleared funds of non-criminal origin and legally earned, or by license or authority from the government of the United States of America, under the appropriate laws of the said country.

We declare that this Custodial Safekeeping Receipt is an operating, fully confirmed instrument, and is governed by and to be construed in accordance with the applicable laws of the country (United States of America), the United Kingdom, the Netherlands, and Switzerland, and the rules of the International Chamber of Commerce (I.C.C.), 500/600 Latest Revision, Paris, France, governing Uniform Customs and Practice for Documentary Credit, and engages is in accordance with the terms thereof.

We also declare that any copy of this instrument will be valid and legal as the original.

Yours Sincerely,

Ben S. Bernanke
Chairman

Janet Louise Yellen
Vice Chairman

The Federal Reserve Board

FEDERAL RESERVE BANK
33 LIBERTY STREET
NEW YORK, NEW YORK, 10045, U.S.A.
PHONE : (212) 720 5000 FAX : (212) 720 6331

DATE : AUGUST 10, 2011
REF : FRNY/0106213-09

CONFIDENTIAL MEMO

TRANSACTION CODE	:	FRNY/0137743-09
SELLER'S REF. CODE	:	582-172-4671SB
PRINCIPAL SELLER	:	SKB PARTNERS, LLC. REPRESENTED BY MR. SCOTT A. SMITH U.S.A. PASSPORT NUMBER 402829477
PRINCIPAL BUYERS	:	BANK OPERATIONS
ISSUER OF CHECKS	:	FEDERAL RESERVE BANK (CENTRAL BANK)

SCREENING PROCEDURES :

1. ENTER THE ACCESS CODE FOR : ASL819RU – FRNYUS33FX1
2. ENTER THE SECURITY CODE : OTU491674
3. GO TO RELATED CODE : MFE693JH
4. ENTER THE NET CODE : 691047
5. ENTER THE FOLLOWING ACCESS CODE : ASL819RU

CUSIP	:	NKS139864
SWIFT CODE	:	FRNYUS33FX1
SCREENING CODE	:	690347-09
ISIN	:	AU000000ALD4
COMMAND CODE	:	022-778-706
DTC	:	104739
UWRTR	:	24NKS24OG-RU 4764

6. FOLLOW THE INSTRUCTIONS ON SCREEN AS APPROPRIATE FOR:
   a. OPTION 1 : TO BLOCK THE BANK INSTRUMENT CONCERNED
   b OPTION 2
   c. OPTION 3
7. IF ANY OF THE AFOREMENTIONED OPTIONS IS NOT SELECTED, THE SAID BANK INSTRUMENT WILL GO OFF FROM THE SCREEN

YOURS SINCERELY,

Ben S. Bernanke

BEN S. BERNANKE
CHAIRMAN

Janet L. Yellen

JANET LOUISE YELLEN
VICE CHAIRMAN

The Federal Reserve Board

FEDERAL RESERVE BANK
33 LIBERTY STREET
NEW YORK, NEW YORK, 10045, U.S.A.
PHONE : (212) 720 5000 FAX : (212) 720 6331

Date : August 10, 2011
Ref. : FRNY/0137749-09

To: SKB Partners, LLC.
Represented by Mr. Scott A. Smith
U.S.A. Passport Number 402829477
Custodial Trustee
Custodial Account No.: 021088506

Dear Mr. Scott A. Smith,

This letter will serve as confirmation that SKB Partners, LLC., Represented by Mr. Scott A. Smith, U.S.A. Passport Number 402829477, has the full signatory / authority over the U.S. Treasury Check Numbers 2122 10566101 up to 2122 10566120 with a total amount of Ten Billion United States Dollars (USD 10,000,000,000.00).

We, The Federal Reserve Bank of New York, located at 33 Liberty Street, New York, New York 10045, U.S.A., with the authorized signatures appearing below, hereby irrevocably acknowledge with full bank responsibility our receipt in custody of the said assets.

We confirm that this letter is issued under full faith and trust of our bank and that the said instruments are freely available to Mr. Scott A. Smith, authorized signature and may be assigned, or recorded on the record of our bank with the express written consent of the above reference account holder to obtain credit. All rights arising from the ownership of this account shall thereby be freely assignable, transferable, and divisible without payment to us of any transfer fee and upon written instructions of the Account Holder hereof, and who warrants our strict compliance herewith.

The asset shall be free and clear of any taxes, levies, or duties of any nature present or future imposed under the laws of the European Union and Switzerland.

We confirm the account of Mr. Scott A. Smith, may be verified by a responsible bank inquiry, if the inquiry is accompanied by the check numbers, verification and transfer code, and will be confirmed by Grey Screen only to such bank as designated by Mr. Scott A. Smith, authorized signature. Original copies of the Custodial Safekeeping Receipts will be delivered via bank courier to the same bank.

The Federal Reserve Board

FEDERAL RESERVE BANK
33 LIBERTY STREET
NEW YORK, NEW YORK, 10045, U.S.A.
PHONE : (212) 720 5000 FAX : (212) 720 6331

Date : August 10, 2011
Ref. : FRNY/0137743-09

SAFE KEEPING RECEIPT

We, The Federal Reserve Bank of New York, located at 33 Liberty Street, New York, New York 10045, U.S.A. with Telephone Number (212) 720 5000; Fax Number (212) 720 6331; SWIFT Code: FRNY US 33, hereby confirm with full authority and responsibility that our valued client has deposited with us in Custodial Account Number 021088506 funds / assets of which details are outlined as follows:

Type of Funds / Assets	U.S. Treasury Checks
Check Numbers	2122 105 66101 up to 2122 105 66120
Registration on FED Screen	Access Code: SKB-FED-83951799-10B-822964-2011 Security Code: 217864 SKB 28 ID Number: SKB-FED-3498123-822964-2011
Date of Issue	August 10, 2011
Value Date:	August 10, 2021 callable and renewable annually up to Ten (10) year
Check Denomination	Five Hundred Million United States Dollars (USD 500,000,000.00)
Total Amount	Ten Billion United States Dollars (USD 10,000,000,000.00)

These funds / assets have been placed in our custodial safekeeping under Custodial Account No. 021088506, Custodial Account Name: SKB Partners, LLC., Safekeeping Period: from March 29, 2010 to March 29, 2025.

This Safekeeping Receipt is issued and effective from the date of issuance for the benefit of the Custodial Trustee and Signatory of the aforesaid funds / assets, namely SKB Partners, LLC., Represented by Mr. Scott A. Smith, U.S.A. Passport Number 402829477 or his assignees.

We further confirm that these funds / assets are good, clean, cleared and of non-criminal origin, free and clear of all liens and encumbrances, and shall remain so for the above-stated Safekeeping Period.

The Federal Reserve Board

This Safekeeping Receipt is an operative instrument, and it is confirmed, irrevocable, unconditional, divisible, transferable, and assignable without presentation to us.

With the authority of the signatures below, we hereby add our authentication and stand ready to confirm authenticity by Grey Screen only to any responsible inquiring bank. On request of an original copy of this Safekeeping Receipt will be delivered via bonded courier bank-to-bank.

Yours Sincerely,

Ben S. Bernanke
Chairman

Janet Louise Yellen
Vice Chairman

The Federal Reserve Board

FEDERAL RESERVE BANK
33 LIBERTY STREET
NEW YORK, NEW YORK. 10045, U.S.A.
PHONE : (212) 720 5000 FAX : (212) 720 6331

Date: August 10, 2011
Ref.: FRNY/0079133-09

Reference: SKB Partners, LLC.
Represented by Mr. Scott A. Smith

PRIVATE & CONFIDENTIAL

Dear Sirs,

At the request and instruction of our Client, herewith we furnish you the Screen Blocking Code: 182884936728

This is applicable solely to the U.S. Treasury Check Number 2122 10566101 up to 2122 10566120 for your exclusive use as appropriate.

This Screen Blocking Code should be applied as per procedures given in our Confidential Memo dated August 10, 2011, Reference: FRNY/0106213-09.

This letter may be verified via secure transmission on bank-to-bank basis.

Yours Sincerely,

Ben S. Bernanke
Chairman

Janet Louise Yellen
Vice Chairman

SKB PARTNERS

PROJECT #1: PROVENCE, $623 MILLION USD WITH A 42 MONTH CONSTRUCTION TIMEFRAME

Provence is a place where one can transcend into a luxurious and romantic world of an authentic French village IN THE United States' #1 tourist city, Orlando, Florida. This village's icons are centered on a five-star deluxe hotel which includes extensive convention and meeting space, a spa, a winery, perfumery, wedding chapel and a world-renowned restaurant and cooking school, all set amid well-known retail shops and lush landscaping.

In addition to being pampered at the hotel and spa, guests who dream of their own high-end, platinum style weddings could design their own fragrance, wine and dining experiences without missing any details of authentic French sophistication.

Those unique individuals who recognize the opulence associated with the French lifestyle can actually realize their dreams of living in The Village of Provence in one of the residences or fractional ownership villas.

Prior to the existence of the village in 2011, Provence will be creating an online sales system and luxury catalogue which will be sent to a specifically targeted customer. This form of sales of fragrances, bath and body products, home products, lifestyle products, and food and beverages will produce substantial revenues.

Architecturally, the buildings will have the look and feel of an ancient walled city in Provence, down to original doors and windows from France. The village will be raised on a landscaped hill; beneath will be two levels of parking and one level of back-of-the house services for ultimate operational efficiency.

The majority of vendors within the village will be of the highest quality, including respected brands from France such as Cartier, Chanel, Dior, Hermes, Yves Ste. Laurent, Remy Martin and Lacoste. Combined with the retail experience, there will be a number of food and beverage locations that range from a five-star restaurant to a street side creperie or brasserie.

PROJECT #2: ST. CROIX, $225 MILLION USD WITH A 34 MONTH CONSTRUCTION TIMEFRAME

This is a project we are working on in St Croix. It is part of the Foxwoods casino development group. Planning approval in place for the development and we are negotiating with a hotel operator and a golf design firm for a "signature" golf course. The development consists of a hotel, casino, condos, golf, retail, and spa villas etc. (Design layout below)

EXHIBIT "B"

PROJECT#3: SUNSTAR FLOOR FLOORS MANUFACTURING PLANT, $16 MILLION USD WITH A 14 MONTH CONSTRUCTION TIMEFRAME

Sunstar Floor Products(Hunchun) Co., Ltd. (SFPH) is an expansion stage company that is building a factory, to manufacture wood floor products for export into world wide market.

Founded in July 11, 2005, in Export Processing Area, Economic Development Zone, Hunchun City, Jilin province, China.

The wood floor market in the United States is currently a $4.5 billion market, with fragmented players. Growth of this segment has been at an 15-18% rate for the last five years and continues unabated, with forecast to continue for the next ten years at double digit (10%-15%) growth rate.

This is largely due to renovation of existing homes, caused by job changes. New construction, due to new household formation, low mortgage rates, and upgrading of homes by baby boomers coming close to retirements. The diversification of taste and usage change in living life style.

SFPH has invaluable and exclusive relationship with:

- *Sunstar Floor Products(USA) LLC- a very knowledge/well established company marketing/sales organization, it has a network of sales channels directly and indirectly to customers throughout the North American market.*
- *Robin Products LLC – a well established channel of sales and marketing company that markets into Middle-East, Eastern Europe, Central and South America.*

SFPH is currently seeking to raise the built-out capital of the factory, hire personal, purchase raw materials, which total US$12.0 million. Revenue will be generated upon completion of the factory and production begins.

Increase in Scale:

- *SFPH is in place to provide a steady source for large scale users (sales channels), steady, continuous, and quality supply chain.*

- *SFPH is planning to expand into new sales channels. SFPH is working on commercial agreements with several dominant sales outlet channels in US domestic market, in order to access their customer base to our product lines.*

New Products and Services

- *Daily shipment of finished wood floor products to our North American based customers. To built the premier wood floor products company to supply the world wide market.*
- *Products include: (a) solid wood floor*
  (b) engineered wood floor
- *Provide a basis for cooperation with end users to participate in the supply chain backward integration.*

PROJECT #4: PAPAGAYO (COSTA RICA) FOR $414 MILLION USD WITH A 32 MONTH CONSTRUCTION TIMEFRAME

The Company has been formed to acquire and develop the Properties, resulting in the full completion of the Project. A map identifying the location of the Properties and its proximity to other developments is set forth in Appendix B hereto. The Company has the Properties under contract and is scheduled to close on the Properties between December 3, 2007 and January 14, 2008. The Properties total approximately 584 acres (237 hectares) and will be purchased for approximately $88,000,000.

The Properties are an assemblage of three contiguous, previously undeveloped parcels of land located on the Northern Pacific coast of Costa Rica in the heart of Costa Rica's hottest area of development – the Guanacaste Province, and more specifically, Playa Panama. The Properties are surrounded by major planned or existing resorts, including The Four Seasons, St. Regis, Ritz Carlton, Aman Resorts

International, and Rosewood Hotels (see attached map). Of major significance is the proximity of the Properties to the Daniel Oduber International Liberia Airport. This airport is a convenient 15 minute drive from the Properties and has experienced major growth in the last few years. According to the Vice-minister of Transport and President of the technical Aviation Council, Viviana Martin, it is expected that some 400,000 passengers will make their entry through this airport in 2007, resulting in an increase of 28% over 2006. The growth of the number if visitors in Liberia has been constant in the last 5 years and has been accompanied by a growing interest in more airlines to establish operations here. In addition to Atlanta, Dallas, Houston, Los Angeles, Miami, and Toronto, in 2007 alone, direct flights have been announced from such key gateway cities as New York, London, and Denver. Traffic through the airport has increased 525% over the past four years, forcing plans for the expansion of the terminal.

It is anticipated that the Project will feature the following with a heavy emphasis on "eco" friendly development:

- *Approximately 1,000-1,200 high end residential units made up of multi-story condominium, single family casitas, duplex and town-homes, all strategically positioned at varying price points*
- *18-27 Hole championship golf course designed by Jesper Parnevik*
- *Beach Club and restaurant/bar*
- *Intimate fine dining option(s)*
- *Luxury spa and fitness center*
- *Tennis*
- *Five-star boutique hotel*
- *Infinity edged pools*
- *Private transportation*
- *Multiple water and beach amenities*

PROJECT #5: BARD (BIO-DEISEL PLANT) FOR $57 MILLION USD WITH A 17 MONTH CONSTRUCTION TIMEFRAME

Biofuel Advance Research and Development, LLC. (BARD) is ***establishing a 60,000,000 gallons biodiesel production plant*** *using soybeans and algae as the primary feedstock through an established chemical process to meet the growing global demand for alternative fuels.*
To reduce production costs and satisfy the soy crude oil requirement BARD will incorporate a ***66,000,000 gallon solvent extraction plant.*** *In addition, BARD has developed a plan to use technology, which is laboratory proven, to produce biodiesel from algae. The algae may be created on site by the use of photo- bioreactor technology. The technology was successfully demonstrated in a mini biodiesel refinery plant at the India Institute of Technology (IIT), Kharagpur, India. BARD plans to completely switch raw material from soy beans to algae by year 2 of production. This will greatly enhance profitability by self creation of raw material. A side benefit of the technology is the use of carbon dioxide. Employing the exhausts from commercial plants adjoining the site would also help clean the environment.*
BARD has secured by executed sales agreement a 37 acre parcel of land at the Keystone Industrial Port Complex (KIPC) located in Fairless Hills, Pennsylvania. KIPC was formerly the home of U.S. Steel.

Located north of Philadelphia and slightly southwest of Trenton, New Jersey the location is easily reached by rail and by water. The port is on the Delaware River, a deep water shipping lane. The area is considered an industrial growth area by the Commonwealth of Pennsylvania and as a result BARD will enjoy ten year real estate tax abatement.

*BARD has recently obtained the **Air Quality Permit** from Department of Environment Protection of the Commonwealth of Pennsylvania. This is the most important and difficult permit required to build a plant of this size.*

*BARD entered in to an agreement with **Tech-Start India Pvt. Ltd** and **CCIL of India**, the authorized technology collaborator of **Lurgi**, a German engineering and equipment firm that is providing leading edge technology in the field of biodiesel production. Tech-Start/CCIL will provide an end to end solution that will give BARD a strong technical position versus competitors. BARD has contracted with **Langan Engineering and Environmental Services Inc.** of Philadelphia for all required site engineering and permits. BARD has a signed contract with **River Consulting** for all plant engineering, storage, and rail design and construction. The facility will be fully automated and will operate on an Enterprise Resource Planning (ERP) platform supplied by SAP. This will allow BARD to fully track and evaluate all aspects of the supply chain and production processes. BARD's management has strong backgrounds in chemical engineering, systems management, and quality control.*
*BARD has contracted with Eco-Energy to handle the sale and delivery of all of the biodiesel created by BARD. The contract has duration of five years. **Eco-Energy, Inc.** of Franklin, TN is the largest alternative fuel trader in the United States. BARD has also contracted with **FC Stone**, the largest commodity trader in the United States. FC Stone will provide to BARD all of the necessary soy beans to produce biodiesel and since the crushing capabilities exceed the refining needs, BARD will produce soy oil which FC Stone will market. Lastly, BARD has contracted with **Commodity Specialists Company** (CSC) to market the residual products created by crushing soy beans. Those products, soy meal and soy hull pellets add a great deal of profitability to the process. CSC has a healthy mix of* domestic and *international operation. CSC financial strength is the result of a diversified stable operation.*

PROJECT#6: MYRIAD CASINO $625 MILLION USD FOR PHASE 1 WITH A 36 MONTH CONSTRUCTION TIMEFRAME (TOTAL PROJECT COST IS $1.98 BILLION OVER A 100 MONTH TIMEFRAME)

The Myriad Project will be the beneficiary under three State/County entitlement programs. The first program is a $70,000,000 Tax Incremental Financing ("TIF"), in which the County will issue bonds to reimburse the Project owner for certain infrastructure costs. In Phase I it has been estimated that $40,000,000 in TIF financing will be used against eligible costs. The Project has also been approved as a Public Improvement District ("PID"), enabling Myriad to issue tax exempt PID bonds to finance certain elements of the project that are deemed to be "for the benefit of the public", which may include roads, water, sewer, lakes, bridges and other public improvements. For Phase I, the PID component assumes $0. The Project has also received approval for a Tourism Grant in the Amount of $297,000,000. This grant makes the Project eligible to receive, under an approved schedule over ten years, rebates of sales taxes (7%) on non-gaming revenue as a reimbursement of certain capital costs expended for the Project. The Phase I analysis utilizes approximately $51,800,000 of those rebates during the term of the analysis.

Phase I Analysis: *The financial analysis represents Phase I of the Project which includes the following elements: a 100,000 square foot casino ; a 35,000 square foot convention/meeting center; a 750 key hotel; a 25,000 square foot health spa; a water park and structure parking for 2,000 cars. The casino will contain various restaurant and retail concepts and there will be an 18 hole signature golf course and clubhouse. The analysis includes all infrastructure and land costs, architectural and engineering costs, the costs of financing the project (including all interest costs), the funding of project overhead and working capital. This analysis is meant to include all sources and uses of funds during the 40 month construction period, as well as the 10 year operating period.*

PROJECT(S) #7 THROUGH 12: VARIOUS SKB PROJECTS TOATALING $650 MILLION USD ALL TO BEGIN WITHIN THE FIRST 12 MONTHS OF OBTAINING PROFITS FROM A PRIVATE PLACEMENT PROGRAM

SKB has $300M USD of local projects which include schools, hospitals, roads, commercial property development, shopping centers, and recreation facilities. Then we have about $100M USD in existing businesses that we have either taken public and/or started but need further capital investment to continue their growth. Lastly we have about $235M USD in acquisitions of existing income producing properties.

SKB Partners has the ability to put an additional $750 Million to $1 Billion USD of construction projects on its schedule every year but we need a reliable funding source to be able to complete those projects. Twenty-five percent of our projects are completed on a humanitarian basis and through grants, TIFs, and our Foundation work with charities.

PARTICIPATION AGREEMENT

THIS AGREEMENT ("Agreement"), is dated as of **January 28, 2012**, by and between **SKB Partners, LLC**, an Arkansas entity (hereinafter jointly referred to as "SKB") and [redacted] (hereinafter referred to as "Participant").

Whereas, SKB sought an investment of Four Million Dollars ($4,000,000.00) from Participant.

Whereas, SKB, and Participant desire to set forth the terms and conditions pursuant to which Participant may purchase a percentage of the available net earnings owned by SKB under the attached Reserved Funds Letter, Confidential Memo, DTC WI 2037 and Safe Keeping Receipt in favor or SKB (Exhibit 1, attached hereto and made a part hereof and hereafter referred to as Reserved Capital) and thereby purchase one percent (1%) of SKB's net earnings "Return on Investment" (ROI) generated by the Reserved Capital pursuant to the Agreement between SKB and New Fountain Development LTD, said Agreement being known as "Project Funding & Asset Management Agreement" and any successors thereto for the life of SKB's Reserved Capital. An additional nine percent (9%) was "gifted" to Participant for his time and efforts spent on the transaction dating back to July 2011. The percentage of ownership sharing profit mentioned above does not include any ownership rights in or to Investor's Original Reserved Capital and/or the Trading Capital obtained against such Reserved Capital.

NOW, THEREFORE, for good and valuable mutual consideration, the receipt and sufficiency of which are hereby acknowledged, SKB and Participant hereby agree as follows:

1. PARTICIPANT. Participant has paid to SKB the sum of Four Hundred Seventy-Five Thousand Dollars (USD 475,000.00). Participant and SKB agree that said sum of Four Hundred Seventy-Five Thousand Dollars (USD 475,000.00) has been funded as follows: Seventy-Five Thousand Dollars (USD 75,000.00) on August 12, 2011; Twenty-Five Thousand Dollars (USD 25,000.00) on August 16, 2011; Five Thousand Dollars (USD 5,000.00) on September 3, 2011; Ten Thousand Dollars (USD 10,000.00) on September 16, 2011; Ten Thousand Dollars (USD 10,000.00) on October 31, 2011; and Three Hundred and Fifty Thousand Dollars (USD 350,000.00) on November 28, 2011. Further, SKB warrants that all updated compliance documents have been submitted to a qualified entity, New Fountain Development, LTD, final approval has been granted by that entity and it's associated banks and related entities, Deutschebank, UniCredit Bank of Austria (hereinafter referred to as "Bank Syndicate"), the FED and the European Central Bank; including an Asset Management Agreement which has been approved by said bank syndicate for execution. In return for the referenced payments SKB agrees to transfer ten percent (10%), *as outlined in paragraph 3, of it's net earnings "Return of Investment" (ROI) generated by the Reserved Capital reserved under PROJECT FUNDING & ASSET MANAGEMENT AGREEMENT* and any successor agreements thereto for the life of Reserved Capital, pursuant to Section 3 hereinafter. The percentage of ownership sharing profit mentioned above does not include any ownership rights in or to Investor's Original Reserved Capital and/or the Trading Capital obtained against such Reserved Capital.

2. TAX LIABILITY. Participant shall be solely responsible for any and all local, state, and federal tax liabilities which may [illegible]ment or payments made hereunder. Participant shall hold SKB harmle[illegible]y and all local, state, and federal tax

EXHIBIT "C"

liabilities which may be assessed against SKB by virtue of this Agreement or payments made hereunder as they relate to the Services performed by Participant.

3. COMPENSATION. Within two (2) business days of SKB's receipt of any and all *(ROI)*, SKB will pay pursuant to the Agreement the aggregate sum of ten percent (10%) of the *net earnings "Return of Invest" (ROI) generated by the Reserved Capital reserved under NEW FOUNTAIN DEVELOPMENT LTD & SKB PARTNERS LLC PROJECT FUNDING & ASSET MANAGEMENT AGREEMENT* and any successors thereto for the life of SKB's Reserved Capital.

4. TERM. The term of this Agreement shall be for a period equal to the term of the *NEW FOUNTAIN DEVELOPMENT LTD & SKB PARTNERS LLC PROJECT FUNDING & ASSET MANAGEMENT AGREEMENT.*

5. CANCELLATION or TERMINATION. SKB may NOT terminate this Agreement before the expiration date of the term of the Credit Derivative, which is August 10, 2021 unless Participant breaches any confidential information pursuant to the transaction.

6. CONFIDENTIAL INFORMATION. Participant shall treat as strictly confidential (a) all information and data obtained by Participant in connection with this Agreement or otherwise which are confidential or proprietary to SKB, and SKB including, without limitation, the Work Product, and information and data relating to SKB's operations, policies, procedures, techniques, accounts and personnel; and (b) all information and data which are confidential or proprietary to a third party and which are in the possession, custody or control of SKB. In the event of a breach or threatened breach of the provisions of this Section, SKB shall be entitled to an injunction restraining such breach or threatened breach without having to prove actual damages. Such injunctive relief as SKB may obtain shall be in addition to all of the rights and remedies available at law and in equity. This Section shall survive the termination of this Agreement for a period of two years from the date of termination.

7. CHANGES. The terms and conditions of this Agreement may not be amended, waived, or modified, except in a writing signed by the parties hereto.

8. NO WAIVER. No failure or delay of either party to exercise any rights or remedies under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any rights or remedies preclude any further or other exercise of the same or any other rights or remedies, nor shall any waiver of any rights or remedies with respect to any circumstances be construed as a waiver thereof with respect to any other circumstances.

9. SEVERABILITY. In the event that any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall continue in full force and effect as if no such invalidity or unenforceability had been determined and it shall not be affected thereby.

10. GOVERNING LAW. In the event of a dispute hereunder, the Courts of the State of Arkansas shall be deemed to have jurisdiction and the laws of the State of Arkansas shall apply.

PARTICIPATION AGREEMENT

11. SIGNATURES. The parties to this Agreement must sign it and return it to the SKB office. These are time sensitive documents and therefore a faxed copy with original signatures shall and will be valid. The agreement will be signed in triplicate by each party, one copy to Participant, one copy to SKB and one copy to be held on file for the duration of the transaction.

DATED as of the date first above written.

PARTICIPANT: [redacted]

[redacted], **Individually**

Date: 1-30-2012

[redacted]

[redacted]

[redacted]

Title: **Vice President**

Date: 1-30-2012

SKB Partners, LLC

Scott L. Smith

Title: **Managing Partner**

Date: 1/30/12

PROJECT FUNDING & ASSET MANAGEMENT AGREEMENT

THIS PROJECT FUNDING ASSET MANAGEMENT AGREEMENT (hereinafter the "Agreement"), effective on **September 5, 2011** is entered into by and between:

SKB PARTNERS LLC being located at 22461 Interstate 30 South, Suite 100 Bryant, Arkansas 72022, represented by Scott A. Smith, its Senior Managing Partner, Email: ssmith@skbholdings.com (hereinafter referred to as **"INVESTOR"**)

AND

NEW FOUNTAIN DEVELOPMENT LTD, a British Virgin Islands corporation existing under the laws of United Kingdom Registered #1592184 with record offices at Double Building Suite 1401, 22 Stanley Road Central, Hong Kong represented by John L. Thompson, bearing USA Passport # 449714883, its Managing Director, (hereinafter referred to as **"ASSET MANAGER/FUNDER"**)

The INVESTOR and the ASSET MANAGER/FUNDER are hereinafter collectively referred to as the "PARTIES".

WHEREAS, the PARTIES desire to participate in a Private Asset Management Program – as same is more particularly described in that certain Broker/Dealer Platform for mutual profit and to create funding for needful projects; and

WHEREAS, ASSET MANAGER/FUNDER has knowledge and, desires to provide administrative/funding experience and source, and warrants that it is capable of executing ("Trading") trading contracts (each such, to be hereinafter referred to as a "Trading Contract") with a bank engaged in such trading; and

WHEREAS, INVESTOR is desirous of entering into an agreement wherein INVESTOR shall cause US Treasury Funds (The "Treasury Funds") in the form of US Treasury Check(s) in Safe Keeping at one of INVESTOR's banks (a "Asset Reserve Bank") in the form of Cash Backed US Treasury Checks under Safe Keeping Receipt, Irrevocable, Unconditional, Operable, Transferable, Assignable, Divisible in amounts of Five Hundred Million USD ($500,000,000.00) up to a total of Ten Billion USD ($10,000,000,000.00) in agreed increments or tranches, to be determined; and

WHEREAS, in creating this AGREEMENT, it is not the intention of the PARTIES to create a taxable partnership, rather it is the intent of the PARTIES to create a vehicle or cooperative enterprise through which the PARTIES to this AGREEMENT can pursue their common business interest.

NOW THEREFORE, the PARTIES, in consideration of the mutual terms and covenants hereinafter set forth, the PARTIES intending to be bound by law, do hereby agree to the following terms and conditions:

INITIALS: ASSET MANAGER/FUNDER INVESTOR

SOURCE: NICK GORDON

NEW FOUNTAIN DEVELOPMENT LTD
PROJECT FUNDING & ASSET MANAGEMENT AGREEMENT
Funding Agreement Code: NFD-SKB10B-08142011-01

ARTICLE 1 – COMPENSATION

(a) **INVESTOR** hereby agrees to make available Reserved Capital through :

Bank Instrument exclusively reserved for the private placement transactions with the Asset Reserved at the Federal Reserve Bank New York, 33 Liberty Street New York, New York 10045. U.S.A. Bank Account name SKB PARTNERS LLC, Account Number: 021088506. In increments of Five-Hundred-Million USD ($500,000,000.00) for a total of Ten Billion USD ($10,000,000,000.00) cash funds in the form of US Treasury Checks for the mutual benefit of the PARTIES.

(b) **ASSET MANAGER/FUNDER** hereby agrees to set up and execute a funding/trading platform with a MAJOR International bank and/or financial institution (hereinafter, the "Transaction Bank") once there is delivered to **ASSET MANAGER/FUNDER** Transaction Bank by **ASSET MANAGER/FUNDER** Bank confirmation that Treasury funds are available from the **Credit Line** established from the bank-to-bank download or Blocking the Instrument(s) or Account at **ASSET MANAGER/FUNDER** designated Banking Coordinates.

2. **CUSTODY AND CONTROL**

(a) The PARTIES agree that **ASSET MANAGER/FUNDER** shall at all times have complete control of funds/LOAN within the Transaction Bank unless otherwise agreed between the parties.

(b) **INVESTOR** shall receive all Trading Profits (as defined in Paragraph 3) from the Trading into **INVESTOR's own Designated/Paymaster Account.**

3. **PERCENTAGE OWNERSHIP INTEREST**

(a) The percentage of ownership interest in the net earnings "Return of Invest" (ROI) generated by the Reserved Capital reserved under this AGREEMENT and/or the Trading Capital, shall be FIFTY 50 % PERCENT to **INVESTOR** and FIFTY 50 % PERCENT to **ASSET MANAGER/FUNDER.**

(b) "NET EARNINGS" is defined as the GROSS trading profit minus all applicable bank fees, transaction expenses, and legal expenses associated with all funding/trading platform transactions and distribution transactions under Transaction Code XXXXXXX.

(c) The Net Trading Profits (ROI) shall be paid out equally in accordance with the ownership interest as defined in the above sub-paragraph.

DISTRIBUTION SHALL BE:

SOURCE: NICK GORDON

INVESTOR: TO RECEIVE (50 %) PERCENT

AND

ASSET MANAGER/FUNDER: TO RECEIVE (50 %) PERCENT.

(d) The percentage of ownership sharing profit mentioned above does not include any ownership rights in or to **INVESTOR**'s Original Reserved Capital and/or the Trading Capital obtained against such Reserved Capital.

(e) Subject to paragraph 12 hereof, the Reserved Capital shall be returned/blocking released to **INVESTOR**'s full control after as agreed.

4. COMMUNICATIONS

The PARTIES do hereby agree to maintain communication with all banks involved on the Transaction only through **ASSET MANAGER/FUNDER**; and also agree to readily perform all acts necessary for them to maintain control and momentum of the schedule contemplated herein for the exchange of funds and credit instruments.

5. GENERAL

The primary purpose of the Agreement shall be, without limitation, to engage in and complete financial transactions ("Acquisition/Exchange Transactions") to acquire, own, and resell and/or exchange all sorts of bank debenture instruments for a profit, and for the benefit of the PARTIES to this Agreement.

6. TAXES

None of the PARTIES make any representation regarding the tax implication or consequence, if any, of the transaction envisaged by this Agreement, it being clearly understood and agreed by all PARTIES hereto that each, individually and separately, accepts liability for taxes, imports, levies, duties or charges that may be applicable in the performance of their respective duties herein.

7. GOVERNING LAW

(a) This Agreement shall be governed by and construed in accordance with the laws of SWITZERLAND, and the Parties agree to submit to the jurisdiction of it's courts. Any change or modification of this Agreement must be in writing and executed by all of the PARTIES hereto.

(b) This Agreement shall be executed in one or more counterparts and each counterpart shall be considered and original binding agreement whether received

INITIALS: ASSET MANAGER/FUNDER INVESTOR SS

SOURCE: NICK GORDON

by mail, courier, or facsimile transmission, said facsimile document to be considered the original until receipt to the hard copy.

8. TERMS OF THE BUY & SELL TRANSACTION

The parties agree that for each transaction, the parties must accept a Memorandum of Understanding, and each of the PARTIES must provide a mutual written consent to the other. The PARTIES hereby agree that this Agreement is subject to, and all duties, promises, responsibilities and obligations of each PARTY are to be performed strictly in accordance with, the spirit and provisions of the relevant Memorandum of Understanding and related trade both of which are hereby incorporated into this Agreement by this document. The PARTIES agree that the minimum spread acceptable for the Trading activities shall be determined by Trade Desk.

9. AUTHORITY AND SURVIVAL

The PARTIES hereby confirm that each is in full authority and is duly authorized to execute and deliver this Agreement for their respective organization and to be bound by its terms and conditions. Should any portion of this Agreement be ruled unlawful, then that portion shall be null and void, but the remainder of the terms and conditions set forth herein shall remain in full force and effect.

10. NON-CIRCUMVENTION/NON-DISCLOSURE

(a) Standards of the ICC regarding non-circumvention, non-disclosure and *force majeure* shall apply and are deemed to be included herein by reference hereto further delineated, but not limited, as follows :

(b) The PARTIES hereto agree not to circumvent.

Any other parties in any manner whatsoever, whether directly or indirectly through the use of any third party entity shall remain in full force and effect for all future and ongoing trade contracts including renewal of all trade agreements.

(c) This Agreement and earlier drafts of this Agreement shall be kept confidential and are not to be reproduced in any manner whatsoever. Further, this Agreement shall not be given to any third party except those persons directly involved with the closing or the transactions herein contemplated.

No signatory party or related parties (direct or indirect) herein will attempt to deal with in any way, or solicit the source or client of the other, at any time or any manner, without the prior written consent of the other party. Information to the subject transaction contemplated including all individual names, telephone numbers and other information are to remain confidential contact, and each party hereto expressly prohibits the other from releasing any personal information to third parties.

INITIALS: ASSET MANAGER/FUNDER INVESTOR SS

SOURCE: NICK GORDON

11. LEGAL AND BINDING

Under penalty of perjury, the PARTIES do hereby deem this a legal and binding Agreement for transactions described above. This Agreement applies regardless of whether banks or amounts of invested capital stated in this Agreement change. Mutual written consent must be provided if the above changes should occur.

12. TERM; TERMINATION

This Agreement shall remain in full force and effect for all future and ongoing trade contracts including renewal of all trade agreements.

Notwithstanding anything to the contrary in this Agreement, **INVESTOR** shall have the right to terminate this Agreement by written notice given to **ASSET MANAGER/FUNDER** not less than five (5) days of the following occurrence:

(a) Trading does not commence within 7 to 10 International Banking days following the delivery by Blocking of the Reserved Capital in the form of US Treasury Check(s).

13. ARBITRATION

If any dispute arises between the PARTIES hereto, they shall first attempt to settle it by amiable discussion. If the dispute persists, it shall be arbitrated under the rules of the International Chamber Of Commerce rules of Arbitration. Arbitration shall take place in Geneva, Switzerland. The decision shall be final and binding, and may be filed for judgment in any court of competent jurisdiction.

14. MODIFICATION

Modifications, changes or amendments to this Agreement shall be effective only at such time as they are reduced to writing and agreed upon by each and every party hereto. There shall be no deviation in procedures once this Agreement is signed and the transactions commence.

15. ASSIGNMENT

INVESTOR agrees that **ASSET MANAGER/FUNDER** may assign this agreement via Power of Attorney dated August 16th, 2011 issued from **INVESTOR** to the designated legal representative to secure credit and or funding for the investment purpose of this contract. Investor agrees to allow the **ASSET MANAGER/FUNDER** to engage adore-mentioned asset(s) referencing this agreement, on behalf of the **INVESTOR** with Buyer(s) and Seller(s) of bank instruments, Credit or Loan Provider(s), Trader(s) and Funder(s) on behalf of **INVESTOR** and or associates of the Investor as it pertains to this asset and or agreement only. **INVESTOR** agrees that **ASSET MANAGER/FUNDER** may act without the express written permission of the **INVESTOR**.

INITIALS: ASSET MANAGER/FUNDER INVESTOR SS

SOURCE: NICK GORDON

16. FACSIMILE TRANSMISSION OF AGREEMENT

A duly executed facsimile copy of this Agreement shall be demand an original, binding and enforceable Agreement in every respect.

17. ENTIRE AGREEMENT

(a) The PARTIES hereto certify, warrant and confirm that they have each read the Agreement in its entirety and fully understand the intent and meaning as contained herein including any appendix attached, and agree that successors, executives, associates, affiliates or assigns of their or any affiliates organizations now in existence or hereafter named shall be bound hereto and shall abide by the terms and conditions of this Agreement.

(b) This Agreement is binding upon the undersigned PARTIES, and cannot be altered or amended except by signed agreement on the amendment by the PARTIES hereto.

ASSET MANAGER/FUNDER

FOR AN ON BEHALF OF
NEW FOUNTAIN DEVELOPMENT LTD

[redacted]

Name: [redacted]
Title: Managing Director
Passport: 449714883
Issue Date: 8 Sept 2008
Expiry Date: 18 Sept 2018
This 19TH. Day of August, 2011

AND

INVESTOR

FOR AN ON BEHALF OF
SKB PARTNERS LLC

Scott A. Smith

Name: Scott A. Smith
Title: Senior Managing Partner
Passport: 402829477
Issue Date: 20 January 2004
Expiry Date: 19 January 2014
This 19TH. Day of August, 2011

INITIALS: ASSET MANAGER/FUNDER INVESTOR SS

SOURCE: NICK GORDON

APPENDIX "A" FEDERAL RESERVE MEMO

SCREENING AND BLOCKING CODES

TBD

INITIALS: ASSET MANAGER/FUNDER INVESTOR SS

SOURCE: NICK GORDON

OPERATING AGREEMENT OF

MAVERICK INVESTMENTS, LLC

A ARKANSAS LIMITED LIABILITY COMPANY

FOR THE INVESTMENT IN:

VILLAGE HOME CARE
OF THE PALM BEACHES

A FLORIDA LIMITED LIABILITY COMPANY

EFFECTIVE AS OF JANUARY 1, 2006

THE INTERESTS DESCRIBED AND REPRESENTED BY THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT" OR ANY APPLICABLE STATE SECURITIES LAWS ("STATE ACTS") AND ARE RESTRICTED SECURITIES AS THAT TERM IS DEFINED IN RULE 144 UNDER THE ACT. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR QUALIFICATION UNDER THE ACT AND APPLICABLE STATE ACTS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE ACT AND APPLICABLE STATE ACTS, THE AVAILABILITY OF WHICH IS TO BE ESTABLISHED TO THE SATISFACTION OF THE COMPANY.

EXHIBIT
"D"

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THIS Agreement is made and entered into this 29 day of March, 2006 by and among the Company and each of the Members whose signatures appear on the signature page hereof (the "Initial Members"). In consideration of the mutual covenants herein contained and for other good and valuable consideration, the Members and the Company (and each person who subsequently becomes an Equity Owner) hereby agree as follows:

ARTICLE 1. DEFINITIONS

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

1.1 **Act.** Act shall mean the Arkansas Limited Liability Company Act, Article 608, Arkansas Statute, as it may be amended from time to time.

1.2 **Adjusted Capital Contributions.** Adjusted Capital Contributions shall mean an amount equal to such Equity Owner's Capital Contributions, if any, pursuant to Sections 8.1 and 8.2, less any Distributions made to such Equity Owner pursuant to Section 9.4.

1.3 **Affiliate.** Affiliate shall mean, with respect to any Person: (i) any Person directly or indirectly controlling, controlled by, or under common control with such Person, (ii) any Person owning or controlling 10% or more of the outstanding voting interests of such Person, (iii) any officer, director, or general partner of such Person, or (iv) any Person who is an officer, director, general partner, trustee, or holder of 10% or more of the voting interests of any Person described in clauses (i) through (iii) of this sentence. For purposes of this definition, the term "controls," "is "controlled by," or "is under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

1.4 **Agreement.** Agreement shall mean this Operating Agreement as originally executed and as amended from time to time.

1.5 **Articles of Organization.** The Articles of Organization of the Company as filed with the Secretary of State as the same may be amended from time to time.

1.6 **Capital Account.** Capital Account as of any given date shall mean the Capital Account of each Equity Owner as described in Article 8 and maintained to such date in accordance with this Agreement.

1.7 **Capital Contribution.** Capital Contribution shall mean any contribution to the capital of the Company in cash or property by an Equity Owner whenever made. "Initial Capital Contribution" shall mean the initial contribution to the capital of the Company pursuant to this Agreement.

1.8 **Code.** Code shall mean the Internal Revenue Code of 1986, as amended from time to time.

1.9 **Company.** Company shall mean Maverick Investments, LLC.

1.10 **Company Property.** All assets (real or personal, tangible or intangible, including cash) of the Company.

1.11 **Deficit Capital Account.** Deficit Capital Account shall mean with respect to any Equity Owner, the deficit balance, if any, in such Equity Owner's Capital Account as of the end of the Fiscal Year, after giving effect to the following adjustments:

(a) credit to such Capital Account the amount, if any, which such Equity Owner is obligated to restore under Section 1.704-1(b)(2)(ii)(c) of the Regulations, as

well as any addition thereto pursuant to the next to last sentence of Sections 1.704-2(g)(1) and (i)(5) of the Regulations, after taking into account thereunder any changes during such year in partnership minimum gain as determined in accordance with Section 1.704-2(d) of the Regulations ("Company Minimum Gain") and in any partner nonrecourse debt minimum as determined under Section 1.704-2(i)(3) of the Regulations ("Member Minimum Gain"); and

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

This definition of Deficit Capital Account is intended to comply with the provisions of Regulation §§ 1.704-1(b)(2)(ii)(d) and 1.704-2, and shall be interpreted consistently with those provisions.

1.12 **Depreciation.** 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 Managers.

1.13 **Distributable Cash.** All cash, whether revenues or other funds received by the Company, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred incident to the normal operation of the Company's business; and (iii) Reserves.

1.14 **Distribution.** Any Transfer of Company Property from the Company to or for the benefit of an Equity Owner by reason of such Equity Owner's ownership of an Economic Interest.

1.15 **Economic Interest.** An Equity Owner's share of one or more of the Profits, Losses and Distributions pursuant to this Agreement and the Act, but shall not include any right to participate in the management or affairs of the Company, including, the right to vote on, consent to or otherwise participate in any decision of the Members or Managers.

1.16 **Economic Interest Owner.** The owner of an Economic Interest who is not a Member.

1.17 **Entity.** Any general partnership (including a limited liability partnership), limited partnership (including a limited liability limited partnership), limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

1.18 **Equity Owner.** An Economic Interest Owner or a Member.

1.19 **Fiscal Year.** The taxable year of the Company as determined under the Code.

1.20 **Gift.** A gift, bequest, or other transfer for no consideration, whether or not by operation of law, except in the case of bankruptcy.

1.21 **Gifting Equity Owner.** Any Equity Owner who gifts, bequeaths or otherwise transfers for no consideration (by operation of law or otherwise, except with respect to bankruptcy) all or any part of its Ownership Interest.

1.22 **Gross Asset Value.** 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 an Equity Owner to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Managers, provided that the initial Gross Asset Values of the assets contributed to the Company pursuant to Section 8.1 hereof shall be as set forth in Exhibit 8.1, and provided further that, if the contributing Member is a Manager, the determination of the fair market value of any other contributed asset shall require the consent of the other Members owning a Majority Interest (determined without regard to the Voting Interest of such contributing Member);

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Managers as of the following times: (i) the acquisition of an additional interest by any new or Existing Equity Owner in exchange for more than a de minimis contribution of property (including money); (ii) the Distribution by the Company to an Equity Owner of more than a de minimis amount of property as consideration for an Ownership Interest; and (iii) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (i) and (ii) above shall be made only if the Managers reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Equity Owners in the Company;

(c) The Gross Asset Value of any Company asset Distributed to any Equity Owner shall be adjusted to equal the gross fair market value of such asset on the date of Distribution as reasonably determined by the distributee and the Managers, provided that, if the distributee is a Manager, the determination of the fair market value of the Distributed asset shall require the consent of the other Members owning a Majority Interest (determined without regard to the Voting Interest of the distributee Member); 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 Section 734(b) or Section 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation §1.704-1(b)(2)(iv)(m) and Section 8.3 and subparagraph (e) under the definition of Profits and Losses; provided, however, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (d) of this definition to the extent that the Managers reasonably determine that an adjustment pursuant to subparagraph (b) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraph (a), (b) or (d) of this definition, then such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

1.23 **Majority Interest.** One or more Voting Interests of Members which taken together exceed 50% of the aggregate of all Voting Interests.

1.24 **Managers.** Managers shall mean one or more managers designated as provided in Section 5.2.

1.25 **Member.** Each of the parties who executes a counterpart of this Agreement as a Member (an **"Initial Member"**) and each of the parties who may hereafter become a Member. If a Person is a Member immediately prior to the purchase or other acquisition by such Person of an Economic Interest, such Person shall have all of the rights of a Member with respect to such purchased or otherwise acquired Ownership Interest, as the case may be.

1.26 **Membership Interest.** A Member's entire interest in the Company, including such Member's Economic Interest and such other rights and privileges that the Member may enjoy by being a Member.

1.27 **Ownership Interest.** Ownership interest shall mean:

(a) in the case of a Member, the Member's Membership Interest; and

(b) in the case of an Economic Interest Owner, the Economic Interest Owner's Economic Interest.

1.28 **Person.** Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.

1.29 **Profits and Losses.** Profits and Losses shall mean for each Fiscal Year of the Company an amount equal to the Company's net taxable income or loss for such year as determined for federal income tax purposes (including separately stated items) in accordance with the accounting method and rules used by the Company and in accordance with Section 703 of the Code with the following adjustments:

(a) Any items of income, gain, loss and deduction allocated to Equity Owners pursuant to Sections 9.2, 9.3 or 9.13 shall not be taken into account in computing Profits or Losses;

(b) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses (pursuant to this definition) shall be added to such taxable income or loss;

(c) Any expenditure of the Company described in Section 705(a)(2)(B) of the Code and not otherwise taken into account in computing Profits and Losses (pursuant to this definition) shall be subtracted from such taxable income or loss;

(d) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraphs (b) or (c) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits and Losses;

(e) Gain or loss resulting from any disposition of any Company asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed with reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value;

(f) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year; and

(g) To the extent an adjustment to the adjusted tax basis of any Company

asset pursuant to Section 734(b) or Section 743(b) of the Code is required pursuant to Section 1.704-1(b)(2)(iv)(m)(4) of the Regulations to be taken into account in determining Capital Accounts as a result of a Distribution other than in liquidation of an Ownership Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses.

1.30 **Regulations.** Regulations shall include proposed, temporary and final regulations promulgated under the Code in effect as of the date of filing the Articles of Organization and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.

1.31 **Reorganization.** Reorganization shall mean the merger or conversion of the Company, or a sale or other disposition of assets of the Company, or sale or other disposition of Ownership Interests, or other transaction pursuant to which a Person or Persons acquire all or substantially all of the assets of, or Ownership Interests in, the Company in a single or series of related transactions, including without limitation, a merger or conversion of the Company into a corporation or other entity, whether or not such corporation or other entity has the same owners as the Partnership and whether or not additional capital is contributed to such corporation or other entity; provided, however, that a Reorganization shall not include the merger or conversion of the Company into a general partnership which is not a limited liability partnership.

1.32 **Reserves.** Reserves shall mean, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts reasonably deemed sufficient by the Managers for working capital and for payment of taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

1.33 **Sale or Sell.** A sale, assignment, exchange, or other transfer for consideration, pledge, hypothecation, or grant of a security interest.

1.34 **Secretary of State.** The secretary of state of Arkansas.

1.35 **Selling Equity Owner.** Any Equity Owner which sells, assigns, or otherwise transfers for consideration all or any portion of its Membership Interest or Economic Interest.

1.36 **Sharing Ratio.** The ratio used throughout this Agreement to determine the sharing of certain items. The Initial Sharing Ratio shall be:

Member	Sharing Ratio
Scott Smith	50%
Firenze Enterprises, LLC	50%

The sharing ratio shall be adjusted from time to time as provided in this Agreement.

1.37 **State.** State shall mean the State of Arkansas.

1.38 **Transfer.** Transfer shall mean any Sale or Gift.

1.39 **Transferring Equity Owner.** Transferring Equity Owner shall mean a Selling Equity Owner and a Gifting Equity Owner.

1.40 **Two-Thirds Interest.** Two-thirds Interest shall mean one or more Voting Interests of Members which taken together exceed 66.67% of the aggregate of all Voting Interests.

1.41 **Unrecovered Losses.** The Interests used to determine the Members' respective voting rights on certain matters as provided in this Agreement. The Initial Voting Interest is:

Member	Voting Interest
Scott Smith	50%
[redacted]	50%

The voting interest shall be adjusted from time to time as provided in this Agreement.

ARTICLE 2. FORMATION OF COMPANY

2.1 **Formation.** On July 16, 2004, Scott Smith organized a limited liability company pursuant to the Act by executing and delivering articles of organization to the Secretary of State in accordance with and pursuant to the Act. The Company and the Members hereby forever discharge the organizer, and the organizer shall be indemnified by the Company and the Member from and against, any expense or liability actually incurred by the organizer by reason of having been the organizer of the Company.

2.2 **Name.** The name of the Company is Maverick Investments, LLC.

2.3 **Principal Place of Business.** The principal place of business of the Company shall be 2411 Defoe Circle, Bryant, Arkansas 72022. The Company may locate its places of business and registered office at any other place or places as the Managers may from time to time deem advisable.

2.4 **Registered Office and Registered Agent.** The Company's initial registered office and the name of the registered agent at such address shall be as set forth in the Articles. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Secretary of State pursuant to the Act.

2.5 **Term.** The Company shall continue in existence until it terminates in accordance with the provisions of this Agreement or the Act.

ARTICLE 3. BUSINESS OF COMPANY

3.1 **Permitted Business.** The business of the Company shall be:

(a) To provide an equity investment to a home health services company, other services or products related to providing home health services and to accomplish any lawful business whatsoever, or which shall at any time appear conducive to or expedient for the protection or benefit of the Company and its assets

(b) To exercise all other powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Act.

(c) To engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

ARTICLE 4. NAMES AND ADDRESSES OF EQUITY OWNERS

The names and addresses of the Initial Members are as follows:

NAME	ADDRESS
Scott Smith	c/o Scott Smith 2411 Defoe Circle Bryant, Arkansas 72022
[redacted]	[redacted]

The names and addresses of other Equity Owners shall be maintained as provided under Section 13.1.

ARTICLE 5. RIGHTS AND DUTIES OF MANAGERS

5.1 **Management.** The business and affairs of the Company shall be managed by its Managers. Except for situations in which the approval of the Members is expressly required by this Agreement or by nonwaivable provisions of applicable law, the Managers shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts and activities customary or incident to the management of the Company's business. At any time when there are more than the original two Managers, the Managers may take any action permitted upon a majority vote of the Managers, unless the action is expressly approved in another means pursuant to this Agreement or the Act or unless a majority of the Managers determine in a writing provided to the remaining Manager(s) prior to such Manager(s) taking a specified action that the approval of less than a Majority of the Managers is required in order to take such action. Unless authorized to do so by this Agreement or by the Managers, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose.

5.2 **Number, Tenure and Qualifications.** The Company shall initially have two (2) Managers who shall be Scott Smith and David Young. The number of Managers shall be fixed from time to time by the affirmative vote of Members holding at least a Majority Interest, but in no instance shall there be less than one Manager. Each Manager shall hold office until such Manager resigns pursuant to Section 5.9 or is removed pursuant to Section 5.10. Managers shall be appointed by the affirmative vote of Members holding at least a Majority Interest. Managers need not be residents of the State or Members.

5.3 **Certain Powers of Managers.** Without limiting the generality of Section 5.1 but subject to the limitations of Section 5.4, the Managers shall have power and authority, on behalf

of the Company:

(a) To review any and all business plans and/or investment opportunities which are presented to the Managers;

(b) To purchase equity positions of any kind or to make loans to other companies to acquire ownership interests in said companies or to earn interest income from said companies for the benefit of the Company and its Members, upon approval of at least an 80% vote of the Board of Directors;

(c) To take any action necessary to protect the Company's property and business;

(d) To hold and own any Company real and/or personal properties in the name of the Company;

(e) To invest any Company funds (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper or other investments as described in Section 5.3(b), above, upon approval of at least an 80% vote of the Board of Directors;

(f) To execute on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of Company Property; assignments; bills of sale; leases; partnership agreements; operating (or limited liability company) agreements of other limited liability companies; and any other instruments or documents necessary, in the reasonable opinion of the Managers, to the conduct of the business of the Company;

(g) To employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds;

(h) To enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Managers may approve;

(i) To execute and file such other instruments, documents and certificates which may from time to time be required by the laws of the State or any other jurisdiction in which the Company shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement, continue and defend the valid existence of the Company;

(j) To cause the Company to be a party to a Reorganization; and

(k) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

(l) To hire and fire employees of the Company; to set reasonable compensation for such employees; and to change such compensation in the discretion of the Managers.

5.4 **Limitations on Authority.** Notwithstanding any other provision of this Agreement, the Managers shall not cause or commit the Company to do any of the following without the express written consent of Members holding a Two-Thirds Interest:

(a) Sell or otherwise dispose all or substantially all of the Company Property or any Company Property other than in the ordinary course of business;

(b) Guaranty or become surety for the obligations of any Person; or

(c) Cause the Company to commence a voluntary case as debtor under the United States Bankruptcy Code.

5.5 **Liability for Certain Acts.**

(a) The Managers do not, in any way, guarantee the return of the Equity Owners' Capital Contributions or a profit for the Equity Owners from the operations of the Company.

(b) The Managers shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member (or successor thereto), except to the extent, if any, that the loss or damage shall have been the result of gross negligence, fraud, deceit, willful misconduct, or breach of this Agreement.

5.6 **Managers and Members Have No Exclusive Duty to Company.** The Managers and Members shall have no exclusive duty to act on behalf of the Company. Each Manager and Member may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Manager shall have any right, by virtue of this Agreement, to share or participate in any other investments or activities of any other Manager or Member. Neither any Manager nor any Equity Owner shall incur any liability to the Company or to any of the Equity Owners as a result of engaging in any other business or venture. No Manager or Member shall take action with or participate in any other company or venture, in any manner, that could, directly or indirectly, harm the Company or any of the Company's investments.

5.7 **Bank Accounts.** The Managers may from time to time open bank accounts in the name of the Company, and the Managers shall be the sole signatory thereon, unless the Managers determine otherwise.

5.8 **Indemnity of the Managers, Employees and Other Agents.**

(a) The Company shall indemnify each Manager and make advances for expenses to the maximum extent permitted under the Act, except to the extent the claim for which indemnification is sought results from an act or omission for which the Manager may be held liable to the Company or a Member under Section 5.5(b). The Company shall indemnify its employees and other agents who are not Managers to the fullest extent permitted by law.

(b) Expenses (including legal fees and expenses) incurred by a Manager in defending any claim, demand, action, suit or proceeding subject to subsection (a) above shall be paid by the Company in advance of the final disposition of such claim, demand, action, suit or proceeding upon receipt of an undertaking (which need not be secured) by or on behalf of the Manager to repay such amount if it shall ultimately be finally determined by a court of competent jurisdiction and not subject to appeal, that the Manager is not entitled to be indemnified by the Company as authorized hereunder.

5.9 **Resignation.** Any Manager may resign at any time by giving written notice to the Members. The resignation of any Manager shall take effect upon receipt of notice thereof or

at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also an Equity Owner shall not affect the Manager's rights as an Equity Owner.

5.10 **Removal.** At a meeting called expressly for that purpose, all or any lesser number of Managers may be removed at any time for gross negligence, fraud, deceit or intentional misconduct which had a material adverse effect on the Company, or if the Manager is adjudicated incompetent by a Court of competent jurisdiction by the affirmative vote of Members holding a Majority Interest determined without regard to any Voting Interest held by the Manager or an Affiliate of the Manager. A Manager may be removed for any reason set forth in this paragraph at any time by Members holding a Majority Interest. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

5.11 **Vacancies.** Any vacancy occurring for any reason in the number of Managers shall be filled by the affirmative vote of Members holding a Majority Interest (determined without regard to any Voting Interest owned by a Manager who was removed pursuant to Section 5.10 during the preceding 24-month period). Any Manager's position to be filled by reason of an increase in the number of Managers shall be filled by the affirmative vote of a Majority Interest.

5.12 **Compensation, Reimbursement, Organization Expenses.**

(a) The compensation of the Managers shall be fixed from time to time by an affirmative vote of Members holding at least a Two-Thirds Interest, and no Manager shall be prevented from receiving such compensation by reason of the fact that he is also a Member. Upon the submission of appropriate documentation each Member shall be reimbursed by the Company for reasonable out-of-pocket expenses incurred on behalf, or at the request, of the Company.

(b) The Company shall be required to reimburse Scott Smith for expenses reasonably incurred by him in connection with the formation, organization and capitalization of the Company, including the legal fees incurred in connection with negotiating and drafting this Agreement.

(c) The Managers shall cause the Company to make an appropriate election to treat expenses incurred by the Company in connection with the formation and organization of the company to be amortized under the 60-month period beginning with the month in which the Company begins business to the extent that such expenses constitute "organizational expenses" of the Company within the meaning of Code Section 709(b)(2).

5.13 **Right To Rely on the Managers.**

(a) Any Person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by any Manager as to:

(i) The identity of any Manager or Equity Owner;

(ii) The existence or nonexistence of any fact or facts which constitute a condition precedent to acts on behalf of the Company by any Manager or which

are in any other manner germane to the affairs of the Company;

(iii) The Persons who are authorized to execute and deliver any instrument or document of the Company; or

(b) Any act or failure to act by the Company or any other matter whatsoever involving the Company or any Equity Owner.

ARTICLE 6. RIGHTS AND OBLIGATIONS OF EQUITY OWNERS

6.1 **Limitation of Liability.** Except as otherwise provided by the nonwaivable provisions of the Act and by this Agreement, no Equity Owner shall be liable for an obligation of the Company solely by reason of being or acting as an Equity Owner.

6.2 **List of Equity Owners.** Upon written request of any Member made in good faith and for a purpose reasonably related to the Member's rights as Member under this Agreement (which reason shall be set forth in the written request), the Manager shall provide a list showing the names, addresses and Ownership Interests of all Equity Owners. Economic Interest Owners shall have no rights to information under this Section 6.2.

6.3 **Equity Owners Have No Agency Authority.** Except as expressly provided in this Agreement, the Equity Owners (in their capacity as Equity Owners) shall have no agency authority on behalf of the Company.

6.4 **Company Books.** In accordance with Section 9.10 herein, the Managers shall maintain and preserve, during the term of the Company, and for five years after dissolution, all accounts, books, and other relevant Company documents. Upon reasonable request, each Member shall have the right, during ordinary business hours, to inspect and copy such Company documents at the requesting Member's expense.

6.5 **Priority and Return of Capital.** Except as may be expressly provided in Article 9, no Equity Owner shall have priority over any other Equity Owner, either as to the return of Capital Contributions or as to Profits, Losses or Distributions; provided, however, that this Section 6.5 shall not apply to loans (as distinguished from Capital Contributions) which an Equity Owner has made to the Company.

ARTICLE 7. ACTIONS OF MEMBERS

Unless otherwise required in this Agreement, actions and consents of the Members may be communicated or reflected orally, electronically or in writing, and no action need be taken at a formal meeting. Members may, but are not required to, meet from time to time on such notice, if any, as the Member convening the meeting chooses to give. Any consent required to be in writing may be evidenced by separate written counterparts. Any action of the Members shall be effective when a sufficient number of Members to take such action communicate their consent to the action to the Managers.

MEETINGS OF MEMBERS

7.1 **No Required Meetings.** The Members may, but shall not be required to hold any annual, periodic or other formal meetings. However, meetings of the Members may be called by any Manager, or by any Member or Members holding at least 10% of the Voting Interests.

7.2 **Place of Meetings.** The Member or Members calling the meeting may designate any place within the State as the place of meeting for any meeting of the Members; and Members holding a Majority Interest may designate any place outside the State as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the Company in the State.

7.3 **Notice of Meetings.** Except as provided in Section 7.4, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than twenty-four (24) hours before the date of the meeting, either personally, by mail, or by electronic mail by or at the direction of the Member or Members calling the meeting, to each Member entitled to vote at such meeting.

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

7.5 **Telephonic Meetings.** Any Member who is unable to physically attend a meeting of the Member may participate in such meeting by conference telephone call.

7.6 **Record Date.** For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any Distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such Distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section 7.6, such determination shall apply to any adjournment thereof.

7.7 **Quorum.** Members holding at least a Majority Interest, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Voting Interests so represented may adjourn the meeting from time to time for a period not to exceed 60 days without further notice. However, if the adjournment is for more than 60 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Voting Interests whose absence would cause less than a quorum.

7.8 **Manner of Acting.** If a quorum is present, the affirmative vote of Members holding a Majority Interest shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, by the Articles of Organization, or by this Agreement. Unless otherwise expressly provided herein, Members who have an interest (economic or otherwise) in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon any such matter and their Voting Interest, vote or consent, as the case may be, shall be counted in the determination of whether the requisite matter is approved by the Members.

7.9 **Proxies.** At all meetings of Members, a Member who is qualified to vote may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Managers before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

7.10 **Action by Members Without a Meeting.** Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents or approvals describing the action taken and signed by Members holding at least a Majority Interest. Members will respond in writing to a proposed Consent Action delivered by the Managers within twenty-four (24) hours by facsimile, electronic mail or overnight delivery. Action taken under this Section 7.10 is effective when Members with the at least a Majority Interest, have signed the consent or approval, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

7.11 **Waiver of Notice.** When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

ARTICLE 8. CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS

8.1 **Members' Capital Contributions.** After each of the parties has executed this Agreement and delivered an executed copy of same to the Managers, each Equity Owner shall contribute such amounts as are set forth in Exhibit 8.1 hereto as its share of the Initial Capital Contribution.

8.2 **Additional Contributions.** Except as set forth in Section 8.1, no Equity Owner shall be required to make any Capital Contributions. To the extent unanimously approved by the Managers, from time to time, the Equity Owners may be permitted to make additional Capital Contributions if and to the extent they so desire, and if the Managers determine that such additional Capital Contributions are necessary or appropriate in connection with the conduct of the Company's business (including without limitation, expansion or diversification). In such event, the Equity Owners shall have the opportunity (but not the obligation) to participate in such additional Capital Contributions as the Members shall unanimously agree. If there is a

unanimous vote of all Members, the income and/or profits of the Company for a given quarter or year may be reinvested into the Company instead of being distributed to the Members. If such a decision is made, the reinvested profits or gains will be treated as Additional Contributions by the Members in their pro-rata share. In addition, if such a decision is made, all Members shall still receive the appropriate documentation under the Code each Member to properly report their Federal and/or State income tax burden as the amounts will still be taxable to each Member under the Code. The Company will not make any payments for any Member's tax liability due to a reinvestment of income or profit.

8.3 **Capital Accounts.**

(a) A separate Capital Account shall be maintained for each Equity Owner. Each Equity Owner's Capital Account shall be increased by: (1) the amount of money contributed by such Equity Owner to the Company; (2) the fair market value of property contributed by such Equity Owner to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code); (3) allocations to such Equity Owner of Profits; and (4) any items in the nature of income and gain which are specially allocated to the Equity Owner pursuant to Sections 9.2 and 9.3. Each Equity Owner's Capital Account shall be decreased by: (1) the amount of money Distributed to such Equity Owner by the Company; (2) the fair market value of property Distributed to such Equity Owner by the Company (net of liabilities secured by such Distributed property that such Equity Owner is considered to assume or take subject to under Section 752 of the Code); (3) any items in the nature of deduction and loss that are specially allocated to the Equity Owner pursuant to Sections 9.2 and 9.3; and (4) allocations to such Equity Owner of Losses.

(b) Without limiting the other rights and duties of a transferee of an Ownership Interest pursuant to this Operating Agreement, in the event of a permitted sale or exchange of an Ownership Interest in the Company, (1) the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Ownership Interest in accordance with Section 1.704-1(b)(2)(iv) of the Regulations; and (2) the transferee shall be treated as the transferor for purposes of allocations and distributions pursuant to Article 9 to the extent that such allocations and distributions relate to the transferred Ownership Interest.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 8.3 is intended to comply with the requirements of Section 704(b) of the Code and the Regulations promulgated thereunder. If in the opinion of the Company's accountants the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 8.3 should be modified in order to comply with Section 704(b) of the Code and the Regulations thereunder, then, notwithstanding anything to the contrary contained in the preceding provisions of this Section 8.3, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Equity Owners.

(d) Upon liquidation of the Company, liquidating Distributions shall be made in accordance with the positive Capital Account balances of the Equity Owners, as determined after taking into account all Capital Account adjustments for the Company's

taxable year during which the liquidation occurs. Liquidation proceeds shall be paid in accordance with Section 12.3. The Company may offset damages for breach of this Agreement by any Equity Owner whose interest is liquidated (either upon the withdrawal of the Equity Owner or the liquidation of the Company) against the amount otherwise Distributable to such Equity Owner. Subject to Section 8.1 and 8.2, no Equity Owner shall have any obligation to restore all or any portion of a deficit balance in such Equity Owner's Capital Account.

8.4 **Withdrawal or Reduction of Equity Owners' Contributions to Capital.**

(a) An Equity Owner shall not receive a Distribution of any part of its Capital Contribution to the extent such Distribution would violate Section 9.5.

(b) An Equity Owner, irrespective of the nature of its Capital Contribution, does not have the right to demand and receive property other than cash in return for its Capital Contribution.

8.5 **Remedies for Nonpayment of Capital Contributions.** Failure of any Equity Owner to make full and timely payment to the Company of any Capital Contribution properly assessed hereunder shall constitute a breach of this Agreement (and any such Equity Owner shall be hereinafter referred to as a "Defaulting Equity Owner"). Upon such a breach, the Managers shall decide whether to grant an extension of time to the defaulting Member or to return to the Member the amount which that Member had previously contributed to the Company less a ten percent (10%) accounting and legal fee for the cancellation of the Members interest.

ARTICLE 9. ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS AND REPORTS

9.1 **Allocations of Profits and Losses from Operations.** Except as provided in Sections 9.2 and 9.3, the Profits and Losses for each Fiscal Year shall be allocated among the Equity Owners in accordance with their relative Sharing Ratios.

9.2 **Special Allocations to Capital Accounts.** Notwithstanding Section 9.1 hereof:

(a) In the event that any Equity Owner unexpectedly receives any adjustments, allocations or Distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Regulations, which create or increase a Deficit Capital Account of such Equity Owner, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially allocated to such Equity Owner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Deficit Capital Account so created as quickly as possible. It is the intent that this Section 9.2(a) be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Regulations.

(b) The Losses allocated pursuant to Section 9.1 hereof shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have a Deficit Capital Account at the end of any Fiscal Year. In the event that some, but not all, of the Members would have Deficit Capital Accounts as a consequence of an

allocation of Losses pursuant to Section 9.1 hereof, the limitation set forth in the preceding sentence shall be applied on a Member by Member basis so as to allocate the maximum permissible Losses to each Member under Section 1.704-1(b)(2)(ii)(d) of the Regulations. All Losses in excess of the limitation set forth in this Section 9.2(b) shall be allocated to the Members in proportion to their respective positive Capital Account balances, if any, and thereafter to the Members in accordance with their interests in the Company as determined by the Managers in their reasonable discretion. In the event that any Equity Owner would have a Deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of any amount, if any, that such Equity Owner is obligated to restore to the Company under Section 1.704-1(b)(2)(ii)(c) of the Regulations and such Equity Owner's share of Company Minimum Gain as defined in Section 1.704-2(g)(1) of the Regulations (which is also treated as an obligation to restore in accordance with Section 1.704-1(b)(2)(ii)(d) of the Regulations), the Capital Account of such Equity Owner shall be specially credited with items of Company income (including gross income) and gain in the amount of such excess as quickly as possible.

(c) Notwithstanding any other provision of this Section 9.2, if there is a net decrease in the Company Minimum Gain as during a Fiscal Year, then the Capital Accounts of each Equity Owner shall be allocated items of income (including gross income) and gain for such Fiscal Year (and if necessary for subsequent Fiscal Years) equal to that Equity Owner's share of the net decrease in Company Minimum Gain. This Section 9.2(c) is intended to comply with the minimum gain chargeback requirement of Section 1.704-2 of the Regulations and shall be interpreted consistently therewith. If in any Fiscal Year that the Company has a net decrease in the Company Minimum Gain, if the minimum gain chargeback requirement would cause a distortion in the economic arrangement among the Equity Owners and it is not expected that the Company will have sufficient other income to correct that distortion, the Managers may in their discretion (and shall, if requested to do so by a Member) seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Section 1.704-2(f)(4) of the Regulations.

(d) Notwithstanding any other provision of this Section 9.2 except Section 9.2(c), if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Company Fiscal Year, each Member who has a share of the Member Minimum Gain as of the beginning of the Fiscal Year shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) equal to such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt. A Member's share of the net decrease in Member Minimum Gain shall be determined in accordance with Section 1.704-2(i)(4) of the Regulations; provided, however, that a Member shall not be subject to this provision to the extent that an exception is provided by Section 1.704-2(i)(4) of the Regulations and any Revenue Rulings issued with respect thereto. Any Member Minimum Gain allocated pursuant to this provision shall consist of first, gains recognized from the disposition of Company property subject to the Member Nonrecourse Debt, and, second, if necessary, a pro rata portion of the Company's other items of income or gain (including gross income) for that Fiscal Year. This Section 9.2(d) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the

Regulations and shall be interpreted consistently therewith.

(e) Items of Company loss, deduction and expenditures described in Section 705(a)(2)(B) of the Code which are attributable to any nonrecourse debt of the Company and are characterized as partner nonrecourse deductions under Section 1.704-2(i) of the Regulations shall be allocated to the Equity Owners' Capital Accounts in accordance with said Section 1.704-2(i) of the Regulations.

(f) Beginning in the first taxable year in which there are allocations of "nonrecourse deductions" (as described in Section 1.704-2(b) of the Regulations), such deductions shall be allocated to the Equity Owners in the same manner as Loss is allocated for such period.

(g) To the extent that an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) or 743(b) of the Code is required pursuant to Section 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4) of the Regulations, to be taken into account in determining Capital Accounts as the result of a Distribution to an Equity Owner in complete liquidation of its Ownership Interest, the amount of such adjustment to 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 Equity Owners in accordance with their interests in the Company in the event Section 1.704-1(b)(2)(iv)(m)(2) of the Regulations applies, or to the Equity Owner to whom such Distribution was made in the event Section 1.704-1(b)(2)(iv)(m)(4) of the Regulations applies.

(h) Any income, gain, loss or deduction realized by the Company as a direct or indirect result of the issuance of an interest in the Company by the Company to an Equity Owner (the "Issuance Items") shall be allocated among the Equity Owners so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Equity Owner, shall be equal to the net amount that would have been allocated to each such Equity Owner if the Issuance Items had not been realized.

9.3 **Credit or Charge to Capital Accounts.** Any credit or charge to the Capital Accounts of the Equity Owners pursuant to Sections 9.2(a), 9.2(b), 9.2(c), 9.2(d), 9.2(e), 9.2(f) and 9.2(g) ("Regulatory Allocations") hereof shall be taken into account in computing subsequent allocations of Profits and Losses pursuant to Section 9.1, so that the net amount of any items charged or credited to Capital Accounts pursuant to Section 9.1 and the Regulatory Allocations hereof and this Section 9.3 shall to the extent possible, be equal to the net amount that would have been allocated to the Capital Account of each Equity Owner pursuant to the provisions of this Article 9 if the special allocations required by the Regulatory Allocations hereof had not occurred.

9.4 **Distributions.** Except as provided in Sections 8.3(d) (with respect to liquidating Distributions) and 9.5 (with respect to limitations on Distributions), the Managers shall Distribute Distributable Cash to the Equity Owners in accordance with their Sharing Ratios. All Distributions which, when made, exceed the recipient Equity Owner's basis in that Equity Owner's Ownership Interest shall be considered advances or drawings against the Equity Owner's Distributive share of taxable income or gain. To the extent it is determined at the end of the Fiscal Year that the recipient Equity Owner has not been allocated taxable income or gain

that equals or exceeds the total of such advances or drawings for such Fiscal Year, such Equity Owner shall be obligated to recontribute any such advances or drawings to the Company. Notwithstanding the foregoing sentence, an Equity Owner will not be required to recontribute such advances or drawings to the extent that, on the last day of the Fiscal Year, such Equity Owner's basis in its Ownership Interest in the Company has increased from the time of such advance or drawing.

9.5 **Limitation Upon Distributions.** No Distribution shall be made if such Distribution would violate the Act.

9.6 **Accounting Principles.** For financial reporting purposes, the Company shall use accounting principles applied on a consistent basis using the accrual method of accounting determined by the Managers, unless the Company is required to use a different method of accounting for federal income tax purposes, in which case that method of accounting shall be the Company's method of accounting.

9.7 **Interest on and Return of Capital Contributions.** No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution, except as otherwise specifically provided for herein.

9.8 **Loans to Company.** Nothing in this Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.

9.9 **Accounting Period.** The Company's accounting period shall be the Fiscal Year.

9.10 **Records and Reports.** At the expense of the Company, the Managers shall maintain records and accounts of all operations and expenditures of the Company. At a minimum the Company shall keep at its principal place of business the following records:

(a) A current list of the full name and last known business, residence, or mailing address of each Equity Owner and Manager, both past and present;

(b) A copy of the Articles of Organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

(c) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the four most recent Fiscal Years;

(d) Copies of the Company's currently effective written Agreement, copies of any writings permitted or required with respect to an Equity Owner's obligation to contribute cash, property or services, and copies of any financial statements of the Company for the three (3) most recent Fiscal Years;

(e) Minutes of every annual, special and court-ordered meeting;

(f) Any written consents obtained from Members for actions taken by Members without a meeting.

9.11 **Returns and Other Elections.** The Managers shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all

other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Equity Owners within a reasonable time after the end of the Fiscal Year. All elections permitted to be made by the Company under federal or state laws shall be made by the Managers in their sole discretion; provided, however, that the Managers shall make any tax election requested by Members owning a Majority Interest.

9.12 **Tax Matters Partner.** Any Manager selected by a vote of the Managers, so long as the Manager so selected is also a Member, is hereby designated the Tax Matters Partner ("TMP") as defined in Section 6231(a)(7) of the Code. The TMP and the other Members shall use their reasonable efforts to comply with the responsibilities outlined in Sections 6221 through 6233 of the Code (including any Regulations promulgated thereunder), and in doing so shall incur no liability to any other Member.

9.13 **Certain Allocations for Income Tax (But Not Book Capital Account) Purposes.**

(a) In accordance with Section 704(c)(1)(A) of the Code and Section 1.704-1(b)(2)(i)(iv) of the Regulations, if a Member contributes property with an initial Gross Asset Value that differs from its adjusted basis at the time of contribution, income, gain, loss and deductions with respect to the property shall, solely for federal income tax purposes (and not for Capital Account purposes), be allocated among the Equity Owners so as to take account of any variation between the adjusted basis of such property to the Company and its Gross Asset Value at the time of contribution pursuant to the traditional method under Section 1.704-3(b) of the Regulations. In accordance with Section 704(c)(1)(A) of the Code and Section 1.704-1(b)(2)(i)(iv) of the Regulations, if an Equity Owner contributes property with an initial Gross Asset Value that differs from its adjusted basis at the time of contribution, income, gain, loss and deductions with respect to the property shall, solely for federal income tax purposes (and not for Capital Account purposes), be allocated among the Equity Owners so as to take account of any variation between the adjusted basis of such property to the Company and its Gross Asset Value at the time of contribution. Notwithstanding the foregoing sentence, in the event any Equity Owner is limited in recognizing any tax allocations cost recovery deductions or loss with respect to contributed property by the "ceiling rule" as described in Regulation Section 1.704-3(b), then, in addition to the allocation of items with respect to the contributed property allocated pursuant to the previous sentence, all items of loss and deductions of the Company other than with respect to the property shall, solely for federal income tax purposes (and not for Capital Account purposes), be allocated among the Equity Owners pursuant to the traditional method with curative allocations described in Regulation Section 1.704-3(c) so as to offset the effect of the ceiling rule. The allocations described in the previous sentence shall be limited to items of ordinary loss and deduction of the Company other than with respect to the property even if such items do not offset fully the effect of the ceiling rule.

(b) Pursuant to Section 704(c)(1)(B) of the Code, if any contributed property is Distributed by the Company other than to the contributing Equity Owner within seven (7) years of being contributed, then, except as provided in Section 704(c)(2) of the Code,

the contributing Equity Owner shall, solely for federal income tax purposes (and not for Capital Account purposes), be treated as recognizing gain or loss from the sale of such property in an amount equal to the gain or loss that would have been allocated to such Equity Owner under Section 704(c)(1)(A) of the Code if the property had been sold at its fair market value at the time of the Distribution.

(c) In the case of any Distribution by the Company to an Equity Owner, such Equity Owner shall, solely for federal income tax purposes (and not for Capital Account purposes), be treated as recognizing gain in an amount equal to the lesser of:

(1) the excess (if any) of (A) the fair market value of the property (other than money) received in the Distribution over (B) the adjusted basis of such Equity Owner's Ownership Interest immediately before the Distribution reduced (but not below zero) by the amount of money received in the Distribution; or

(2) the Net Precontribution Gain (as defined in Section 737(b) of the Code) of the Equity Owner. The Net Precontribution Gain means the net gain (if any) which would have been recognized by the distributee Equity Owner under Section 704(c)(1)(B) of the Code if all property which (A) had been contributed to the Company within seven years of the Distribution, and (B) is held by the Company immediately before the Distribution, had been Distributed by the Company to another Equity Owner. If any portion of the property Distributed consists of property which had been contributed by the distributee Equity Owner to the Company, then such property shall not be taken into account under this Section 9.13(c) and shall not be taken into account in determining the amount of the Net Precontribution Gain. If the property Distributed consists of an interest in an Entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such Entity after such interest had been contributed to the Company.

(d) All recapture of income tax deductions resulting from sale or disposition of Company property shall be allocated to the Equity Owners to whom the deduction that gave rise to such recapture was allocated hereunder to the extent that such Equity Owner is allocated any gain from the sale or other disposition of such property.

ARTICLE 10. TRANSFERABILITY

10.1 General.

(a) Except as otherwise specifically provided herein, no Equity Owner shall have the right to Transfer the Equity Owner's Ownership Interest.

(b) Each Equity Owner hereby acknowledges the reasonableness of the restrictions on sale and gift of Ownership Interests imposed by this Agreement in view of the Company purposes and the relationship of the Equity Owners. Accordingly, the restrictions on sale and gift contained herein shall be specifically enforceable.

(c) In no event shall any Equity Owner pledges or otherwise encumber any of its Ownership Interest as security for repayment of a liability. Any such pledge or hypothecation shall be deemed invalid under the terms of this Agreement and not be allowed to be transferred to any creditor of any Member for any reason.

10.2 **Additional Conditions to Recognition of Transferee.**

(a) If a Transferring Equity Owner sells or gifts an Ownership Interest to a Person who is not already a Member, as a condition to recognizing one or more of the effectiveness and binding nature of such sale or gift, the remaining Members or Managers may require the Transferring Equity Owner and the proposed successor-in-interest to execute, acknowledge and deliver to the Managers such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the Managers may deem necessary or desirable to accomplish any one or more of the following:

(1) constitute such successor-in-interest as an Equity Owner;

(2) confirm that the proposed successor-in-interest as an Economic Interest Owner, or to be admitted as a Member, has accepted, assumed and agreed to be subject and bound by all of the terms, obligations and conditions of this Agreement, as the same may have been further amended (whether such Person is to be admitted as a new Member or will merely be an Economic Interest Owner);

(3) preserve the Company after the completion of such sale, transfer, assignment, or substitution under the laws of each jurisdiction in which the Company is qualified, organized or does business;

(4) maintain the status of the Company as a partnership for federal tax purposes; and

(5) assure compliance with any applicable state and federal laws, including securities laws and regulations.

(6) verify the suitability of the proposed Equity Owner to verify that they are not making an investment that could later be the subject of a legal action for non-suitability due to the size and/or nature of the investment in relation to the Equity Owners experience and/or total net worth.

(b) Any sale or gift of an Ownership Interest and admission of a Member in compliance with this Article 10 shall be deemed effective as of the last day of the calendar month in which the successor in interest complies with Section 10.2(a). The Transferring Equity Owner hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article 10.

10.3 **Gifts of Ownership Interests.** A Gifting Equity Owner may gift all or any portion of its Ownership Interest; provided, however, that the successor-in-interest ("donee") complies with Section 10.2(a) and further provided that the donee is either the Gifting Equity Owner's spouse, former spouse, lineal descendant (including adopted children) or to an Entity in which day-to-day voting control is directly or indirectly held by one or more of the Gifting Equity Owners, or the Gifting Equity Owner's spouse, former spouse, or lineal descendant (including adopted children). In the event of the gift of all or any portion of a Gifting Equity Owner's Ownership Interest to one or more donees who are under 25 years of age, one or more trusts shall be established to hold the gifted Ownership Interest(s) for the benefit of such donees until the respective donees reach the age of at least 25 years.

ARTICLE 11. ISSUANCE OF MEMBERSHIP INTERESTS

11.1 **Issuance of Additional Membership Interests to New Members.** From the date of the formation of the Company, any Person acceptable to Members holding a Majority Interest may become a Member in the Company by the issuance by the Company of Membership Interests for such consideration as the Members holding a Majority Interest shall determine, subject to the terms and conditions of this Agreement.

11.2 **Part Year Allocations With Respect to New Members.** No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. In accordance with the provisions of Section 706(d) of the Code and the Regulations promulgated thereunder, the Managers may, at their option, at the time a Member is admitted, close the Company books (as though the Company's Fiscal Year had ended) or make pro rata allocations of loss, income and expense deductions to a new Equity Owner for that portion of the Company's Fiscal Year in which an Equity Owner became an Equity Owner.

ARTICLE 12. DISSOLUTION AND TERMINATION

12.1 **Dissolution.**

(a) The Company shall be dissolved only upon the occurrence of any of the following events:

(1) by the written agreement of Members holding a Majority Interest;

(2) by an order of a court of competent jurisdiction in an action commenced by any Member in which the Member can show that:

(a) The Members are deadlocked in the management of the Company's affairs, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted, because of the deadlock;

(b) The Managers or other Members in control of the Company have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) There have been repeated, material breaches of the Agreement by the Company or by other Members or Managers.

Notwithstanding anything to the contrary in the Act, the Company shall not be dissolved upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of an Equity Owner.

(b) As soon as possible following the occurrence of any of the events specified in Section 12.1(a) effecting the dissolution of the Company, the appropriate representative of the Company shall execute all documents required by the Act at the time of dissolution and file or record such statements with the appropriate officials.

12.2 **Effect of Dissolution.** Upon dissolution, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until winding up and Distribution is completed.

12.3 **Winding Up, Liquidation and Distribution of Assets.**

(a) Upon dissolution, an accounting shall be made by the Company's Managers of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Managers shall immediately proceed to wind up the affairs of the Company.

(b) If the Company is dissolved and its affairs are to be wound up, the Managers shall:

(1) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent that the Managers may determine to distribute in kind any assets to the Equity Owners);

(2) Allocate any Profit or Loss resulting from such sales to the Equity Owners' Capital Accounts in accordance with Article 9 hereof;

(3) Discharge all liabilities of the Company, including liabilities to Equity Owners who are also creditors, to the extent otherwise permitted by law, other than liabilities to Equity Owners for Distributions and the return of capital, and establish such Reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Equity Owners, the amounts of such Reserves shall be deemed to be an expense of the Company);

(4) Distribute the remaining assets to the Equity Owners in accordance with their positive Capital Account balances;

(5) If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Equity Owners shall be adjusted pursuant to the provisions of Article 9 and Section 8.3 of this Agreement to reflect such deemed sale; and

(6) The positive balance (if any) of each Equity Owner's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's Fiscal Year during which the liquidation occurs) shall be Distributed to the Equity Owners, either in cash or in kind, as determined by the Managers, with any assets Distributed in kind being valued for this purpose at their fair market value. Any such Distributions to the Equity Owners in respect of their Capital Accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Regulations.

(c) Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations, if any Equity Owner has a Deficit Capital Account (after giving effect to all contributions, Distributions, allocations and other Capital Account adjustments for all Fiscal Years, including the year during which such liquidation occurs), such Equity Owner shall have no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Equity Owner to the Company or to any other Person for any purpose whatsoever.

(d) Upon completion of the winding up, liquidation and Distribution of the

assets, the Company shall be deemed terminated.

(e) The Managers shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final Distribution of its assets.

12.4 **Filing or Recording Statements.** Upon the conclusion of winding up, the appropriate representative of the Company shall execute all documents required by the Act at the time of completion of winding up and file or record such statements with the appropriate officials.

12.5 **Return of Contribution Nonrecourse to Other Equity Owners.** Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Equity Owner shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Equity Owners, such Equity Owners shall have no recourse against any other Equity Owner.

ARTICLE 13. MISCELLANEOUS PROVISIONS

13.1 **Notices.** Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served if sent by telecopy or facsimile transmission, delivered by messenger or overnight courier, or mailed, certified first class mail, postage prepaid, return receipt requested, and addressed or sent to the Equity Owner's and/or Company's address, as set forth on Exhibit 13.1. Such notice shall be effective, (a) if delivered by messenger or by overnight courier, upon actual receipt (or if the date of actual receipt is not a business day, upon the next business day); (b) if sent by telecopy or facsimile transmission, upon confirmation of receipt (or if the date of such confirmation of receipt is not a business day, upon the next business day); or (c) if mailed, upon the earlier of three business days after deposit in the mail and the delivery as shown by return receipt therefore. Any Equity Owner or the Company may change its address by giving notice in writing to the Company and the other Equity Owners of its new address.

13.2 **Books of Account and Records.** Proper and complete records and books of account shall be kept or shall be caused to be kept by the Managers, in which shall be entered fully and accurately all transactions and other matters relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such books and records shall be maintained as provided in Section 9.10. The books and records shall at all times be maintained at the principal executive office of the Company and shall be open to the reasonable inspection and examination of the Equity Owners or their duly authorized representatives during reasonable business hours.

13.3 **Application of State Law.** This Agreement, and the application and interpretation hereof, shall be governed exclusively by its terms and by the laws of the State, and specifically the Act.

13.4 **Waiver of Action for Partition.** Each Equity Owner irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the Company Property.

13.5 **Amendments.** This Agreement may be amended only with the written agreement of Members holding a Two-Thirds Interest. No amendment which has been agreed to in accordance with the preceding sentence shall be effective to the extent that such amendment has a Material Adverse Effect upon one or more Equity Owners who did not agree in writing to such amendment. For purposes of the preceding sentence, "Material Adverse Effect" shall mean any modification of the relative rights to Distributions by the Company (including allocations of Profits and Losses which are reflected in the Capital Accounts). Without limiting the generality of the foregoing: an amendment which has a proportionate effect on all Equity Owners (or in the case of a redemption of Ownership Interests or issuance of additional Ownership Interests, an amendment which has a proportionate effect on all Equity Owners immediately after such redemption or issuance) with respect to their rights to Distributions shall be deemed to not have a Material Adverse Effect on Equity Owners who do not agree in writing to such amendment. Notwithstanding the foregoing provisions of this Section 13.5, no amendment shall be made to a provision herein which requires the vote, approval or consent of the Members holding more than a Two-Thirds Interest, unless Members holding such greater Voting Interests approve of such amendment.

13.6 **Execution of Additional Instruments.** Each Equity Owner hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

13.7 **Construction.** Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

13.8 **Effect of Inconsistencies with the Act.** It is the express intention of the Equity Owners and the Company that this Agreement shall be the sole source of agreement among them, and, except to the extent that a provision of this Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Regulations or is expressly prohibited or ineffective under the Act, this Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law or rule. In the event that the Act is subsequently amended or interpreted in such a way to make valid any provision of this Agreement that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. The Members and the Company hereby agree that the duties and obligations imposed on the Members as such shall be those set forth in this Agreement, which is intended to govern the relationship among the Company and the Equity Owners, notwithstanding any provision of the Act or common law to the contrary.

13.9 **Waivers.** The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an

original violation.

13.10 **Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

13.11 **Attorneys' Fees.** Should the Company or any party to this Agreement reasonably retain counsel for the purpose of enforcing or preventing breach of any provision of this Agreement, including but not limited to instituting any action or proceeding to enforce any provision of this Agreement, for damages by reason of any alleged breach of any provision of this Agreement, for a declaration of such party's rights or obligations under this Agreement or for any other judicial remedy, then, if the matter settled by judicial determination or arbitration, the prevailing party (whether at trial, on appeal, or arbitration) shall be entitled, in addition to such other relief as may be granted, to be reimbursed by the losing party for all costs and expenses incurred, including, but not limited to, reasonable attorneys' fees and costs for services rendered to the prevailing party.

13.12 **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law. Without limiting the generality of the foregoing sentence, to the extent that any provision of this Agreement is prohibited or ineffective under the Act or common law, this Agreement shall be considered amended to the smallest degree possible in order to make the Agreement effective under the Act or common law.

13.13 **Heirs, Successors and Assigns.** Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

13.14 **Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

13.15 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

13.16 **Power of Attorney.** Each Equity Owner hereby irrevocably makes, constitutes and appoints the Managers, with full power of substitution, so long as such Managers are acting in such a capacity (and any successor Manager thereof so long as such Manager is acting in such capacity), its true and lawful attorney, in such Equity Owner's name, place and stead (it is expressly understood and intended that the grant of such power of attorney is coupled with an interest) to make, execute, sign, acknowledge, swear and file with respect to the Company:

(a) all amendments of this Agreement adopted in accordance with the terms

hereof;

(b) all documents which the Managers deem necessary or desirable to affect the dissolution and termination of the Company;

(c) all such other instruments, documents and certificates which may from time to time be required by the laws of the State or any other jurisdiction in which the Company shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement, continue and defend the valid existence of the Company; and

(d) all instruments, documents and certificates which the Managers deem necessary or desirable in connection with a Reorganization which has been authorized in accordance with the terms of this Agreement.

This power of attorney shall not be affected by and shall survive the bankruptcy, insolvency, death, incompetency, or dissolution of an Equity Owner and shall survive the delivery of any assignment by the Equity Owner of the whole or any portion of its Ownership Interest. Each Equity Owner hereby releases each Manager from any liability or claim in connection with the exercise of the authority granted pursuant to this power of attorney, and in connection with any other action taken by such Manager pursuant to which such Manager purports to act as the attorney-in-fact for one or more Equity Owners, if the Manager believed in good faith that such action taken was consistent with the authority granted to it pursuant to this Section 13.16.

13.17 **Investment Representations.** The undersigned Equity Owners, if any, understand (1) that the Ownership Interests evidenced by this Agreement have not been registered under the Securities Act of 1933, the State Securities Act or any other state securities laws (the "Securities Acts") because the Company is issuing these Ownership Interests in reliance upon the exemptions from the registration requirements of the Securities Acts providing for issuance of securities not involving a public offering, (2) that the Company has relied upon the fact that the Ownership Interests are to be held by each Equity Owner for investment, and (3) that exemption from registrations under the Securities Acts would not be available if the Ownership Interests were acquired by an Equity Owner with a view to Distribution. Accordingly, each Equity Owner hereby confirms to the Company that such Equity Owner is acquiring the Ownership Interests for such own Equity Owner's account for investment. Each Equity Owner agrees not to transfer, sell or offer for sale any portion of the Ownership Interests unless there is an effective registration or other qualification relating thereto under the Securities Act of 1933 and under any applicable state securities laws or unless the holder of Ownership Interests delivers to the Company an opinion of counsel, satisfactory to the Company, that such registration or other qualification under such Act and applicable state securities laws is not required in connection with such transfer, offer or sale. Each Equity Owner understands that the Company is under no obligation to register the Ownership Interests or to assist such Equity Owner in complying with any exemption from registration under the Securities Act if such Equity Owner should at a later date, wish to dispose of the Ownership Interest. Furthermore, each Member realizes that the Ownership Interests are unlikely to qualify for disposition under Rule 144 of the Securities and Exchange Commission unless such Equity Owner is not an "affiliate" of the Company and the Ownership Interest has been beneficially owned and fully paid for by such Equity Owner for at least three years.

Each Equity Owner, prior to acquiring an Ownership Interest, has made an investigation of the Company and its business, and the Company has made available to each Equity Owner, all

information with respect to the Company which such Equity Owner needs to make an informed decision to acquire the Ownership Interest. Each Equity Owner has relied on its own tax and legal advisors in connection with such Equity Owner's decision to acquire an Ownership Interest. Each Equity Owner considers himself, herself or itself to be a person possessing experience and sophistication as an investor which are adequate for the evaluation of the merits and risks of such Equity Owner's investment in the Ownership Interest.

13.18 **Representations and Warranties.**

(a) **In General.** As of the date hereof, each of the Equity Owners hereby makes each of the representations and warranties applicable to such Equity Owner as set forth in Section 13.17 hereof, and such warranties and representations shall survive the execution of this Agreement.

(b) **Representations and Warranties.** Each Equity Owner that is an Entity hereby represents and warrants that:

(1) **Due Incorporation or Formation; Authorization of Agreement.** Such Equity Owner is a corporation duly organized or a partnership or limited liability company duly formed, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or formation and has the corporate, partnership or limited liability company power and authority to own its property and carry on its business as owned and carried on at the date hereof and as contemplated hereby. Such Equity Owner is duly licensed or qualified to do business and in good standing in each of the jurisdictions in which the failure to be so licensed or qualified would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder. Such Equity Owner has the corporate, partnership or limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder and the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate, partnership or limited liability company action. This Agreement constitutes the legal, valid, and binding obligation of such Equity Owner.

(2) **No Conflict with Restrictions; No Default.** Neither the execution, delivery, and performance of this Agreement nor the consummation by such Equity Owner of the transactions contemplated hereby: (1) will conflict with, violate, or result in a breach of any of the terms, conditions, or provisions of any law, regulation, order, writ, injunction, decree, determination, or award of any court, any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator, applicable to such Equity Owner or any of its Affiliates; (2) will conflict with, violate, result in a breach of, or constitute a default under any of the terms, conditions, or provisions of the articles of incorporation, bylaws, partnership agreement, limited liability company agreement or operating agreement of such Equity Owner or any of its Affiliates or of any material agreement or instrument to which such Equity Owner or any of its Affiliates is a party or by which such Equity Owner, or any of its Affiliates is or may be bound or to which any of its material properties or assets is subject; (3) will conflict with, violate, result in a breach of, constitute a default under (whether

with notice or lapse of time or both), accelerate or permit the acceleration of the performance required by, give to others any material interests or rights, or require any consent, authorization, or approval under any indenture, mortgage, lease agreement, or instrument to which such Equity Owner or any of its Affiliates is a party or by which such Equity Owner or any of its Affiliates is or may be bound; or (4) will result in the creation or imposition of any lien upon any of the material properties or assets of such Equity Owner or any of its Affiliates.

(3) **Government Authorizations.** Any registration, declaration, or filing with, or consent, approval, license, permit, or other authorization or order by, any government or regulatory authority, domestic or foreign, that is required in connection with the valid execution, delivery, acceptance, and performance by such Equity Owner under this Agreement or the consummation by such Equity Owner of any transaction contemplated hereby has been completed, made, or obtained on or before the effective date of this Agreement.

(4) **Litigation.** There are no actions, suits, proceedings, or investigations pending or, to the knowledge of such Equity Owner or any of its Affiliates, threatened against or affecting such Equity Owner or any of its Affiliates or any of their properties, assets, or businesses in any court or before or by any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator which could, if adversely determined (or, in the case of an investigation could lead to any action, suit, or proceeding, which if adversely determined could) reasonably be expected to materially impair such Equity Owner's ability to perform its obligations under this Agreement or to have a material adverse effect on the consolidated financial condition of such member; and such Equity Owner or any of its Affiliates has not received any currently effective notice of any default, and such Equity Owner or any of its Affiliates is not in default, under any applicable order, writ, injunction, decree, permit, determination, or award of any court, any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator which could reasonably be expected to materially impair such Equity Owner's ability to perform its obligations under this Agreement or to have a material adverse effect on the consolidated financial condition of such Equity Owner.

(5) **Investment Company Act; Public Utility Holding Company Act.** Neither such Equity Owner nor any of its Affiliates is, nor will the Company as a result of such Equity Owner holding an Ownership Interest be, an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940. Neither such Equity Owner nor any of its Affiliates is, nor will the Company as a result of such Equity Owner holding an Ownership Interest be, a "holding company," "an affiliate of a holding company," or a "subsidiary of a holding company," as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

(c) **Confidentiality.** Except as contemplated hereby or required by a court of competent authority, each Equity Owner shall keep confidential and shall not disclose to others and shall use its reasonable efforts to prevent its Affiliates and any of its, or its Affiliates' present or former employees, agents, and representatives from disclosing to

others without the prior written consent of the Managers any information which: (1) pertains to this Agreement, any negotiations pertaining thereto, any of the transactions contemplated hereby, or the business of the Company; or (2) pertains to confidential or proprietary information of any Member or the Company or which any Equity Owner has labeled in writing as confidential or proprietary; provided that any Equity Owner may disclose to its Affiliates' employees, agents, and representatives any information made available to such Equity Owner. No Equity Owner shall use, and each Equity Owner shall use its best efforts to prevent any Affiliate of such Equity Owner from using, any information which: (1) pertains to this Agreement, any negotiations pertaining hereto, any of the transactions contemplated hereby, or the business of the Company; or (2) pertains to the confidential or proprietary information of any Equity Owner or the Company or which any Equity Owner has labeled in writing as confidential or proprietary, except in connection with the transactions contemplated hereby.

CERTIFICATE

The undersigned hereby agree, acknowledge and certify that the foregoing Agreement, consisting of 30 pages, excluding the Table of Contents and attached Exhibits, constitutes the Agreement of Maverick Investments, LLC adopted by the Equity Owners as of March 29, 2006.

MAVERICK INVESTMENTS, LLC

BY: [redacted]
It's Manager: [redacted]
For: [redacted]

And

Scott Smith
It's Manager: Scott Smith

EXHIBIT 8.1

INITIAL CAPITAL CONTRIBUTIONS

Name and Address of Initial Member	Capital Contribution Schedule
NAME	
Scott Smith 2411 Defoe Circle Bryant, Arkansas 72022	$350,000
[redacted]	$250,000
[redacted]	

EXHIBIT 8.2
ADDITIONAL CAPITAL CONTRIBUTIONS

Member	Maximum Capital Contribution	Additional

EXHIBIT 13.1

NAME, ADDRESS AND FACSIMILE NUMBER OF EQUITY OWNER

Name/Address	Facsimile Number
Scott Smith 2411 Defoe Circle Bryant, Arkansas	501-847-1369

[redacted]