

City of Fayetteville Staff Review Form

2022-0020

Legistar File ID

2/1/2022

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Summer Fallen

1/10/2022

AIRPORT SERVICES (760)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval and signature of the Mayor on a ground lease with MRS ENTERPRISES LLC for land located North of terminal at 4386 S. School Avenue to construct a 110' X 100' hangar.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Current Budget

\$ -

Funds Obligated

\$ -

Current Balance

\$ -

Does item have a cost? No

Item Cost

\$ -

Budget Adjustment Attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ -

V20210527

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



MEETING OF FEBRUARY 1, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Terry Gulley, Assistant Public Works Director

FROM: Summer Fallen, Airport Director

DATE: Feb 1, 2022

SUBJECT: Ground Lease with MRS ENTERPRISES, LLC

RECOMMENDATION:

Staff recommends approval and signature of the Mayor on a ground lease with MRS ENTERPRISES LLC for land located North of terminal at 4386 S. School Avenue to construct a 110' X 100' hangar.

BACKGROUND:

The area in question was improved via grant funds from the FAA and Arkansas Department of Aeronautics in 2007 to prove infrastructure for 4 corporate style hangars.

DISCUSSION:

MRS ENTERPRISES, LLC will construct at 110' X 100' corporate hangar at Drake Field. This hangar will have the ability to house multiple corporate sized aircraft.

BUDGET/STAFF IMPACT:

MRS ENTERPRISES, LLC will pay \$1,980 per year during the 18-month discount period, and \$3,850 per year after the discount period is expired.

Attachments:

Staff Review Form
City Council Memo
Ground Lease
Exhibit A

Lease Agreement
between The City of Fayetteville, Arkansas
And
Tenant

The purpose of this Lease Agreement is to establish an agreement between the City of Fayetteville, Arkansas ("CITY") and **MRS ENTERPRISES, LLC** ("Lessees") for the use of space for the construction of an aircraft hangar and associated aprons and taxilanes as described below.

1. **Leased Premises.** For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by LESSEES as obligations to the CITY, the CITY lets, leases and demises unto LESSEES, subject to the terms and conditions contained herein, the following described property situated in Washington, County, Arkansas:

A certain tract of land located immediately north of the Drake Field Terminal building for construction of a 110' x 100' hangar.

2. **Term.** The initial term is for forty (40) years beginning on FEBRUARY, 2022, and shall end on FEBRUARY, 2062 unless otherwise terminated, canceled or extended as set forth hereinbelow:

- a. LESSEES shall have eighteen (18) months from FEBRUARY, 2022 (the "Discount Period") to begin construction of the hangar. The CITY or LESSEES may terminate this lease at any time by giving the other party thirty (30) days written notice of termination during the first eighteen (18) months following the FEBRUARY, 2022 date, or prior to the ground breaking for the new facility, whichever occurs earlier. The Discount Period may be extended by up to an additional eighteen (18) months upon written agreement of CITY and LESSEES. Failure to begin construction before JULY, 2023 (or the expiration of any extended period agreed upon by the parties pursuant to this subsection) shall be an automatic cancellation of this ground lease.
- b. Option to Extend. LESSEES shall have the option to extend the lease term of this lease for ONE (1) period of five (5) years if LESSEES have satisfied the following conditions:
 - i. LESSEES have complied with and performed all conditions, covenants, and terms of the Agreement without any defaults known to LESSEES, or any defaults that are not otherwise in the process of being resolved in the manner provided in this Agreement.
 - ii. Notice of LESSEES' request to renew has been made and presented in writing to the City at least one hundred twenty (120) days prior to the expiration of the initial term.
 - iii. The amount of rental fees shall have been successfully negotiated and agreed to by the parties for the extended lease term.

3. **Rent.** LESSEES agree to pay to CITY for the Discount Period set forth in paragraph 2.A above a discounted annual ground rental fee of eighteen cents (\$0.18) per square foot of total leased ground space. Annual rental due for this Discount Period is NINETEEN HUNDRED EIGHTY DOLLARS (\$1,980). The discounted rate shall expire at the end of Discount Period (including any extension agreed upon by the parties pursuant to paragraph 2.A above) or upon the issuance of a Final Certificate of Occupancy, whichever shall occur first.

Upon the expiration of the Discount Period, LESSEES agree to pay to CITY an annual ground rental rate of twenty-five cents (\$0.35) per square foot of total leased ground space. Annual rental due for this period of time is THREE THOUSAND EIGHT HUNDRED FIFTY DOLLARS (\$3,850).

Rental payments during the Discount Period shall be paid in advance on the first day of each month beginning FEBRUARY 2022. Rental payments after the Discount Period shall be paid in advance in yearly installments on the first day following the issuance of a final certificate of occupancy.

A delinquency charge shall be imposed on payments not received by the close of business on the tenth (10th) day after the due date. Such delinquency charge shall be the maximum amount allowable under Arkansas law. Payments shall be delivered or mailed to: City of Fayetteville, 113 W. Mountain St., Fayetteville, Arkansas 72701.

4. **Use.** LESSEES agree to use the leased premises only as an aircraft hangar and any other related lawful purposes.

- a. **Flammable Material:** LESSEES agree not to store any flammable material on the leased premises other than a limited supply of oils and agents necessary for the operation of an aircraft hangar.
- b. **Hazardous Substances.** LESSEES shall not cause or permit any hazardous substances to be used or stored on or in the leased premises without first obtaining CITY's written consent. If hazardous substances are used, stored, generated, or disposed of on or in the leased premises or if the leased premises or any other airport property become contaminated in any manner for which LESSEES are responsible or legally liable, LESSEES shall indemnify and hold harmless CITY from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the leased premises or damages caused by loss or restriction of rentable or usable space as part of the leased premises) arising during or after the term hereof and arising as a result of that contamination by LESSEES, LESSEE'S agents, employees or invitees. This indemnification includes, without limitation, any costs incurred because of any investigation of the airport or any cleanup removal or restoration mandated by a federal, state, or local agency or political subdivision.

- c. LESSEES shall not start or operate aircraft engines within the facility to be constructed on the leased premises and shall not allow such operations by any other person.

5. **Use of the Airport.** LESSEES are granted the use, in common, without charge, with others similarly authorized, of the airport, together with all facilities, equipment, improvements, and services which have been or may hereafter be provided at or in connection with the airport from time to time including, but not limited to, the landing field and any extensions hereof or additions thereto, roadways, runways, ramps, aprons, taxiways, floodlights, landing lights, beacons, control tower, signals, radio aids, and all other conveniences for flying, landings and takeoffs.

LESSEES agree to observe and obey the CITY's ordinances and regulations with respect to use of the leased premises and airport as well as all applicable county, state or federal regulations or laws. LESSEES agree to abide by "The Minimum Standards for the Fayetteville Municipal Airport Drake Field" a copy of which is attached hereto as Exhibit A and made a part hereof.

6. **Repairs, Maintenance and Appearance.** LESSEES shall at all times during the term of this agreement, at their expense, keep and maintain in good repair and safe condition the leased premises and the equipment and appurtenances, both inside and outside, structural and non-structural, extraordinary and ordinary, whether or not due to wear, tear, obsolescence or defects, latent or otherwise. When used herein, the term "repairs" shall include all necessary replacements, renewals, alterations, additions and betterments. LESSEES acknowledge that they are responsible for the repairs and maintenance necessary to maintain the structural integrity of the hangar. LESSEES shall at all times maintain the leased premises in a clean, orderly, and attractive condition and will not allow the accumulation of rubbish, trash, refuse or any other unsightly condition or fire hazard on the leased premises. LESSEES shall be responsible for the mowing and upkeep of the outside grounds of the leased premises. LESSEES shall be responsible for all janitorial services and trash removal from the leased premises.

In the event LESSEES fail to repair or maintain the leased premises as required, CITY may enter the leased premises for the purpose of making such repairs necessary to maintain the structural integrity of the hangar or to perform any maintenance required to keep the leased premises in a clean, orderly and attractive condition. LESSEES shall be liable for any costs incurred by the CITY in the event CITY exercises its authority due to LESSEE'S Failure to make necessary repairs or perform other required maintenance work.

7. **Alterations and Improvements.** Following issuance of a final certificate of occupancy for the hangar and office space to be constructed on the leased premises, LESSEES shall have prior written consent from the CITY, meeting all CITY requirements, to make any alterations, additions and improvements LESSEES deem necessary and desirable to the interior of the leased premises. LESSEES shall not be entitled to make any major or material alterations, additions or changes to the exterior of the leased premises without the CITY's written consent. LESSEES acknowledge and agree that all such alterations, additions, attachments and improvements including, but not limited to, paneling, partitions, railings, floors, ceilings and the like, shall become the property of the CITY upon the termination of this agreement.

8. **Insurance.** LESSEES shall obtain and maintain sufficient insurance coverage for the repair or replacement of the leased premises and any adjacent improvements, with an insurance company licensed to do business in the State of Arkansas, naming the CITY as an Additional Insured on the policy. LESSEES shall provide the Airport Director with a valid certificate of insurance at all times during the term of this agreement. LESSEES acknowledge that it is their responsibility to maintain insurance on any personal property on the leased premises.

9. **Sub-Leasing and Assignment.** LESSEES shall not assign this lease or sublet the Leased Premises without prior written consent of the CITY of Fayetteville. Consent for any assignment or subletting shall only be considered at the same rates as established in Paragraph 3 above. Any such assignment or subletting shall in no way relieve LESSEES from liability for the obligations imposed by this lease. LESSEES may only be released from liability by a specific written release executed by the CITY.

10. **Events of Default.** The following shall be Events of Default under this agreement:

- a. LESSEES shall fail to pay when due and owing any rent and such nonpayment continues for twenty days after written notice by the CITY;
- b. LESSEES voluntarily abandon, desert or vacate the leased premises;
- c. LESSEES fail to comply with the insurance requirements set forth above;
- d. LESSEES fail to observe or perform any other obligation under the terms of this agreement and such failure is unremedied for twenty (20) days after the CITY has provided written notice specifying such default. CITY may, but is not required to, grant LESSEES such additional time as is reasonably required to correct any such default if LESSEES have instituted corrective action and are diligently pursuing the same; or
- e. LESSEES fail to provide and maintain any security assurances required under the terms of this agreement.

11. **Remedies Upon Default.** Whenever an Event of Default shall occur, and at its exclusive option, CITY may deliver to LESSEES written notice of termination specifying the date upon which the agreement shall terminate. In the event of termination, LESSEES rights to possession of the leased premises shall immediately cease. CITY may reenter and take possession of the leased premises and LESSEES shall surrender possession. Upon termination, LESSEES shall be liable to CITY for payment of:

- a. All rents and sums accrued through the date of termination.
- b. The reasonable costs incurred by CITY to re-let the leased premises, or any portion thereof; and

- c. The reasonable cost incurred by CITY to restore the leased premises or any portion thereof to the condition in which they were originally leased, ordinary wear and tear excepted; and
- d. Reasonable attorney's fees and costs related to the termination of the lease agreement including those incurred through the judicial process if LESSEES fail to vacate.

All rental payments received by CITY from re-letting the leased premises after termination of this agreement shall be credited against the LESSEES' Outstanding Rental Balance. The acceptance by CITY of any rent payments by LESSEES after termination of this agreement shall not be considered a reinstatement or waiver of any other remedies available to CITY.

CITY may also pursue any other available right or remedy available to it in the event of default.

12. **Joint and Several Liability of Lessees.** LESSEES acknowledge that they are jointly and severally liable for the obligations imposed on them by this agreement

13. **Expiration or Termination.** LESSEES hereby agree that upon termination of this lease by expiration or by earlier termination for any reason whatsoever, it will remove its property from the leased premises immediately. All property installed, erected or placed by LESSEES in, on, or about the leased premises shall be deemed to remain the property of CITY.

14. **Closure of Airport.** In the event that the Fayetteville Municipal Airport facility and property are no longer used by the CITY for aviation purposes, LESSEES may remain in possession of the premises until the end of the lease term with the right to use the premises for any use allowable under Arkansas law.

15. **Taxes.** LESSEES shall pay all ad valorem taxes and assessments upon the leased premises and upon all personal property located upon the leased premises which are assessed during the lease term.

16. **Indemnity.** LESSEES agree to indemnify the CITY against any liability for injuries to persons or damage to property caused by LESSEE'S gross negligent use or occupancy of the leased premises; provided, however, that LESSEES shall not be liable for any personal injury, damage or loss occasioned by the negligence of the CITY or its agents or employees, and provided further that each party shall give prompt and timely notice of any claim made or suit instituted which may in any way directly or indirectly affect either party. Each party shall have the right to compromise and defend the same to the extent of its own interest. This clause shall not be construed to waive that tort immunity granted to the CITY under Arkansas law.

17. **Non-Waiver.** It is agreed that the failure of CITY to invoke any of the available remedies under this lease or under law in the event of one or more breaches or defaults by LESSEES under the lease shall not be construed as a waiver of such provisions and conditions and shall not prevent the CITY from invoking such remedies in the event of any future breach or default.

18. **Notices.** Any notice or consent required by this agreement shall be sufficient if sent by Certified Mail, return receipt requested, postage paid, to the following addresses:

LESSEES

MRS Enterprises, LLC
PO Box 397
Farmington, AR 72730

CITY

City of Fayetteville
ATTN: Airport Director
113 W. Mountain Street
Fayetteville, Arkansas 72701

19. **Succession.** This lease agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

20. **Severability.** Each paragraph of this lease agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

21. **Interpretation.** This lease agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

22. **Entire Agreement.** This lease agreement contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This lease agreement supersedes all prior agreements, contracts and understandings of any kind between the parties relating to the subject matter hereof. This agreement may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.


CITY OF FAYETTEVILLE:

By: _____
LIONELD JORDAN, Mayor

ATTEST:

By: _____
KARA PAXTON, CITY Clerk

TENANT

By:  _____
Printed Name: Michael Simo
Title: Member

OPERATING AGREEMENT
OF
MRS ENTERPRISES LLC
An Arkansas Limited Liability Company

PREPARED BY
RMP LLP
ATTORNEYS AT LAW
5519 HACKETT ROAD, SUITE 300
SPRINGDALE, AR 72764
P. O. BOX 1788
FAYETTEVILLE, AR 72702

1.	DEFINITIONS.	Page 1
2.	ORGANIZATION.	Page 5
2.1	<u>Name.</u>	Page 5
2.2	<u>Purposes.</u>	Page 5
2.3	<u>Powers.</u>	Page 5
2.4	<u>Term</u>	Page 6
2.5	<u>Registered Agent</u>	Page 6
2.6	<u>Registered Office.</u>	Page 6
3.	MEMBERS; MEETINGS	Page 6
3.1	<u>Names and Addresses of Initial Members.</u>	Page 6
3.2	<u>Meetings</u>	Page 6
3.3	<u>Vote of Members</u>	Page 6
4.	MANAGEMENT	Page 6
4.1	<u>Member Management</u>	Page 6
4.1.1	<u>Business and Affairs</u>	Page 6
4.1.2	<u>Individual Member Authority</u>	Page 6
4.1.3	<u>Group Member Authority</u>	Page 7
4.1.4	<u>Relief from Liability</u>	Page 7
4.1.5	<u>Examples</u>	Page 7
4.2	<u>Reliance by Third Parties</u>	Page 8
4.2.1	<u>Duty of Person Dealing with Member</u>	Page 8
4.2.2	<u>No Affect on Liability to Other Members</u>	Page 8
4.3	<u>Nominees</u>	Page 8
4.4	<u>Other Member Matters</u>	Page 9
4.4.1	<u>Documents</u>	Page 9
4.4.2	<u>Experts</u>	Page 9
4.4.3	<u>Delegation</u>	Page 9
4.4.4	<u>Reimbursement</u>	Page 9
4.5	<u>Reliance</u>	Page 9
4.6	<u>Limited Liability</u>	Page 9
4.7	<u>Withdrawal</u>	Page 9
5.	CONTRIBUTIONS AND DISTRIBUTIONS.	Page 9
5.1	<u>Initial Capital Contributions.</u>	Page 9
5.2	<u>Additional Capital Contributions.</u>	Page 9
5.3	<u>Interest and Return of Capital Contribution.</u>	Page 9
5.4	<u>Capital Accounts.</u>	Page 10
5.4.1	<u>Separate Accounts.</u>	Page 10
5.4.2	<u>Obligation of Member.</u>	Page 10
5.4.3	<u>Loans to the Company.</u>	Page 10
5.4.4	<u>Effect of Transfer.</u>	Page 10
5.5	<u>Distributions</u>	Page 11
5.5.1	<u>Distributions</u>	Page 11
5.5.2	<u>Distributions in Kind</u>	Page 11

5.5.3	<u>Tax Distributions</u>	Page 11
5.6	<u>Allocations</u>	Page 11
5.7	<u>Allocation with Respect to Property</u>	Page 11
6.	TRANSFER OF INTERESTS AND RESIGNATION.	Page 12
6.1	<u>Right of First Refusal</u>	Page 12
6.1.1	<u>Company Option</u>	Page 12
6.1.2	<u>Member Option</u>	Page 12
6.1.3	<u>Default Transfer Period</u>	Page 12
6.2	<u>Refusal Right Not Applicable</u>	Page 12
6.3	<u>Admission of Substitute Members</u>	Page 12
6.4	<u>Purchase of Certain Membership Interests</u>	Page 13
6.4.1	<u>Right of Company to Purchase</u>	Page 13
6.4.2	<u>Notice and Option Period</u>	Page 13
6.4.3	<u>Determination of Purchase Price</u>	Page 13
6.4.4	<u>Continuation of Company</u>	Page 13
6.4.5	<u>Closing of Purchase</u>	Page 14
6.4.6	<u>Prohibition on Exercise</u>	Page 14
6.5	<u>Absolute Prohibition</u>	Page 14
6.6	<u>Members Acquiring Membership Interest from Company</u>	Page 14
6.7	<u>Resignation</u>	Page 14
6.8	<u>Effect of Prohibited Action</u>	Page 15
6.9	<u>Consideration for Transfer</u>	Page 15
6.10	<u>Transferor and Transferee Closing Responsibility</u>	Page 15
6.11	<u>Rights of an Assignee</u>	Page 15
7.	DISSOLUTION AND TERMINATION.	Page 15
7.1	<u>Events of Dissolution</u>	Page 15
7.2	<u>Liquidation</u>	Page 16
7.3	<u>Orderly Liquidation</u>	Page 16
7.4	<u>Distributions</u>	Page 16
7.5	<u>Taxable Gain or Loss</u>	Page 17
7.6	<u>No Recourse Against Members</u>	Page 17
7.7	<u>Continuation</u>	Page 17
7.8	<u>Date of Dissolution</u>	Page 17
8.	ACCOUNTING; CERTAIN TAX MATTERS.	Page 17
8.1	<u>Financial Statements and Tax Returns</u>	Page 17
8.2	<u>Fiscal Year</u>	Page 17
8.3	<u>Method of Accounting</u>	Page 17
8.4	<u>Tax Classification</u>	Page 17
8.5	<u>Tax Elections</u>	Page 18
8.6	<u>Tax Matters Partner</u>	Page 18
8.7	<u>Company Representative</u>	Page 18
8.7.1	<u>Appointment and Acceptance</u>	Page 18
8.7.2	<u>Power and Duties</u>	Page 18
8.7.3	<u>Elections</u>	Page 18
8.7.4	<u>Member Obligations</u>	Page 19

8.7.5	<u>Expenses</u>	Page 19
8.7.6	<u>Liability of Company Representative</u>	Page 19
8.7.7	<u>Indemnification of Company Representative</u>	Page 19
9.	MISCELLANEOUS PROVISIONS.	Page 19
9.1	<u>Agent.</u>	Page 19
9.2	<u>Amendments.</u>	Page 20
9.3	<u>Application of Arkansas Law.</u>	Page 20
9.4	<u>Mediation and Arbitration</u>	Page 20
9.5	<u>Mediation</u>	Page 20
9.6	<u>Arbitration</u>	Page 20
9.7	<u>Attorneys' Fees.</u>	Page 21
9.8	<u>Banking.</u>	Page 21
9.9	<u>Construction.</u>	Page 21
9.10	<u>Counterparts.</u>	Page 21
9.11	<u>Creditors.</u>	Page 21
9.12	<u>Headings.</u>	Page 21
9.13	<u>Heirs, Successors and Assigns.</u>	Page 22
9.14	<u>Information Release.</u>	Page 22
9.15	<u>Insurance Purchase.</u>	Page 22
9.16	<u>Location of and Access to Company Records.</u>	Page 22
9.17	<u>Notices.</u>	Page 22
9.18	<u>Power of Attorney.</u>	Page 23
9.18.1	<u>Grant of Power</u>	Page 23
9.18.2	<u>Power Irrevocable.</u>	Page 23
9.18.3	<u>Use of Power.</u>	Page 23
9.19	<u>Representations and Warranties.</u>	Page 24
9.19.1	<u>Investment Representation.</u>	Page 24
9.19.2	<u>Organization Representation.</u>	Page 24
9.19.3	<u>Survival.</u>	Page 24
9.20	<u>Rights and Remedies Cumulative.</u>	Page 24
9.21	<u>Severability.</u>	Page 24
9.22	<u>Waiver of Right of Partition.</u>	Page 24
9.23	<u>Waivers.</u>	Page 25
9.24	<u>Entire Agreement.</u>	Page 25
	SCHEDULE A--MEMBERS AND CAPITAL CONTRIBUTIONS	Page 27

**OPERATING AGREEMENT
OF
MRS ENTERPRISES LLC
An Arkansas Limited Liability Company**

THIS OPERATING AGREEMENT, dated as of February 12, 2019, by and among the undersigned parties, who by their execution of this Operating Agreement affirm their status as the current Members of MRS Enterprises LLC, an Arkansas limited liability company, provides as follows:

RECITALS:

The Company was previously organized as a limited liability company under the laws of the State of Arkansas effective as of July 24, 2018. The undersigned parties wish to enter into this amended Operating Agreement to set forth the terms and conditions on which the management, business and financial affairs of the Company shall be conducted. Except as specifically stated herein and except as to the continuance of the capital account of the Member, this Operating Agreement will replace all prior operating agreements of MRS Enterprises LLC.

AGREEMENT:

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

1. DEFINITIONS. Capitalized terms used in this Operating Agreement shall have the following meanings, or if not defined herein, in the Act:

"Act" shall mean the Arkansas Small Business Entity Tax Pass Through Act, Ark. Code Ann. § 4-32-101 et seq. (1993), as amended and in force from time to time.

"Articles" shall mean the articles of organization of the Company, as amended and in force from time to time.

"Assignee" shall mean a transferee of a Membership Interest who is not otherwise admitted to the Company as a Substitute Member pursuant to the terms of this Operating Agreement and who has the rights described in paragraph 6.11 herein.

"BBA" means the Bipartisan Budget Act of 2015 as amended by the Protecting American from Tax Hikes Act of 2015, Pub. L. No.114-113, div. Q (the "PATH Act"), § 411, whose operational provisions are contained in §§ 6221 through 6241 of the Code.

"Capital Account" shall mean as of any given date the amount calculated and maintained by the Company for each Member as provided in paragraph 5.4 hereof.

"Capital Contribution" shall mean any contribution to the capital of the Company by a Member in cash, property or services, or a binding obligation to contribute cash, property or services, whenever made.

"Code" shall mean the Internal Revenue Code of 1986, as amended and includes the United States Treasury Regulations promulgated under the authority of the Code.

"Company" shall mean MRS Enterprises LLC.

"Company Level Taxes" means any federal, state, or local taxes, additions to tax, penalties, and interest payable by the Company as a result of any examination of the Company's affairs by any federal, state, or local tax authorities, including resulting administrative and judicial proceedings under the Partnership Tax Audit Rules.

"Company Representative" has the meaning assigned to the term "partnership representative" in § 6223 of the Code and any Treasury Regulations or other administrative or judicial pronouncements promulgated thereunder (and in any similar capacity under state or local Law), as appointed in paragraph 8.7.

"Consideration" shall mean any interest in any real or personal property wherever situated and whether tangible or intangible, direct or indirect, absolute or contingent, or future or present which will be proposed to be exchanged or exchanged for all or any part of a Membership Interest.

"Covered Audit Adjustment" means an adjustment to any partnership-related item (within the meaning of § 6241(2)(B) of the Code) to the extent such adjustment results in an "imputed underpayment" as described in § 6225(b) of the Code or any analogous provision of state or local Law.

"Dissolution" shall mean the conclusion of the procedure set forth in the Act for the termination of the Company.

"Distribution" shall mean the payment of money to the Members other than payments for services rendered, payments for the purchase and sale of Company Property or other real or personal property, payments for reimbursement of expenses, and payments on loans.

"Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or other association.

"Fair Market Value" shall mean the price at which an item of property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts as proposed in Reg. §§ 20.2031-1(b) and 25.2512-1 of the Code.

"Initial Capital Contribution" shall mean the initial contribution to the capital of the Company made by a Member pursuant to paragraph 5.1 of this Operating Agreement.

"Law" means any federal, national, supranational, state, provincial, local or similar statute, law, ordinance, regulation, rule, code, order, requirement or rule of law (including common law).

"Legally Separated" shall mean that Spouses shall have entered into a written separation agreement.

"Loss" shall mean the losses and deductions of the Company for each fiscal year, plus any expenditures of the Company not deductible in computing its taxable income and not properly chargeable to the Capital Accounts of the Members.

"Management Authority" shall refer to the Members power to manage the Company, as further described in 4.1.1

"Member" shall mean each Person that is identified as an Member on Schedule A or is hereafter admitted as a Member (either as a transferee of a Membership Interest or as an additional Member) as provided in this Operating Agreement. A Person shall cease to be a Member at such time as he no longer owns any Membership Interest.

"Membership Interest" shall mean the ownership interest of a Member in the Company, which may be expressed as a percentage equal to such Member's Capital Account divided by the aggregate Capital Accounts of all Members. The Membership Interests may be recorded from time to time on a schedule attached to this Operating Agreement. For purposes of Article 8 of the Uniform Commercial Code, Ark. Code Ann. § 4-8-101 et seq., the Membership Interests of the Company shall be a "security", but this shall not mean or imply that the Membership Interests are otherwise a "security" under applicable Company Representative.

"Operating Agreement" shall mean this Operating Agreement, as originally executed and as amended from time to time.

"Option Event" shall mean:

- (A) the death of a Member;
- (B) a default of a Member regarding the Member's Capital Contribution as contemplated in subparagraph 5.4.2;
- (C) the legal incapacity of a Member as established by a final non-appealable judgment, decree or order of a court of competent jurisdiction;
- (D) the Dissolution of the Member;
- (E) the change of ownership/voting control of the Member from the Person who owned or had voting control of the Member on the execution date of this Operating Agreement or otherwise, the date on which the Member was admitted to the Company;
- (F) the inability of a Member to pay his debts generally as they become due;
- (G) any assignment by a Member for the benefit of his creditors;
- (H) the filing by a Member of a voluntary petition in bankruptcy or similar insolvency proceedings; or

- (I) the filing against a Member of an involuntary petition in bankruptcy or similar insolvency proceeding that is not dismissed within ninety (90) days thereafter.

"Option Member" shall mean any Member to which an Option Event has occurred. Option Member shall include an Option Member's personal representative, trustee of a trust created by the Option Member or trustee in bankruptcy, to the extent applicable.

"Partnership Tax Audit Rules" means §§ 6221 through 6241 of the Code, as amended, together with any final or temporary Treasury Regulations, Revenue Rulings, and case Law interpreting §§ 6221 through 6241 of the Code, as amended (and any analogous provision of state or local tax Law).

"Permitted Transfer" shall mean:

- (A) a Transfer to a Related Party of the Member;
- (B) a Transfer (which is not the result of an Option Event) to a trust, each beneficiary of which is a Related Party of the Member; and
- (C) an encumbrance or pledge of up to ninety percent (90%) of a Member's Membership Interest in order to secure loans from commercial financial institutions; and
- (D) a Transfer of a Membership Interest to a custodian to be held for a minor Related Party of the transferor Member under the Laws of the State of Arkansas or any other state and the Transfer of this Membership Interest from such custodian to such Related Party when he reaches the age of termination of such custodianship under the applicable statute.

"Person" shall mean any natural person or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such person where the context so admits.

"Profit" shall mean the income and gains of the Company for each fiscal year, plus any income which is exempt from tax as described in § 705(a)(1)(B) of the Code.

"Property" shall mean any and all interests of the Company in any asset, real or personal property, wherever situated, whether tangible or intangible, direct or indirect, absolute or contingent, or future or present.

"Related Party" shall mean in relation to a Member:

- (A) any heir (determined by applying the Laws of descent and distribution of the state where the Member resides) of the referenced Member, other than the referenced Member's Spouse,
- (B) a trust established providing a lifetime income interest for the Spouse of this Member with principal distributions, in the event that the Spouse is the trustee of such trust, as is necessary for this Spouse's health, maintenance and support in such Spouse's accustomed manner of living, and
- (C) a trust established providing a lifetime income interest only for a Spouse of a descendant of the Member.

“Spouse” means a person who is legally married to and not Legally Separated from the other if the other is living; or was married to and not Legally Separated from the other at the time of the other's death.

“Tax Matters Partner” has the meaning assigned to the term in § 6231(a)(7) of the Code prior to amendment by the BBA.

“Transfer” means any transfer or other disposition by or with respect to a Member of all or any part of his Membership Interest, whether or not made to another party to this Operating Agreement and whether voluntarily, involuntarily or by operation of Law, and includes any transfer or other disposition (1) by sale, exchange, assignment, gift, will, intestacy Law or other act of alienation, (2) by grant of security interest, pledge or other encumbrance, (3) by an executor, administrator, custodian or trustee to a beneficiary, (4) by attachment, levy, judicial process or similar proceedings (e.g., divorce, bankruptcy, enforcement of a security interest, entry of a charging order), or under an agreement prior or incident to such proceedings or (5) pursuant to applicable community property, quasi-community property or similar state Law. In addition, a “Transfer” will be deemed to have occurred if a Member that is an entity (1) is dissolved or (2) goes through a change of ownership or voting control of the Member from the person who owned or had voting control of the Member on the execution date of this Agreement or the date on which the Member was admitted to the Company. For a Person to “Transfer” means a Transfer occurs by or with respect to the Member. A Transfer made to the trustee of a trust that is wholly revocable by the transferor will not be a Transfer for purposes of this Operating Agreement, but any subsequent Transfer by the trustee of this trust will be deemed to have been made by the trust's grantor. Unless the context or modifiers indicates otherwise, “Transfer” includes both voluntary and involuntary Transfers.

2. ORGANIZATION.

2.1 Name. The name of the Company shall be “MRS Enterprises LLC.” Subject to applicable Arkansas Law, the Company may adopt such trade or business names, whether fictitious, assumed, in acronym form or otherwise, as the Members may deem appropriate.

2.2 Purposes. The nature of the business or purposes to be conducted or promoted by the Company is to engage in any lawful act or activity for which limited liability companies may be formed under the Act. The Company shall have the power and authority to take any and all actions and engage in any and all activities necessary, appropriate, desirable, advisable, ancillary or incidental to the accomplishment of the foregoing purpose.

2.3 Powers. The Company will have the power to hold, operate, encumber, lease, sell, dispose of and otherwise deal with Company property (including businesses), to carry on any activities and take any action related to its purposes and to execute and perform any contracts, documents or instruments necessary to, in connection with or incidental to the accomplishment of its purposes, so long as such activities may be lawfully carried on or performed by a limited liability company under Arkansas Law (and if applicable, the foreign jurisdiction). The Company will have the power to invest and reinvest any of the Company property, whether or not the original purpose for the investment has been accomplished. In addition, the Company will have all powers and rights related or incidental to its purposes and of a limited liability company organized under the Act to the extent such powers or rights are not limited or changed by its Articles. If the Company qualifies to do business in a foreign jurisdiction, the Company will have such additional powers and rights (if any) as provided a limited liability company with respect to its activity in that jurisdiction.

2.4 Term. The term of the Company shall commence upon filing duly executed Articles of Organization in the office of the Secretary of State of Arkansas and shall continue until the Company is liquidated and dissolved pursuant to the provisions of Section 7.

2.5 Registered Agent. The initial registered agent of the Company shall be the registered agent named in the Articles of Organization. The registered agent may resign at any time by sending written notice to the Company. The Members may terminate the registered agent at any time and appoint successor registered agents.

2.6 Registered Office. The Company's principal office and place of business will be P.O. Box 397, Farmington, AR 72730. The registered office may be changed from time to time by the Members.

3. MEMBERS; MEETINGS

3.1 Names and Addresses of Initial Members. The names and addresses of the initial Members are set forth in Schedule A (which is incorporated by reference).

3.2 Meetings. Meetings of the Company may be called by a majority in interest of the Members for any matters on which the Members may vote under this Operating Agreement or for any other reason. Unless waived, ten (10) days written notice of a meeting will be required and meetings will be held in the location designated by the Members. Any action required or permitted to be taken at a meeting may be taken without a meeting by written action signed by the Members with necessary Membership Interests required to take the same action at a meeting. The written action is effective when signed by Members with the necessary Membership Interests, unless a different effective time is provided in the written action.

3.3 Vote of Members. On all matters requiring a vote of the Members, each Member will have a vote equal to his Membership Interest at the time of such vote. Members may vote informally or by proxy at any Company meeting. A vote may be taken after written notice stating that a failure to respond within not less than fifteen (15) days will be considered a vote in favor of the matter which is the subject of the vote is sent to each Member entitled to vote pursuant to the terms of this Operating Agreement. This paragraph shall not be interpreted as creating voting rights for a Member that would not otherwise hold such voting power under another section, paragraph, subparagraph or clause of this Operating Agreement.

4. MANAGEMENT.

4.1 Member Management.

4.1.1 Business and Affairs. The Member(s) will have the full and exclusive power on behalf of the Company to manage, operate and control the businesses and affairs of the Company and to do or cause to be done anything determined to be necessary or appropriate for the business and affairs of the Company ("Management Authority").

4.1.2 Individual Member Authority. Each Member is authorized to exercise Management Authority on behalf of the Company *without* the need for any other Member to join in the exercise of the Management Authority. The affect of the exercise of Management Authority by one Member with respect to third parties will be the same as if the Management Authority was exercised by the majority in interest vote of the Members, will constitute the act or non-act of the Company and will bind the Company, the Member(s) and all respective successors, assigns, heirs and personal representatives.

4.1.3 Group Member Authority. When multiple Members choose to exercise Management Authority as a group, the Members will exercise Management Authority by majority in interest vote unless otherwise required by this Agreement or the Act.

4.1.4 Relief from Liability. If a Member disagrees with the exercise of Management Authority by another Member acting alone or the vote of the Members acting as a group, within five (5) days of actual knowledge of this exercise of Management Authority by the Member(s), the dissenting Member may give written notice to the other Member(s) of the dissent and this notice will relieve the dissenting Member of any liability to the Company, the other Member(s) or third parties resulting from the exercise of the Management Authority. In this event, the dissenting Member will be indemnified from all loss and expense by the Company and the other Member(s) who have consented to the exercise of the Management Authority.

4.1.5 Examples. Management Authority includes, but is not limited to, the authority to:

- (1) execute and deliver on behalf of the Company, all contracts, instruments, documents, and undertakings necessary that may be necessary, appropriate or advisable in furtherance of the purposes of the Company;
- (2) sell, exchange, assign, convey, lease and transfer legal and equitable title to Company property on terms and conditions determined appropriate by the Members, including the giving of any warranties or assurances determined appropriate;
- (3) buy, lease or otherwise acquire, operate, improve and develop any type of Company property;
- (4) retain (without liability) any property in the form in which it is received without regard to its productivity or the proportion that any one asset or class of assets may bear to the whole of the Company property;
- (5) take title to Company property in the name of the Company or as nominee (with or without disclosing the identity of the principal) and allow registration of securities in "street name" under a custodial arrangement with a securities brokerage firm, trust department or other custodian;
- (6) collect funds due to the Company;
- (7) borrow money, finance, refinance or otherwise incur obligations for the account of the Company and pledge, mortgage and grant security interests in Company property;
- (8) assign any debts owing to the Company;
- (9) carry out the Company purposes through other limited liability companies, partnerships, corporations or other entities or business trusts and enter into any agreement for the sharing of profits and any joint venture agreement with any person or entity engaging in any business or venture in which this Company may engage;
- (10) manage, administer, conserve, improve, develop, operate, lease, utilize and defend Company property directly or through third parties;
- (11) execute any type of agreement or instrument in connection with any other Company power;
- (12) hire employees, appoint agents and engage other persons to assist in the management of the Company and delegate powers or duties of the Members to these persons assisting in this management (even if they are related by blood, marriage or business relationship to a Member) and pay these person reasonable compensation;
- (13) incur any reasonable expense for travel, telephone, telegraph, insurance, taxes and such other things in carrying on Company business or affairs;
- (14) quitclaim, release, or abandon any Company property with or without consideration;
- (15) loan funds on terms and conditions determined appropriate by the Members;
- (16) open and maintain bank and investment accounts and arrangements, draw checks and other orders for the payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (17) invest and reinvest Company property to accomplish the Company purposes, including but not limited to investing the Company property in accordance with modern portfolio theory;

- (18) prepare and file, or cause to be prepared and filed, all tax returns (if any) and payments relating to income tax, employment taxes, and other taxes imposed upon the Company;
- (19) make elections available to the Company under the Code;
- (20) execute and file certificates or instruments required or permitted by the Act and other laws with respect to the Company.

4.2 Reliance by Third Parties.

4.2.1 Duty of Person Dealing with Member. Notwithstanding any other provision of this Agreement, any act of Management Authority taken by a Member (even if there is more than one Member) which states that it is on behalf of the Company will be binding as to any person (and the heirs, successors and assigns of this person) who acts and relies in good faith on the authority of the Member to take the action. A person who in good faith and for value deals with a Member (or a person purporting to be a Member), or who in good faith assists a Member (or a person purporting to be a Member), in the conduct of a transaction (e.g., a sale and purchase of Company property, a transfer of Company property by a transfer agent, a distribution of dividends by dividend disbursing agent, a loan to the Company by a bank or a distribution to a person by a brokerage firm holding Company property) will not be required to:

- (1) ascertain whether this person who purports to be a Member is in fact then occupying the position of Member,
- (2) ascertain whether this Member has the power to act alone or on behalf of the other Members,
- (3) ascertain whether this Member is properly exercising any Management Authority,
- (4) ascertain whether a person who purports to be acting for an entity Member is in fact then authorized to act on behalf of the entity Member or
- (5) assure the proper application of any property paid or delivered to the Member,

even if the action appears to be prohibited by this Agreement.

4.2.2 No Affect on Liability to Other Members. This reliance accommodation for third parties to act without the requirement to fully ascertain the authority of the Member by a complete review of this Agreement and any applicable Member action resolution, memorandum or minutes will in no way affect the liability of the acting Member to the Company or the other Member(s) for any improper conduct.

4.3 Nominees. The Company and the Member(s) recognize that sometimes there are practical difficulties in doing business as a limited liability company, occasioned by outsiders seeking to satisfy themselves relative to the authority of the Member(s) to act for and on behalf of the Company or for other reasons. The Members therefore specifically authorizes a Member to acquire real and personal property, arrange financing, enter contracts and complete other arrangements needed to effectuate the purposes of the Company in the individual name of the Member or in the name of a nominee, without having to disclose the existence of the Company.

4.4 Other Member Matters.

4.4.1 Documents. A Member may rely, and will be protected in acting or refraining from acting, on any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by the Member to be genuine and to have been signed or presented by the proper party(s).

4.4.2 Experts. A Member may consult with legal counsel, accountants, appraisers, management consultants, investment managers, investment bankers and other consultants and advisers selected by the Members, and any opinion of any such person as to matters that the Member reasonably believes to be within the professional or expert competence of this person will be a full and complete authorization and protection in respect of the action taken or omitted by the Member in good faith and in accordance with that opinion.

4.4.3 Delegation. A Member will have the right, in respect of any of obligations of the Member under this Agreement or the Act, to act through any of the duly authorized officer(s), manager(s), member(s), general partner(s) or other applicable representative(s) of the Member and will have the right, in respect of any of the powers or obligations of the Member under this Agreement or the Act, to act through a duly appointed attorney-in-fact. Each such attorney-in-fact will, to the extent provided by the Member in the power of attorney, have full power and authority to do and perform every act and duty that is permitted or required to be done by the Member under this Agreement or the Act.

4.4.4 Reimbursement. A Member will be entitled to receive reimbursement for expenses incurred in the performance of duties under this Agreement if approved by the Member.

4.5 Reliance. Any person dealing with the Company in good faith may rely on the authority of the Member(s) in taking any action or deciding not to act in the name of the Company.

4.6 Limited Liability. No Member(s) will have any personal obligation for any liabilities of the Company solely by reason of being a Member(s) except as provided by applicable law.

4.7 Withdrawal. A Member will have no right to resign and withdraw from the Company at any time prior to dissolution without the written consent of all other Members.

5. CONTRIBUTIONS AND DISTRIBUTIONS.

5.1 Initial Capital Contributions. Each Member has made an initial Capital Contribution as shown on Schedule A attached hereto. The Initial Capital Contribution to be made by any Person who hereafter is admitted as a Member and acquires his Membership Interest from the Company shall be determined by the Members.

5.2 Additional Capital Contributions. No Member shall be required to make any Capital Contribution in addition to his Initial Capital Contribution. Otherwise, the Members may make additional Capital Contributions to the Company only if such additional Capital Contributions are made pro rata by all the Members or all the Members consent in writing to any non-pro rata contribution. The Fair Market Value of any property other than cash or widely traded securities to be contributed as an additional Capital Contribution shall be (a) agreed upon by the contributing Member and a majority in interest of the Members before contribution, or (b) determined by a disinterested appraiser selected by the Members.

5.3 Interest and Return of Capital Contribution. No Member shall receive any interest on his Capital Contribution. Except as otherwise specifically provided for herein, the Members shall not be allowed to withdraw or have refunded any Capital Contribution. Further, no Members will have priority over any other Members as to the return or withdrawal of Capital Contributions.

5.4 Capital Accounts.

5.4.1 Separate Accounts. All Capital Accounts shall be maintained pursuant to this paragraph 5.4 and § 704(b) of the Code and Regulations promulgated thereunder. Separate Capital

Accounts shall be maintained for each Member in accordance with the following provisions:

- (A) To each Member's Capital Account there shall be credited the Fair Market Value of such Member's Initial Capital Contribution and any additional Capital Contributions, such Member's distributive share of Profits, and the amount of any Company liabilities that are expressly assumed by such Member.
- (B) To each Member's Capital Account there shall be debited the amount of cash and the Fair Market Value of any Property distributed to such Member pursuant to any provision of this Operating Agreement, such Member's distributive share of Losses, and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any Property contributed by such Member to the Company.
- (C) The Capital Account shall also include a pro rata share of the Fair Market Value of any Property contributed by a Person who is not a Member, such Fair Market Value to be the same value reported for federal gift tax purposes if a gift tax return is filed, and if not, the Fair Market Value in the case of real property shall be determined by an independent M.A.I. appraiser, selected by the Members, actively engaged in appraisal work in the area where such real property is located and otherwise by the certified public accountant or accountants then serving the Company.
- (D) If any Member makes a non-pro rata Capital Contribution to the Company or the Company makes a non-pro rata Distribution to any Member, the Capital Account of each Member shall be adjusted to reflect the then Fair Market Value of the Property held by the Company immediately before the Capital Contribution or Distribution.

5.4.2 Obligation of Member. Each Member is unconditionally obligated to make its Capital Contribution to the Company. If after having received notice, as provided in this Operating Agreement, a Member is in default of its Capital Contribution, the Company may offset Distributions to that Member until the total offset Distributions for this Member equals the Member's Capital Contribution obligation. In the alternative, the Company may charge the Member interest, at a commercially reasonable rate and determined in the sole discretion of the Members, on the amount of its Capital Contribution obligation.

5.4.3 Loans to the Company. If the Company has insufficient funds to meet its obligations as they come due and to carry out its routine, day-to-day affairs, then, in lieu of obtaining required funds from third parties or selling its assets to provide required funds, the Company may, but shall not be required to, borrow necessary funds from one or more of the Members as designated by the Members; provided that the terms of such borrowing shall be commercially reasonable and the Company shall not pledge its Property to secure such borrowing.

5.4.4 Effect of Transfer. In the event of a Transfer of a Membership Interest in the Company, including a Permitted Transfer, the Capital Account of the transferor shall become the Capital Account of the transferee in proportion to the percentage of the transferor's Membership Interest Transferred.

5.5 Distributions.

5.5.1 Distributions. To the extent permitted by applicable Law and hereunder, and

except as otherwise provided in paragraph 7.4, Distributions to Members may be declared by the Members out of funds legally available therefor in such amounts and on such terms (including the payment dates of such distributions) as the Members shall determine using such record date as the Members may designate. Any such Distribution shall be made to the Members as of the close of business on such record date on a *pro rata* basis, in accordance with the Membership Interest owned by each Member as of the close of business on such record date; provided, however, that the Managing Member shall have the obligation to make distributions as set forth in subparagraph 5.5.3 and clause 7.4(C); and provided, further, that, notwithstanding any other provision herein to the contrary, no Distributions shall be made to any Member to the extent such Distribution would render the Company insolvent or violate the Act. For purposes of the foregoing sentence, insolvency means the inability of the Company to meet its payment obligations when due. Promptly following the designation of a record date and the declaration of a Distribution pursuant to this subparagraph 5.5.1, the Members shall give notice to each Member of the record date, the amount and the terms of the Distribution and the payment date thereof.

5.5.2 Distributions in Kind. Distributions in kind of the Company Property, in liquidation or otherwise, shall be made only with the consent of all Members and only at a value established by mutual agreement of the Members. Prior to any such Distribution in kind, the difference between such established value and the book value of the Property to be distributed shall be credited or charged, as is appropriate, to the Members' Capital Accounts in proportion to their Membership Interest. Upon the Distribution of such Property, such agreed upon value shall be charged to the Capital Accounts of the Members receiving such Distribution. Members shall not be able to demand or force a Distribution in kind of Company Property over the objection of non-consenting Members.

5.5.3 Tax Distributions. The Company shall, subject to any restrictions contained in any agreement to which the Company is bound, make Distributions out of legally available funds to all Members on a *pro rata* basis in accordance with subparagraph 5.5.1, at such times and in such amounts as the Members reasonably determine is necessary to enable the Members, in the aggregate, to timely satisfy any and all U.S. federal, state and local and non-U.S. tax obligations (including any Company Level Taxes, but excluding any obligations to remit any withholdings withheld from payments to third parties) owed by the Members, in the aggregate.

5.6 Allocations. Except as otherwise provided in paragraphs 5.7 and 5.8 hereof, all items of Profit, Loss, deduction and credit, whether resulting from the Company's operations or in connection with its Dissolution, shall be allocated to the Members for federal, state and local income tax purposes in proportion to their respective Membership Interests.

5.7 Allocation with Respect to Property. If, at any time during the Company's existence, any Member contributes to the Company Property with an adjusted basis to the contributing Member which is more or less than the agreed Fair Market Value and such Property is accepted by the Company at the time of its contribution, the taxable Profit, Loss, deductions and credits with respect to such contributed Property for tax purposes only (but not for purposes of calculating the Members' respective Capital Accounts) shall be shared among the Members so as to take account of the variation between the basis of the Property to the Company and its agreed Fair Market Value at the time of contribution, pursuant to § 704(c) of the Code.

5.8 Special Allocations. Items of income, gain, loss, expense or credit resulting from a Covered Audit Adjustment shall be allocated to the Members in accordance with the applicable provisions of the Partnership Tax Audit Rules.

6. TRANSFER OF INTERESTS AND RESIGNATION.

6.1 Right of First Refusal.

6.1.1 Company Option. Unless the Transfer of his Membership Interest is a Permitted Transfer, each Member hereby covenants and agrees that he will not Transfer all or any part of his Membership Interest to any Person, firm, corporation, trust or other Entity without first offering in writing to sell such Membership Interest to the Company on the same written terms and conditions offered by such third party ("Purchase Terms"). The Company shall have the right to accept the offer at any time during the 30 days following the date on which the written offer is delivered to the Company ("Company Acceptance Period").

6.1.2 Member Option. If the Company shall fail to accept the offer within the Company Acceptance Period or waive its right to acquire such Membership Interest, then within fifteen (15) days, beginning on the earlier of (1) the end of the Company Acceptance Period or (2) the date on which the Company waives its right to acquire such Membership Interest ("Member Acceptance Period"), one or more of the Members may acquire such Membership Interest on the same Purchase Terms. In this event, the Membership Interest will be divided pro-rata among the acquiring Members.

6.1.3 Default Transfer Period. If both the Company and the Members fail to accept the offer in the time provided herein, the Membership Interest may, during the sixty (60) day period beginning on the earlier of (1) the end of the Member Acceptance Period or (2) the date on which all Members waive their right to acquire such Membership Interest, be disposed of free of the restrictions imposed by this Operating Agreement; provided, however, that the Membership Interest is Transferred on the same Purchase Terms that were offered to the Company and Members (as applicable). Any Membership Interest not so disposed of within this sixty (60) day period shall thereafter remain subject to the terms of this Operating Agreement.

6.2 Refusal Right Not Applicable. Notwithstanding paragraph 6.1, any or all of a Member's Membership Interest may be Transferred to a transferee without an offer being made to the Company and Members as described therein, if the Transfer is a Permitted Transfer. Notwithstanding the previous sentence, no Assignee of a Membership Interest by way of being the transferee of a Transfer (including a Permitted Transfer) shall become a Member of the Company except upon receiving the consent of a majority in interest of the non-Transferring Members and upon complying with the requirements of paragraph 6.3.

6.3 Admission of Substitute Members. Notwithstanding paragraph 6.2, if the unanimous consent contemplated in paragraph 6.2 is satisfied, a transferee (including a transferee of a Permitted Transfer) shall be admitted as a Substitute Member only if:

- (A) the Transferring Member (or his personal representative) and the transferee:
 - (1) execute, acknowledge, and deliver to the Members such instruments of Transfer and assignment as are in form and substance satisfactory to the Members; and
 - (2) furnish to the Members such assurances as the Members may request, including, without limitation, an opinion of counsel to the Company or counsel otherwise satisfactory to the Members that the Transferring Member's Membership Interest has been registered for sale under the Securities Act of 1933, as amended, and under all applicable state securities Laws or that such registration under the said Securities Act of 1933 and under all applicable state securities Laws is not required and that the Transfer shall not cause a termination of the Company

under § 708(b) or any other provision of the Code; and

(B) the transferee:

- (1) pays all reasonable expenses connected with such substitution; and
- (2) agrees to be bound by the terms and provisions of this Operating Agreement by becoming a signatory hereto.

6.4 Purchase of Certain Membership Interests.

6.4.1 Right of Company to Purchase. If an Option Event occurs with respect to any an Option Member, the Option Member shall cease to be a participating Member and shall have the rights of an Assignee only. The Company shall have the option to purchase the Option Member's Membership Interest upon the terms and conditions set forth in this paragraph 6.4.

6.4.2 Notice and Option Period. Upon any Option Event occurring to an Option Member, the Option Member shall, within fifteen (15) days, deliver written notice of the occurrence of such Option Event to the Company. The Company shall have the option, but not the obligation, to purchase the Option Member's Membership Interest at any time during the sixty (60) day period immediately following the date on which it receives notice of the occurrence of the Option Event. Such option shall entitle the Company to purchase such Membership Interest for the purchase price described in subparagraph 6.4.3. The consent of all the Members shall be required to authorize the exercise of such option by the Company. Such option must be exercised by delivery of a written notice from the Company to the Option Member during the aforementioned period. Upon delivery of such notice the exercise of such option shall be final and binding on the Company and the Option Member.

6.4.3 Determination of Purchase Price. The purchase price of Option Member's Membership Interest shall be the Fair Market Value of such Membership Interest. The Fair Market Value of the interest shall be the amount that the Option Member would receive in exchange for his entire interest in the Company if the Company sold all of its assets, subject to their liabilities, at their Fair Market Value as of the date on which the Option Event occurred and distributed the net proceeds from such sale in complete liquidation of the Company. The Fair Market Value of the Option Member's Membership Interest shall be determined as expeditiously as possible by a disinterested appraiser selected by the Members, (exclusive of the Option Member's Membership Interest). If the only Member is the Option Member, then the majority in interest of the Members (exclusive of the Option Member's Membership Interest) shall select a disinterested appraiser who shall determine the Fair Market Value of Company assets and purchase price of the Membership Interest. The determination of the Fair Market Value of the Company Assets and purchase price of the Membership Interest by the appraiser shall be conclusive and binding on all parties. All costs of an appraiser shall be shared equally by the Option Member and the Company.

6.4.4 Continuation of Company. If the option described in this paragraph 6.4 is not exercised, the business of the Company shall continue, and the Option Member shall retain his Membership Interest as an Assignee, unless the Members (exclusive of the Option Member) unanimously consent for the Option Member to be reinstated as a participating Member. The unanimous consent of the Members described herein, may be conditioned on the Option Member complying with the terms and conditions of paragraph 6.3.

6.4.5 Closing of Purchase. If the option to purchase the Option Member's Membership Interest is exercised by the Company, then not later than thirty (30) days after the date on which the appraisal described in subparagraph 6.4.3 is complete (the "Appraisal Date"), the

Company shall make a Distribution of Property to the Option Member with a value equal in amount to the purchase price of the Option Member's Membership Interest; provided, however, that at the election of the Company, such Distribution to the Option Member may be made in five (5) equal annual installments, the first of which shall be made on the thirtieth (30th) day after the Appraisal Date and one of which shall be made on the same date in each of the four years thereafter, provided, further, however, that notwithstanding an election by the Company to make the Distribution to the Option Member in five equal annual installments, the Company may accelerate without penalty all of such installments at any time or any part of such installment at any time. If the Company elects to make Distributions to the Option Member in five equal annual installments as provided herein, the Company, in addition to such annual installments, shall pay the Option Member additional amounts computed as if the Option Member were entitled to interest on the undistributed amount of the total Distribution to which the Option Member is entitled hereunder at an annual rate equal to the annual Federal Mid-Term Rate in effect under § 1274(d) of the Code, as determined on the thirtieth (30th) day after the Appraisal Date, which additional amounts, computed like interest, shall be due and payable on the same dates as the annual installments of the Distribution payable to the Option Member hereunder. Any unpaid Capital Contributions of the Option Member and any damages occurring to the Company as a result of the Option Event shall be taken into account in determining the net amount due the Option Member at the closing, and any excess of such unpaid Capital Contributions or damages over the amount due at closing shall be netted against subsequent installment payments as they become due.

6.4.6 Prohibition on Exercise. If at a time when the Company has an option to purchase an Option Member's Membership Interest, it is prohibited from purchasing all or any portion of such Membership Interest pursuant to the Act or any loan agreement or similar restrictive agreement, the Option Member and the remaining Members shall, to the extent permitted by Law, take appropriate action to adjust the value of the Company's Property from book value to a fair valuation based on accounting practices and principles that are reasonable under the circumstances in order to permit the Company to purchase such Membership Interest. If the Company becomes obligated to purchase an Option Member's Membership Interest under this Section 6 and the above action cannot be taken or does not create sufficient value to permit the Company to do so, the Company shall be obligated to purchase the portion of the Membership Interest it is permitted to purchase.

6.5 Absolute Prohibition. Notwithstanding any other provision in this Section 6, the Membership Interest of a Member, in whole or in part, or any rights to Distributions therefrom, shall not be Transferred, if, as a result thereof, the Company would be terminated for federal income tax purposes in the opinion of counsel for the Company or such action would result in a violation of federal or state securities Laws in the opinion of counsel for the Company.

6.6 Members Acquiring Membership Interest from Company. No Person who acquires a Membership Interest from the Company shall be admitted as a Member of the Company, except upon receiving the unanimous consent of the Members and complying with the terms set forth in clause 6.3(B).

6.7 Resignation. Any Member may elect to resign from the Company and to sell his entire interest in the Company to the Company at any time by serving written notice of such election upon the Company. Such notice shall set forth the date upon which such resignation shall become effective, which shall be not less than sixty (60) days and not more than ninety (90) days from the date of such notice. The purchase price for a Resigning Member's interest in the Company shall be One Dollar (\$1.00).

6.8 Effect of Prohibited Action. Any Transfer or other action in violation of this Section 6 shall be void ab initio and of no force or effect whatsoever.

6.9 Consideration for Transfer. The Consideration for a Transfer may be paid in a form other than cash if the Members consent in writing to such non-cash Consideration. This non-cash Consideration may be any type of property which the Members find acceptable. The Members will set forth the terms of any promissory notes or other deferred payment obligations which are Consideration for a Transfer. The value of any non-cash Consideration will be its Fair Market Value on the date of Transfer. Fair Market Value will be determined by mutual agreement between the Members and the transferee, unless they are unable or unqualified to mutually agree on the Fair Market Value of such non-cash Consideration, in which case the Fair Market Value will be determined by a disinterested professional, mutually selected by the Members and transferee, such as a certified appraiser, who has the ability to provide an acceptable valuation. If the transferee and the Members are unable to mutually select this disinterested professional, the part of the property subject to the disagreement will be ineligible as Consideration.

6.10 Transferor and Transferee Closing Responsibility. Upon the closing of any Transfer, the transferor will execute and deliver to the transferee any and all documents affecting conveyance of the Membership Interest in a form reasonably acceptable to or requested by the transferee. The transferee will execute and deliver to the Company a duplicate counterpart of this Operating Agreement agreeing to be bound by all of the provisions of this Operating Agreement. The transferee agrees that he will be subject to any claims or offsets attributable to the Transferred Membership Interest. Further, the transferee will deliver the agreed Consideration to the Members. The Members will first use this Consideration to pay any debts, liabilities, or obligations of the transferor to the Company. Thereafter, the Members will pay the balance of the Consideration to the transferor.

6.11 Rights of an Assignee. If an Assignee of a Membership Interest is not admitted as a Member because of the failure to satisfy the requirements of paragraphs 6.1, 6.2, 6.3 or 6.5, such Assignee shall nevertheless be entitled to receive such Distributions from the Company as the Transferring Member would have been entitled to receive under paragraph 5.5 and clause 7.4(C) of this Operating Agreement with respect to such Membership Interest had the Transferring Member retained such Membership Interest. An Assignee will not acquire any legal, beneficial or equitable interest in the Company; however, the Company may, but will not be required to make Distributions to an Assignee until a court of competent jurisdiction will have issued a charge against a Membership Interest as provided in the Act. Any further purported Transfer by an Assignee will be subject to the terms of this Operating Agreement. The Assignee will not:

- (A) have or exercise any rights of a Member;
- (B) interfere in the management or administration of the business and affairs of the Company;
- (C) have access to information accounts of Company transactions; or
- (D) be able to inspect or be reflected on the Company books and records.

7. DISSOLUTION AND TERMINATION.

7.1 Events of Dissolution. The Company shall be dissolved upon the first to occur of the following ("Event of Dissolution"):

- (A) any event that under the Act or the Articles requires Dissolution of the Company, provided that the death, resignation, retirement, expulsion, bankruptcy, or dissolution of a Member or occurrence of any other event that terminates the continued membership of a Member in the Company shall not cause the Dissolution of the Company;

- (B) the unanimous written consent of the Members to the Dissolution of the Company; and
- (C) the entry of a decree of judicial dissolution of the Company as provided in the Act.

7.2 Liquidation. Upon the Dissolution of the Company, it shall wind up its affairs and distribute its Property in accordance with the Act and this Operating Agreement by either or a combination of both of the following methods as the Members shall determine:

- (A) selling the Company's Property and, after the payment of Company liabilities, distributing the net proceeds therefrom to the Members in proportion to their Membership Interests and in satisfaction thereof; and/or
- (B) distributing the Company's Property to the Members in kind with each Member accepting an undivided interest in the Company's Property, subject to its liabilities, in satisfaction of his Membership Interest. The interest conveyed to each Member in such Property shall constitute a percentage of the entire interests in such Property equal to such Member's Membership Interest.

7.3 Orderly Liquidation. A reasonable time as determined by the Members not to exceed eighteen (18) months shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to the creditors so as to minimize any Losses attendant upon Dissolution.

7.4 Distributions. Upon liquidation, the Company Property (including any cash on hand) shall be distributed in the following order and in accordance with the following priorities:

- (A) first, to the payment of the debts and liabilities of the Company and the expenses of liquidation, including a sales commission to the selling agent, if any; then
- (B) second, to the setting up of any reserves that the Members (or the Person or Persons carrying out the liquidation) deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company. At the expiration of such period as the Members (or the Person or Persons carrying out the liquidation) shall deem advisable, but in no event to exceed eighteen (18) months, the Company shall distribute the balance thereof in the manner provided in the following clause; then
- (C) third, to the Members in proportion to their respective Membership Interests.
- (D) in the event of a Distribution in liquidation of the Company's Property in kind, the Fair Market Value of such Property shall be determined by a qualified and disinterested appraiser, selected by the Members (or the Person or Persons carrying out the liquidation), and each Member shall receive an undivided interest in such Property equal to the portion of the proceeds to which he would be entitled under the immediately preceding clause if such Property were sold at such Fair Market Value.

7.5 Taxable Gain or Loss. Taxable Profit and Loss from the sale or Distribution of Company Property incurred upon or during liquidation and termination of the Company shall be allocated to the Members as provided in paragraph 5.6 above.

7.6 No Recourse Against Members. Except as provided by Law, upon Dissolution, each Member shall look solely to the Property of the Company for the return of his 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 Capital Contribution of each Member, such Member shall have no recourse against any other Member.

7.7 Continuation. Within thirty (30) days after the occurrence of an Event of Dissolution, the Company may be continued if all Members consent in writing to such continuance. In such event, the Company shall be deemed to have been reconstituted, reorganized, and continued as though the Event of Dissolution never occurred.

7.8 Date of Dissolution. The Company shall terminate and dissolve when all of its assets have been applied and distributed in accordance with the provisions of paragraph 7.4 above. The establishment of any reserves in accordance with the provisions of clause 7.4(B) above shall not have the effect of extending the term of the Company, but any such reserves shall be distributed in the manner provided in paragraph 7.4 (exclusive of clause 7.4(B)) upon expiration of the period of such reserve.

8. ACCOUNTING; CERTAIN TAX MATTERS.

8.1 Financial Statements and Tax Returns. Within seventy-five (75) days from the close of each fiscal year of the Company, the Company Representative shall cause to be delivered to each Member a statement setting forth such Member's allocable share of all tax items of the Company for such year, and all such other information as may be required to enable each Member to prepare his federal, state and local income tax returns in accordance with all then applicable Laws, rules and regulations. The Company Representative will arrange for the preparation and timely filing of all federal, state and local income tax, other tax and informational returns required of the Company for each fiscal year at the sole cost and expense of the Company.

8.2 Fiscal Year. The fiscal and taxable year of the Company shall be on a calendar year.

8.3 Method of Accounting. The Company's books of account shall be maintained, and its income, gains, Losses, and deductions shall be determined and accounted for in accordance with such method of accounting as may be adopted for the Company for federal income tax purposes, and for purposes of this Operating Agreement, the Company shall account for each and every item of its income, gain, Loss and deduction in the same manner as it accounts for each such item for income tax purposes.

8.4 Tax Classification. The Members intend that the Company shall be classified as a partnership for federal, state and local tax purposes. Notwithstanding the foregoing, this classification shall not be deemed to convert the Company to any classification other than an Arkansas limited liability company for any other purpose whatsoever.

8.5 Tax Elections. The Company may make an election (or continue a previously made election) pursuant to § 754 of the Code for the taxable year of the Company that includes the date hereof and shall not thereafter revoke such election. In addition, the Company Representative may make any election the Company Representative deems appropriate and in the best interests of the Company so long as it is permitted under the Code and/or applicable Law.

8.6 Tax Matters Partner. To the extent the Company is required to have a Tax Matters Partner, the Members elect and appoint Melissa Sims. The Tax Matters Partner shall take such actions as necessary to cause to the extent possible each Member to become a "notice partner" within the meaning of the Code. The Tax Matters Partner shall inform each Member of all significant

matters that may come to its attention in its capacity as Tax Matters Partner and shall forward to each Member copies of all significant written communications it may receive in that capacity. The Tax Matters Partner shall not take any action without authorization by the Company, other than an action required by the Code, or other applicable state Law. All reasonable costs and expenses incurred by the Tax Matters Partner in its capacity shall be paid by the Company.

8.7 Company Representative. For all taxable years beginning on or after January 1, 2018, this paragraph 8.7 shall apply.

8.7.1 Appointment and Acceptance. The Members unanimously elect and appoint Melissa Sims to be the Company Representative pursuant to the Code at the sole cost and expense of the Company. By signing below, the Company Representative accepts such appointment and confirms to the Company that he or she satisfies the substantial presence requirement of Code § 6223(a) and the regulations thereunder, and agrees to forward any and all communications from the IRS relating to the Company to the Members. The Company Representative will serve until his, her, or its death, resignation, incapacity, bankruptcy, revocation/removal or a determination by the IRS that the designation is not effective. If there is a vacancy in the position of Company Representative, a successor Company Representative shall be designated by the Members.

8.7.2 Power and Duties. The Company Representative shall represent the Company in connection with all examinations, disputes, controversies or proceedings by or against any federal, state or local taxing authority. The Company Representative is authorized to exercise any and all authority and take any and all actions granted to the Company Representative under applicable Law, including without limitation, elections related to an audit; matters arising from the audit; the audit proceedings, including receiving notices of the commencement of an audit and requests for information; providing information to the IRS with regard to the audit; meeting with IRS personnel to discuss and settle the audit; extending the statute of limitations for the Members and the Company; binding the Company and the Members to a settlement with respect to the audit matters; electing not to contest the notice of final adjustments to a Company tax return in court or to contest all or any portion of the matter in court and to choose the court forum; filing an election out; making decisions regarding the payment of the imputed underpayment; making a push-out election; entering into a closing agreement with the IRS; requesting multiple imputed underpayments; filing an administrative adjustment request; and deciding whether to settle with IRS appeals or to settle litigation and whether to appeal an adverse court decision.

8.7.3 Elections. The Company Representative may, in his or her sole and absolute discretion, file such election forms, statements and other information required by the Partnership Tax Audit Rules to make the election out of the Partnership Tax Audit Rules pursuant to Code § 6221(b) (the "Opt-Out Election") if the Company is eligible for the Opt-Out Election. If the Company is not eligible for the Opt-Out Election, the Company Representative may, in his or her sole and absolute discretion, otherwise make the push-out election pursuant to Code § 6226(a) with respect to any tax year of the Company.

8.7.4 Member Obligations. Each Member hereby covenants and agrees to promptly provide the Company Representative with all information regarding the Member's tax returns and tax liabilities as requested from time to time, including but not limited to proof that the Member has filed an amended return and paid any resulting tax, the Member's address, taxpayer identification number and current contact information, the Member's status as a tax-exempt Member, the tax rate applicable to the Member and the Member's status as an eligible Member. Each Member agrees that any action taken by the Company Representative in connection with audits of the Company or any other matters relating to taxes shall be binding upon such Members and each such Members further agrees that such Members shall not treat any Company item inconsistently on such Member's income tax return with the treatment of the item on the Company's return and that such Member shall not

independently act with respect to tax audits or tax proceedings affecting the Company. In the event that the Company becomes liable for any Company Level Taxes, (i) each Person that was a Member of the Company for the taxable year to which such Company Level Taxes relate shall indemnify, defend and hold harmless the Company for such Person's allocable share of the amount of such Company Level Taxes, (ii) the Company may cause the Members (including any former Member) to whom such Company Level Taxes relate to pay, and each such Member hereby agrees to pay, such amount to the Company, and such amount shall not be treated as a Capital Contribution, and (iii) without reduction to a Member's (or former Member's) obligations under this subparagraph 8.7.4, any amount paid by the Company that is attributable to a Member and that is not paid by such Member pursuant to clause (ii) above, shall be treated for purposes of this Agreement as a Distribution to such Member and a reduction to such Member's Capital Account balance. The obligations of each Member under this subparagraph 8.7.4 shall survive the Transfer by such Member of its Membership Interest, the termination of this Agreement, and the dissolution of the Company.

8.7.5 Expenses. The Company Representative may retain, at the Company's expense, such outside counsel, accountants and other professional consultants as the Company Representative reasonably deems necessary in the course of fulfilling his or her obligations as the Company Representative.

8.7.6 Liability of Company Representative. The Company Representative shall act in good faith and shall use commercially reasonable efforts to carry out the duties, authority and responsibilities set forth in this Agreement and the Partnership Tax Audit Rules. Unless fraud, deceit, gross negligence, willful misconduct or a wrongful taking shall be proved by a non-appealable court order, judgment, decree or decision, the Company Representative shall not be liable or obligated to the Company or to any of the Members for any breach of fiduciary duty, for any mistake of fact or judgment, or for the doing of any act, or the failure to do any act, which may cause or result in any loss or damage to the Company or to the Members. In addition, the Company Representative may rely on the services and advice of attorneys, accountants and other professional advisors or experts. The Company Representative shall not be liable to the Company or to any Member for damages, losses, or costs, any loss of value or any liability arising from such reliance.

8.7.7 Indemnification of Company Representative. The Company shall reimburse and indemnify the Company Representative for all claims, liabilities, losses and damages incurred by the Company Representative in connection with any administrative or judicial proceeding with respect to the federal income taxation of the Company or the Members, or both, including (without limitation) his or her actions under the Partnership Tax Audit Rules.

9. MISCELLANEOUS PROVISIONS.

9.1 Agent. Status as a Member of the Company shall not cause a Member to be the agent of the Company. Unless another agent is otherwise appointed by the Members, the Members shall be the agent of the Company. The Members of the Company can designate one or more Members to serve as the agent of the Company.

9.2 Amendments. No amendment or modification of this Operating Agreement shall be effective except upon the unanimous written consent of the Members.

9.3 Application of Arkansas Law. This Operating Agreement, and the interpretation hereof, shall be governed exclusively by its terms and by the Laws of the State of Arkansas, without reference to its choice of law provisions, and specifically the Act.

9.4 Mediation and Arbitration. All disputes and controversies between the parties hereto

arising out of or in connection with this Operating Agreement shall be submitted to non-binding mediation first and if this mediation does not produce a settlement agreeable to the parties, then such disputes and controversies shall be submitted to arbitration.

9.5 Mediation. Mediation will be conducted pursuant to the following procedure:

- (A) The opposing parties will attempt to select a mutually satisfactory mediator. If they cannot agree on a mediator within fifteen (15) days after the unresolved dispute arises, the opposing parties will submit a panel of seven persons as proposed mediators. Names will be stricken from the list of the panel alternatively by the opposing parties (with the order of striking determined by lot) until only one name remains and that remaining person will become the mediator.
- (B) The mediator will render his decision within thirty (30) days after the close of the hearing or thirty (30) days after the brief filing date, whichever is later.
- (C) The mediator will have no power to add to or to subtract from or modify any of the terms of this Operating Agreement or any agreement made supplementary hereto.
- (D) The mediator will decide only the issues presented by the dispute and will not have the right to decide any other issues unless all parties involved in the dispute and all the Members agree otherwise.
- (E) Neither the opposing parties nor any other Member, nor the mediator, may disclose the existence, content, or results of any mediation without the prior written consent of the opposing parties and the Members.
- (F) Each opposing party will bear his own costs and expenses and will pay one-half of the mediator's fee and one-half of the administrative fees of mediation unless there are more than two opposing parties in which event the mediator's fee and the administrative fees of mediation will be shared equally by the opposing parties.

9.6 Arbitration. Arbitration will be conducted pursuant to the following procedure:

- (A) The opposing parties will attempt to select a mutually satisfactory arbitrator. If they cannot agree on an arbitrator within fifteen (15) days after the unresolved dispute arises, the American Arbitration Association will be requested to submit a panel of seven persons, each qualified to serve as arbitrator. Names will be stricken from the list of the panel alternatively by the opposing parties (with the order of striking determined by lot) until only one name remains and that remaining person will become the arbitrator.
- (B) The arbitrator will render his decision within 30 days after the close of the hearing or 30 days after the brief filing date, whichever is later. The decision of the arbitrator will be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction.
- (C) The arbitrator will have no power to add to or to subtract from or modify any of the terms of this Operating Agreement or any agreement made supplementary hereto.

- (D) The arbitrator will decide only the issues presented by the dispute and will not have the right to decide any other issues unless all parties involved in the dispute and all other Members agree otherwise.
- (E) Neither the opposing parties nor any other Member, nor the arbitrator, may disclose the existence, content, or results of any arbitration without the prior written consent of the opposing parties and all other Members.
- (F) Each opposing party will bear his own costs and expenses and will pay one-half of the arbitrator's fee and one-half of the administrative fees of arbitration unless there are more than two opposing parties in which event the arbitrator's fee and the administrative fees of arbitration will be shared equally by the opposing parties.

9.7 Attorneys' Fees. In the event any Member brings an action to enforce any provisions of this Operating Agreement against the Company or any other Member, whether such action is at law, in equity or otherwise, the prevailing party shall be entitled, in addition to any other rights or remedies available to it, to collect from the non-prevailing party or parties the reasonable costs and expenses incurred in the investigation preceding such action and the prosecution of such action, including but not limited to reasonable attorney's fees and court costs.

9.8 Banking. The funds of the Company shall be kept in one or more separate bank accounts in the name of the Company in such banks or other federally insured depositories as may be designated by the Members, or shall otherwise be invested in the name of the Company in such manner and upon such terms and conditions as may be designated by the Members. All withdrawals from any such bank accounts or investments established by the Members hereunder shall be made on such signature or signatures as may be authorized from time to time by the Members. Any account opened by the Members for the Company shall not be commingled with other funds of the Members or interested persons.

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

9.10 Counterparts. This Operating 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.

9.11 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditor of the Company.

9.12 Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

9.13 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 Operating Agreement, their respective heirs, legal representatives, successors and assigns.

9.14 Information Release. The Company and Members may release information concerning Members and the business of the Company to governmental authorities as required by the Act, or any other statute or regulation affecting the Company.

9.15 Insurance Purchase. In order to fund any obligations under this Operating Agreement, the Company or the Members may maintain such life insurance policies on the lives of one or more Members as the Members determine from time to time to be desirable.

9.16 Location of and Access to Company Records. The following records of the Company shall be kept at its office designated by the Members where they shall be subject to inspection and copying at the reasonable request and at the expense of any Member during ordinary business hours only after providing the Company thirty (30) days written notice:

- (A) a current list of the full name and last known business address of each current and past Member (in alphabetical order);
- (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 certificate has been executed;
- (C) copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years;
- (D) copies of any document evidencing an agreement by a Member to make Capital Contributions or setting forth the value of Property or services contributed;
- (E) copies of any records required by the Act or other applicable Law to be kept by the Company; and
- (F) copies of this Operating Agreement, as amended, and of any financial statements of the Company for the three most recent years.

9.17 Notices. Notices . Any notice or other communication hereunder must be given in writing and (i) delivered in person, (ii) transmitted by facsimile, by telecommunications mechanism or electronically or (iii) mailed by certified mail, postage prepaid, receipt requested as follows:

- (A) if to the Company, addressed to it at:
MRS Enterprises LLC, P.O. Box 397, Farmington, AR 72730;
- (B) if to the one of the Member, addressed to it at the address listed in Schedule A

or to such other address or to such other Person as a party shall have last designated by such notice to the other parties. Each such notice or other communication shall be effective (i) if given by telecommunication or electronically, when transmitted to the applicable number or electronic mail address so specified in (or pursuant to) this paragraph 9.17 and an appropriate answer is received or, if transmitted after 4:00 p.m. local time on a Business Day in the jurisdiction to which such notice is sent or at any time on a day that is not a Business Day in the jurisdiction to which such notice is sent, then on the immediately following Business Day, (ii) if given by mail, on the first Business Day in the jurisdiction to which such notice is sent following the date three (3) days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or (iii) if given by any other means, on the Business Day when actually received at such address or, if not received on a Business Day, on the Business Day immediately following such actual receipt.

A copy of each notice sent to or by a Member or the Company pursuant to the terms of this

Operating Agreement will be forwarded to:(which shall not constitute notice) to:

RMP LLP
Attention: Kasper Huber
Facsimile: 1-479-443-2718
P.O. Box 1788
Fayetteville, Arkansas 72702
5519 Hackett Road
Springdale, Arkansas 72764
khuber@rmp.law

9.18 Power of Attorney.

9.18.1 Grant of Power. Each Member does hereby irrevocably constitute and appoint the Other Members, as such Member's true and lawful attorney, in his name, place and stead, to make, execute, consent to, swear to, acknowledge, record and file from time to time any and all of the following:

- (A) any certificate or other instrument that may be required to be filed by the Company or the Members under the Laws of the State of Arkansas or under the applicable Laws of any other jurisdiction in order to conduct business in any such jurisdiction, to the extent the Managers deem any such filing to be necessary or desirable;
- (B) any amendment to the Articles adopted as provided in this Operating Agreement; and
- (C) any certificates or other instruments that may be required to effectuate the Dissolution (including the winding up) of the Company pursuant to the provisions of this Operating Agreement.

9.18.2 Power Irrevocable. It is expressly understood, intended and agreed by each Member for himself, his successors and assigns that the grant of the power of attorney to the Other Members pursuant to subparagraph 9.18.1 is coupled with an interest, is irrevocable, and shall survive the death or legal incompetency of the Member or such assignment of his Membership Interest.

9.18.3 Use of Power. One of the ways that the aforementioned power of attorney may be exercised is by listing the names of the Members and having the signature of the other Members, as attorney-in-fact, appear with the notation that the signatory is signing as attorney-in-fact of the listed Members.

9.19 Representations and Warranties.

9.19.1 Investment Representation. All persons who become Members, by signing this Operating Agreement, represent and warrant to the other Members and the Company (1) that their purchase of a Membership Interest in the Company is made as a principal for their sole account for investment purposes only and not with the view toward distribution or resale of all or any portion of the Membership Interest, (2) that under no circumstances will the Members Transfer any portion of their Membership Interest except in compliance with this Operating Agreement and applicable securities Laws and regulations, (3) that they are relying on their own professional tax, legal and other business advisor in making their decision to enter into and execute this Operating Agreement, (4) that they are aware of the restrictions on Transfer of their interest under this Operating Agreement

and that the same will at no time be freely Transferable otherwise than to a Person accepting similar restrictions on Transferability, (5) that they have been given the opportunity to review this Operating Agreement and all other records or information requested by them before the date of execution, (6) that they will bear the total risk of loss of their investment in the Company, (7) that their Membership Interests have not been registered pursuant to Securities Act of 1933, 15 U.S.C. § 77a et seq, as amended, the State of Arkansas Securities Act, A.C.A. § 23-42-101, or under any other applicable state securities Laws and may be a “restricted security” under these aforementioned Laws, and (8) that they are an adult and are able to assess the economic risk associated with executing this Operating Agreement.

9.19.2 Organization Representation. All Entities who become Members, by signing this Operating Agreement represent and warrant to the other Members and the Company that the Entity: (1) has all authority to own and operate its business; (2) has all authority (both implied and apparent) to execute this Operating Agreement on behalf of the Entity; (3) has not or will not breach any other contract, agreement or other obligation by executing this Operating Agreement; (4) is solvent and has never been insolvent; (5) has never filed a voluntary petition in bankruptcy or entered into similar insolvency proceedings and has never had an involuntary petition in bankruptcy filed against it; (6) has continually been able to pay its debts generally as they become due; (7) has always and will continue to comply with all Laws applicable to it; and (8) is not a party to any litigation.

9.19.3 Survival. The Members agree that all representations and warranties provided in this Operating Agreement will survive the execution of this Operating Agreement.

9.20 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any Person shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the Persons may have by Law, statute, ordinance or otherwise.

9.21 Severability. Each provision of this Operating Agreement shall be considered separable and (a) if for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future Law, such invalidity shall not impair the operation of or affect those portions of this Operating Agreement which are valid, or (b) if for any reason any provision or provisions herein would cause the Members to be bound by the obligations of the Company under the Laws of the State of Arkansas as the same may now or hereafter exist, such provision or provisions shall be deemed void and of no effect.

9.22 Waiver of Right of Partition. Each of the Members does hereby agree to and does hereby waive any right such Member may otherwise have to cause any asset of the Company to be partitioned among the Members or to file any complaint or to institute any proceeding at law or in equity seeking to have any such assets partitioned.

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


9.24 Entire Agreement. This Operating Agreement represents the entire and complete agreement of the Members with respect to the subject matter hereof, and supersedes all prior understandings and agreements, both written and oral, as to the subject matter hereof by and among any of the Members hereto. The Members represent and warrant that they have not been influenced by any Member or other Person to enter into this Operating Agreement, nor relied on any representation, warranty, or covenant of any Member or other Person except for those

representations, warranties, and covenants of the Members in this Operating Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF , each of the parties hereto has caused this Operating Agreement to be executed as of the day and year first above written.

MEMBERS:



Payton Sims, Trustee of the Payton Sims
Revocable Living Trust u/a/d July 29, 2015



Melissa Sims, Trustee of the Sims Family
Trust u/a/d March 29, 2016

COMPANY REPRESENTATIVE:



Melissa Sims

OPERATING AGREEMENT OF MRS ENTERPRISES LLC
Dated: February 12, 2019

SCHEDULE A—MEMBERS AND CAPITAL CONTRIBUTIONS

Members - Name & Address	Capital Account	Fair Market Value	Percentage Interest
Payton Sims, Trustee of the Payton Sims Revocable Living Trust u/a/d July 29, 2015	See Company Records	See Company Records	50%
Melissa Sims, Trustee of the Sims Family Trust u/a/d March 29, 2016 P.O. Box 397, Farmington, AR 72730	See Company Records	See Company Records	50%

Exhibit A

