

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

VANDALIA CAPITAL II, LLC; and
UNITED BANK, INC.,

Plaintiffs,

v.

DAVID P. PRAY, Individually and
as Trustee of the DAVID P. PRAY
REVOCABLE TRUST; DAVID P.
PRAY REVOCABLE TRUST; and
JOHN/JANE DOE,

Defendants.

Civil Action No. 13-C-570
(Judge Bloom)

2013 MAR 26 PM 2:41
CLERK
KANAWHA COUNTY CIRCUIT COURT

COMPLAINT

NOW COME Plaintiffs, Vandalia Capital, II, LLC, and United Bank, Inc., by counsel, Scott S. Segal, Mark R. Staun and The Segal Law Firm, and for their Complaint against Defendants, David P. Pray, individually and as trustee of the David P. Pray Revocable Trust; the David P. Pray Revocable Trust and John/Jane Doe, and state as follows:

PARTIES AND JURISDICTION

1. Plaintiff, Vandalia Capital II, LLC ("Vandalia"), is a West Virginia limited liability company organized under the laws of the State of West Virginia on or about October 26, 2006 (Secretary of State documents attached hereto as **Exhibit 1**);
2. Plaintiff United Bank, Inc. ("United Bank") is a banking institution formed under the laws of the State of West Virginia;

3. Defendant David P. Pray (“David Pray”) is a citizen and resident of Charleston, Kanawha County, West Virginia, and the Trustee of the David P. Pray Revocable Trust;

4. The David P. Pray Revocable Trust (the “Pray Trust” and together with David Pray, the “Pray Defendants”) is a trust formed by Defendant David Pray. The Pray Trust is a member of Vandalia;

5. John/Jane Doe are individuals whose identity is not yet known to the Plaintiffs, whom Plaintiffs believe were and are involved in activities directed to divest David Pray of assets;

6. Jurisdiction of this matter is vested with the Circuit Court of Kanawha County, West Virginia, as all parties to this action are domiciled in Kanawha County, West Virginia, and all relevant and material acts and/or failures to act on behalf of the Defendants occurred in Kanawha County, West Virginia;

OPERATIVE FACTS

7. Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged and Plaintiffs further complain and say as follows:

8. In connection with the formation of Vandalia, on or about October 26, 2006, the members of Vandalia entered into an operating agreement on or about October 27, 2006 (the “Operating Agreement”). (A copy of the Operating Agreement attached as **Exhibit 2.**)

9. IB Development, LLC (“IB Development”) is a real estate developer that wanted to purchase certain tracts of real property (the “Property”) in furtherance of a housing development project to be located in Weddington, North Carolina (the “Project”);

10. On or about October 30, 2006 IB Development and United Bank entered into a Loan Agreement (together with all amendments and addenda thereto, the “Loan Agreement”) pursuant to

which United Bank agreed to, *inter alia*, loan the principal amount of \$28,212,594.00 to IB Development (the "Loan"), the proceeds of which Loan were to be used by IB Development to, *inter alia*, (a) purchase the Property, and (b) create a principal reserve in the amount of \$2,953,833.00 (the "Loan Reserve") to be used to pay interest accruing on the Note until such funds were depleted. (A copy of the Loan Agreement attached hereto as **Exhibit 3**);

11. On or about October 30, 2006, IB Development executed and delivered the Promissory Note and Security Agreement payable to United Bank in the principal amount of \$28,212,594.00 (together with all amendments and allonges thereto, the "Note") as evidence of the Loan. A copy of the Note is attached hereto as **Exhibit 4**. IB Development is required by the terms of the Note to make payments of all interest accruing on the principal balance of the Note until the Note matures;

12. On or about October 30, 2006 eleven (11) of Vandalia's individual members and David Pray (collectively, the "Guarantors" or individually, a "Guarantor"), executed and delivered a Guaranty in favor of United Bank, which provided, *inter alia*, that each Guarantor's liability would not exceed 8.34% of the original principal amount of the Loan, plus accrued interest, attorney's fees and collection costs, and all other costs, fees and expenses agreed to be paid under all agreements evidencing the Loan and securing payment of the Loan. (A copy of David Pray's Guaranty (the "Pray Guaranty") is attached hereto as **Exhibit 5**);

13. Pursuant to the Loan Agreement and the Note, the Guarantors were also required to obtain letters of credit for the benefit of United Bank in the total amount of \$13,065,974.00 from a bank satisfactory to United Bank and its counsel to meet United Bank's collateral requirements;

14. In accordance with the Loan Agreement and Note, twelve (12) letters of credit, each in the amount of \$1,088,831.17 and together totaling \$13,065,974.00 (collectively, the "Letters of

Credit”), were issued by Centra Bank in Morgantown, West Virginia, for the benefit of United Bank upon the application of the Guarantors, including David Pray;

15. The entire outstanding balance of the Loan, including all principal and accrued but unpaid interest, was due and payable in full by IB Development on May 1, 2008. Due to adverse market conditions and other development issues, IB Development was unable to comply with the repayment provisions and United Bank and IB Development have entered into several allonges to the Note extending the time in which full payment of the Note would be due.

16. On July 14, 2008, Vandalia entered into a Consulting Agreement with Prayworks, LLC. (A copy of the Consulting Agreement attached hereto as **Exhibit 6**);

17. Prayworks, LLC, a limited liability company managed by David Pray, provides consulting and management services with regard to real estate developments;

18. Prayworks, LLC agreed to provide a number of services for Vandalia as specified in the Consulting Agreement, regarding the Project, including but not limited to:

2. Services. The scope of the consulting and project management services to be provided by PrayWorks under this Agreement (collectively the “Services”) shall include: (i) the following work and services; and (ii) such additional work and services as may be later agreed in writing between PrayWorks and Vandalia:

a. PrayWorks shall assist in the preparation, reconstruction, monitoring and/or management of a developer’s pro forma for the Project. When completed, the pro forma budget shall be presented to Vandalia’s representatives appointed hereunder for final review and acceptance in writing;

b. PrayWorks shall occasionally monitor and inspect work at the Project, and maintain a reasonable understanding of the Project’s design criteria;

c. PrayWorks shall consult with IB [Development] and Vandalia in the

development and selection of a Project delivery system for the design and construction of the Project, and in the development and execution of an inspection/quality control programs in connection with the Project;

d. PrayWorks shall assist IB [Development] and Vandalia in retaining the services of such professionals as may be required for development of the Project including, but not limited to, attorneys, surveyors, geotechnical engineers, design/builders, contractors and various vendors required for the Project; provided, however, IB [Development] and Vandalia shall at all times be the contracting party with such professionals;

e. PrayWorks shall assist in facilitating communications between IB [Development] (in its role as marketers and promoters of the Project) and Vandalia in an effort to avoid unreasonable delays with regard to the marketing and sale of the Project;

f. PrayWorks shall periodically review and monitor the work of those providing services in connection with the development of the Project (including, but not limited to the aforesaid professionals retained by IB [Development] and Vandalia) to reasonably assure that all such service providers are satisfying their contractual obligations with respect to others providing services in connection with the Project. PrayWorks shall to the extent it determines necessary in the exercise of its reasonable discretion regularly attend or otherwise participate in meetings related to the development of the Project;

g. PrayWorks shall assist Vandalia and IB [Development] with the procurement of insurance products for the Project;

h. PrayWorks shall perform certain bookkeeping and administrative services for Vandalia with regard to the Project, which shall include without limitation maintenance of books of account for Vandalia in order to keep Vandalia advised of expenditures made with regard to the Project. All such records shall be available to Vandalia or Vandalia's designated representatives upon reasonable notice during normal business hours for examination, audit or inspection, all the sole cost and expense of Vandalia. Upon any termination of this Agreement, copies of all such books and records shall be provided to Vandalia;

i. PrayWorks shall assist Vandalia and IB [Development] with facilitation of communications with lenders for the Project;

j. PrayWorks shall, through and with the assistance of certified public accountants and legal counsel engaged by Vandalia and IB [Development], assist Vandalia and IB [Development] with preparation and filing of all federal, state and local tax returns and with tax planning for the Project;

k. PrayWorks shall and may, as it deems reasonably necessary, communicate with one or more of the members of Vandalia as to the status of the Project and other ongoing issues; and

l. PrayWorks shall consult with Vandalia and IB [Development] and in connection with crisis and risk management assistance for the Project.

19. The Loan Reserve was depleted by the fall of 2009.

20. In a meeting of the Vandalia members, which occurred on November 13, 2009 (the “November 2009 Meeting”), the Vandalia members discussed and resolved, without a dissenting vote, that the Vandalia members would pay the interest accruing on the Note to avoid a payment default on the Loan, and to keep the Project afloat until the economy and real estate markets recovered.

21. During the November 2009 Meeting, David Pray agreed with this approach and the resolution, and suggested that Vandalia’s accountants clarify the nature and character of the interest payments to be paid to United Bank for tax purposes.

22. The annual interest accruing on the Loan was approximately \$1,200,000.00. Along with property taxes, each member or their guarantors was required to fund annually over \$1,300,000.00 to prevent a payment default on the Loan;

23. Thereafter, each Vandalia member and/or Guarantor began making semi-annual interest payments of \$55,000 to avoid a payment default on the Loan;

24. From Vandalia's inception until April of 2011, David Pray was actively involved with Vandalia and the Project in North Carolina, working with IB Development on various development issues including the installation of the sewer to service the Project;

25. In the spring of 2011, David Pray advised Vandalia's managing members, on separate occasions, that he did not intend to make any more semi-annual \$55,000 interest payments on the Loan;

26. David Pray stopped making his semi-annual interest payments in April of 2011. As a result of David Pray's failure to make his payments, the other Vandalia members increased their payments in order to keep the Loan from being declared in a payment default, which would, in turn, result in the Guarantors' respective letters of credit and individual guaranties being called by United Bank;

27. David Pray, through his then-counsel Kent George, offered to make a \$330,000 cash payment to Vandalia and/or one or more of its members in exchange for the Trust's interest in Vandalia and a release of the Trust and David Pray personally from and indemnification of any and all obligations and liabilities to United Bank and to Vandalia's members;

28. David Pray's overture was discussed at a meeting of the Vandalia members on June 15, 2011 (the "June 2011 Meeting"). David Pray did not attend the June 2011 Meeting;

29. No individual member or group of members was willing to accept the Trust's interest in exchange for the payment by David Pray of \$330,000, nor was any individual member or group of members willing to release and/or to indemnify the Trust or David Pray from their individual or collective obligations and liabilities;

30. In 2011, United Bank acquired Centra Bank, the issuer of the letters of credit;
31. United Bank notified the Guarantors that, because of its acquisition of Centra Bank, the Letters of Credit or other equivalent security needed to be obtained;
32. After receiving such notification, David Pray telephoned Randy Williams at Centra Bank requesting an extension of one year on his current Letter of Credit. Mr. Williams advised David Pray that because of Centra Bank's merger with United Bank, Centra would be unable to extend the Letter of Credit for an additional year;
33. Up to this point, Centra Bank had extended the termination dates of the Letters of Credit it issued for the benefit of United Bank because of the extensions of the maturity date of the Loan. The Letters of Credit were, at this point, set to expire on December 15, 2011;
34. United Bank, Inc. permitted some members of Vandalia Capital, II, LLC, to open lines of credit backed by their personal assets in lieu of replacement Letters of Credit totaling an amount equal to the Letters of Credit and had discussions with David Pray's counsel about his posting of a new Letter of Credit or equivalent security prior to the expiration of David Pray's Centra Bank Letter of Credit, which was set to expire December 15, 2011;
35. On or about December 13, 2011, counsel for United Bank met with David Pray's then counsel, Kent George and David Higgins of Robinson & McElwee, PLLC for that purpose;
36. Prior to the December 13, 2011, meeting, David Pray's counsel had provided United Bank with what was represented to be Mr. Pray's current financial statement;
37. United Bank was prepared at the meeting and so advised David Pray's counsel that United Bank would be receptive to the idea of David Pray opening a line of credit for the benefit of United Bank secured by David Pray's personal assets in lieu of a replacement Letter of Credit. United

Bank also made it clear to David Pray's counsel in prior conversations that United Bank would call David Pray's Letter of Credit before it expired, if David Pray did not agree to supply United Bank with a new Letter of Credit in the same amount, or equivalent security;

38. Upon review of David Pray's financial statement, United Bank had a number of questions concerning his stated assets that required further explanation, which request went unanswered. As such, United Bank determined and advised David Pray's counsel before the expiration of David Pray's Letter of Credit, that United Bank could not open a line of credit in an amount to replace David Pray's soon to expire letter of credit because David Pray's financial statement lacked sufficient assets to collateralize and back such a line of credit.

39. Prior to the expiration of his current letter of credit, Defendant David Pray's counsel stated that David Pray was attempting to obtain a replacement Letter of Credit with another bank in favor of United Bank, but that he may be unable to do so prior to the expiration of the current Letter of Credit on December 15, 2011;

40. Centra Bank agreed orally to extend David Pray's current Letter of Credit until December 23, 2011, to allow David Pray to replace his existing Letter of Credit, without defaulting under his Guaranty. United Bank had previously instructed Centra Bank to draw on David Pray's Letter of Credit immediately prior to its expiration, if David Pray had not secured and posted a suitable replacement Letter of Credit, or equivalent. United Bank withdrew that instruction to Centra Bank based upon the representation that David pray intended to secure an equivalent Letter of Credit or security ;

41. Defendant David Pray's lawyer acknowledged the extension to keep the current letter of credit in place until December 23, 2011;

42. Ultimately, due to the Christmas holiday, Centra Bank agreed to extend the Letters of Credit until December 28, 2011;

43. On December 16, 2011, without the knowledge or prior agreement of United Bank, David Pray called Randy Williams at Centra Bank and told him that David Pray's Letter of Credit had expired, confirmed it could not be called by United Bank. David Pray had then no intention of replacing his Letter of Credit;

44. A review of David Pray's purported most recent financial statement as of December 2011, as presented to United Bank and reviewed at the meeting of December 13, 2011 revealed a depletion of assets and/or transfer of assets such that any default by him under the Guaranty or Loan and judgment thereon, would jeopardize United Bank, Inc.'s position as David Pray had substantially diminished assets to satisfy his portion of the debt;

45. David P. Pray, Individually, has had no Letter of Credit in place since the expiration of his Centra Bank Letter of Credit in December, 2011 and he has failed and refused to provide a similar Letter of Credit or equivalent security for United Bank as of the filing of this Complaint.

CLAIMS FOR RELIEF

Count I (Declaratory Judgment Request by Vandalia Against the Pray Defendants)

46. Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged and Plaintiffs further complain and say as follows:

47. Vandalia requests that this Court determine the rights, status and legal relations arising out of the Vandalia Operating Agreement, pursuant to the West Virginia Uniform and Declaratory Judgment Act, W. Va. Code §§ 55-13-1, et seq.;

48. Article IX of the Operating Agreement, titled “Dissociation of Members”, provides in relevant part:

9.1 Events of Dissociation. No Member has the power at any time to disassociate from the company by voluntary withdraw. A Member is only disassociated from the company upon the occurrence of any of the following events:

...

(c) Upon application by the company or another member, the member’s expulsion by judicial determination because the member: (1) engaged in wrongful conduct that adversely and materially affected the company’s business; (2) willfully or persistently committed a material breach of this agreement or of a duty owed to the company or the other members under Section 7.1 of this agreement or engaged in conduct relating to the company’s business which makes it not reasonably practical to carry on the business with the member.

...

9.2 Wrongful Dissociation. A member’s dissociation from the company shall be wrongful if: (a) it is in breach of an express provision of this agreement . . .

9.3 Consequences of Wrongful Dissociation. A member who wrongfully dissociates from the company is liable to the company and to other members for damages caused by the dissociation. The liability is in addition to any other obligation of the wrongfully dissociated member to the company or to the other members. If the company does not dissolve and wind up its business as a result of the member’s wrongful dissociation as defined under Section 9.2 of this agreement, damages sustained by the company for the wrongful dissociation must be offset against distributions otherwise due for the wrongfully dissociating member after the dissociation.

49. The Pray Defendants’ failure to make semi-annual \$55,000 interest payments to United Bank, as voted on and ratified by the Vandalia members on November 13, 2009, now totaling \$275,000.00, and their failure to keep in place the required letter of credit, or equivalent facility, are

material breaches of the duties owed to the other Vandalia members;

50. Vandalia, therefore, requests that this Court enter an Order determining and declaring as follows:

- That the Pray Defendants are in breach of the Operating Agreement by failing to make semi-annual interest payments to United Bank, as voted on and ratified by the membership on November 13, 2009 and by failing to keep in place his required letter of credit, or the equivalent;
- That the Pray Defendants engaged in wrongful conduct that adversely and materially affected Vandalia's business;
- That the Pray Defendants willfully and persistently committed a material breach of this agreement and of the duty owed to the company or other members under Section 7.1 of the Operating Agreement by failing to make semi-annual interest payments to United Bank;
- That the Pray Defendants have engaged in conduct which makes it not reasonably practicable to carry on the business with the member;

51. Vandalia further requests that this Court enter an Order declaring:

- Upon a finding of the factors set forth in Section 9.1 of the Operating Agreement, that the Pray Trust is expelled as a member of Vandalia;
- That this Court, after finding that the Pray Trust has met the requirements for wrongful dissociation under Section 9.2 of the Operating Agreement, award damages for such wrongful dissociation under Section 9.3 of the Operating Agreement, including, but not limited to payment for past interest payments due and owing from

2009 until the present;

- That this Court award and order further relief that it may deem just and proper, including an award of pre-judgment interest, attorney's fees and costs.

**Count II (Vandalia's Claim for Breach of Contract
Against the Pray Defendants)**

52. Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged and Plaintiffs further complain and say as follows:

53. The Pray Defendants breached their agreement and/or contract with Vandalia, by failing to pay semi-annual interest payments to United Bank, as voted on and ratified by the members of Vandalia (including the Pray Defendants) on November 13, 2009, by failing to keep in place the required letter of credit, or equivalent, as well as by refusing to provide services to Vandalia, under the Consulting Agreement;

54. As a direct and proximate result of the acts alleged in this Count of the Complaint, Plaintiffs have been and continue to be damaged and injured as herein described.

**Count III (Vandalia's Claim for Breach of Implied Covenant of Good Faith
and Fair Dealing Against the Pray Defendants)**

55. Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged and Plaintiffs further complain and say as follows:

56. The Pray Defendants breached the implied covenant of good faith and fair dealing implicit by and between the members of Vandalia, in that, without limitation, David Pray has failed to keep in place the required letter of credit, or equivalent, or to make semi-annual interest payments to United Bank, which has caused the other members to increase their payments in order to keep the Loan from being declared in a payment default, which, in turn, could result in, *inter alia*, United Bank

drawing on the Letters of Credit and other facilities, and demanding payment of the Loan pursuant to the Guaranties;

57. As a direct and proximate result of the acts alleged in this Count of the Complaint, Vandalia has been and continues to be damaged and injured as herein described.

**Count IV (Declaratory Judgment Request by United Bank
Against the Pray Defendants)**

58. Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged and Plaintiff further complains and says as follows:

59. United Bank requests that this Court determine the rights, status and legal relations arising out of the Loan Agreement, the Note, the Pray Guaranty and the other Loan Documents pursuant to the West Virginia Uniform Declaratory Judgment Act, W. Va. Code §§ 55-13-1, et seq.;

60. The Loan Agreement states in relevant part:

1. Loan.

...

(d) Loan Documents and Collateral Security. This Agreement, the Note, and any other documents contemplated by or executed in connection with this Agreement or the Note, including but not limited to letters of credit, guaranties, security agreements, financing statements, collateral assignments of contracts, fixture filings, mortgages and deeds of trust (collectively, together with all modifications, amendments, restatements, refinancings, substitutions for, replacements, consolidations, renewals or extensions, from time to time, thereof or thereto, the "Loan Documents"), shall, except for the Guaranties and "Letters of Credit" (as hereinafter defined), be secured by all of the Real Property and Personal Property described on Exhibit A attached hereto and described in the applicable Loan Documents (the "Collateral Security").

The Loan shall also be secured by the aforesaid Guaranties from the Guarantors and by letters of credit ("Letters of Credit") to be provided

to the Bank by the Guarantors.

Each Guaranty from a Guarantor will be irrevocable, unconditional, and in a fixed dollar amount as set forth in the Guaranty. Each Guaranty will remain in effect for the term of the Loan and until such time as the Note, together with all interest, late fees, and penalties, is paid in full, and will not be reduced with principal reductions.

The Letters of Credit shall total the amount of \$13,065,974.00 and shall be comprised of 35% of the acquisition costs (\$8,372,154.00) and 100% of the remaining Loan amount for fees, soft costs and interest reserve. The Letters of Credit shall be irrevocable with an expiration of the later to occur of (i) 30 to 60 days after the maturity of the Loan, or (ii) the date that the principal balance of the Note, together with all interest, late fees and penalties, is paid in full. The Letters of Credit shall be from a bank or banks satisfactory to the Bank and its counsel.

The Loan Documents shall be in form and substance satisfactory to the Bank and its counsel, and the Borrower agrees to execute any documents and deliver any property to the Bank deemed necessary by the Bank or its counsel to evidence or assure the protection, perfection and/or enforcement of such Collateral Security including, without limitation, security agreements, financing statements, fixture filings and amendments thereto or continuations thereof and mortgages, deeds of trust and similar documents, and amendments thereto.

61. The Pray Guaranty states in relevant part:

DATE AND PARTIES. The date of this Guaranty is October 30, 2006. The parties and their addresses are:

LENDER:

UNITED BANK, INC.
500 Virginia Street - East
Charleston, West Virginia 25301
Telephone: (304) 348-8400

BORROWER:

IB DEVELOPMENT, LLC
a North Carolina Limited Liability Company
13850 Ballantyne Corporate Place
Suite 150
Charlotte, North Carolina 28277

GUARANTOR:

DAVID P. PRAY
RR Box 331B
Charleston, West Virginia 25314

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

A. Pronouns. The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.

B. Note. "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.

C. Property. "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC DEBT GUARANTY. For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, and to induce you, at your option, to make loans or engage in any other transactions with the Borrower from time to time, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of the following described Debt(s) of the Borrower including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 3026937-0101, dated October 30, 2006, from IB Development, LLC (Borrower) to you, in the amount of \$28,212,594.00, which has a maturity date of May 1, 2008.

My liability will not exceed the sum of 8.340 percent of the original principal amount of the Debt, plus accrued interest, attorneys' fees and collection costs, when allowed by law, and all other costs, fees and expenses agreed to be paid under all agreements evidencing the Debt and securing the payment of the Debt. You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

...

8. DEFAULT. I will be in default if any of the following occur:

A. Payments. I fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or Borrower.

C. Death or Incompetency. I die or am declared legally incompetent.

D. Failure to Perform. I fail to perform any condition of or to keep any promise or covenant of this Guaranty.

E. Other Documents. A default occurs under the terms of any other document relating to the Debt.

F. Other Agreements. I am in default on any other debt or agreement I have with you.

G. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. I fail to satisfy or appeal any judgment against me.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. I change my name or assume an additional name without notifying you before making such a change.

K. Property Transfer. I transfer all or a substantial part of my money or property.

L. Property Value. You determine in good faith that the value of the Property has declined or is impaired.

M. Insecurity. You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

...

10. REMEDIES. After the Borrower or I default, and after you give any legally required notice and opportunity to cure the default, you may at your option do any one or more of the following.

A. Acceleration. You may make all or any part of the amount owing by the terms of this Guaranty immediately due.

...

11. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

...

21. CONTRIBUTION AMONG MEMBER GUARANTORS. As among the Guarantors who are Members of Vandalia Capital II, LLC, or who have any interest in an entity that is a Member of Vandalia Capital, II, LLC or who have any interest in an entity that is a Member of Vandalia Capital II, LLC (the "Member Guarantors"), and without affecting the right of the Beneficiary to proceed severally against each of the Member Guarantors as set forth herein, it is agreed by and among the Member Guarantors that:

(a) Each Member Guarantor shall promptly contribute his 100%

portion of any and all Debt due hereunder to Beneficiary and shall deal with all other Member Guarantors in good faith, in order to ensure that all liability for Debt hereunder shall be shared equally among the Member Guarantors.

(b) This Section of the Guaranty provides to Member Guarantors the benefits and obligations of contractual contribution and restitution as to all future payments made by Member Guarantors, or any of them, to Beneficiary by reason of this Guaranty, and each Member Guarantor shall have a cause of action against every other Member Guarantor to enforce his or its rights hereunder. Member Guarantors hereby waive any right to assert in any manner against the other Member Guarantors any claim, defense, counterclaim and off-set of any kind or nature, whether legal or equitable, that the Member Guarantors, or any of them, may now or at any time hereafter have against one or more of the other Member Guarantors.

(c) Each of the Member Guarantors agrees to pay, forthwith and on demand made after the Debt has been completely and finally satisfied, all amounts rightfully owing pursuant to the terms hereof to the demanding Member Guarantors.

62. United Bank requests that this Court enter an Order declaring as follows:
- That David Pray is in violation and default under the terms of the Pray Guaranty;
 - Specifically and without limitation, David Pray is in violation of Section 21(a) of the Pray Guaranty in that David Pray has failed to contribute his proportion of any and all debt due hereunder and has failed to deal with the other Guarantors in good faith;
 - That David Pray is in violation of Section 8.A. of the Pray Guaranty in that he has failed to make interest payments in accordance with the agreement of the Vandalia members;
 - That David Pray is in default under Section 8.D. of the Guaranty in that he has violated Section 21(a) of this Guaranty, as he has not dealt with the other Member Guarantors of Vandalia in good faith;

- That David Pray is in default under Section 8.F. of the Guaranty in that he has failed to maintain a letter of credit, in violation of the Loan Agreement;
 - That David Pray is in default under Section 8.G. of the Guaranty in that he has misrepresented his financial condition;
 - That David Pray is in default under Section 8.K. of the Guaranty in that he has, upon information and belief, transferred all or a substantial part of his money or property out of his name into the names of others;
 - David Pray is in default under Section 8.M. of the Guaranty because, upon information and belief, Pray has transferred assets to others resulting in a material adverse change in his financial condition so as to impair his ability to perform under the Pray Guaranty;
63. United Bank further requests that this Court enter an order declaring that David Pray:
- Pay the amount due and owing under the Pray Guaranty and pursuant to Section 11 of the Pray Guaranty, pay all expenses of collection for enforcement of the Pray Guaranty and for protection of United Bank's rights, including, but not limited to, reasonable attorney's fees, court costs and other legal expenses.

Count V (Breach of Contract Asserted by United Bank Against the Pray Defendants)

64. Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged and Plaintiffs further complain and say as follows:

65. The Pray Defendants breached their agreement and/or contracts with United Bank, under the Loan Agreement attached as **Exhibit 3** and Guaranty attached as **Exhibit 5**, as more fully set forth in Count IV of this Complaint;

66. As the direct and proximate result of the acts alleged in this Complaint, United Bank has been and continues to be damaged and injured as herein described;

Count VI (Malicious Conduct and Common Law Bad Faith)

67. Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged and Plaintiffs further complain and say as follows:

68. David Pray knowingly, willfully, intentionally and maliciously refused to act in conformity with the Loan Agreement and Guaranty regarding Plaintiffs and intentionally misled United Bank about David Pray's intention to secure a replacement, equivalent letter of credit, or security on which United Bank relied in; a) withdrawing its request that Centra Bank draw on David Pray's Letter of Credit; and b) extending the time for David Pray to secure the replacement Letter of Credit;

69. David P. Pray knowingly, willfully, intentionally and maliciously refused to abide by the Vandalia Operating Agreement and the resolution of its members by failing to make agreed-to semi-annual interest payments of \$55,000 to United Bank, the unpaid total of which is now \$275,000.00 and by failing to keep in place his required Letter of Credit, or equivalent security for a part of his Guaranty;

70. By these and other acts and failures to act, David Pray has acted willfully, wantonly, maliciously and in reckless disregard of the civil rights of Plaintiffs and has done so with such indifference as to permit an award of punitive damages.

Count VII (Fraudulent Transfers Involving David Pray and Jane/John Doe)

71. Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged and Plaintiffs further complain and say as follows:

72. In connection with the Loan and the Pray Guaranty, David Pray provided financial statements and information to United Bank;

73. David Pray's last financial statement provided to United Bank was significantly different from those previously provided by David Pray because it showed a depletion of assets;

74. It is believed that Defendants Jane/John Doe are individuals who were involved with David Pray, or the beneficiaries of David Pray's acts to intentionally divest and/or to deplete David Pray of assets so as to give the appearance of financial hardship on his financial statement and to make any judgment against him uncollectable in whole or part;

75. It is believed that David Pray and Jane/John Doe conveyed substantial amounts of property, real and personal, for the purpose of defrauding creditors, including United Bank, and hindering and delaying the collection of any indebtedness that may be owed in the event of a default under the terms and conditions of the Pray Guaranty to the detriment and prejudice of Plaintiffs;

76. As a direct and proximate result of the acts of David Pray and Jane/John Doe, jointly and severally, United Bank's ability to collect under the Pray Guaranty has been impaired, and Vandalia and its other members have been subjected to greater potential liability and loss. Plaintiffs pray that the conveyances made from David Pray to Jane/John Doe be declared void and that judgment herein be declared a lien on the property of David Pray and Jane/John Doe and that Plaintiffs be awarded their attorney's fees and costs in the prosecution of this Count.

RELIEF REQUESTED

WHEREFORE, Plaintiffs demand judgment against the Defendants for declaratory relief as pled; compensatory damages, punitive and exemplary damages; civil penalties; attorney's fees and costs; pre and post judgment interest; all statutory, common law and equitable relief to which the

Plaintiffs may be entitled; and any other such relief as justice requires.

JURY DEMAND

To the extent that any triable factual issues exist which are not the subject of the declaratory and contract relief sought by the Plaintiffs, Plaintiffs hereby demand a trial by jury upon all such issues raised herein.

**VANDALIA CAPITAL II, LLC and
UNITED BANK, INC.,**

**Plaintiffs,
By counsel:**



Scott S. Segal (WV Bar I.D. #4717)

Mark R. Staun (WV Bar I.D. #5728)

THE SEGAL LAW FIRM

A Legal Corporation

810 Kanawha Boulevard, East
Charleston, West Virginia 25301
(304) 344-9100

State of West Virginia



Certificate

*I, Betty Ireland, Secretary of State of the
State of West Virginia, hereby certify that*

VANDALIA CAPITAL II, LLC

Control Number: 89141

has filed its "Articles of Organization" in my office according to the provisions of West Virginia Code §§31B-2-203 and 206. I hereby declare the organization to be registered as a limited liability company from its effective date of October 26, 2006 until the expiration of the term or termination of the company.

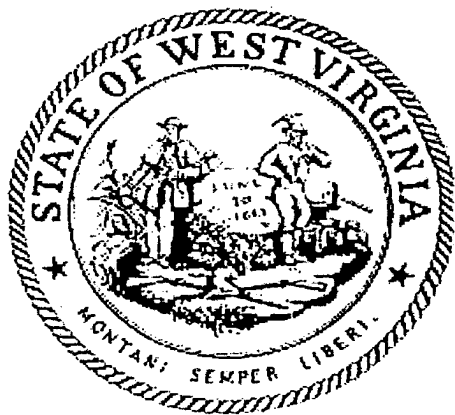
Therefore, I hereby issue this

CERTIFICATE OF A LIMITED LIABILITY COMPANY

*Given under my hand and the
Great Seal of the State of
West Virginia on this day of
October 26, 2006*

Betty Ireland

Secretary of State



EXHIBIT

1

Betty Ireland
Secretary of State
State Capitol Building
100 Kanawha Blvd. East
Charleston, WV 25305-0770

Penney Barker, Manager
Corporations Division
Tel: (304) 558-8000
Fax: (304) 558-8381
Hours: 8:30 a.m. – 5:00 p.m. ET

**WEST VIRGINIA
ARTICLES OF ORGANIZATION
OF LIMITED LIABILITY COMPANY**

Control # 89141

We, acting as organizers according to West Virginia Code §31B-2-202, adopt the following Articles of Organization for a West Virginia Limited Liability Company:

1. The name of the West Virginia limited liability

company shall be: [The name must contain one of the required terms such as "limited Liability company" or abbreviations such as "LLC" or "PLLC"—see instructions for list of acceptable terms.]

Vandalia Capital II, LLC

2. The company will be an:

☒

LLC

☐

professional LLC for the profession of _____

3. The address of the initial designated office of the company in WV, if any, will be:
[need not be a place of the company's business]

**300 Capitol Street, Suite 1503,
Charleston, WV 25301**

4. The mailing address of the principal office, if different, will be:

The name and address of the agent for service of process, if any, is:

**Andrew A. Payne, III
300 Capitol Street, Suite 1503
Charleston, WV 25301**

The mailing address of the above agent of process if different, is:

6. The name and address of each organizer:

Name

No. & Street

City, State, Zip

David P. Ferretti	300 Kanawha Boulevard, East	Charleston, WV 25301

7. The company will be:

☐

an at-will company, for an indefinite period.

☒

a term company, for the term of 99 years.

FILED

OCT 26 2006

**IN THE OFFICE OF
SECRETARY OF STATE**

8. The Company will be:

☐

member-managed. [List the name and address of each member with signature authority, attach an extra sheet if needed]

OR

☒

manager-managed, [List the name and address of each manager with signature authority, attach an extra sheet if needed.]

<u>Name</u>	<u>Address</u>	<u>City, State, Zip</u>
Andrew A. Payne, III	300 Capitol Street, Suite 1503	Charleston, WV 25301
Stephen B. Farmer	746 Myrtle Road	Charleston, WV 25314

9. All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations or liabilities of the company.

☒

NO - All debts, obligations and liabilities are those of the company.

☐

YES - Those persons who are liable in their capacity as members for all debts, obligations or liability of the company have consented to this in writing.

10. The purposes for which this limited liability company is formed are as follows:

(Describe the type(s) of business activity which will be conducted, for example, "real estate," "construction of residential and commercial buildings," "commercial printing," "professional practice of architecture.")

The conduct of any and all lawful business activities

11. Other provisions which may be set forth in the operating agreement or matters not inconsistent with law:
[See instructions for further information; use extra pages if necessary.]

None

12. The number of pages attached and included in these Articles is None.

13. The requested effective date is:
[Requested date may not be earlier than filing nor later than 90 days after filing.]

☒

the date & time of filing

☐

the following date _____ and time _____

14. Contact and Signature Information:

- a. Contact person to reach in case there is a problem with filing: David P. Ferretti

Phone # (304) 340-3859

e-mail dferretti@spilmanlaw.com

- b. Signature of: (manager of a manager-managed company, member of a member-managed company, person organizing the company, if the company has not been formed or attorney-in-fact for any of the above.

David P. Ferretti
Name [print or type]

Organizer
Title/Capacity

David P. Ferretti
Signature

**VANDALIA CAPITAL II, LLC
OPERATING AGREEMENT**

TABLE OF CONTENTS

**ARTICLE I
TERM COMPANY**

1.1	Agreement on Term	1
-----	-------------------	---

**ARTICLE II
MEMBER'S CAPITAL CONTRIBUTIONS**

2.1	Capital Contributions of Initial Members	2
2.2	Capital Accounts	2
2.3	Additional Capital Contributions	2
2.4	No Return of Capital Contributions	2

**ARTICLE III
ALLOCATIONS**

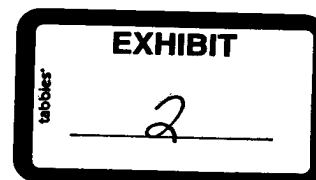
3.1	Profits and Losses	2
3.2	Other Allocations	2

**ARTICLE IV
DISTRIBUTIONS**

4.1	Determination and Frequency	2
4.2	Limitations on Distributions	3
4.3	Allocation	3

**ARTICLE V
MANAGEMENT**

5.1	Managers Committee	3
5.2	Authority of Manager	3
5.3	Delegation of Authority	4
5.4	Duties Owed	4
5.5	Transactions with the Company	4
5.6	Meetings	5
5.7	Participation in Meeting by Telephone	5
5.8	Waiver of Notice	5
5.9	Action by Members Committee Without Meeting	5
5.10	Quorum; Adjournments	5
5.11	Voting	6
5.12	Record of Meetings	6
5.13	Agents and Employees	6
5.14	Compensation of Managers, Agents and Employees	6
5.15	Reimbursement	6



5.16	Indemnification	6
5.17	Successor Managers, Removal and Term	6

ARTICLE VI
BOOKS, RECORDS AND AUDITS

6.1	Access to Records	7
6.2	Provision of Information.	7
6.3	Accounting Period	7
6.4	Financial and Tax Information	7
6.5	Tax Matters	7

ARTICLE VII
MEMBERS

7.1	Duties Owed	8
7.2	Compensation	8
7.3	Meetings	8
7.4	Participation in Meeting by Telephone	9
7.5	Waiver of Notice	9
7.6	Action by Members Committee Without Meeting	9
7.7	Quorum; Adjournments	9
7.8	Voting	9
7.9	Transactions with the Company	9
7.10	Record of Meetings	10
7.11	Reimbursement	10
7.12	Indemnification	11

ARTICLE VIII
TRANSFERS OF INTEREST

8.1	Transfer of Interest	11
8.2	Consent to Admission of New Members	11
8.3	Conditions to Permitted Transfers	11
8.4	Rights of Unadmitted Transferee	12

ARTICLE IX
DISSOCIATION OF MEMBERS

9.1	Events of Dissociation	12
9.2	Wrongful Dissociation	14
9.3	Consequences of Wrongful Dissociation	14
9.4	Effect of Dissociation	14

ARTICLE X
DISSOLUTION AND WINDING UP

10.1	Events of Dissolution and Winding Up	15
10.2	Continuation after Dissolution	16
10.3	Right to Wind Up Business	16
10.4	Member's Power and Liability as Agent after Dissolution	16
10.5	Disposition of Assets	17
10.6	Compliance with Certain Requirements of Regulations	17
10.7	Deemed Distribution and Recontribution	17
10.8	Liquidator	18
10.9	Form of Liquidating Distributions	18

ARTICLE XI
DEFINITIONS AND RULES OF CONSTRUCTION

11.1	Definitions	18
11.2	Rules of Construction	19

ARTICLE XII
OTHER PROVISIONS

12.1	Notices	20
12.2	Governing Law	20
12.3	Headings	20
12.4	Entire Agreement; Amendment	20
12.5	Severability	21
12.6	Binding Effect	21
12.7	Execution of Agreement	21
12.8	Counterparts	21
	Signatures	21

Appendix A – Members and Capital Contributions

Appendix B - Tax Matters

**OPERATING AGREEMENT
OF
VANDALIA CAPITAL II, LLC
A West Virginia Limited Liability Company**

This **OPERATING AGREEMENT** ("this Agreement") is made and entered into as of October 27, 2006 (the "Effective Date"), among **Vandalia Capital II, LLC**, a West Virginia limited liability company (the "Company"), and **Ralph Ballard, Stephen B. Farmer, David P. Ferretti, Shawn P. George, Mark Grimmitt, Robert Huggins, Andrew Jordon, R. Scott Long, Andrew A. Payne, III, David P. Pray Revocable Trust, Rooke Asset Partners, LP, and Timothy K. Wilcox**, all of whom have agreed to become the initial members of the Company, and subsequently all those persons who become members of the Company, the names and addresses of all such persons being set forth on the attached Appendix A;

WHEREAS, the Members have agreed to the formation of the Company for the purpose of providing financing for a real estate development project located in the Town of Weddington, Union County, North Carolina, and for other lawful business purposes;

WHEREAS, the Members have caused Articles of Organization to be filed with the West Virginia Secretary of State on October 26, 2006, creating the Company as a limited liability company pursuant to the Act effective at the time of filing on that date;

WHEREAS, the parties have agreed to operate the Company in accordance with the provisions of this Agreement; and

WHEREAS, unless defined elsewhere in this Agreement, words and terms identified by initial capitals shall have the meanings respectively ascribed to them in Article XI or Appendix B of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the parties, intending to be legally bound, do hereby agree as follows:

**ARTICLE I
TERM COMPANY**

1.1 Agreement on Term. The Company shall be a company for a term of 99 years under the Act, unless and until dissolved by operation of law or in accordance with the dissolution provisions of this Agreement. The Members agree to remain Members until the expiration of the term specified in the Articles of Organization of the Company.

ARTICLE II
MEMBER'S CAPITAL CONTRIBUTIONS

2.1 Capital Contributions of Members. The name, address, fax number, if any, e-mail address, if any, description and value of the initial Capital Contribution and number of the Company's Units of each of the Members are set forth on Appendix A to this Agreement. The Members hereby agree to make the Capital Contributions set forth on Appendix A. The total number of authorized Units of the Company is 12,000 Units.

2.2 Capital Accounts. A Capital Account shall be established and maintained for each Member and other Interest Holder in accordance with Section 704 of the Internal Revenue Code, the regulations thereunder, and the provisions of this Agreement. The amount of capital to be credited to each Member's capital account shall be as set forth on Appendix A.

2.3 Additional Capital Contributions. No Member shall be required to contribute additional capital or to lend any funds to the Company.

2.4 No Return of Capital Contributions. Except as provided in Section 10.5 of this Agreement, no Member or other Interest Holder is entitled to demand or receive a return of its Capital Contributions.

ARTICLE III
TAX ALLOCATIONS

3.1 Profits and Losses. After giving effect to the allocations set forth in Appendix B to this Agreement, Profits or Losses for any fiscal year shall be allocated among the Members or other Interest Holders in the manner as set forth in Appendix B.

3.2 Other Tax Allocations. All allocations to the Members or other Interest Holders pursuant to this Article III and Appendix B shall, except as otherwise provided, be divided among them in proportion to their ownership of the Units of the Company. The Members are aware of the income tax consequences of the allocations made by this Article III and the allocation provisions of Appendix B. The Members agree to be bound by all such provisions in reporting their shares of the Company's Profit and Loss for income tax purposes.

ARTICLE IV
DISTRIBUTIONS

4.1 Determination and Frequency. Subject to the limitations of Section 4.2, cash from operations or sales of assets of the Company shall be distributed at

least quarterly to the Members and other Interest Holders in such amounts as the Managers Committee (as defined in Article V of this Agreement) may determine after consideration of retention of funds in the Company for its actual, anticipated or contingent liabilities, including taxes, if the Managers Committee concludes that the resources of the Company may not be sufficient to pay such liabilities.

4.2 Limitations on Distributions. A Member has no right to receive, and may not be required to accept, a distribution in kind. No distribution of cash or other property of the Company shall be made to a Member or other Interest Holder if:

(a) The Company would not be able to pay its debts as they become due in the ordinary course of business; or

(b) The total assets of the Company would be less than the sum of its total liabilities plus the amount that would be needed, if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights, if any, upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution.

The Company may base its determination that a distribution is not prohibited under this Section 4.2 on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method authorized by the Managers Committee that is reasonable in the circumstances.

4.3 Allocation. All distributions of cash shall be paid and distributed to and among the Members and other Interest Holders in proportion to their ownership of the Units of the Company at the date of such distribution, or in any other manner determined by the Managers Committee not inconsistent with the other provisions of this Agreement.

ARTICLE V **MANAGEMENT**

5.1 Managers Committee. This Company is organized, and will be operated, as a manager-managed limited liability company under the Act. Subject to the limitations set forth in Section 7.9, the business, property and affairs of the Company shall be managed and controlled by the Managers Committee consisting of the Persons named as Managers in the Articles of Organization of this Company and their successors as provided in this Agreement.

5.2 Authority of Manager. Any Manager may act as an agent of the Company for any purpose of its business, including the signing of an instrument in the Company's name, if authorized by the Managers Committee.

5.3 Delegation of Authority. A Manager may appoint another Manager as such Manager's proxy to vote at any meeting of the Managers Committee, and such appointment shall be in writing signed by the appointing Manager. The Managers Committee may delegate its authority to any one or more Managers.

5.4 Duties Owed. Each Manager shall discharge the Manager's duties to the Company and its Members under this Agreement and the Act and exercise any rights consistently with the obligation of good faith and fair dealing. A Manager does not violate a duty or obligation under this Agreement or under the Act merely because the Manager's conduct furthers the Manager's own interest. The only fiduciary duties a Manager owes to the Company and its Members are the duty of loyalty and the duty of care imposed by this Section 5.4.

(a) **Duty of Loyalty.** A Manager's duty of loyalty to the Company and its Members is limited to the following:

(1) To account to the Company and to hold as trustee for it any property, profit or benefit derived by the Manager in the conduct or winding up of the Company's business or derived from a use by the Manager of the Company's property, including the appropriation of the Company's opportunity;

(2) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and

(3) To refrain from competing with the Company in the conduct of the Company's business before the dissolution of the Company.

(b) **Duty of Care.** A Manager's duty of care to the Company and its Members in the conduct of and winding up of the Company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

(c) **Limitations.** A Member of the Company, who is a Manager, is held to the standards of conduct set forth in this Section 5.4 to the extent that the Member exercises the managerial power vested in him or her as a Manager. A Manager is relieved of liability imposed by law for violation of the standards prescribed in this Section 5.4 to the extent of the managerial authority reserved or delegated to the Members by this Agreement.

5.5 Transactions with the Company. As authorized by the Managers Committee with knowledge that it is authorizing a transaction with a Manager or an Affiliate of a Manager, a Manager may lend money to and transact other business with the Company. As to each such loan or transaction, the rights and obligations of the

Manager are the same as those of a person who is not a member, subject to other applicable law.

5.6 Meetings. Regular meetings of the Managers Committee shall be held as the Managers Committee may from time to time determine, but the Managers Committee shall meet at least once during each calendar quarter. Special meetings of the Managers Committee may be called by any Manager. Meetings of the Managers Committee may be held either within or without the State of West Virginia. Notice of all special meetings of the Managers Committee shall be given by the Managers or Manager calling such meeting; and such notice shall be given at least 3 days before the time of such meeting and shall state the purpose or purposes thereof.

5.7 Participation in Meeting by Telephone. Any one or more Managers may participate in any meeting of the Managers Committee, or a meeting of the Managers Committee may be conducted through the use of, any means of communication by which all the Managers may simultaneously hear each other. Any Manager so participating in a meeting is deemed to be present in person at such meeting and shall be counted as a part of the quorum for that meeting. Any vote of the Managers Committee taken at any such meeting shall have the same effect and validity as though the action were duly taken by the action of the Managers Committee at a meeting at which all of the Managers participating were present at the same location.

5.8 Waiver of Notice. Where notice is required, such notice may be waived by a writing signed by the Manager or Managers waiving notice, regardless of whether such waiver is given before or after the time required; and such waiver or waivers shall be filed with the records of the meetings of the Managers Committee. Any meeting of the Managers Committee at which every Manager is present or represented shall be valid, notwithstanding lack or insufficiency of the notice required by this Agreement.

5.9 Action by Managers Committee Without Meeting. Whenever the vote of the Managers Committee at a meeting thereof is required or permitted to be taken in connection with any Company action, the meeting and vote of such Managers Committee may be dispensed with if all of the Managers entitled to vote upon the action, if such meeting were held, shall agree in writing (including by electronic mail) to such Company action being taken, and such agreement shall have like effect and validity as though the action were duly taken by the unanimous action of all Managers entitled to vote at a meeting of the Managers Committee duly called and held.

5.10 Quorum; Adjournments. At all meetings of the Managers Committee, a quorum shall consist of at least a majority of all of the Managers of the Company. If a majority of the Managers is not present, either in person or by delegation pursuant to Section 5.3, at the time and place appointed, the Managers present or represented, though less than a quorum, may adjourn the meeting from time to time until a quorum is present and the business to come before the meeting is completed.

5.11 Voting. If a quorum is present at any meeting of the Managers Committee duly called and held, unless otherwise provided in this Agreement, the affirmative vote of a majority of the Managers of the Company at the meeting shall be and constitute the act of the Company. Each Manager shall be entitled to one vote on each matter voted upon at any meeting of the Managers Committee.

5.12 Record of Meetings. A record may be kept of the meetings of the Managers Committee and the action taken at those meetings, which shall be verified by the signature of the persons acting as chairman and secretary of the meeting.

5.13 Agents and Employees. The Managers Committee may employ such employees, agents and other representatives (including engineers, consultants, attorneys and accountants) to perform such duties as the Managers Committee may prescribe.

5.14 Compensation of Managers, Agents and Employees. The Managers Committee may fix the compensation of Managers, including reasonable allowance for expenses actually incurred in connection with their duties. The Managers Committee shall have the authority to fix the compensation of all employees, agents and other representatives of the Company.

5.15 Reimbursement. The Company shall reimburse a Manager for payments made by the Manager in the ordinary course of the business of the Company or for the preservation of its business or property, so long as such payment is approved in advance or subsequently approved by the Managers Committee. Unless authorized by the Managers Committee in advance of such payment, a payment made by a Manager which gives rise to an obligation of reimbursement on the part of the Company under this Section 5.14 shall not constitute a loan to the Company upon which interest accrues from the date of the payment.

5.16 Indemnification. The Company shall indemnify a Manager for liabilities incurred by the Manager in the ordinary course of the business of the Company or for the preservation of its business or property, so long as such liability is incurred pursuant to prior authorization of, or subsequently ratified by, the Managers Committee.

5.17 Successor Managers, Removal and Term. There are two initial Managers of the Company named in its Articles of Organization, all of whom are Members. Upon the death or resignation of any of the individuals who are initial Managers, or their successors, a Person who is a Member shall be elected as a successor Manager by a vote of the majority of the remaining Managers. The Members shall not have the right to remove any Manager. A Manager who is to be succeeded by another Person pursuant to this Agreement shall hold office until such Manager's successor has been elected and qualified, unless the Manager sooner resigns.

ARTICLE VI

BOOKS, RECORDS AND AUDITS

6.1 Access to Records. Upon the request of a Member, the Company shall provide the Member and its agents and attorneys with access to the Company's records at the Company's principal office or at such other offices of the Company where such records shall be kept in the ordinary course of the Company's business. Upon the written request of a former Member, setting forth the purpose for which the former Member desires access, the Company shall provide the former Member of the Company and its agents and attorneys with access for proper purposes to records of the Company pertaining to the period during which it was a Member of the Company. The Member or, for proper purposes, the former Member shall have the right to inspect and copy records during the ordinary business hours of the Company, provided that such inspection and copying does not unreasonably interfere with the operations of the Company. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records made for a Member or former Member.

6.2 Provision of Information. Without demand, the Company shall furnish a Member information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement or the Act. On written demand, the Company shall furnish a Member other information concerning the Company's business or affairs, except to the extent the written demand or the information demanded is unreasonable or otherwise improper under the circumstances. Upon the request of a Member, the Company will, at its expense, provide the Member with a copy of this Agreement.

6.3 Accounting Period. The accounting period of the Company shall be the calendar year.

6.4 Financial and Tax Information. The Profits or Losses of the Company for each year shall be determined as soon as possible after the close of each calendar year and a report shall be furnished to each Member together with a statement indicating the Member's share of the Profits or Losses of the Company for the year for income tax reporting purposes as determined under the Internal Revenue Code and the allocation provisions of this Agreement, and such additional information as may be reasonably required by each Member in preparing the Member's income tax or informational returns. The Profits or Losses of the Company shall be determined in accordance with generally accepted accounting principles and practices consistently applied.

6.5 Tax Matters.

(a) **Tax Elections.** The Managers shall, without any further consent of the Members being required (except as specifically required herein), make any and all elections for federal, state, local, and foreign tax purposes including, without limitation,

any election, if permitted by applicable law: (i) to adjust the basis of Property pursuant to Code Sections 754, 734(b) and 743(b), or comparable provisions of state, local or foreign law, in connection with Transfers of Units and Company distributions; (ii) with the consent of all of the Members, to extend the statute of limitations for assessment of tax deficiencies against the Members with respect to adjustments to the Company's federal, state, local or foreign tax returns; and (iii) to the extent provided in Code Sections 6221 through 6231 and similar provisions of federal, state, local, or foreign law, to represent the Company and the Members before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company or the Members in their capacities as Members, and to file any tax returns and execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company and the Members. Andrew A. Payne, III is specifically authorized to act as the "Tax Matters Member" under the Code and in any similar capacity under state or local law.

(b) **Tax Information.** Necessary tax information shall be delivered to each Member as soon as practicable after the end of each Allocation Year of the Company but not later than five (5) months after the end of each Allocation Year.

ARTICLE VII

Members

7.1 Duties Owed. A Member who is not also a Manager (i) owes no duties to the Company or to the other Members solely by reason of being a Member and (ii) is not an agent of the Company for the purpose of conducting its business solely by reason of being a Member.

7.2 Compensation. No Member is entitled to remuneration for services performed for the Company, except for reasonable compensation for services rendered in winding up the business of the Company.

7.3 Meetings. Meetings of the Members shall be held as the Managers Committee may from time to time determine, except that a Member or Members that own in the aggregate at least 50% of the Units of the Company may call a meeting of the Members of the Company. Meetings of the Members may be held either within or without the State of West Virginia. Notice of all meetings of the Members shall be given at least 5 business days before the time of such meeting by the Persons calling such meeting; and, if such meeting is called by Persons other than the Managers through action of the Managers Committee, such notice shall specify the purpose or purposes of such meeting.

7.4 Participation in Meeting by Telephone. Any one or more Members may participate in any meeting of the Members, or a meeting of the Members

may be conducted through the use of, any means of communication by which all the Member may simultaneously hear each other. Any Member so participating in a meeting is deemed to be present in person at such meeting and shall be counted as a part of the quorum for that meeting. Any vote of the Member taken at any such meeting shall have the same effect and validity as though the action were duly taken by the action of the Member at a meeting at which all of the Member participating were present at the same location.

7.5 Waiver of Notice. Where notice is required, such notice may be waived by a writing signed by the Member or Members waiving notice, regardless of whether such waiver is given before or after the time required; and such waiver or waivers shall be filed with the records of the meetings of Members. Any meeting of the Members at which every Member is present or represented shall be valid, notwithstanding lack or insufficiency of the notice required by this Agreement.

7.6 Action by Members Without Meeting. Whenever the vote of the Members at a meeting thereof is required or permitted to be taken in connection with any Company action, the meeting and vote of such Members may be dispensed with if all of the Members entitled to vote upon the action, if such meeting were held, shall agree in writing to such Company action being taken, and such agreement shall have like effect and validity as though the action were duly taken by the unanimous action of all Members entitled to vote at a meeting of the Members duly called and held.

7.7 Quorum; Adjournments. At all meetings of the Members, a quorum shall consist of at least a majority of all of the Units of the Company. If a majority of the Units is not present, either in person or by proxy, at the time and place appointed, the Members represented, though less than a quorum, may adjourn the meeting from time to time until a quorum is present and the business to come before the meeting is completed.

7.8 Voting; Proxy. If a quorum is present at any meeting of the Members duly called and held, unless otherwise provided in this Agreement, the affirmative vote of a majority of the Units of the Company represented at the meeting shall be and constitute the act of the Members. Each Member shall be entitled to one vote for each Unit owned on each matter voted upon at any meeting of the Members. A Member may appoint another Person as his or her proxy to vote such Member's Units at any meeting of the Members, and such appointment shall be in writing signed by the appointing Member.

7.9 Matters Requiring Member Approval. In addition to matters requiring action by the Members provided for elsewhere in this Agreement and although other matters may be brought before the Members for action, the Members reserve to themselves the right to act on the matters set forth in this Section 7.9.

Unless a greater vote is required by other provisions of this Agreement, all matters specified under the Act as requiring consent of all members of a limited liability company shall only require the affirmative vote of Members owning more than a majority of the Units of the Company. Such matters include the following:

- (1) Authorization or ratification, after full disclosure of all material facts, of specific acts or transactions that would otherwise violate the duty of loyalty;
- (2) Amendment of the Articles of Organization of the Company;
- (3) Compromise of an obligation to make a contribution;
- (4) Compromise, as among the Members, of an obligation of a Member to make a contribution or return money or other property paid or distributed in violation of the Act;
- (5) Authorization of interim distributions, including redemption of an interest, made by the Company before its dissolution and winding up;
- (6) The admission of a new Member;
- (7) Use of the Company's property to redeem an interest subject to a charging order;
- (8) Waiver of the right to have the Company's business wound up and the Company terminated after dissolution and before the winding up of its business is completed;
- (9) Consent of the Members to merge with another entity;
- (10) The sale of a material asset of the Company or the acceleration or compromise of a material debt of the Company; and
- (11) Sale, lease, exchange or other disposal of all, or substantially all, of the Company's property with or without goodwill.

7.10 Record of Meetings. A record shall be kept of the meetings of the Members and the action taken at those meetings, which shall be verified by the signature of the persons acting as chairman and secretary of the meeting.

7.11 Reimbursement. The Company shall reimburse a Member for payments made by the Member in the ordinary course of the business of the Company or for the preservation of its business or property, so long as such payment is approved in advance or subsequently approved by the Managers Committee. The Company shall reimburse a Member for any advance to the Company beyond the amount of contribution

the Member agreed to make, so long as such payment is approved in advance or subsequently approved by the Managers Committee. Unless authorized by the Managers Committee in advance of such payment or advance, a payment or advance made by a Member which gives rise to an obligation of reimbursement on the part of the Company under this Section 7.3 shall not constitute a loan to the Company upon which interest accrues from the date of the payment or advance.

7.12 Indemnification. The Company shall indemnify a Member for liabilities incurred by the Member in the ordinary course of the business of the Company or for the preservation of its business or property.

ARTICLE VIII

TRANSFERS OF INTEREST

8.1 Transfer of Interest. A transfer of an Interest does not entitle the transferee to become or to exercise any rights of a Member, other than those specified in Section 8.4 of this Agreement. The Company need not give effect to a transfer until it has received written notice of the transfer. Notwithstanding the foregoing or anything else contained herein to the contrary, any Member shall have the right to transfer all or any portion of his, her or its interest to his or her spouse, to any descendent of himself or herself, to a trust for the benefit of one or more of such persons or of such Member, or to a corporation, LLC or other entity wholly-owned and controlled by such Member.

8.2 Consent to Admission of New Members. Except as permitted under Section 8.1, no Member has the power to confer upon or transfer to a Person who is not a Member of the Company all the attributes of the Member's Interest in the Company without the written consent of a majority of the Units of all non-transferring Members, which consent may be given or withheld in the sole and absolute discretion of the non-transferring Members. If the non-transferring Members give the required consent and the transferee satisfies the other conditions for admission provided in Section 8.3, the transferee is admitted to Membership in the Company. A sole remaining Member of the Company may consent to the admission of a Member as provided in Section 8.3.

8.3 Conditions to Permitted Transfers. In addition to the written consent required under Section 8.2, a transfer of an Interest shall not be permitted under this Agreement and the transferee thereof admitted to the Company as a Member unless and until the following conditions are satisfied:

(a) Evidence that the transfer has been effected, satisfactory to the Company or its counsel, is delivered to the Company;

(b) Except in the case of a transfer at death or involuntarily by operation of law, the transferor shall furnish to the Company an opinion of counsel, which counsel and opinion shall be satisfactory to the Company and its counsel, that the transfer will not

cause the Company to terminate as a partnership for federal income tax purposes, unless said requirement is waived by the Company;

(c) The transferee executes such documents and instruments as the Company may reasonably request to effect the transferee's becoming a party to and being bound by this Agreement; and

(d) The transferee reimburses the Company for all reasonable expenses, including legal expenses, incurred in connection with the admission of the transferee as a Member.

8.4 Rights of Unadmitted Transferee. Except as provided in this Section 8.4, a transferee of an Interest not admitted as a Member shall not have any rights of a Member under this Agreement or the Act, including any right to participate in the management or conduct of the Company's business, to access to information concerning the Company's transactions, to receive information or an accounting of the affairs of the Company, or to inspect the books or records of the Company. A transferee of an Interest not admitted as a Member shall only be entitled to:

(a) Receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled, which distributions may be applied to satisfy any debts, obligations or liabilities to the Company that the transferor or transferee of such Interest may have; and

(b) Receive, upon dissolution and winding up of the Company's business (i), in accordance with the transfer, the net amount otherwise distributable to the transferor, and (ii) a statement of account only from the date of the latest statement of account distributed by the Company prior to commencement of the dissolution and winding up of the Company's business.

ARTICLE IX

DISSOCIATION OF MEMBERS

9.1 Events of Dissociation. No Member has the power at any time to dissociate from the Company by voluntary withdrawal. A Member is only dissociated from the Company upon the occurrence of any of the following events:

(a) Upon transfer of all of a Member's Distributional Interest, other than a transfer for security purposes or a court order charging the Member's Distributional Interest which has not been foreclosed:

(b) Upon the vote of more than seventy-five percent of the Units of the Company to expel the Member;

(c) Upon application by the Company or another Member, the Member's expulsion by judicial determination because the Member:

(1) Engaged in wrongful conduct that adversely and materially affected the Company's business;

(2) Willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 7.1 of this Agreement; or

(3) Engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member;

(d) Upon a Member's:

(1) Becoming a debtor in bankruptcy;

(2) Executing an assignment for the benefit of creditors;

(3) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver or liquidator of the Member or of all or substantially all of the Member's property; or

(4) Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver or liquidator of the Member or of all or substantially all of the Member's property obtained without the Member's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

(e) In the case of a Member who is an individual:

(1) The Member's death;

(2) The appointment of a guardian or general conservator for the Member; or

(3) A judicial determination that the Member has otherwise become incapable of performing the Member's duties under this Agreement;

(f) In the case of a Member that is a trust or is acting as a Member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the Company, but not merely by reason of the substitution of a successor trustee;

(g) In the case of a Member that is an estate or is acting as a Member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to

receive distributions from the Company, but not merely the substitution of a successor personal representative; or

(h) Termination of the existence of a Member if the Member is not an individual, estate or trust other than a business trust.

9.2 Wrongful Dissociation. A Member's dissociation from the Company shall be wrongful if:

(a) It is in breach of an express provision of this Agreement; or

(b) Before the expiration of the term specified in the Articles of Organization of the Company:

(1) The Member is expelled by judicial determination under Section 9.1(c) of this Agreement;

(2) The Member is dissociated by becoming a debtor in bankruptcy; or

(3) In the case of a Member who is not an individual, trust (other than a business trust), or estate, the Member is expelled or otherwise dissociated because it dissolved or terminated its existence.

9.3 Consequences of Wrongful Dissociation. A Member who wrongfully dissociates from the Company is liable to the Company and to the other Members for damages caused by the dissociation. The liability is in addition to any other obligation of the wrongfully dissociating Member to the Company or to the other Members. If the Company does not dissolve and wind up its business as a result of the Member's wrongful dissociation as defined under Section 9.2 of this Agreement, damages sustained by the Company for the wrongful dissociation must be offset against distributions otherwise due the wrongfully dissociating Member after the dissociation.

9.4 Effect of Dissociation.

(a) **On Economic Interests.** If a Member's dissociation results in a dissolution and winding up of the Company's business, Article X of this Agreement applies. If a Member's dissociation does not result in a dissolution and winding up of the Company's business, then the dissociated Member shall have no right to have the Company purchase, and the Company shall have no obligation to purchase, the dissociated Member's ownership interest in the Company until the expiration of the term of the Company specified in its Articles of Organization at the time of such dissociation. Upon a Member's dissociation, the dissociated Member shall have the same rights in regards to distributions as an unadmitted transferee of a Member.

(b) **On Participation.** Upon a Member's dissociation from the Company:

(1) The Member's right to participate in the management and conduct of the Company's business terminates, except that, after dissolution, a Member who has not wrongfully dissociated may participate in winding up the Company's business;

(2) The Member ceases to be a Member and is treated the same as an unadmitted transferee of a Member;

(3) The Member's duty of loyalty under Section 7.1(a)(3) of this Agreement terminates; and

(4) The Member's duty of loyalty under Section 7.1(a)(1) and (2) and duty of care under Section 7.1(b) of this Agreement continue only with regard to matters arising and events occurring before the Member's dissociation, unless the Member participates in winding up the Company's business pursuant to Section 9.4(b)(1) of this Agreement.

ARTICLE X

DISSOLUTION AND WINDING UP

10.1 Events of Dissolution and Winding Up. The Company shall be dissolved and its business wound up, upon the occurrence of any of the following events:

(a) Upon the agreement or consent of Members of the Company owning more than two-thirds of the Units of the Company.

(b) Dissociation of a Member but only if the dissociation is for a reason provided in subsections 9.1(b), (d), (e), (f), (g) and (h) and occurs before the expiration of the term specified in the Articles of Organization of the Company, but the Company will not be deemed to have been dissolved by such dissociation and required to wind up its business by reason of the dissociation if, within ninety days after the Company has notice of the dissociation, Members holding more than a majority of the Units of the Company (other than the Units of the dissociated Member) shall agree or consent to continue the business of the Company.

(c) An event that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety days after the Company has notice of the event is effective retroactively to the date of the event for the purposes of this section.

(d) On application by a Member or a dissociated Member, upon entry of a judicial decree that:

(1) The economic purpose of the Company is likely to be unreasonably frustrated;

(2) Another Member has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the Company's business with that Member;

(3) It is not otherwise reasonably practicable to carry on the Company's business in conformity with the Articles of Organization and this Agreement;

(4) The Company fails to purchase the petitioner's Distributional Interest after the expiration of the term of the Company; or

(5) The Managers in control of the Company have acted, are acting or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial to the petitioner.

(e) On application by a transferee of a Member's interest, a judicial determination that it is equitable to wind up the Company's business, after the expiration of the Company's term as specified in its Articles of Organization at the time the applicant became a transferee by Member dissociation, transfer or entry of a charging order that gave rise to the transfer.

10.2 Continuation after Dissolution. Except as otherwise provided in this Section 10.2, the Company shall continue after dissolution only for the purpose of winding up the business of the Company. At any time after the dissolution of the Company and before the winding up of its business is completed, the Members, including a dissociated Member whose dissociation caused the dissolution, may unanimously waive the right to have the Company's business wound up and the Company terminated. In that event, the Company shall resume carrying on its business as if dissolution had never occurred and any liability incurred by the Company or a Member after the dissolution and before the waiver is determined as if the dissolution had never occurred and the rights of a third party accruing under Section 10.4 below or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

10.3 Right to Wind Up Business. A Person winding up the Company's business may preserve its business and property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal or administrative, settle and close the Company's business, dispose of and transfer the Company's property, discharge the Company's liabilities, distribute the assets pursuant to Section 10.5, settle disputes by mediation or arbitration, and perform any other acts necessary, advisable or incidental to the winding up of the Company's business and the disposition of its assets and liabilities.

10.4 Member's Power and Liability as Agent after Dissolution. The Company will be bound by a Member's act after dissolution that (i) is appropriate for winding up the Company's business or (ii) would have bound the Company before dissolution, if the other party to the transaction did not have notice of the dissolution. A Member who, with knowledge of the dissolution, subjects the Company to liability by an act that is not appropriate for winding up the Company's business is liable to the Company for any damage caused to the Company arising from the liability.

10.5 Disposition of Assets. In winding up the Company's business, the assets of the Company must be applied to discharge its obligations to creditors, including Members who are creditors. Any surplus must be distributed to Members and other Interest Holders in accordance with their right to distributions under this Section 10.5. Each Member is first entitled to a distribution upon the winding up of the Company's business consisting of a return of all contributions which have not been previously returned. Any remaining property of the Company shall be distributed among the Members and other Interest Holders of the Company in proportion to their ownership of the Units of the Company.

10.6 Compliance with Certain Requirements of Regulations; Deficit Capital Accounts. In the event the Company is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this Section 10 to the Members who have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2). If any Member has a deficit balance in his Capital Account (after giving effect to all contributions, distributions and allocations for all Allocation Years, including the Allocation Year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever. In the discretion of the Liquidator, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to this Section 10 may be:

(a) Distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Liquidator, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to Section 10; or

(b) Withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld amounts shall be distributed to the Members as soon as practicable.

10.7 Deemed Distribution and Recontribution. Notwithstanding any other provisions of this Article X, in the event the Company is liquidated within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g), but if no liquidating event has occurred, the Property shall not be liquidated and the Company's liabilities shall not be paid or discharged and the Company's affairs shall not be wound up. Instead, solely for federal income tax purposes, the Company shall be deemed to have contributed all of its Property and liabilities to a new limited liability company in exchange for an interest in such new company and, immediately thereafter, the Company will be deemed to liquidate by distributing interests in the new Company to the Members.

10.8 Liquidator.

(a) Definition. The "Liquidator" shall mean a Person appointed by the Managers to oversee the liquidation of the Company.

(b) Fees. The Company is authorized to pay a reasonable fee to the Liquidator for its services performed pursuant to this Section 10 and to reimburse the Liquidator for its reasonable costs and expenses incurred in performing those services.

(c) Indemnification. The Company shall indemnify, save harmless, and pay all judgments and claims against such Liquidator or any officers, directors, agents or employees of the Liquidator relating to any liability or damage incurred by reason of any act performed or omitted to be performed by the Liquidator, or any officers, directors, agents or employees of the Liquidator in connection with the liquidation of the Company, including reasonable attorneys' fees incurred by the Liquidator, officer, director, agent or employee in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred, except to the extent such liability or damage is caused by the fraud, intentional misconduct of, or a knowing violation of the laws by the Liquidator which was material to the cause of action.

10.9 Form of Liquidating Distributions. For purposes of making distributions required by this Section, the Liquidator may determine whether to distribute all or any portion of the Property in-kind or to sell all or any portion of the Property and distribute the proceeds therefrom.

ARTICLE XI
DEFINITIONS

11.1 Definitions. The following words and terms used in this Agreement, including all appendices to it, shall have the meanings respectively ascribed to them in this Section:

- a. "Act" means the Uniform Limited Liability Company Act of West Virginia, as amended, from time to time.
- b. "Affiliate" means, with respect to a Person, another Person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.
- c. "Agreement" means this Operating Agreement, as amended from time to time.
- d. "Company" means Vandalia Capital II, LLC, a West Virginia limited liability company.
- e. "Distributional Interest" means all of a Member's interest in distributions by the Company.
- f. "Interest" means the rights and benefits to which an Interest Holder is entitled under this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement.
- g. "Interest Holder" means any Person who holds an Interest, whether a Member, former Member or an unadmitted assignee or transferee of a Member.
- h. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time.
- i. "Manager" means a Person who was appointed as a Manager in the Articles of Organization of the Company or who becomes a successor to such a Manager.
- i. "Member" means each Person signing this Agreement and any person who is subsequently admitted as a Member.
- j. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

In addition to the terms defined in this Section, other terms used in this Agreement or the appendices to it which relate to the application of the tax laws to the Company and its business are defined in Appendix B.

11.2 Rules of Construction. The following rules shall control in the interpretation or construction of this Agreement:

- a. Regardless of whether this Agreement specifically refers to particular provisions of the Act, all of the provisions of which are default rules in the absence of a different agreement among the members of a limited liability company:

(1) If any provision of this Agreement conflicts with a provision of the Act, the provision of this Agreement controls and the provision of the Act is modified or negated accordingly; and

(2) If it is necessary to construe a provision of the Act as modified or negated in order to effectuate any provision of this Agreement, the provision of the Act is modified or negated accordingly.

b. The word "including" followed by a listing does not limit the preceding words or terms and shall mean "including, without limitation."

c. The masculine gender shall include the feminine and neuter genders and any pronoun shall be construed as to number and gender as may be appropriate in the context of its use.

ARTICLE XII

OTHER PROVISIONS

12.1 Notices. Any notice or communication to be given to any Member pursuant to this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date when delivered personally or sent by electronic mail, (b) on the date when transmitted by fax (receipt confirmed), provided that a copy is mailed by the end of the following business day by United States mail, postage prepaid; (c) on the next business day following deposit with a nationally recognized overnight delivery service for next day delivery, or (d) on the third day after deposit in the United States mails, postage prepaid, addressed or transmitted to such Member at the address, or fax number, as appropriate, shown in this Agreement or such other address, or other fax number, as the Member shall have subsequently communicated to the Company. Until the Company shall subsequently communicate another address or fax number to all Members, the address of the Company is 300 Capitol Street, Suite 1503, Charleston, West Virginia 26505; and its fax number is (304) 594-2925.

12.2 Governing Law. The agreements and rights of the parties hereunder shall be interpreted and determined in accordance with the laws of the State of West Virginia, without regard to its conflicts of laws principles that would require the application of some other law.

12.3 Headings. The headings and subheadings used in this Agreement are only for convenience of reference and shall have no effect on the interpretation or construction of the provisions of this Agreement.

12.4 Entire Agreement; Amendment. This Agreement, including Appendices A and B attached hereto, contains the entire understanding and agreement of

the Members. It may only be altered or amended by a vote of the holders of two-thirds of the Units of all Members, which amendment shall then be documented by a writing which all Members hereby agree to sign.

12.5 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement.

12.6 Binding Effect. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

12.7 Execution of Agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

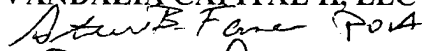
12.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement. This Agreement shall become effective when one or more counterparts have been executed by each of the parties hereto, it being understood that all parties need not execute the same counterpart. Any counterpart of this Operating Agreement which has attached to it separate signature pages, which together contain the signatures of all parties hereto, shall for all purposes be deemed a fully executed original.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Operating Agreement has been executed
by the Company and the Members.

THE COMPANY:

VANDALIA CAPITAL II, LLC

By: 
Stephen B. Farmer, and

By: 
Andrew A. Payne, III,

BEING ALL OF THE MANAGERS OF
VANDALIA CAPITAL II, LLC

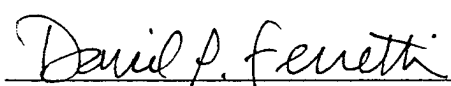
THE MEMBERS:


RALPH BALLARD

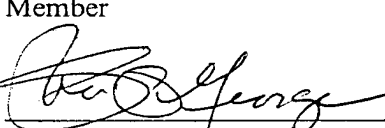
Member


STEPHEN B. FARMER

Member


DAVID P. FERRETTI

Member


SHAWN P. GEORGE

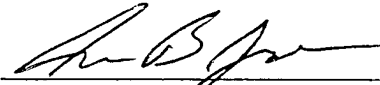
Member


MARK GRIMMETT

Member

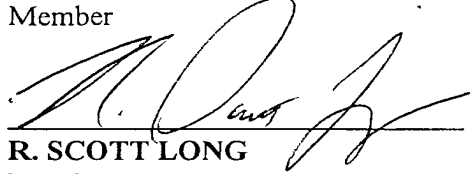
ROBERT HUGGINS

Member



ANDREW JORDON

Member



R. SCOTT LONG

Member



ANDREW A. PAYNE, III

Member

DAVID P. PRAY REVOCABLE TRUST

By: _____


David P. Pray, Trustee

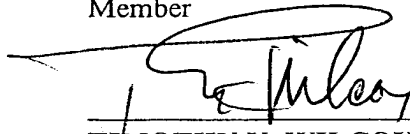
Member

ROOKE ASSET PARTNERS, LP

By: _____


Andrew K. Rooke, General Partner

Member



TIMOTHY K. WILCOX

Member


ROBERT HUGGINS
Member

ANDREW JORDON
Member

R. SCOTT LONG
Member

ANDREW A. PAYNE, III
Member

DAVID P. PRAY REVOCABLE TRUST

By: _____
David P. Pray, Trustee
Member

ROOKE ASSET PARTNERS, LP

By: _____
Andrew K. Rooke, General Partner
Member

TIMOTHY K. WILCOX
Member

ROBERT HUGGINS
Member

ANDREW JORDON
Member

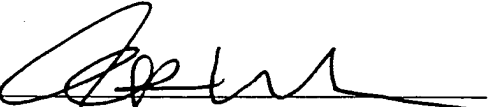
R. SCOTT LONG
Member

ANDREW A. PAYNE, III
Member

DAVID P. PRAY REVOCABLE TRUST

By: _____
David P. Pray, Trustee
Member

ROOKE ASSET PARTNERS, LP

By:  _____
Andrew K. Rooke, General Partner
Member

TIMOTHY K. WILCOX
Member

APPENDIX A
MEMBERS AND CAPITAL CONTRIBUTIONS

Date: July 6, 2006

<u>Members' Names, Addresses and Other Information</u>	<u>Description of Contributed Property</u>	<u>Value of Contribution</u>	<u>Capital Units</u>
Ralph Ballard 403 Quarry Point Charleston, WV 25305 Fax No: (304) E-Mail: Social Security Number: 227-82-9941		\$0	10
Stephen B. Farmer 746 Myrtle Road Charleston, WV 25314 Fax No: (304) 346-5980 E-Mail: sbfarmer@fcclaw.net Social Security Number: 232-94-4683		\$0	10
David P. Ferretti 300 Kanawha Boulevard, East Charleston, WV 25301 Fax No: (304) 340-3801 E-Mail: dferretti@spilmanlaw.com Social Security Number: 233-72-4530		\$0	10

<u>Members' Names, Addresses and Other Information</u>	<u>Description of Contributed Property</u>	<u>Value of Contribution</u>	<u>Capital Units</u>
Shawn P. George 1526 E. Kanawha Boulevard Charleston, WV 25311 Fax No: (304) 342-2153 E-Mail: sgeorge@citynet.net Social Security Number:		\$0	10
Mark Grimmitt 210 Flintlock Road Charleston, WV 25314 Fax No: (304) E-Mail: Social Security Number: 236-02-9104		\$0	10
Robert Huggins Bramlage Coliseum Suite 133 1800 College Ave Manhattan, KS 66502-3355 Fax No: E-Mail: Social Security Number:		\$0	10
Andrew Jordon P. O. Box 3311 Charleston, WV 25333 Fax No: (304) E-Mail: vestbr@earthlink.net Social Security Number:		\$0	10

<u>Members' Names, Addresses and Other Information</u>	<u>Description of Contributed Property</u>	<u>Value of Contribution</u>	<u>Capital Units</u>
R. Scott Long 214 Capitol Street Charleston, WV 25301 Fax No: (304) 346-5515 E-Mail: scottl@handl.com Social Security Number: 234-90-1084		\$0	10
Andrew A. Payne, III Suite 1503, 300 Capitol Street Charleston, WV 25301 Fax No: (304) 343-9240 E-Mail: drewpayne@charter.net Social Security Number: 233-74-2403		\$0	10
David P. Pray Rt. 2, Box 331B Charleston, WV 25314 Fax No: (304) E-Mail: dave@prayworks.com Social Security Number: 064-40-0171		\$0	10
Rooke Asset Partners, LP 175 South Street Morristown, NJ 07960 Fax No: (215) 591-9575 E-Mail: akrookel@verizon.net Federal Tax ID Number: 58-2500248		\$0	10

<u>Members' Names, Addresses and Other Information</u>	<u>Description of Contributed Property</u>	<u>Value of Contribution</u>	<u>Capital Units</u>
Timothy K. Wilcox 1590 Hampton Road Charleston, WV 25314 Fax No: (304) 344-2349 E-Mail: basepet@aol.com Social Security Number: 235-98-5410		\$0	10
		TOTALS	120

APPENDIX B

TAX MATTERS

B-1. Tax-Related Definitions.

For the purpose of this Agreement, including the appendices to it, and for the purpose of application of the provisions of the tax laws to the Company and its business, the following words and terms shall have the meanings respectively ascribed to them below:

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

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

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

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

b. "Additional Capital Contributions" means, with respect to each Member, the Capital Contributions made by such Member pursuant to Article 2 and Appendix A hereof. In the event Units are Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Additional Capital Contributions of the transferor to the extent they relate to the Transferred Units.

c. "Adjusted Capital Contribution" means, as of any day, an Interest Holder's Capital Contribution adjusted as follows:

(1) Increased by the amount of any Membership liabilities in connection with distributions pursuant to this Agreement, which are assumed by such Interest Holder or are secured by any Membership Property distributed to such Interest Holder;

(2) Increased by any amounts actually paid by such Interest Holder to any Lender pursuant to the terms of any assumption agreement; and,

(3) Reduced by the amount of cash and the Gross Asset Value of any Company Property distributed to such Interest Holder pursuant to this Agreement, and the amount of any liabilities of such Interest Holder assumed by the Company

or which are secured by any property contributed by such Interest Holder to the Company.

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

d. "Allocation Year" means (i) the period commencing on the Effective Date and ending on December 31, 2003, (ii) any subsequent twelve (12) month period commencing on January 1 and ending on December 31 or (iii) any portion of the period described in clauses (i) or (ii) for which the Company is required to allocate Profits, Losses and other items of Company income, gain, loss or deduction pursuant to Section 3 and Appendix B hereof.

e. "Capital Account" means, with respect to any Member, or Interest Holder the Capital Account maintained for such person in accordance with the following provisions:

(1) To each Person's Capital Account, there should be credited such Person's Capital Contributions, such Person's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to this Appendix B, and the amount of any Company liabilities assumed by such Person or which are secured by any Property distributed to such Person. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Company by the maker of the note (or a Member related to the maker of the note within the meaning of Regulations Section 1.704-1(b)(2)(ii)(c)) shall not be included in the Capital Account of any Member until the Company makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2);

(2) To each Person's Capital Account, there should be debited the amount of cash and the Gross Asset Value of any Property distributed to such Person, pursuant to any provision of this Agreement. Such Person's distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to this Appendix B, and the amount of any liabilities of such Person assumed by the Company, or which are secured by any Property contributed by such Person to the Company.

(3) In the event all, or a portion of an interest in the Company, is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

(4) In determining the amount of any liability for purposes of this Appendix B, there shall be taken into account Internal Revenue Code Section

752(c) and any other applicable provisions of the Internal Revenue Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with the Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Managers shall determine that it is prudent to modify the manner in which the Capital Accounts or any debits or credits thereto are computed in order to comply with such Regulations, the Managers may make such modifications, provided that it is not likely to have a material effect on the amounts distributed to any person pursuant to Article X hereof, upon the dissolution of the Company. The Managers also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and other Interest Holders in the amount the capital reflected on the Company's balance sheet, as computed for book purposes in accordance with Regulation Section 1.704-1(b)(2)(iv)(g) and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulation Section 1.704-1(b).

f. "Capital Contribution" means, with respect to any Member or other Interest Holder, the amount of money and the initial Gross Asset Value of any Property, other than money, contributed to the Company with respect to the Units in the Company held or purchased by such Member, including Additional Capital Contributions.

g. "Company Minimum Gain" has the meaning given the term "partnership minimum gain" in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

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

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

(1) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset as determined by the contributing Member provided that a determination of the fair market value of

the contributed assets shall require the consent of the majority of the Members' Units in the Company;

(2) The Gross Asset Value of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Managers, as of the following times:

(i) The acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution;

(ii) The distribution by the Company to a Member or other Interest Holder of more than a de minimis amount of Property as consideration for an Interest in the Company; and,

(iii) The liquidation of the Company within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g): provided, however, that adjustments pursuant to clauses (i) and (ii) above shall be made only if the Managers reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members and other Interest Holders in the Company;

(3) The Gross Asset Value of any Company asset distributed to any Member or other Interest Holder shall be adjusted to equal the gross fair market value (taking Code Section 7701(g) into account) of such asset on the day of distribution as determined by the distributee and the Managers; provided that the determination of the fair market value of the distributed assets shall require the consent of a majority of the Members' Units in the Company; and,

(4) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and subparagraph (6) of the definition of "Profits" and "Losses" or Section B-4(c) hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (4) to the extent that an adjustment pursuant to subparagraph (2) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (4).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraph (1), (2) or (4) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Profits and Losses.

j. "Member Nonrecourse Debt" has the same meaning as the term "Member nonrecourse debt" in Section 1.704-2(b)(4) of the Regulations.

- k. "Member Nonrecourse Debt Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.
- l. "Member Nonrecourse Deductions" has the same meaning as the term "Member nonrecourse deductions" in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.
- m. "Net Cash Flow" means the gross cash proceeds of the Company less the portion thereof used to pay or establish reserves for all Company expenses, debt payments, capital improvements, replacements, and contingencies, all as determined by the Management Committee. "Net Cash Flow" shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to the first sentence of this definition.
- n. "Nonrecourse Deductions" has the meaning set forth in Section 1.704-2(b)(1) of the Regulations.
- o. "Nonrecourse Liability" has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.
- p. "Minimum Gain" has the meaning set forth in Sections 1.704-2(d) of the Regulations. Minimum Gain shall be computed separately for each Interest Holder in a manner consistent with the Regulations under Internal Revenue Code Section 704(b).
- q. "Negative Capital Account" means a Capital Account with a balance of less than zero.
- r. "Nonrecourse Debt" has the meaning set forth in Section 1.704-2(b)(4) of the Regulations.
- s. "Nonrecourse Deductions" has the meaning set forth in Section 1.704-2(b)(1) of the Regulations.
- t. "Nonrecourse Liability" has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.
- u. "Partner Nonrecourse Deductions" has the meaning set forth in Section 1.704-2(i)(2) of the Regulations.
- v. "Percentage Interest" means, with respect to any Member as of any date, the ratio (expressed as a percentage) of the number of Units held by such Member on such date to the aggregate Units held by all Members on such date. The Units held by each Member immediately after the Effective Date is set forth in Appendix A hereof.

w. "Profits" and "Losses" means for each Allocation Year, an amount equal to the Company's taxable income or loss for such Allocation Year, determined in accordance with Internal Revenue Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

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

(2) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulation Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits and Losses shall be subtracted from such taxable income or loss;

(3) In the event Gross Asset Value of any Company asset is adjusted pursuant to subparagraphs (2) or (3) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain (if the adjustment increases the Gross Asset Value of the asset) or loss (if the adjustment decreases the Gross Asset Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses;

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

(5) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Allocation Year, computed in accordance with the definition of Depreciation;

(6) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Internal Revenue Code Section 734(b) is required pursuant to Regulation Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than a liquidation of a Member's or other Interest Holder's Interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Profits and Losses; and,

(7) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Sections B-4 or B-5 hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Sections B-4 and B-5 hereof shall be determined by applying rules analogous to those set forth in subparagraphs (1) through (6) above.

x. "Property" means all real and personal property acquired by the Company, including cash, and any improvements thereto, and shall include both tangible and intangible property.

y. "Regulations" means the Income Tax Regulations, including Temporary Regulations promulgated under the Internal Revenue Code, as such Regulations may be amended from time to time.

z. "Regulatory Allocations" has the meaning set forth in Section B-5 hereof.

B-2. Profits.

After giving effect to the special allocations set forth in Sections B-4 and B-5, Profits for any Allocation Year shall be allocated to the Members in proportion to their Percentage Interests.

B-3. Losses.

After giving effect to the special allocations set forth in Sections B-4 and B-5 and subject to Section B-5, Losses for any Allocation Year shall be allocated to the Members in proportion to their Percentage Interests.

B-4. Special Allocations.

The following special allocations shall be made in the following order:

(a) Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Appendix B, if there is a net decrease in Company Minimum Gain during any Allocation Year, each Member shall be specially allocated items of Company income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with sections 1.704-2(f) (6) and 1.704-2(j) (2) of the Regulations. This Section B-4(a) is intended to comply with the minimum gain chargeback requirement in

Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(b) Member Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i) (4) of the Regulations, notwithstanding any other provision of this Appendix B, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Allocation Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i) (5) of the Regulations, shall be specially allocated items of Company income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i) (4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i) (4) and 1.704-2(j) (2) of the Regulations. This Section B-4(b) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i) (4) of the Regulations and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible, provided that an allocation pursuant to this Section B-4(c) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Appendix B have been tentatively made as if this Section B-4(c) were not in the Agreement.

(d) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Allocation Year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section B-4(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Appendix B have been made as if Section B-4(c) and this Section B-4(d) were not in the Agreement.

(e) Nonrecourse Deductions. Nonrecourse Deductions for any Allocation Year shall be specially allocated to the Members in proportion to their respective Percentage Interests.

(f) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Allocation Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i) (1).

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

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

B-5. Curative Allocations.

The allocations set forth in Sections B-4(a), B-4(b), B-4(c), B-4(d), B-4(e), B-4(f), B-4(g) and B-6 (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section B-5. Therefore, notwithstanding any other provision of this Appendix B (other than the Regulatory Allocations), the Management Committee shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Sections B-2, B-3, and B-4(h).

B-6. Loss Limitation.

Losses allocated pursuant to Section B-3 hereof shall not exceed the maximum amount of Losses that can be allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Allocation Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section B-3 hereof, the limitation set forth in this Section B-6 shall be applied on a Member by Member basis and Losses not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance with the positive balances in such Member's Capital Accounts so as to allocate the maximum permissible Losses to each Member under Section 1.704-1(b)(2)(ii)(d) of the Regulations.

B-7. Other Allocation Rules.

(a) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Management Committee using any permissible method under Code Section 706 and the Regulations thereunder.

(b) The Members are aware of the income tax consequences of the allocations made by this Appendix B and hereby agree to be bound by the provisions of this Appendix B in reporting their shares of Company income and loss for income tax purposes.

(c) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a) (3), the Members' interests in Company profits are in proportion to their Percentage Interests.

To the extent permitted by Section 1.704-2(h) (3) of the Regulations, the Manager shall endeavor to treat distributions of Net Cash Flow as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Member.

B-8. Tax Allocations: Code Section 704(c).

In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any Property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with the definition of Gross Asset Value) using an appropriate and reasonable method of allocation as set out in the Regulations to Code Section 704(c), as the Managers shall determine.

In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (ii) of the definition of Gross Asset Value, subsequent allocations of

income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

Any elections or other decisions relating to such allocations shall be made by the Management Committee in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section B-8 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") is made and entered into as of this 30th day of October, 2006, by and between **IB DEVELOPMENT, LLC**, a North Carolina limited liability company (the "Borrower"), and **UNITED BANK, INC.**, a state banking association (the "Bank").

WHEREAS, the Borrower has requested the Bank to make a loan to the Borrower in the maximum principal amount of \$28,212,594.00 as provided in Section 1 hereof (the "Loan"); and

WHEREAS, the proceeds of the Loan will be used by the Borrower to purchase certain real estate located in the Town of Weddington, Union County, North Carolina from Emily Pierce Whitt, Trustee, Milimac Holdings, LLC, and Charles Allen Deal and Patricia Deal (collectively, the "Sellers"), pursuant to those certain Real Estate Purchase Agreements, dated October 25, 2005, August 24, 2006, and October 30, 2006, by and among the Borrower and the Sellers (collectively, the "Real Estate Purchase Agreement") and for such other purposes as set forth herein; and

WHEREAS, the Loan will be secured by a first priority lien on all of the right, title and interest of the Borrower in and to the real property identified on Exhibit A attached hereto (the "Real Property") along with a first priority lien on all of the personal property identified on Exhibit A attached hereto ("Personal Property"); and

WHEREAS, Andrew A. Payne, III, Ralph L. Ballard, III, Stephen B. Farmer, David P. Ferretti, Andrew B. Jordon, Mark A. Grimmert, Shawn P. George, David P. Pray, R. Scott Long, Timothy K. Wilcox, Andy Rooke and Robert Huggins (each a "Guarantor" and collectively, the "Guarantors") shall each irrevocably and unconditionally guarantee the Loan in such amounts as are more particularly set forth in the respective Guaranty Agreements of even date herewith and executed by Guarantors, which amounts shall remain a fixed dollar amount during the term of the Loan (each a "Guaranty" and collectively, the "Guaranties"); and

WHEREAS, the Bank is willing to provide such Loan subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants contained herein, the parties hereby agree as follows:

1. Loan.

(a) Loan. Subject to the terms and conditions of this Agreement, the Bank agrees to lend to the Borrower, as of the date hereof, the Loan in the amount of \$28,212,594.00 for the purposes specified herein. The Loan shall be evidenced by the Promissory Note given by the Borrower to the Bank, in the form of Schedule 1(a) attached hereto and made a part hereof, in the principal amount of \$28,212,594.00 (the "Note"). No repayment or prepayment of any portion of the Loan by the Borrower shall create any obligation on the part of the Bank to re-lend such repaid or prepaid amounts to the Borrower. The Loan shall bear interest at an annual fixed rate of 7.80% for the term of the Note. Interest on the Loan

EXHIBIT

tabbies
3

shall be computed on the basis of a year consisting of 360 days applied to the actual number of days elapsed. The Borrower shall repay the Loan in quarterly installments of interest only commencing on November 30, 2006, and continuing on the same day in each third month thereafter, until May 1, 2008, when the entire outstanding principal balance of the Note and all accrued and unpaid interest shall be due and payable in full. The interest reserve amount of \$2,953,833.00 shall not be disbursed by the Bank at the Closing (as hereinafter defined) but shall be held by the Bank and applied to the aforesaid monthly interest payments due Bank from Borrower.

Borrower shall make principal reduction payments to Bank upon the closing of each sale of a lot within the Real Property (each a "Lot"). Each such payment shall be made within seven (7) business days (as hereinafter defined) after the sale of a Lot in an amount equal to 100% of the gross contract sales price for the Lot, less applicable closing costs, buyer's interest carry and reasonable and customary sales commissions. "Business Day" shall mean a day other than a Saturday, Sunday or other day on which commercial banks are authorized or required to close under the laws of the United States of America and the State of West Virginia.

The closing under the Real Estate Purchase Agreements will take place in two or three separate transactions during the week of October 30, 2006 and the Loan proceeds will be disbursed by Bank for the closings subject to and in accordance with the Addendum attached hereto.

(b) Late Fee. If any payment on the Loan is more than 10 days past its due date, the Borrower also shall pay the Bank a late fee equal to 2% of the amount due and owing. If any payment is more than 30 days past its due date, or after maturity, whether by acceleration or otherwise, or upon the occurrence and during the continuance of any Event of Default hereunder, the Loan and other obligations of the Borrower to the Bank hereunder shall bear interest (computed and adjusted in the same manner, and with the same effect, as interest on the Loan prior to maturity) payable on demand at a rate equal to the 7.8% plus 2% per annum, in all cases until paid and whether before or after the entry of any judgment thereon, however, in no event shall such default rate be less than the above described fixed note rate and in that case such note rate shall be the default rate.

(c) Loan Origination Fee. In consideration of Bank making the Loan to Borrower, Borrower agrees to pay to Bank on the Closing Date a loan origination fee ("Loan Origination Fee") in the amount of \$564,005.00 (2% of the Loan amount).

(d) Loan Documents and Collateral Security. This Agreement, the Note, and any other documents contemplated by or executed in connection with this Agreement or the Note, including but not limited to letters of credit, guaranties, security agreements, financing statements, collateral assignments of contracts, fixture filings, mortgages and deeds of trust (collectively, together with all modifications, amendments, restatements, refinancings, substitutions for, replacements, consolidations, renewals or extensions, from time to time, thereof or thereto, the "Loan Documents"), shall, except for the Guaranties and "Letters of Credit" (as hereinafter defined), be secured by all of the Real Property and Personal Property described on Exhibit A attached hereto and described in the applicable Loan Documents (the "Collateral Security").

The Loan shall also be secured by the aforesaid Guaranties from the Guarantors and by letters of credit ("Letters of Credit") to be provided to the Bank by the Guarantors.

Each Guaranty from a Guarantor will be irrevocable, unconditional, and in a fixed dollar amount as set forth in the Guaranty. Each Guaranty will remain in effect for the term of the Loan and until such time as the Note, together with all interest, late fees, and penalties, is paid in full, and will not be reduced with principal reductions.

The Letters of Credit shall total the amount of \$13,065,974.00 and shall be comprised of 35% of the acquisition costs (\$8,372,154.00) and 100% of the remaining Loan amount for fees, soft costs and interest reserve. The Letters of Credit shall be irrevocable with an expiration of the later to occur of (i) 30 to 60 days after the maturity of the Loan, or (ii) the date that the principal balance of the Note, together with all interest, late fees and penalties, is paid in full. The Letters of Credit shall be from a bank or banks satisfactory to the Bank and its counsel.

The Loan Documents shall be in form and substance satisfactory to the Bank and its counsel, and the Borrower agrees to execute any documents and deliver any property to the Bank deemed necessary by the Bank or its counsel to evidence or assure the protection, perfection and/or enforcement of such Collateral Security including, without limitation, security agreements, financing statements, fixture filings and amendments thereto or continuations thereof and mortgages, deeds of trust and similar documents, and amendments thereto.

(e) Taxes. The Borrower agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges, or similar levies (which shall not, in any event include any transfer or other taxes that arise or are incurred or imposed solely as a result of transfer or assignment by the Bank of all or any portion of the Loan) that arise from the execution, delivery or registration of, or otherwise with respect to, this Agreement (hereinafter referred to as "Taxes"). Notwithstanding the foregoing, Borrower shall have the right to contest any Taxes by instituting and diligently and in good faith pursuing, appropriate judicial and/or administrative proceedings as to prevent or suspend collections, provided that Borrower provides Bank with adequate security for payment of the Taxes.

(f) Indemnity. The Borrower will indemnify within 30 days from the date the Bank makes written demand therefor, the Bank for the full amount of Taxes paid by the Bank and any liability (including penalties, additions to tax, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally assessed, provided that the Bank will cooperate with the Borrower in contesting the imposition of any Taxes or obtaining a refund thereof.

(g) Survival of Covenants. Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in this Section shall survive the payment in full of principal and interest hereunder.

(h) Prepayments. The Loan shall be subject to prepayment, in whole or in part, at any time without penalty. Any prepayment shall be applied in accordance with the instructions of the Borrower at the time each such prepayment is made. Any Loan prepayment

shall not be re-loaned to the Borrower and shall apply to installments due hereunder in inverse order of maturity.

(i) Payments. All payments of principal and interest hereunder shall be made in immediately available funds, for the account of the Bank at United Bank, Inc., 500 Virginia Street, East, Charleston, West Virginia 25301-2135, or at such other place as may be designated by the Bank to the Borrower in writing. The Bank is authorized by the Borrower to enter from time to time the balance of the Loan and all payments and prepayments thereon on the reverse of the Note or in the Bank's regularly maintained data processing records, and the aggregate unpaid amount of the Loan set forth thereon or therein shall be presumptive evidence of the amount owing to the Bank and unpaid thereon. Upon request and payment by the Borrower of a reasonable fee which compensates the Bank for the cost of issuing the same, the Bank shall provide the Borrower with a statement showing all payments and prepayments on the Loan.

2. Representations and Warranties. To induce the Bank to enter into this Agreement and to agree to make the Loan, the Borrower represents and warrants as follows:

(a) Existence. The Borrower is duly organized, validly existing and in good standing as a limited liability company under the laws of the State of North Carolina. The Borrower is duly qualified as a foreign corporation or limited liability company and in good standing under the laws of each jurisdiction in which the failure to be so qualified by the Borrower would have a material adverse effect on the business or financial condition of the Borrower, taken as a whole. The location of the chief executive office of the Borrower is 13850 Ballantyne Corporate Place, Suite 150, Charlotte, North Carolina 28277.

(b) Authority. The Borrower has full power and authority to own its properties and to conduct its businesses as such businesses are now being conducted, and the Borrower has full power and authority to execute, deliver and perform under this Agreement, the Note and all other Loan Documents.

(c) Borrowing Authorization. The execution, delivery and performance by the Borrower of this Agreement, the Note and the other Loan Documents: (i) have been duly authorized by all requisite action; (ii) do not and will not (A) violate any provision of any law, statute, rule or regulation applicable to the Borrower or the Collateral Security, (B) violate any order, judgment or decree of any court, arbitrator or other agency of government applicable to the Borrower or the Collateral Security, (C) violate the articles of organization, operating agreement or other organizational or governing documents of the Borrower, or (D) create a breach or default under the provisions of any provision of any material agreement (including, without limitation, any agreement with members) to which the Borrower is a party or subject or by which it or any of its properties or assets are bound; (iii) except as otherwise provided in this Agreement, do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Borrower; and (iv) do not and will not require any consent, approval or other action by or any notice to or filing with any court or administrative or governmental body or any other person or entity. This Agreement and the other Loan Documents have been duly executed and delivered on behalf of the Borrower and constitute the legal, valid and binding obligations of the Borrower,

enforceable against the Borrower in accordance with their respective terms, to the extent such Borrower has executed the same.

(d) Financial Information and Reports. Borrower is a newly formed entity and therefore does not have any historical financial statements. Neither the Borrower nor the Guarantors have any material contingent liabilities required to be disclosed under GAAP which are not provided for or disclosed in such financial statements.

(e) Indebtedness. The Borrower does not have any indebtedness nor has Borrower guaranteed the obligations of any other person (except by endorsement of negotiable instruments payable on sight for deposit or collection or similar banking transactions in the usual course of business), and there exists no default under the provisions of any instrument evidencing any indebtedness of the Borrower or of any agreement relating thereto, either currently or after giving effect to the Loan.

(f) Actions. As of the date of this Agreement, there is no action, suit, investigation or proceeding pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower before any court, arbitrator or administrative or governmental agency which is reasonably likely to result in any material adverse change in the business, operations or condition (financial or otherwise) of the Borrower taken as a whole, nor, to the best of the Borrower's knowledge after diligent investigation, is there any basis for any such action which is reasonably likely to result in such a material adverse change.

(g) Title to Property. The Borrower has good and marketable title in the Collateral Security free and clear of all liens, mortgages, pledges, security interests, encumbrances or charges of any kind, including any agreement to give any of the foregoing, any conditional sale or other title retention agreement or any lease in the nature thereof, other than the liens and security interests listed on attached Schedule 2(g) (the "Permitted Liens").

(h) ERISA. No "employee welfare benefit plan" or "employee pension benefit plan" (as defined in Sections 3(1) and 3(2), respectively, of the Employee Retirement Income Security Act of 1974, as amended and in effect ("ERISA")) has been established or is maintained by Borrower.

(i) Purpose of the Loan. The Loan shall be used by the Borrower to purchase the Real Estate pursuant to the Real Estate Purchase Agreement and for certain soft costs and interest reserve as follows:

Loan is comprised as follows:

\$ 23,302,492	Land cost
\$ 659,264	Fee paid for land assemblage
\$ 2,953,833	Interest Reserve equal to 1 1/2 years at 7.8%
\$ 733,000	Soft costs
\$ <u>564,005</u>	United Bank loan fee
\$ 28,212,594	

The Loan is not secured, directly or indirectly, by any stock for the purpose of purchasing or carrying any margin stock or for any purpose which would violate either Regulation U, 12 C.F.R. Part 221, or Regulation X, 12 C.F.R. Part 224, promulgated by the Board of Governors of the Federal Reserve System.

(j) Compliance. The Borrower is not in default under or acting in material violation of (i) any mortgage, indenture, lease, contract or agreement to which it is a party or by which any of its properties are bound; (ii) its Articles of Organization or Operating Agreement, or other organizational or governing documents; (iii) any judgment, order, writ, injunction or decree of any court or arbitration applicable to the Borrower or the Collateral Security; or (iv) any order, license, rule or regulation or demand by any federal, state, municipal or other governmental agency or any statute (including, without limitation, any applicable usury or similar law) applicable to the Borrower or the Collateral Security.

(k) Adverse Contracts and Conditions. The Borrower is not (i) a party to any contract or agreement made otherwise than in the ordinary course of business which, in the reasonable opinion of the Borrower, is a burdensome contract or agreement materially and adversely affecting the business operations of the Borrower, as such business is now conducted or contemplated to be conducted or condition of the Borrower taken as a whole, (ii) subject to any charge, restriction, judgment, decree or order, materially and adversely affecting the business, operations or condition, financial or otherwise, of the Borrower taken as a whole, or (iii) a party to any labor dispute which is reasonably likely to have a material adverse effect on the Borrower.

(l) Taxes. The Borrower has filed all federal, state and local tax returns and other reports which it is required by law to file, has paid all taxes, assessments and other similar charges that are due and payable, other than taxes, if any, being contested by the Borrower in good faith and as to which adequate reserves have been established in accordance with GAAP, and has withheld all employee and similar taxes which it is required by law to withhold.

(m) No Default. There exists no condition or event which would constitute an Event of Default under this Agreement or any other of the Loan Documents immediately after giving effect to the making of the Loan provided for hereunder or which would mature into the same with notice or the passage of time or both.

(n) Conditions Met. All acts, conditions and things required to be done and performed and to have happened to constitute this Agreement and the other Loan Documents as the legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms, have been done, performed and have happened in due and strict compliance with all applicable laws and regulations.

(o) Perfected Security Interests. The liens and security interests granted to the Bank by the Borrower in the Collateral Security will, upon (i) execution and delivery of the documents contemplated by this Loan Agreement; and (ii) the filing of appropriate financing statements, fixture filings, mortgages and deeds of trusts and delivery of property where possession is required to perfect a security interest, constitute valid and fully

perfected and continuing first priority liens and security interests duly enforceable in accordance with their terms under all applicable laws, rules and regulations, subject to no prior liens.

(p) Environmental Compliance. To best of Borrower's actual knowledge, after due inquiry, the Collateral Security is in compliance in all material respects with all federal, state, local and regional statutes, ordinances, orders, judgments, rulings and regulations relating to any matters of pollution or of environmental regulation or control, and there are and have been no releases or threatened releases or disposal of any hazardous, toxic or dangerous substance, waste or material or any solid waste, pollutant or contaminants ("hazardous substances") defined as such in or for the purpose of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, codified at 42 U.S. C. §§ 9601, et seq., any statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability for any hazardous, toxic or dangerous substances, wastes or materials or any solid wastes, pollutants or contaminants in violation of any such laws. Such matters are generally hereinafter referred to as "Environmental/Pollution Matters," and such matters include specifically by way of example only and not by way of limitation: environmental or ecological matters or controls, air pollution, water pollution, surface and subsurface pollution (including, but not limited to, soil, water well or other underground water contamination), noise control, dealings with hazardous and toxic materials, sewer discharges, waste disposal, storage or treatment, run-off control, and effluent discharges relating to the Collateral Security. No notice of any actual or claimed or asserted failure to comply with any such statutes, ordinances, orders judgments, rulings or regulations relating to the Collateral Security with respect to Environmental/Pollution Matters is outstanding.

(q) No Untrue Statements. No representation or warranty by the Borrower and no statement contained in this Agreement or in any other document furnished to the Bank or on behalf of any person pursuant to this Agreement, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein or therein not misleading.

(r) Solvency. The Borrower, upon consummation of the Loan, does not intend to and does not believe that it has incurred debts that will be beyond its ability to pay at maturity; the present fair saleable value of the assets of the Borrower exceeds the amount that will be required to pay the probable liability on its existing debts (whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent) as they become due and payable; the Borrower does not have unreasonably small capital for it to carry on its business as proposed to be conducted; and the Borrower is not making transfers under any evidence of indebtedness with the intent to hinder, delay or defraud any entity to which the Borrower is or will become indebted.

3. Borrower's Covenants. The Borrower covenants and agrees that, from the date of this Agreement and until the Loan is paid in full and all obligations under this Agreement are fully performed:

(a) Financial Statements; Periodic Reports. The Borrower shall furnish to the Bank: (i) as soon as practicable and in any event within 120 days after the last day of each fiscal year of the Borrower, a copy of the annual audit report of the Borrower prepared in accordance with GAAP applied on a basis consistent with that of the preceding fiscal year, and

consisting of a consolidated balance sheet as of the end of such fiscal year, consolidated statements of earnings, stockholders' equity and cash flows of the Borrower for such fiscal year (herein called the "Year-End Financials"), audited by a firm of independent certified public accountants of recognized standing reasonably acceptable to the Bank, whose report shall be in scope and substance reasonably satisfactory to the Bank; (ii) as soon as practicable and in any event within 60 days after June 30 of each calendar year during the term of the Loan, a copy of unaudited financial statements of the Borrower, prepared on a basis consistent with that of the preceding fiscal year, and consisting of a consolidated balance sheet as of the end of such six (6) month period, consolidated statements of earnings, stockholders' equity and cash flows, and a consolidated statement of retained earnings of the Borrower for the six (6) month period commencing on January 1 of such calendar through June 30 of such calendar year; and (iii) with reasonable promptness, such other financial data in such form as the Bank may reasonably request.

The Bank is authorized to deliver a copy of any financial statement or other communication or document delivered to it pursuant to this Section 3(a) to any participant in the Loan and, if such delivery is required by any regulatory body having jurisdiction over the Bank, to such regulatory body, provided that the Bank (and any participant in the Loan with whom such data is shared) shall keep such data confidential except to the extent otherwise required by applicable laws, that the Bank shall not be required to maintain the confidentiality of any data or other information otherwise required to be held by the Bank as confidential ("Confidential Information") if (i) it was or becomes generally available to the public other than through disclosure by the Bank in violation of this Agreement or through disclosure by the Borrower; (ii) it was available to the Bank on a non-confidential basis prior to the disclosure to the Bank by the Borrower; (iii) it becomes available to the Bank from a source not known to the Bank to have a duty of confidentiality with regard to the information; (iv) it is independently developed by the Bank; (v) it is disclosed under operation of law, government regulation, or court order, or (vi) the Bank reasonably believes disclosure is required by law or in response to any governmental agency request, in connection with an examination by regulatory authorities, or as required by court order or subpoena or to defend itself from any claim related to the Confidential Information. The Bank will give the Borrower prompt written notice at the address set forth in this Agreement of any ordered or intended use of Confidential Information so that the Borrower may seek an appropriate protective order. The Borrower shall permit the Bank and its agents and representatives, at the expense of the Bank, to inspect its real and personal property and to verify accounts and inspect and make copies of or extracts from its books, records and files, and to discuss its affairs, finances and accounts with its principal officers and counsel, all at such reasonable times upon prior request and as often as the Bank may reasonably request.

(b) Insurance. The Borrower shall maintain with carriers reasonably satisfactory to the Bank all risk coverage for the actual cash value of all of its real and personal property, and maintain with carriers reasonably satisfactory to the Bank commercial general liability insurance coverage, including excess liability coverage, and, to the extent applicable, flood insurance, all in amounts comparable with other businesses similar to those of the Borrower. The Borrower shall maintain workers' compensation or other similar insurance which may be required by applicable law, in at least the minimum amount required by law. The Borrower shall deliver to the Bank a certificate specifying the details of all such Insurance and update and deliver same to the Bank upon request but no less frequently than annually. The Borrower's insurance coverages as of the date hereof are detailed on Schedule 3(b) hereto. The

Borrower shall name the Bank as an additional insured under such commercial general liability policies and flood policies, and as loss payee under all property policies covering property included in the Collateral Security and add to all such policies standard mortgagee endorsements in favor of the Bank and endorsements requiring 10 days' prior notice to the Bank of any cancellation or non-renewal of same; on request, furnish full information and certifications to the Bank with respect thereto. The Borrower shall make payment of premiums for such policies on or before the due date directly to such insurer. The Borrower hereby authorizes and directs any such insurers to make payments for any loss insured against as to which the Bank is an additional insured or a loss payee directly to the Borrower and the Bank jointly. The Borrower shall furnish to the Bank prior to the date of this Agreement and from time to time thereafter upon request, certificates of insurance indicating that the policies of insurance required to be obtained and maintained by the Borrower pursuant to this Section 3(b) are in full force and effect. Notwithstanding anything herein to the contrary and upon written notice given to the Bank, Borrower shall be entitled to all insurance payments for any loss under \$50,000.00, provided that Borrower (i) is not in default under this Agreement and (ii) Borrower uses the funds to rebuild, repair or restore the damaged property.

(c) Taxes. The Borrower shall file all federal, state and local tax returns and other reports it is required by law to file, and shall pay when due all taxes, assessments and other liabilities, except that the Borrower shall not be obligated to pay any taxes or assessments which it is contesting in good faith, provided that adequate reserves therefor are established in accordance with GAAP, that such contests will not materially adversely affect the Borrower's operations or financial condition or the Bank's interest in the Collateral Security, and that such taxes and assessments are promptly paid when the dispute is finally determined.

(d) Existence and Status. The Borrower shall maintain its existence in good standing under the laws of the State of North Carolina.

(e) Maintenance of Property. The Borrower shall maintain all of its real and personal property in good working order, condition and repair, ordinary wear and tear excepted, and shall not, except in the ordinary course of business, remove or permit the removal of any improvement, accession or fixture therefrom that may in any way materially impair the value of said property.

(f) Compliance with Law. The Borrower shall observe and comply in all material respects with all laws, ordinances, orders, judgments, rules, regulations, certificates, franchises, permits, licenses, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, bureaus, courts, authorities, officials and officers which are now or at any time hereafter may be applicable to it and which might have a material adverse effect on the financial condition of the Borrower, unless and to the extent only that any of the foregoing shall be contested in good faith and by appropriate proceedings diligently conducted by the Borrower and not having resulted in a final judgment which has not been stayed pending appeal.

(g) Notice. The Borrower shall notify the Bank in writing, promptly upon the Borrower's learning thereof, of: (i) any litigation, suit or administrative proceeding which may materially affect the operations, financial condition or business of the Borrower taken as a whole, whether or not the claim is considered by the Borrower to be covered by insurance,

unless the applicable insurer has expressly agreed to defend any such claim and cover fully the liability therefor; (ii) any default by the Borrower under any note, indenture, loan agreement, mortgage, lease or other similar agreement to which the Borrower is a party or by which the Borrower or its assets are bound which might have a material adverse effect on the Borrower; (iii) any default by any obligor under any material note or other evidence of debt (other than an account receivable arising in the ordinary course of business) payable to the Borrower; and (iv) any material factual errors or, if discovered, any material factual defects or omissions in the contents of this Agreement or the other Loan Documents or in the execution or acknowledgment thereof.

(h) Books and Records. The Borrower shall keep and maintain complete books of accounts, records and files with respect to its business at its primary office location at 13850 Ballantyne Corporate Place, Suite 150, Charlotte, North Carolina 28277 in accordance with past practices and shall accurately and completely record all transactions therein.

(i) Inspections. At any reasonable time and with prior notice to Borrower, the Borrower shall allow the Bank access to and the right to examine and inspect, audit and make extracts from, at the Borrower's cost, all of the Borrower's records, files, and books of account, and the Borrower shall execute and deliver at the request of the Bank such instruments as may be necessary for the Bank to obtain such information concerning the business of the Borrower as the Bank may require from any person and to complete such due diligence regarding the Loan and the Collateral Security as the Bank or its counsel may request. Notwithstanding the foregoing, Borrower shall not be required to pay for any audit more than once every twelve (12) months.

(j) Deposits; Primary Operating Accounts. The Borrower shall maintain its primary operating accounts with the Bank.

(k) Additional Borrowing and Liens. The Borrower will not obtain any loan from any other bank, financial institution or third party. The Borrower will not knowingly create, incur, assume or suffer to exist any assignment, pledge, security interest, lien, deed of trust, mortgage, charge or other encumbrance of, in, to or upon (i) the Collateral Security or Borrower's interest in the Collateral Security other than the liens in favor of the Bank; or (ii) any other real or personal property, bank accounts, deposits or any other assets owned by Borrower, other than the Permitted Liens.

(l) Transfer of Collateral Security. The Borrower shall not sell, assign, transfer, abandon, convey, encumber, lease or otherwise dispose of any Collateral Security (either as security or otherwise), without the prior written consent of the Bank, other than the Permitted Liens.

(m) Amendments. The Borrower shall not amend, alter or change its Articles of Organization, Operating Agreements or other governing instruments, as applicable, in any fiscal year for tax and accounting purposes or accounting methods in any material respect.

(n) Change of Management or Ownership. The Borrower shall not merge or consolidate with any other entity; or take any action to change or permit a change in

ownership, management or the nature of Borrower's businesses as presently conducted; or sell or encumber, part with control of or transfer any interest in Borrower.

(o) Distributions, Advances and Loans. The Borrower shall not make distributions, advances or loans to any of its managers or members, without the express written approval of the Bank, except for such distributions to Borrower's members that are necessary for payment of income taxes attributed to Borrower's business or operations. The Borrower shall not use the proceeds of the Loan to pay any salaries, bonuses, or other payments of any kind to any of its employees, managers or members.

(p) Waiver. Any variance from the covenants of the Borrower pursuant to this Section 3 shall be permitted only with the prior written consent and/or waiver of the Bank. Any such variance by consent and/or waiver shall relate solely to the variance addressed in such consent and/or waiver, and shall not operate as the Bank's consent and/or waiver to any other variance of the same covenant or other covenants, nor shall it preclude the exercise by the Bank of any power or right under this Agreement, other than with respect to such variance.

(q) Compliance with Loan Documents. The Borrower shall faithfully observe and comply with all of the terms, conditions, agreements and covenants contained in the Loan Documents.

(r) Other Information, Documents. Upon the written request of the Bank, the Borrower shall promptly execute and deliver to the Bank such other and further documents and information about the business and financial condition of the Borrower or related to the Loan as the Bank may, from time to time, reasonably request.

(s) Subordination. The Borrower agrees that any rights it has with respect to the Collateral Security shall be subordinate to any lien or security interest in favor of the Bank. The Borrower hereby subordinates any lien or security interest, whether statutory or otherwise and including, without limitation, a landlord's statutory lien for rent due or to become due under any leases, which the Borrower may have against the Collateral Security to the lien and security interests granted the Bank in the Collateral Security.

(t) Location of Fixtures. If the Borrower desires to remove any Collateral Security that constitutes real estate fixtures from existing locations or establish a new location at which such Collateral Security may be located, it shall first: (a) give the Bank at least thirty (30) days' prior written notice of its intention to do so and provide the Bank with such information in connection therewith as the Bank may reasonably request; and (b) take such action, satisfactory to the Bank, as may be necessary to maintain at all times the perfection and priority of the security interests in such Collateral Security granted to the Bank.

4. Closing Conditions/Post Closing Matters. The obligation of the Bank to make the Loan or any portion thereof is subject to the satisfaction of each of the following conditions precedent at or prior to the date of funding such Loan (sometimes referred to as the "Closing" or the "Closing Date"):

(a) Default. Before and after giving effect to the Loan or any portion thereof, no Event of Default (as defined in Section 5 of this Agreement) or any event which, with

the passage of time or the giving of notice, might mature into an Event of Default, shall have occurred and be continuing.

(b) Warranties. Before and after giving effect to the Loan or any portion thereof, the representations and warranties in Section 2 hereof shall be true and correct in all material respects as though made on the date of such Loan or portion thereof, except to the extent that a representation and warranty relates to a specific date.

(c) Certification. As of the date of this Agreement, the Borrower shall have delivered to the Bank a certificate of the Borrower executed by its Secretary or Assistant Secretary; (i) to the effect that the resolutions or consent described in Section 4(d) below have not been amended or rescinded and remain in full force and effect; (ii) as to the incumbency of the individuals authorized to sign this Agreement and the other Loan Documents (with specimen signatures included); and (iii) to the effect that the Articles of Organization and Operating Agreement or other organizational or governing documents of the Borrower are in full force and effect in the form delivered to the Bank.

(d) Resolutions. As of the date of this Agreement, the Borrower shall have delivered to the Bank, copies of the resolutions of the Borrower's Managers or consent of Borrower's Members authorizing the borrowings hereunder and the execution and delivery of this Agreement and the other Loan Documents.

(e) Insurance. As of the date of this Agreement, the Borrower shall have delivered to the Bank the insurance information required by Section 3(b).

(f) Articles of Organization and Operating Agreement. As of the date of this Agreement, the Borrower shall have delivered to the Bank true and correct copies of its articles of organization, a certificate of existence and its operating agreement.

(g) Note. As of the date of this Agreement, the Borrower shall have delivered the Note to the Bank with all blanks appropriately completed and duly executed on behalf of the Borrower.

(h) Legal Opinion. As of the date of this Agreement, the Borrower shall have delivered to the Bank the legal opinion as counsel for the Borrower, dated the date of this Agreement, substantially in the form attached as Schedule 4(h) hereto.

(i) Loan Documents. The Loan Documents evidencing or securing the Collateral Security shall have been duly executed and delivered by the Managers, Members or Officers of the Borrower, as appropriate, and each such document that is a financing statement or an amendment to or assignment of a financing statement or is a mortgage or deed of trust shall have been filed or recorded in the appropriate public offices in order to perfect or continue the perfection of the security interest in the Collateral Security referenced therein.

(j) Letters of Credit. The Bank shall have received the duly executed Letters of Credit in a form and substance, and from a bank or banks, satisfactory to the Bank and its counsel.

(k) Other Documentation. The Bank shall have received such other information and documentation, in form and substance satisfactory to the Bank and its counsel, relating to such matters as the Bank or its counsel shall require, including without limitation the evidence of the filing in the appropriate office of the Loan Documents regarding the Collateral Security.

(l) Loan Origination Fee. Borrower shall have paid to Bank the Loan Origination Fee.

(m) Guaranties/Financial Information. The Bank shall have received the Guaranties of the Guarantors in a form and substance satisfactory to the Bank and its counsel. Further, Bank shall have received each Guarantor's financial information satisfactory to Bank and its counsel (a minimum of 2 years of recent tax returns (at least 2004)).

(n) Lender's Title Commitment and Policy. The Bank shall have received a lender's title insurance commitment and final title insurance policy relating to the Real Property and satisfactory to the Bank and its counsel. The final title policy shall insure the Bank that it has a first lien deed of trust on the Real Property.

(o) Environmental Assessment. The Bank shall have received a phase one environmental assessment relating to the Real Property satisfactory to the Bank and its counsel.

(p) Sewer Agreement. Borrower shall provide to Bank a copy of the agreement between Union and Mecklenburg Counties with respect to the public sewer service/facilities to be provided to the Real Property.

Post Closing Matters. Subsequent to closing, Borrower covenants and agrees to perform, do or obtain the following:

- (i) Obtain or acquire all necessary permits and approvals for Borrower's proposed development of or operations on the Collateral Security, and provide to Bank satisfactory evidence of the same.
- (ii) Obtain and provide to Bank, within 120 days of the Closing, a new appraisal of the Real Property which includes a market analysis addressing the level of existing and proposed competition, analyzing underlying market demand, etc. and providing an "as is" and an "as completed" value. This appraisal will be subject to review and approval by Doug Butcher.
- (iii) Provide to Bank updated personal financial information of each Guarantor satisfactory to Bank and its counsel dated not less than one (1) year from October 19, 2006.

5. Events of Default; Remedies.

(a) Events of Default. If any of the following events (each, an "Event of Default") shall occur, then the Bank may, without further notice or demand, accelerate the Loan and thereupon the Loan shall become immediately due and payable (except that the Loan shall become automatically due and payable upon the occurrence of an event described in Sections 5(a)(viii) and (a)(ix) below):

(i) The Borrower does not pay the Bank any interest or principal on the Loan or any other obligation hereunder within 10 days after the date due, whether by reason of acceleration or otherwise; or

(ii) There shall have occurred any other event of default or violation or breach of any covenant, agreement or condition contained herein or in any other Loan Document which has not been cured by the Borrower within 30 days after the earlier to occur of the date the Borrower has knowledge thereof and the date the Bank gives the Borrower notice thereof; or

(iii) The Borrower does not pay when due or prior to the expiration of the applicable cure period, if any, any principal or interest on any other indebtedness consisting of borrowed money indebtedness or capitalized lease indebtedness, or the Borrower defaults in the performance or observance of any other term or condition contained in any agreement or instrument under which such indebtedness is created, and the holder of such other indebtedness declares such indebtedness due prior to its stated maturity because of the Borrower's default thereunder; or

(iv) The Borrower does not perform its obligations under any agreement material to its business, the other party to such agreement declares such agreement in default, and such default creates a reasonable likelihood of material adverse effect on the business, operations or financial condition of the Borrower taken as a whole; or

(v) Any representation or warranty made herein or in any other Loan Document or writing furnished in connection with this Agreement shall be false in any material respect when made; or

(vi) The Borrower is generally not paying its debts as they become due; or

(vii) The Borrower makes an assignment of any material part of its assets for the benefit of creditors; or

(viii) The Borrower applies for the appointment of a trustee or receiver for any part of its assets or commences any proceedings relating to the Borrower under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or other liquidation law of any jurisdiction; or any such application is filed, or any such proceedings are commenced, against the Borrower, and the Borrower indicates its approval, consent or acquiescence thereto; or an order is entered appointing such trustee or receiver, or adjudicating the Borrower bankrupt or insolvent, or approving the petition in any such proceedings, and such order remains in effect for 30 days; or

(ix) Any order is entered in any proceedings against the Borrower decreeing the dissolution of the Borrower; or

(x) Any material part of the Borrower's operations taken as a whole shall cease, terminate or be suspended, subject to force majeure and other than temporary or seasonal cessations which are experienced by other companies in the same line of business and which would not have a material adverse effect on the Borrower's operations or financial condition or its ability to perform its obligations hereunder; or

(xi) Any final, non-appealable judgment which, together with other outstanding judgments against the Borrower, causes the aggregate of such judgments in excess of confirmed insurance coverage satisfactory to the Bank to exceed \$5,000,000, shall be rendered against the Borrower and remain unpaid and unstayed for sixty (60) days; or

(xii) Any action or proceeding before any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency, authority, instrumentality or official shall be commenced against the Borrower which would have a material adverse effect on the Borrower's operations or financial condition or its ability to perform its obligations hereunder; or

(xiii) There shall be commenced any proceeding which remains undismissed for a period of 60 days in which any federal, state, municipal or other governmental department, commission, board, bureau, agency, authority or instrumentality shall seek to take title, whether by condemnation or otherwise, to any material part of any property material to the operations of the Borrower; or

(xiv) If there shall be any change in the direct or indirect beneficial ownership of the Borrower; or

(xv) If any person or entity obtains an order or decree in any court of competent jurisdiction enjoining or prohibiting the Borrower or the Bank from performing under this Agreement or under any of the other Loan Documents, and such proceeding is not discontinued and such decree is not vacated within 30 days after the granting thereof; or

(xvi) The Borrower shall contest the validity and/or enforceability of any of the Loan Documents in any material respect or with respect to the perfection of the Bank's lien on any Collateral Security.

(b) Rights and Remedies in the Event of Default. Upon any Event of Default, and at any time thereafter, the Bank may do any one or more of the following: (1) exercise any or all of the rights of the Bank under the Loan Documents, and/or the Bank's rights as a secured party under the Uniform Commercial Code ("UCC") and applicable laws upon default by a debtor, and/or otherwise available to the Bank at law or in equity; (2) sell, foreclose upon or otherwise dispose of the Collateral Security; and (3) enter into and/or take possession of and/or collect and receive the Collateral Security and take all appropriate steps to secure and protect the Collateral Security. The Bank shall have no obligation to preserve rights to the Collateral Security against prior parties (other than as required under the provisions of the

UCC) or to marshal any Collateral Security for the benefit of any person or entity. All sums expended by Bank for such purpose shall be deemed to have been paid to the Borrower and shall be secured by the Collateral Security.

If an Event of Default occurs hereunder, or if the Loan is accelerated pursuant to this Section 5, without limiting any other right or remedy to which the Bank may be entitled at law or in equity, the Borrower hereby directs the Bank to set-off and to appropriate and apply any and all deposits and any other indebtedness or property at any time held or owing by the Bank to or for the credit of or the account of the Borrower at the Bank, against and on account of the indebtedness and other liabilities of the Borrower to the Bank hereunder and under the Note, regardless of whether or not the Bank shall have made any demand hereunder and although such liabilities, or any of them, shall be contingent or unmatured. In addition, the Borrower hereby directs the Bank to set-off and to appropriate and apply any and all such deposits or property against and on account of the liabilities of the Borrower to the extent such amounts are not promptly paid or reimbursed to the Bank upon demand therefor. The rights and remedies granted to the Bank under this paragraph shall be in addition to, and not in substitution for, any rights or remedies, including, without limitation, any right of set-off or banker's lien, to which the Bank may otherwise be entitled.

No remedy conferred in this Agreement upon the Bank is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy conferred herein or now or hereafter existing at law or in equity or by statute or otherwise, including, but not limited to, any other remedy conferred in the Loan Documents.

(c) Cross-Default. An Event of Default under any Loan Documents will constitute an Event of Default under this Agreement and an Event of Default under any other agreements with or in favor of the Bank related to the Loan, whether or not such is specified therein.

(d) Cross-Collateralization. The proceeds of any property of Borrower or Guarantors in the possession of Lender or in which Lender has a security interest, whether or not such property is held as security for the Obligations under the Loan Documents, and any funds of Borrower or Guarantors held by Lender may be applied by Lender upon an Event of Default, at Lender's discretion, to the obligations outstanding under the Note and the other Loan Documents or to any other indebtedness of Borrower to Lender, at such times and in such order as Lender may from time to time deem appropriate.

(e) Recovery of Expenses. Lender shall have the right to recover and Borrower and/or Guarantors shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender for protecting or enforcing the obligations of Borrower and Guarantors and all rights of Lender hereunder and under the other Loan Documents, including Lender's right to take possession of the Collateral Security, prepare the Security Collateral for sale and sell the Security Collateral. All such expenses shall bear interest at an annual rate equal to the Index plus four percent (4%) until paid in full.

6. General.

(a) Delay; Release of Collateral, Etc. No delay, omission or forbearance on the part of the Bank in the exercise of any power or right shall operate as a waiver thereof, nor shall any single or partial delay, omission or forbearance in the exercise of any other power or right. The rights and remedies of the Bank herein provided are cumulative, shall be interpreted in all respects in favor of the Bank, and are not exclusive of any other rights and/or remedies provided by law.

Any release (regardless of consideration) by the Bank of any part of the Collateral Security held for repayment of the Borrower's obligations hereunder shall not, as to the remainder of the Collateral Security, in any way impair or affect the lien thereon or its priority over any subordinate lien. In addition, the Borrower shall not be relieved of any of its obligations hereunder by reason of the addition or release of any such Collateral Security or the Borrower hereunder. The Borrower hereby waives any and all defenses based on guaranties, suretyship or impairment of collateral.

(b) Notice. Except as otherwise expressly provided in this Agreement, any notice hereunder shall be in writing and shall be deemed to be given when personally delivered, by facsimile with transmission confirmed, or when sent by certified mail, postage prepaid, and addressed to the parties at their addresses set forth below:

Bank: United Bank, Inc.
500 Virginia Street, East
Charleston, West Virginia 25301
Attention: Julie R. Gurtis, Senior Vice President
Telephone: (304) 348-8377
Fax: (304) 348-8353

Borrower: IB Development, LLC
13850 Ballantyne Corporate Place, Suite 150
Charlotte, North Carolina 28277
Attention: Brian W. Hilbrant
Telephone: (704) 927-5202
Fax: (704) 887-4901

The Borrower or the Bank may, by written notice to the others as provided herein, designate another address for purposes hereunder.

(c) Expenses: Indemnity. The Borrower shall pay all reasonable out-of-pocket expenses of the Bank and its employees (but excluding the salaries of the Bank's own employees) and reasonable attorney's fees and legal expenses of the Bank's counsel actually incurred by the Bank in entering into and closing this Agreement and preparing the documentation in connection herewith or in connection with any amendments or modifications hereto, and administering or enforcing the obligations of the Borrower hereunder or under any of the other Loan Documents, and the Borrower agrees to pay the Bank upon demand for the same. The Borrower shall defend, indemnify and hold the Bank harmless from any liability, obligation, cost, damage or expense (including attorney's fees and legal expenses) or taxes (other than

income taxes), fees or third party claims which may arise or be related to the execution, delivery or performance of this Agreement or any of the other Loan Documents, except in the case of gross negligence or willful misconduct on the part of the Bank. The Borrower further agrees to indemnify and hold harmless the Bank from any loss or expense (including attorneys' fees and legal expenses) which the Bank may sustain or incur as a consequence of default by the Borrower of any of its obligations under this Agreement or any of the Loan Documents.

(d) Survival. All covenants and agreements of the Borrower made herein or otherwise in connection with the transactions contemplated hereby shall survive the execution and delivery of this Agreement and the other Loan Documents, and shall remain in effect so long as any obligations of the Borrower are outstanding hereunder or under any of the other Loan Documents.

(e) Severability. Any provision of this Agreement or any of the other Loan Documents which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition of enforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(f) Governing Law. The Loan shall be deemed made in West Virginia, and this Agreement and all other Loan Documents (except for the deed of trust which shall be governed by North Carolina law), and all of the rights and obligations of the Borrower and the Bank hereunder and thereunder, shall in all respects be governed by and construed in accordance with the laws of the State of West Virginia, including all matters of construction, validity and performance. Without limitation on the ability of the Bank to initiate and prosecute any action or proceeding in any applicable jurisdiction related to loan repayment the Borrower and the Bank agree that any action or proceeding commenced by or on behalf of the parties arising out of or relating to the Loan and this Agreement and any of the other Loan Documents shall be commenced and maintained in the District Court of the United States for the Southern District of West Virginia, or the Circuit Court of Kanawha County, West Virginia, or any other court of applicable jurisdiction located in Charleston, West Virginia. The Borrower and the Bank also agree that a summons and complaint commencing an action or proceeding in any such West Virginia courts by or on behalf of such parties shall be properly served and shall confer personal jurisdiction on a party (to which jurisdiction said party consents and submits itself, waiving any objection based upon forum non conveniens and any objection to venue of any action instituted hereunder), if (i) served personally or by certified mail to the other party at any of its addresses noted herein; or (ii) as otherwise provided under the laws of the State of West Virginia. The interest rates and all other terms of the Loan negotiated with the Borrower are, in part, related to the aforesaid provisions on jurisdiction, which the Bank deems a vital part of this loan arrangement. The Borrower and the Bank each waive any right to trial by jury in any action or proceeding relating to this Agreement, the Note or the Loan Documents or any transaction contemplated therein or thereby.

(g) Successors. This Agreement shall be binding upon and inure to the benefit of the Borrower and the Bank and their respective successors and assigns. The Borrower shall not assign its rights or delegate its duties hereunder without the prior written consent of the Bank.

(h) Amendment. Except as otherwise expressly provided herein, this Agreement may not be modified or amended except in writing signed by authorized officers of the Bank and the Borrower.

(i) Counterparts. This Agreement may be executed in multiple counterparts, all of which constitute one document hereunder.

(j) Obligations to Third Parties. This Agreement shall not be deemed to be for the benefit of any third party. All requirements, restrictions and conditions that are or may be imposed by the Bank are solely for the benefit and protection of the Bank and may be waived by the Bank for any reason.

(k) Entire Agreement; Amendments. This Agreement and the other Loan Documents referred to herein and therein constitute the entire agreement between and among the parties hereto relating to the subject matter hereof, incorporate or rescind all prior agreements and understandings between and among the parties hereto relating to the subject matter hereof, and cannot be changed or terminated orally and shall be deemed effective as of the date they are accepted by the Bank. No amendment or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Borrower and the Bank and then such waiver and consent shall be effective only in the specific instance and for the specific purpose for which given.

(l) Recovery of Payments. The Borrower agrees that if any amounts are paid by the Borrower to the Bank pursuant to the Loan Documents, or to the extent that the Borrower makes a payment to the Bank, or the Bank receives any proceeds of the Collateral Security, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or otherwise is required to be repaid to the Borrower, or to an estate, trustee, receiver or any other party, including without limitation, under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the obligation or part thereof which has been paid, reduced or satisfied by such amount shall be reinstated and continue in full force and effect as of the date such initial payment, reduction or satisfaction occurred (said payments or repayments being hereinafter referred to as "Recovered Payments"). The Borrower shall have an obligation to defend and indemnify the Bank of and from any claim or loss under this section, including without limitation, the Bank's attorneys' fees and expenses in the defense of any such action or suit. The Loan Documents shall remain in full force and effect until two years after all indebtedness of the Borrower has been repaid to the Bank or until any issue or controversy regarding any Recovered Payments is judicially concluded and no right of appeal remains.

(m) Assignment by the Bank. The Bank may assign this Agreement, the Note and the other Loan Documents to any other person, firm or corporation, provided that all the provisions of this Agreement shall continue to apply to all of the Loan Documents. Such assignment shall be deemed to be a compliance by the Bank with this Agreement and to have been made in pursuance of this Agreement, and not to be a modification hereof.

(n) Security Interest Absolute. All rights of Bank and the liens and security interests hereunder and under the other Loan Documents, and all obligations of Borrower and the Guarantors hereunder and under the other Loan Documents, shall be absolute

and unconditional irrespective of: (i) any lack of validity or enforceability of this Agreement, the Note, any other Loan Documents, or any lien, security interest or assignment made hereunder or under any other Loan Documents; (ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations, or any other amendment or waiver of, or any consent to any departure from, this Agreement, the Note, or any other Loan Documents; (iii) any exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of, or consent to departure from, any Loan Document for all or any of the obligations; or (iv) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Borrower, Guarantors or a third party pledgor.

(o) Sole Discretion of Lender. Wherever pursuant to such Loan Document, Bank exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Bank, the decision of Bank to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole but reasonable discretion of Bank and shall be final and conclusive, except as may be otherwise specifically provided therein. In addition, Bank shall have the right to refuse to grant its consent, approval or acceptance or to indicate its satisfaction whenever such consent, approval, acceptance or satisfaction shall be required under such instrument.

(Signatures appear on following page)

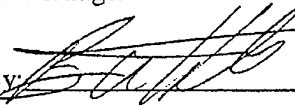
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

BORROWER:

IB DEVELOPMENT, LLC

By: Infinity Partners, LLC

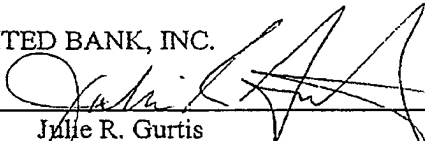
Its: Manager

By: 

Its: Manager

BANK:

UNITED BANK, INC.

By: 

Julie R. Gurtis

Its: Senior Vice President, Commercial Banking

EXHIBITS

Exhibit A	Collateral Security
-----------	---------------------

SCHEDULES

Schedule 1(a)	Note
Schedule 2(g)	Permitted Liens
Schedule 3(b)	Insurance
Schedule 4(h)	Legal Opinion

EXHIBIT A- Collateral Security- Real Property

Ownership	Deed Book/Page	Date	Parcel No.	Size/Acres
Emily Pierce Whitt, Trustee	1048/503	01/15/1998	06-150-071	23.894
Milimac Holdings, LLC	0206/089	09/19/1966	06-126-101A	1.010
	0184/618	06/26/1963	06-126-011	1.000
Milimac Holdings, LLC	0066/015	01/04/1928	06-126-010	29.310
Chares Allen Deal	0193/339	09/25/1964	06-126-002	80.670
Charles Allen Deal, et al	169/343	07/13/1961	06-126-003A	105.420
Charles Allen Deal, et al	0393/750	08/08/1985	06-126-006B	6.813
Chares A. Deal & Patricia	0314/254	09/20/1978	06-126-008A	1.340
Charles Allen Deal	0193/339	09/25/1964	06-126-008	1.372
TOTAL ACRES				261.669

Collateral Security- Personal Property

All assets, accounts, contracts, contract rights, deposits, cash, securities, notes, general intangibles and all other personal property of Borrower.

Schedule 1(a)- Note

Schedule 2(g)- Permitted Liens

1. Second lien deed of trust to be given by Borrower to secure unto Vandalia Capital II, LLC ("Vandalia") the Borrower's obligations under a certain Fee Agreement between Borrower and Vandalia, including a certain promissory note in the principal amount of Twelve Million Dollars (\$12,000,000.00), subject to increase, as more particularly described therein, which deed of trust is to be junior in priority and subordinate to the lien of the Bank's deed of trust.
2. Second lien security agreement, UCC financing statement and collateral assignment of Contracts to be given by Borrower to secure unto Vandalia Capital II, LLC ("Vandalia") the Borrower's obligations under a certain Fee Agreement between Borrower and Vandalia, including a certain promissory note in the principal amount of Twelve Million Dollars (\$12,000,000.00) subject to increase, as more particularly described therein, which security agreement, UCC financing statement and collateral assignment of contracts are to be junior in priority and subordinate to the lien of the Bank's security agreement, UCC Financing statement and collateral assignment of contracts.

Schedule 3(b)- Insurance

Schedule 4(h)- Form of Legal Opinion

[FORM OF LEGAL OPINION- BORROWER'S COUNSEL]

_____, 2006

United Bank, Inc.
500 Virginia Street, East
Charleston, WV 25301
Attention: Julie R. Gurtis, Senior Vice President

Gentlemen:

We have acted as counsel to IB Development, LLC, a North Carolina limited liability company ("Borrower") in connection with a loan in an amount of \$28,212,594 (the "Loan") to be made by United Bank, Inc. ("Lender") to Borrower. Capitalized terms used herein and not otherwise defined have the meanings given in that certain Loan Agreement dated October 30, 2006 and executed by Borrower and Lender. This opinion is being furnished to you at the request of Borrower and pursuant to the terms of the Loan.

In connection with this opinion, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents, each dated as of the date hereof (the documents 1 through 5, described below, are collectively referred to herein as the "Loan Documents").

1. The Loan Agreement;
2. The Promissory Note and Security Agreement in the principal amount of \$28,212,594.00 executed by Borrower and Lender (the "Note");
3. The Deed of Trust executed by Borrower and securing Lender (the "Deed of Trust);
4. UCC-1 Financing Statement naming Lender as Secured Party and Borrower as Debtor (the "UCC Financing Statement"); and
5. Collateral Assignment of Contracts executed by Borrower and securing Lender.

In addition, we have examined (i) such corporate documents and records of Borrower as we considered appropriate (collectively, the "Charter Documents"), including certified copies of Borrower's articles of organization and operating agreement, and (ii) such other certificates, agreements, documents and records as we deemed relevant and necessary as a basis for the opinions hereinafter expressed.

Based upon the foregoing, and upon examination of such questions of law as we have considered necessary or appropriate, and subject to the assumptions, exceptions and qualifications set forth herein, we are of the opinion that:

1. Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of North Carolina and is authorized to do business in the State of North Carolina. The Borrower has all requisite corporate power and authority to own and operate its property, to sell and lease the land it owns or operates or may operate as a lessor and to conduct the business in which it is currently, or is currently proposed to be, engaged.

2. Borrower has all requisite power and authority to execute, deliver and perform its obligations under the Loan Documents and the execution and delivery by Borrower of each such Loan Document, the performance by Borrower of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized by all necessary limited liability company action on the part of Borrower.

3. The Loan Documents have each been duly executed and delivered by Borrower and constitute the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity relating to enforceability.

4. The execution and delivery by Borrower of each of the Loan Documents, the performance by Borrower of its obligations thereunder and the consummation of the transactions contemplated thereby will not violate, conflict with or result in any breach or contravention of the terms of Borrower's Charter Documents or any other organizational document governing Borrower or any requirement of law applicable to Borrower (including, without limitation, any applicable law of the United States) or, to the best of our knowledge, any contractual obligation of Borrower.

5. No approval, consent, compliance, permissions, license, exemption, authorization, or other action or decision not to act by, or filing with, any governmental authority or any other person in respect of any requirement of law, and no lapse of a waiting period under any requirement of law, is necessary or required in connection with the execution, delivery or performance by Borrower of the Loan Documents or the transactions contemplated thereby or the enforcement of the Loan Documents against Borrower in accordance with their respective terms.

6. There are no legal actions, suits, proceedings, claims or disputes pending or threatened, at law, in equity, in arbitration or before any governmental authority against Borrower with respect to the Loan Documents or any of the transactions contemplated thereby or which would, if adversely determined, have a material adverse effect on the condition of Borrower or have an adverse effect on the ability of Borrower to perform its obligations under the Loan Documents. No injunction, writ, temporary restraining order, decree or any order of any nature has been issued by any court or other governmental authority purporting to enjoin or restrain the execution, delivery or performance of the Loan Documents.

7. No fact or circumstance has come to our attention that gives us cause to believe that any representation or warranty by Borrower set forth in any Loan Document is untrue.

8. The provisions of the Note and UCC Financing Statement are effective to grant to the Lender a legal, valid and enforceable security interest in all right, title and interest of the Borrower in the collateral described in such Security Agreement and UCC Financing Statement.

9. The Deed of Trust does not contravene any provision of any law, statute, rule or regulation of the State of North Carolina or any order of any North Carolina governmental authority and is in a form sufficient for the creation of a valid deed of trust lien in favor of the Trustees on the Secured Property, as defined in the Deed of Trust (the "Trust Property") and the Deed of Trust is suitable for recording as such in the Office of the County Recorder/Clerk of Union County, North Carolina to perfect and preserve such lien. No other recordation or filing is required to preserve or perfect such lien or the priority of such lien on the Trust Property. The Deed of Trust creates in favor of the Trustees for the benefit of the Lender a valid and enforceable security interest in all the right, title and interest of Borrower in and to the Trust Property (other than real property hereafter acquired by it), which security interest will be perfected upon the recording and filing contemplated herein.

The opinions expressed herein are limited to laws in effect on the date hereof and we assume no obligation to update this opinion letter upon any change in such laws. We are members of the Bar of the State of North Carolina and we express no opinion as to the laws of any jurisdictions other than (a) the federal laws of the United States, and (b) the laws of the State of North Carolina.

This opinion is for the benefit solely of Lender and may not be used or relied upon by any other person or entity or in connection with any other transaction without our prior written consent.

Very truly yours,



LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
3026937-0101	IB Development, LLC	3026937	10/30/06	JRG
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$28,212,594.00	Not Applicable	7.8%	05/01/08	Commercial

Creditor Use Only

PROMISSORY NOTE AND SECURITY AGREEMENT

(Commercial - Revolving Draw)

DATE AND PARTIES. The date of this Promissory Note and Security Agreement (Loan Agreement) is October 30, 2006. The parties and their addresses are:

LENDER:

UNITED BANK, INC.
500 Virginia Street - East
Charleston, West Virginia 25301
Telephone: (304) 348-8400

BORROWER:

IB DEVELOPMENT, LLC
a North Carolina Limited Liability Company
13850 Ballantyne Corporate Place
Suite 150
Charlotte, North Carolina 28277

1. DEFINITIONS. As used in this Loan Agreement, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I," "me," and "my" refer to each Borrower signing this Loan Agreement, individually and together. "You" and "Your" refer to the Lender.
- B. **Loan Agreement.** Loan Agreement refers to this combined Note and Security Agreement, and any extensions, renewals, modifications and substitutions of this Loan Agreement.
- C. **Loan.** Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Loan Agreement.
- D. **Loan Documents.** Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. **Property.** Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. **Percent.** Rates and rate change limitations are expressed as annualized percentages.

2. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, amounts advanced from time to time under the terms of this Loan Agreement up to the maximum outstanding principal balance of \$28,212,594.00 (Principal), plus interest from the date of disbursement, on the unpaid outstanding Principal balance until this Loan Agreement is paid in full and you have no further obligations to make advances to me under the Loan.

I may borrow up to the Principal amount more than one time.

3. ADVANCES. Advances under this Loan Agreement are made according to the following terms and conditions.

A. **Requests for Advances.** My requests are a warranty that I am in compliance with all the Loan Documents. When required by you for a particular method of advance, my requests for an advance must specify the requested amount and the date and be accompanied with any agreements, documents, and instruments that you require for the Loan. Any payment by you of any check, share draft or other charge may, at your option, constitute an advance on the Loan to me. All advances will be made in United States dollars. I will indemnify you and hold you harmless for your reliance on any request for advances that you reasonably believe to be genuine. To the extent permitted by law, I will indemnify you and hold you harmless when the person making any request represents that I authorized this person to request an advance even when this person is unauthorized or this person's signature is not genuine.

I or anyone I authorize to act on my behalf may request advances by the following methods.

- (1) I make a request in person.
- (2) I make a request by phone.
- (3) I make a request by mail.
- (4) I make a request by fax.

B. **Advance Limitations.** In addition to any other Loan conditions, requests for, and access to, advances are subject to the following limitations.

- (1) **Obligatory Advances.** You will make all Loan advances subject to this Agreement's terms and conditions.
- (2) **Advance Amount.** Subject to the terms and conditions contained in this Loan Agreement, advances will be made in exactly the amount I request.
- (3) **Cut-Off Time.** Requests for an advance received before 02:00 PM will be made on any day that you are open for business, on the day for which the advance is requested.

EXHIBIT

4

(4) Disbursement of Advances. On my fulfillment of this Loan Agreement's terms and conditions, you will disburse the advance in any manner as you and I agree.

(5) Credit Limit. I understand that you will not ordinarily grant a request for an advance that would cause the unpaid principal of my Loan to be greater than the Principal limit. You may, at your option, grant such a request without obligating yourselves to do so in the future. I will pay any over advances in addition to my regularly scheduled payments. I will repay any over advance by repaying you in full within 10 days after the overdraft occurs.

(6) Records. Your records will be conclusive evidence as to the amount of advances, the Loan's unpaid principal balances and the accrued interest.

4. **INTEREST.** Interest will accrue on the unpaid Principal balance of this Loan Agreement at the rate of 7.8 percent (Interest Rate).

A. **Post-Maturity Interest.** After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Loan Agreement at the Interest Rate in effect from time to time, until paid in full.

B. **Maximum Interest Amount.** Any amount assessed or collected as interest under the terms of this Loan Agreement will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.

C. **Statutory Authority.** The amount assessed or collected on this Loan Agreement is authorized by the West Virginia usury laws under W. Va. Code §§ 47A-1-1, 47-6-1 et. seq., 31A-4-27 to 31A-4-30a and 31C-7-2.

D. **Accrual.** Interest accrues using an Actual/360 days counting method.

5. **PAYMENT.** I agree to pay all accrued interest on the balance outstanding from time to time in regular payments beginning November 30, 2006, then on the same day in each 3rd month thereafter. Any payment scheduled for a date falling beyond the last day of the month, will be due on the last day. A final payment of the entire unpaid outstanding balance of Principal and Interest will be due May 1, 2008.

Payments will be rounded to the nearest \$.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Interest payments will be applied first to any charges I owe other than late charges, then to accrued, but unpaid interest, then to late charges. Principal payments will be applied first to the outstanding Principal balance, then to any late charges. If you and I agree to a different application of payments, we will describe our agreement on this Loan Agreement. The actual amount of my final payment will depend on my payment record.

6. **PREPAYMENT.** I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

7. **LOAN PURPOSE.** The purpose of this Loan is to fund the purchase of land, pay realtor fee and provide for a 1 1/2 year interest reserve.

8. **SECURITY.** The Loan is secured by Property described in the SECURITY AGREEMENT section, and by separate security instruments prepared together with this Loan Agreement as follows:

Document Name	Parties to Document
Deed Of Trust -	IB Development, LLC
See Attached Exhibit "A"	

9. **SECURITY AGREEMENT.**

A. **Secured Debts.** This Security Agreement will secure the following debts (Secured Debts), together with all extensions, renewals, refinancings, modifications and replacements of these debts:

(1) Sums Advanced under the terms of this Loan Agreement. All sums advanced and expenses incurred by you under the terms of this Loan Agreement.

B. **Security Interest.** To secure the payment and performance of the Secured Debts, I give you a security interest in all of the Property described in this Security Agreement that I own or have sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products from the Property (including, but not limited to, all parts, accessories, repairs, replacements, improvements, and accessions to the Property). Property is all the collateral given as security for the Secured Debts and described in this Security Agreement, and includes all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property.

This Security Agreement remains in effect until terminated in writing, even if the Secured Debts are paid and you are no longer obligated to advance funds to me under any loan or credit agreement.

C. **Property Description.** The Property subject to this Security Agreement is described as follows:

(1) **Inventory.** All inventory which I hold for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.

(2) **Accounts and Other Rights to Payment.** All rights I have now or in the future to payments including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned, whether or not I have earned such payment by performance. This includes any rights and interests (including all liens and security interests) which I may have by law or agreement against any Account Debtor or obligor of mine.

(3) **General Intangibles.** All general intangibles including, but not limited to, tax refunds, applications for patents, patents, copyrights, trademarks, trade secrets, good will, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use my name.

(4) **Equipment.** All equipment including, but not limited to, all machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and recordkeeping equipment, and parts and tools. All equipment described in a list or schedule which I give will also be included in the Property, but such a list is not necessary for a valid security interest in my equipment.

(5) **Specific Property.** Also, see attached Exhibit "B" incorporated herein by reference

D. **Duties Toward Property.**

(1) Protection of Secured Party's Interest. I will defend the Property against any other claim. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position.

I will keep books, records and accounts about the Property and my business in general. I will let you examine these and make copies at any reasonable time. I will prepare any report or accounting you request which deals with the Property.

(2) Use, Location, and Protection of the Property. I will keep the Property in my possession and in good repair. I will use it only for commercial purposes. I will not change this specified use without your prior written consent. You have the right of reasonable access to inspect the Property and I will immediately inform you of any loss or damage to the Property. I will not cause or permit waste to the Property.

I will keep the Property at my address listed in the DATE AND PARTIES section unless we agree I may keep it at another location. If the Property is to be used in other states, I will give you a list of those states. The location of the Property is given to aid in the identification of the Property. It does not in any way limit the scope of the security interest granted to you. I will notify you in writing and obtain your prior written consent to any change in location of any of the Property. I will not use the Property in violation of any law. I will notify you in writing prior to any change in my address, name or, if an organization, any change in my identity or structure.

Until the Secured Debts are fully paid and this Security Agreement is terminated, I will not grant a security interest in any of the Property without your prior written consent. I will pay all taxes and assessments levied or assessed against me or the Property and provide timely proof of payment of these taxes and assessments upon request.

(3) Selling, Leasing or Encumbering the Property. I will not sell, offer to sell, lease, or otherwise transfer or encumber the Property without your prior written permission, except for inventory sold in the ordinary course of business at fair market value, or at a minimum price established between you and me. If I am in default under this Security Agreement, I may not sell the inventory portion of the Property even in the ordinary course of business. Any disposition of the Property contrary to this Security Agreement will violate your rights. Your permission to sell the Property may be reasonably withheld without regard to the creditworthiness of any buyer or transferee. I will not permit the Property to be the subject of any court order affecting my rights to the Property in any action by anyone other than you. If the Property includes chattel paper or instruments, either as original collateral or as proceeds of the Property, I will note your security interest on the face of the chattel paper or instruments.

(4) Additional Duties Specific to Accounts. I will not settle any Account for less than its full value without your written permission. Until you tell me otherwise, I will collect all Accounts in the ordinary course of business. I will not dispose of the Accounts by assignment without your prior written consent. I will keep the proceeds from all the Accounts and any goods which are returned to me or which I take back. I will not commingle them with any of my other property. I will deliver the Accounts to you at your request. If you ask me to pay you the full price on any returned items or items retaken by me, I will do so. I will make no material change in the terms of any Account, and I will give you any statements, reports, certificates, lists of Account Debtors (showing names, addresses and amounts owing), invoices applicable to each Account, and other data in any way pertaining to the Accounts as you may request.

E. Collection Rights Of The Secured Party. Account Debtor means the person who is obligated on an account, chattel paper, or general intangible. I authorize you to notify my Account Debtors of your security interest and to deal with the Account Debtors' obligations at your discretion. You may enforce the obligations of an Account Debtor, exercising any of my rights with respect to the Account Debtors' obligations to make payment or otherwise render performance to me, including the enforcement of any security interest that secures such obligations. You may apply proceeds received from the Account Debtors to the Secured Debts or you may release such proceeds to me.

I specifically and irrevocably authorize you to exercise any of the following powers at my expense, without limitation, until the Secured Debts are paid in full:

- (1) demand payment and enforce collection from any Account Debtor or Obligor by suit or otherwise.
- (2) enforce any security interest, lien or encumbrance given to secure the payment or performance of any Account Debtor or any obligation constituting Property.
- (3) file proofs of claim or similar documents in the event of bankruptcy, insolvency or death of any person obligated as an Account Debtor.
- (4) compromise, release, extend, or exchange any indebtedness of an Account Debtor.
- (5) take control of any proceeds of the Account Debtors' obligations and any returned or repossessed goods.
- (6) endorse all payments by any Account Debtor which may come into your possession as payable to me.
- (7) deal in all respects as the holder and owner of the Account Debtors' obligations.

F. Authority To Perform. I authorize you to do anything you deem reasonably necessary to protect the Property, and perfect and continue your security interest in the Property. If I fail to perform any of my duties under this Loan Agreement or any other security interest, you are authorized, without notice to me, to perform the duties or cause them to be performed.

These authorizations include, but are not limited to, permission to:

- (1) pay and discharge taxes, liens, security interests or other encumbrances at any time levied or placed on the Property.
- (2) pay any rents or other charges under any lease affecting the Property.
- (3) order and pay for the repair, maintenance and preservation of the Property.
- (4) file any financing statements on my behalf and pay for filing and recording fees pertaining to the Property.
- (5) place a note on any chattel paper indicating your interest in the Property.
- (6) take any action you feel necessary to realize on the Property, including performing any part of a contract or endorsing it in my name.
- (7) handle any suits or other proceedings involving the Property in my name.
- (8) prepare, file, and sign my name to any necessary reports or accountings.
- (9) make an entry on my books and records showing the existence of this Agreement.
- (10) notify any Account Debtor of your interest in the Property and tell the Account Debtor to make payments to you or someone else you name.

If you perform for me, you will use reasonable care. If you exercise the care and follow the procedures that you generally apply to the collection of obligations owed to you, you will be deemed to be using reasonable care. Reasonable care will not include: any steps necessary to preserve rights against prior parties; the duty to send notices, perform services or take any other action in connection with the management of the Property; or the duty to protect, preserve or maintain any security interest given to others by me or other parties. Your authorization to perform for me will not create an obligation

to perform and your failure to perform will not preclude you from exercising any other rights under the law or this Loan Agreement. All cash and non-cash proceeds of the Property may be applied by you only upon your actual receipt of cash proceeds against such of the Secured Debts, matured or unmatured, as you determine in your sole discretion.

If you come into actual or constructive possession of the Property, you will preserve and protect the Property. For purposes of this paragraph, you will be in actual possession of the Property only when you have physical, immediate and exclusive control over the Property and you have affirmatively accepted that control. You will be in constructive possession of the Property only when you have both the power and the intent to exercise control over the Property.

G. **Name and Location.** My name indicated in the DATE AND PARTIES section is my exact legal name. I am not registered under state law and have more than one place of business. My chief executive offices are located in District Of Columbia. I will provide verification of registration and location upon your request. I will provide you with at least 30 days notice prior to any change in my name, address, or state of organization or registration.

H. **Perfection of Security Interest.** I authorize you to file a financing statement covering the Property. I will comply with, facilitate, and otherwise assist you in connection with obtaining perfection or control over the Property for purposes of perfecting your security interest under the Uniform Commercial Code. I agree to pay all actual costs of terminating your security interest.

10. DEFAULT. I will be in default if any of the following occur:

A. **Payments.** I fail to make a payment in full when due.

B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Loan Agreement or any other obligations I have with you.

C. **Business Termination.** I merge, dissolve, reorganize, and my business or existence, or a partner or majority owner dies or is declared legally incompetent.

D. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Loan Agreement.

E. **Other Documents.** A default occurs under the terms of any other Loan Document.

F. **Other Agreements.** I am in default on any other debt or agreement I have with you.

G. **Misrepresentation.** I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. **Judgment.** I fail to satisfy or appeal any judgment against me.

I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.

K. **Property Transfer.** I transfer all or a substantial part of my money or property.

L. **Property Value.** You determine in good faith that the value of the Property has declined or is impaired.

M. **Material Change.** Without first notifying you, there is a material change in my business, including ownership, management, and financial conditions.

N. **Insecurity.** You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Loan Agreement or that the prospect for payment or performance of the Loan is impaired for any reason.

11. DUE ON SALE OR ENCUMBRANCE. You may, at your option, declare the entire balance of this Loan Agreement to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. However, if I am in default under this Agreement, I may not sell the inventory portion of the Property even in the ordinary course of business.

12. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. **Additional Waivers By Borrower.** In addition, I, and any party to this Loan Agreement, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Loan Agreement.

(1) You may renew or extend payments on this Loan Agreement, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Loan Agreement.

(4) You, or any institution participating in this Loan Agreement, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of this Loan Agreement to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that any of us signing this Loan Agreement as a Borrower is authorized to modify the terms of this Loan Agreement or any instrument securing, guarantying or relating to this Loan Agreement.

(7) I agree that you may inform any party who guarantees this Loan of any Loan accommodations, renewals, extensions, modifications, substitutions or future advances.

B. **No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Loan Agreement, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

C. **Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

13. REMEDIES. After I default, and after you give any legally required notice and opportunity to cure the default, you may at your option do any one or more of the following.

A. **Acceleration.** You may make all or any part of the amount owing by the terms of this Loan Agreement immediately due.

B. **Sources.** You may use any and all remedies you have under state or federal law or in any Loan Document.

C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.

D. **Payments Made On My Behalf.** Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Loan Agreement, and accrue interest at the highest post-maturity interest rate.

E. Termination. You may terminate my right to obtain advances and may refuse to make any further extensions of credit.
F. Set-Off. You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Loan Agreement against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Loan Agreement" means the total amount to which you are entitled to demand payment under the terms of this Loan Agreement at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Loan Agreement, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

G. Assembly of Property. You may require me to gather the Property and make it available to you in a reasonable fashion.

H. Repossession. You may repossess the Property so long as the repossession does not involve a breach of the peace. You may sell, lease or otherwise dispose of the Property as provided by law. You may apply what you receive from the disposition of the Property to your expenses, your attorneys' fees and legal expenses (where not prohibited by law), and any debt I owe you. If what you receive from the disposition of the Property does not satisfy the debt, I will be liable for the deficiency (where permitted by law). In some cases, you may keep the Property to satisfy the debt.

Where a notice is required, I agree that ten days prior written notice sent by first class mail to my address listed in this Loan Agreement will be reasonable notice to me under the West Virginia Uniform Commercial Code. If the Property is perishable or threatens to decline speedily in value, you may, without notice to me, dispose of any or all of the Property in a commercially reasonable manner at my expense following any commercially reasonable preparation or processing.

If any items not otherwise subject to this Loan Agreement are contained in the Property when you take possession, you may hold these items for me at my risk and you will not be liable for taking possession of them.

I. Use and Operation. You may enter upon my premises and take possession of all or any part of my property for the purpose of preserving the Property or its value, so long as you do not breach the peace. You may use and operate my property for the length of time you feel is necessary to protect your interest, all without payment or compensation to me.

J. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Loan Agreement or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Loan Agreement. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

15. COMMISSIONS. I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

16. WARRANTIES AND REPRESENTATIONS. I make to you the following warranties and representations which will continue as long as this Loan Agreement is in effect:

A. Power. I am duly organized, and validly existing and in good standing in all jurisdictions in which I operate. I have the power and authority to enter into this transaction and to carry on my business or activity as it is now being conducted and, as applicable, am qualified to do so in each jurisdiction in which I operate.

B. Authority. The execution, delivery and performance of this Loan Agreement and the obligation evidenced by this Loan Agreement are within my powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which I am a party or to which I am or any of my Property is subject.

C. Business Name. Other than previously disclosed in writing to you I have not changed my name or principal place of business within the last 10 years and have not used any other trade or fictitious name. Without your prior written consent, I do not and will not use any other name and will preserve my existing name, trade names and franchises.

D. Ownership of Property. I represent that I own all of the Property. Your claim to the Property is ahead of the claims of any other creditor, except as disclosed in writing to you prior to any advance on the Secured Debts. I represent that I am the original owner of the Property and, if I am not, that I have provided you with a list of prior owners of the Property.

17. INSURANCE. I agree to obtain the insurance described in this Loan Agreement.

A. Property Insurance. I agree to keep the Property insured against the risks reasonably associated with the Property. I will maintain this insurance in the amounts you require. This insurance will last until the Property is released from this Loan Agreement. I may choose the insurance company, subject to your approval, which will not be unreasonably withheld.

I will have the insurance company name you as loss payee on any insurance policy. I will give you and the insurance company immediate notice of any loss. You may apply the insurance proceeds toward what is owed on the Secured Debts. You may require added security as a condition of permitting any insurance proceeds to be used to repair or replace the Property.

If you acquire the Property in damaged condition, my right to any insurance policies and proceeds will pass to you to the extent of the Secured Debts.

I will immediately notify you of cancellation or termination of insurance. If I fail to keep the Property insured, you may obtain insurance to protect your interest in the Property and I will pay for the insurance on your demand. You may demand that I pay for the insurance all at once, or you may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include coverages not originally required of me, may be written by a company other than one I would choose, and may be written at a higher rate than I could obtain if I purchased the insurance. I acknowledge and agree that you or one or your affiliates may receive commissions on the purchase of this insurance.

18. **APPLICABLE LAW.** This Loan Agreement is governed by the laws of West Virginia, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

19. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Loan Agreement shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

20. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Loan Agreement may not be amended or modified by oral agreement. No amendment or modification of this Loan Agreement is effective unless made in writing and executed by you and me. This Loan Agreement and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Loan Agreement is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

21. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Loan Agreement.

22. **NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

23. **CREDIT INFORMATION.** I agree to supply you with whatever information you reasonably feel you need to decide whether to continue this Loan. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

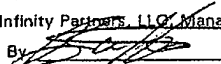
24. **ERRORS AND OMISSIONS.** I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

25. **SIGNATURES.** By signing under seal, I agree to the terms contained in this Loan Agreement. I also acknowledge receipt of a copy of this Loan Agreement.

BORROWER:

IB Development, LLC

By Infinity Partners, LLC, Manager

By  (Seal)
Brian Hilbrant

LENDER:

United Bank, Inc.

By  (Seal)
Julie R. Gurtis, Senior Vice President

EXHIBIT A

1. Collateral Assignment of Contracts
2. UCC Financing Statement
3. Guaranties of Andrew A. Payne, III, Ralph L. Ballard, III, Stephen B. Farmer, David P. Ferretti, Andrew B. Jordon, Mark A. Grimmatt, Shawn P. George, David P. Pray, R. Scott Long, Timothy K. Wilcox, Rooke Asset Partners, LP and Robert Huggins.
4. Letter of Credit from Andrew A. Payne, III, Ralph L. Ballard, III, Stephen B. Farmer, David P. Ferretti, Andrew B. Jordon, Mark A. Grimmatt, Shawn P. George, David P. Pray, R. Scott Long, Timothy K. Wilcox, Rooke Asset Partners, LP, and Robert Huggins.

EXHIBIT B

All of the Borrower's right, title and interest, whether now owned or existing or hereafter acquired or arising, in and to the following (collectively, the "Collateral"):

- (i) all Chattel Paper of the Borrower;
- (ii) all Contracts of the Borrower;
- (iii) all Documents of the Borrower;
- (iv) all Equipment of the Borrower;
- (v) all General Intangibles of the Borrower;
- (vi) all Inventory of the Borrower;
- (vii) all Securities of the Borrower;
- (viii) all Accounts maintained by the Borrower with any financial institution, and all funds on deposit therein, and investments arising out of such funds, all claims thereunder or in connection therewith, all cash, securities, rights and other property at any time and from time to time received, receivable or otherwise distributed in respect of such accounts, such funds or such investments;
- (x) all books, records, printouts, ledger cards, files, correspondence, computer information, including source and object programs, tapes, disks and related data processing software, including source and object codes (owned by the Borrower or in which it has an interest) which at any time evidence or contain information relating to any of the Collateral (including, without limitation, customer lists and supplier lists) or are otherwise necessary or helpful in the collection thereof or realization thereupon;
- (xi) all guaranties, warranties, liens on real or personal property, leases, and other agreements and property which in any way secure or relate to any General Intangibles, Contracts, Securities, Documents, Equipment or Chattel Paper, or are acquired for the purpose of securing and enforcing any item thereof;
- (xii) all other assets and personal property of Borrower;
- (xiii) to the extent, not otherwise included, all Proceeds of each of the foregoing and all accessions to, additions, substitutions and replacements for, and rents, profits and products of each of the foregoing.

The following terms when used herein shall have the meaning specified below:

"Accounts" shall mean any "account," as such term is defined in Section 9-102(a)(2) of the UCC, now owned or hereafter acquired by the Borrower or in which the Borrower now has or hereafter acquires any rights, wherever located, subject to any prohibitions contained in the Contract governing such Account, and in any event, shall include, without limitation, all accounts receivable, book debts and other forms of obligations (other than forms of obligations evidenced by Chattel Paper, Documents or Instruments) now owned or hereafter received or acquired by or belonging or

owing to the Borrower (including, without limitation, under any trade names, styles or divisions thereof) whether arising out of goods sold or leased or services rendered by the Borrower or from any other transaction, whether or not the same involves the sale or lease of goods or services by the Borrower (including, without limitation, any such obligation, which might be characterized as an account or contract right under the UCC) and all of the Borrower's rights in, to and under all purchase orders or receipts now owned or hereafter acquired by it for goods or services, and all of the Borrower's rights to any goods represented by any of the foregoing (including, without limitation, unpaid seller's rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), and all moneys due or to become due to the Borrower under all contracts for the sale of goods or the performance of services or both by the Borrower (whether or not yet earned by performance on the part of the Borrower or in connection with any other transaction), now in existence or hereafter occurring, including, without limitation, the right to receive the proceeds of said purchase orders and contracts, and all collateral security and guarantees of any kind given by any Person with respect to any of the foregoing.

"Chattel Paper" shall mean any "chattel paper," as such term is defined in Section 9-102(a)(11) of the UCC, now owned or hereafter acquired by the Borrower or in which the Borrower now has or hereafter acquires any rights and wherever located.

"Contracts" shall mean all contracts, undertakings, or other agreements (other than rights evidenced by Chattel Paper or Documents) in or under which the Borrower may now or hereafter have any right, title or interest and wherever located, subject to any prohibitions contained therein, including, without limitation, with respect to an Account, any agreement relating to the terms of payment or the terms of performance thereof, and all licenses, leases and subleases and all rights and benefits of Borrower arising out of the such license, lease, or sublease.

"Documents" shall mean any "Documents," as such term is defined in Section 9-102(a)(30) of the UCC, now owned or hereafter acquired by the Borrower or in which the Borrower now has or hereafter acquires any rights and wherever located.

"Equipment" shall mean any "equipment" as such term is defined in Section 9-102(a)(33) of the UCC, now owned or hereafter acquired by the Borrower or in which the Borrower now has or hereafter acquires any rights and wherever located, and, in any event, shall include, without limitation, all machinery, equipment, furnishings, fixtures, vehicles and computers and other electronic data processing and other office equipment now owned or hereafter acquired by the Borrower or in which the Borrower now has or hereafter acquires any rights and wherever located, and any and all additions, substitutions and replacements of any of the foregoing, wherever located, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

"General Intangibles" shall mean any "general intangibles, as such term is defined in Section 9-102(a)(42) of the UCC, now owned or hereafter acquired by the Borrower or in which the Borrower now has or hereafter acquires any rights, and, in any event, shall include, without limitation, all right, title and interest which the Borrower may now or hereafter have in, under or with respect to any Contract, causes of action, franchises, tax refund claims, customer lists, trademarks, patents, rights in intellectual property, licenses, permits, copyrights, trade secrets, proprietary or confidential information, inventions and discoveries (whether patented or patentable or not) and technical information, procedures, designs, know-how, software, data bases, business records data, processes, models, drawings, materials and records, goodwill, all claims under

guaranties, security interests or other security held by or granted to the Borrower, all rights of indemnification and all other intangible property of any kind and nature.

"Inventory" shall mean any "inventory", as such term is defined in Section 9-102(a)(48) of the UCC, now owned or hereafter acquired by the Borrower or in which the Borrower now has or hereafter acquires any rights and wherever located, and, in any event, shall include, without limitation, all inventory, merchandise, goods and other personal property, now owned or hereafter acquired by the Borrower or in which the Borrower now has or hereafter acquires any rights and wherever located, which are held for sale or lease or are furnished or are to be furnished under a contract of service or which constitute raw materials, work in process or materials used or consumed or to be used or consumed in the Borrowers business, or the processing, packaging, delivery or shipping of the same, and all finished goods.

"Proceeds" shall mean "proceeds," as such term is defined in Section 9-102(a)(64) of the UCC and, in any event, shall include, without limitation, (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Borrower from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to the Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental body, authority, bureau or agency (or any person acting under color of governmental authority) (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral, and (iv) the following types of property acquired with cash proceeds: Chattel Paper, Contracts, Documents, General Intangibles and Equipment.

"Securities" shall mean all "Securities" as defined in Section 8-102 of the UCC, whether now owned or hereafter acquired by the Borrower or in which the Borrower now has or hereafter acquires rights.

"UCC", shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of North Carolina; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the Secured Party's security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of North Carolina, the term "UCC" shall mean the, Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

GUARANTY
(Specific Debt - Limited)

DATE AND PARTIES. The date of this Guaranty is October 30, 2006. The parties and their addresses are:

LENDER:

UNITED BANK, INC.
500 Virginia Street - East
Charleston, West Virginia 25301
Telephone: (304) 348-8400

BORROWER:

IB DEVELOPMENT, LLC
a North Carolina Limited Liability Company
13850 Ballantyne Corporate Place
Suite 150
Charlotte, North Carolina 28277

GUARANTOR:

DAVID P. PRAY
RR Box 331B
Charleston, West Virginia 25314

COPY

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.
- B. **Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.
- C. **Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce you, at your option, to make loans or engage in any other transactions with the Borrower from time to time, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of the following described Debt(s) of the Borrower including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 3026937-0101, dated October 30, 2006, from IB Development, LLC (Borrower) to you, in the amount of \$28,212,594.00, which has a maturity date of May 1, 2008.

My liability will not exceed the sum of 8.340 percent of the original principal amount of the Debt, plus accrued interest, attorneys' fees and collection costs, when allowed by law, and all other costs, fees and expenses agreed to be paid under all agreements evidencing the Debt and securing the payment of the Debt. You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

3. EXTENSIONS. I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

6. REVOCATION. I agree that this is an absolute and unconditional Guaranty. This Guaranty cannot be revoked and will remain in effect until the Debt is paid in full.

7. PROPERTY. I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

8. DEFAULT. I will be in default if any of the following occur:

- A. **Payments.** I fail to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or Borrower.
- C. **Death or Incompetency.** I die or am declared legally incompetent.
- D. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Guaranty.
- E. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.
- F. **Other Agreements.** I am in default on any other debt or agreement I have with you.

EXHIBIT

5

G. **Misrepresentation.** I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. **Judgment.** I fail to satisfy or appeal any judgment against me.

I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.

K. **Property Transfer.** I transfer all or a substantial part of my money or property.

L. **Property Value.** You determine in good faith that the value of the Property has declined or is impaired.

M. **Insecurity.** You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

9. **WAIVERS AND CONSENT.** To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. **Additional Waivers.** In addition, to the extent permitted by law, I consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to the Debt or this Guaranty.

- (1) You may renew or extend payments on the Debt, regardless of the number of such renewals or extensions.
- (2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.
- (3) You may release, substitute or impair any Property.
- (4) You, or any institution participating in the Debt, may invoke your right of set-off.
- (5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.
- (6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guarantying or relating to the Debt.
- (7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.
- (8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.
- (9) I agree to waive reliance on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to Lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

B. **No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in the Debt instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

C. **Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

10. **REMEDIES.** After the Borrower or I default, and after you give any legally required notice and opportunity to cure the default, you may at your option do any one or more of the following.

- A. **Acceleration.** You may make all or any part of the amount owing by the terms of this Guaranty immediately due.
- B. **Sources.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.
- C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.
- D. **Payments Made on the Borrower's Behalf.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.
- E. **Termination.** You may terminate my right to obtain advances and may refuse to make any further extensions of credit.
- F. **Attachment.** You may attach or garnish my wages or earnings.
- G. **Set-Off.** You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Guaranty against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay the Debt, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

H. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

11. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

12. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

13. **RELIANCE.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and I have signed this Guaranty to induce you to extend such credit. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from any loans and financial accommodations resulting in the creation of indebtedness guaranteed hereby.

14. **APPLICABLE LAW.** This Guaranty is governed by the laws of West Virginia, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

15. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

16. **ASSIGNMENT.** If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Guaranty.

18. **NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Guarantor will be deemed to be notice to all Guarantors. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

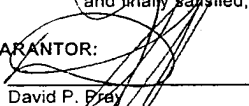
19. **CREDIT INFORMATION.** I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

20. **SIGNATURES.** By signing under seal, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty and acknowledge that I have read the Note and all related Loan Documents.

21. **CONTRIBUTION AMONG MEMBER GUARANTORS.** As among the Guarantors who are Members of Vandalia Capital II, LLC, or who have any interest in an entity that is a Member of Vandalia Capital, II, LLC or who have any interest in an entity that is a Member of Vandalia Capital II, LLC (the "Member Guarantors"), and without affecting the right of the Beneficiary to proceed severally against each of the Member Guarantors as set forth herein, it is agreed by and among the Member Guarantors that:

- (a) Each Member Guarantor shall promptly contribute his 100% proportion of any and all Debt due hereunder to Beneficiary and shall deal with all other Member Guarantors in good faith, in order to ensure that all liability for Debt hereunder shall be shared equally among the Member Guarantors.
- (b) This Section of the Guaranty provides to Member Guarantors the benefits and obligations of contractual contribution and restitution as to all future payments made by Member Guarantors, or any of them, to Beneficiary by reason of this Guaranty, and each Member Guarantor shall have a cause of action against every other Member Guarantor to enforce his or its rights hereunder. Member Guarantors hereby waive any right to assert in any manner against the other Member Guarantors any claim, defense, counterclaim and off-set of any kind or nature, whether legal or equitable, that the Member Guarantors, or any of them, may now or at any time hereafter have against one or more of the other Member Guarantors.
- (c) Each of the Member Guarantors agrees to pay, forthwith and on demand made after the Debt has been completely and finally satisfied, all amounts rightfully owing pursuant to the terms hereof to the demanding Member Guarantors.

GUARANTOR:

 (Seal)
David P. Pray
Individually

LENDER:

United Bank, Inc.
By  (Seal)
Julie R. Gurtis, Senior Vice President

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT ("Agreement") is made this 14th day of July, 2008, by and between PRAYWORKS, LLC ("PrayWorks") and VANDALIA CAPITAL, II LLC ("Vandalia").

RECITALS:

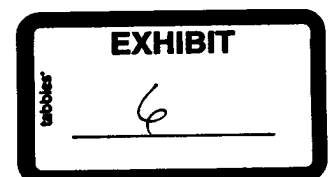
A. PrayWorks is a manager-managed limited liability company headquartered in Charleston, West Virginia, and organized and in good standing under the laws of West Virginia. David P. Pray is the Manager of PrayWorks. PrayWorks is in the business, in part, of providing consulting and project management services with regard to real estate developments;

B. Vandalia is a manager-managed limited liability company headquartered in Charleston, West Virginia, and organized and in good standing under the laws of West Virginia. The Managers of Vandalia are Stephen B. Farmer and Andrew A. Payne III;

C. IB Development, LLC ("IB") is a manager-managed limited liability company headquartered in Charlotte, North Carolina, and organized and in good standing under the laws of North Carolina. The Manager of IB is Infinity Partners, LLC;

D. Vandalia has underwritten a credit facility to IB, and in exchange, IB (through a separate agreement) has agreed to compensate Vandalia and/or has agreed to purchase or anticipates purchasing Vandalia;

E. IB Development is currently pursuing the comprehensive development (i.e., design, construction, marketing and sale) of approximately 275 acres of real property including the construction of approximately 202 home sites for sale and related



facilities, to be located at Weddington County, North Carolina, and to be known as The Woods (the "Project");

F. The Project has experienced delays and difficulties with respect to site development and other operational issues which have resulted in increased costs; and

G. On the Terms and Conditions set forth herein, Vandalia engages PrayWorks to provide consulting and project management services, as more particularly described herein, in connection with IB's development of the Project, and PrayWorks agrees to provide such consulting and project management services on the Terms and Conditions set forth herein.

TERMS AND CONDITIONS:

1. **Recitals.** The Recitals set forth hereinabove are incorporated by reference in this Agreement.

2. **Services.** The scope of the consulting and project management services to be provided by PrayWorks under this Agreement (collectively the "Services") shall include: (i) the following work and services; and (ii) such additional work and services as may be later agreed in writing between PrayWorks and Vandalia:

a. PrayWorks shall assist in the preparation, reconstruction, monitoring and/or management of a developer's pro forma for the Project. When completed, the pro forma budget shall be presented to Vandalia's representatives appointed hereunder for final review and acceptance in writing;

b. PrayWorks shall occasionally monitor and inspect work at the Project, and maintain a reasonable understanding of the Project's design criteria;

c. PrayWorks shall consult with IB and Vandalia in the development and selection of a Project delivery system for the design and construction of the Project, and in the development and execution of an inspection/quality control programs in connection with the Project;

d. PrayWorks shall assist IB and Vandalia in retaining the services of such professionals as may be required for development of the Project including, but not limited to, attorneys, surveyors, geotechnical engineers, design/builders, contractors and various vendors required for the Project; provided, however, IB and Vandalia shall at all times be the contracting party with such professionals;

e. PrayWorks shall assist in facilitating communications between IB (in its role as marketers and promoters of the Project) and Vandalia in an effort to avoid unreasonable delays with regard to the marketing and sale of the Project;

f. PrayWorks shall periodically review and monitor the work of those providing services in connection with the development of the Project (including, but not limited to the aforesaid professionals retained by IB and Vandalia) to reasonably assure that all such service providers are satisfying their contractual obligations to IB and Vandalia, and that IB and Vandalia are satisfying their contractual obligations with respect to others providing services in connection with the Project. PrayWorks shall to the extent it determines necessary in the exercise of its reasonable discretion regularly attend or otherwise participate in meetings related to the development of the Project;

g. PrayWorks shall assist Vandalia and IB with the procurement of insurance products for the Project;

h. PrayWorks shall perform certain bookkeeping and administrative services for Vandalia with regard to the Project, which shall include without limitation maintenance of books of account for Vandalia in order to keep Vandalia advised of expenditures made with regard to the Project. All such records shall be available to Vandalia or Vandalia's designated representatives upon reasonable notice during normal business hours for examination, audit or inspection, all at the sole cost and expense of Vandalia. Upon any termination of this Agreement, copies of all such books and records shall be provided to Vandalia;

i. PrayWorks shall assist Vandalia and IB with facilitation of communications with lenders for the Project;

j. PrayWorks shall, through and with the assistance of certified public accountants and legal counsel engaged by Vandalia and IB, assist Vandalia and IB with preparation and filing of all federal, state and local tax returns and with tax planning for the Project;

k. PrayWorks shall and may, as it deems reasonably necessary, communicate with one or more of the members of Vandalia as to the status of the Project and other ongoing issues; and

l. PrayWorks shall consult with Vandalia and IB in connection with crisis and risk management assistance for the Project.

3. **Standards.** PrayWorks will devote such time and effort as is reasonable and necessary for the satisfactory performance of the Services hereunder.

4. **Term.** Unless earlier terminated according to the terms hereof, the term of this Agreement shall be effective as of June 1, 2008 (the "Effective Date"), and shall continue until the earlier of: (i) all debt incurred by IB and Vandalia in connection with the Project has been retired and all fees, if any, have been paid to Vandalia, or (ii) Vandalia has been purchased in full by IB.

5. **Compensation.**

A. PrayWorks shall be compensated for all Services performed under this Agreement at the following hourly rates:

David P. Pray: \$195.00 per hour

Laura J. Pray: \$45.00 per hour (for bookkeeping and administrative work).

Hourly rates may be revised from time to time by written agreement of the parties.

B. PrayWorks shall be entitled to invoice for all of its work provided as of the Effective Date, but in no event prior to the Effective Date.

C. PrayWorks shall, in addition to the compensation payable hereunder, be reimbursed by Vandalia, within fifteen (15) calendar days of submission of receipts and itemized statements as applicable, for all reasonable expenses PrayWorks incurs in the performance of its Services hereunder including, but not limited to, mileage and travel expenses, reproduction costs, postage, meals and other ordinary and necessary expenses.

D. Except as otherwise set forth herein, Vandalia shall pay PrayWorks' invoices within fifteen (15) calendar days of the receipt thereof. Vandalia shall notify PrayWorks in writing within three (3) calendar days of receipt of an invoice if any portion of the invoice is disputed by Vandalia. Payment of any undisputed amounts shall not be withheld by Vandalia pending resolution of the dispute.

6. **Accuracy.** Vandalia acknowledges that PrayWorks is providing Services to assist Vandalia in the development of the Project and the decision-making required of Vandalia in all phases of such development. As such, PrayWorks is not and shall not be responsible for the completeness or accuracy of any information, data or opinions provided by others which PrayWorks may utilize in the performance of its Services hereunder. PrayWorks is not and shall not be deemed by Vandalia to be a guarantor of any information, data or opinions provided by PrayWorks, and Vandalia hereby releases and waives any and all claims against PrayWorks based thereon.

7. **Project Costs and Projections.** It is recognized by the parties hereto that neither Vandalia nor PrayWorks have control over the cost of labor, materials, services or equipment which may be required to develop, design, construct, market and sell the Project. It is further recognized that neither Vandalia nor PrayWorks have control over interest rates, the costs of raw or finished materials, sales projections or forecasts, the real estate market in the vicinity of the Project, or any other factors or variables which could affect the financial success of the Project. Accordingly, Vandalia acknowledges that PrayWorks cannot and does not warrant or represent that the costs which Vandalia shall incur in the development of the Project and income expected therefrom shall not vary from any estimate(s) of such costs provided or relied upon by PrayWorks whether in the pro forma budget or otherwise, and PrayWorks shall have no liability to Vandalia as a result of any such forecast or projection including without limitation any budget, cost, and estimation analysis and development.

8. **Exculation and Indemnity of PrayWorks.** Neither PrayWorks nor any member, manager, employee, agent or representative of PrayWorks shall be subject to

liability to Vandalia, or to any member, manager, employee, agent, investor or representative of Vandalia, for any act or omission in the course of, or in connection with, the rendering or providing of Services hereunder unless PrayWorks has committed willful misfeasance or reckless disregard of its obligations or duties hereunder.

To the fullest extent permitted by law, Vandalia agrees to defend, indemnify and hold PrayWorks, David P. Pray and PrayWorks' members, managers, employees, agents and representatives (collectively "PrayWorks Indemnified Parties") harmless from and against any and all claims, damages, losses, expenses, demands and causes of action (collectively "claims"), joint or several, including but not limited to attorneys' fees and any expenses whatsoever of PrayWorks Indemnified Parties incurred in investigating, preparing for, or defending against any litigation commenced or any claim (and any and all amounts paid in settlement of any such litigation or claim), arising out of or related to the performance of the Services hereunder; *provided, however*, that Vandalia shall not be obligated to defend, indemnify and hold the PrayWorks Indemnified Parties harmless from any claims which arise as a result of the willful misfeasance or reckless disregard of the PrayWorks Indemnified Parties.

9. Assignment. PrayWorks may assign this Agreement to any other entity controlled by David P. Pray, which assignment shall be effective upon written notice of such assignment to Vandalia. Vandalia and PrayWorks agree that, if and when notified of such assignment, the new entity shall immediately assume all PrayWorks' rights and obligations hereunder, at which time PrayWorks shall no longer have any rights against, or obligations to, Vandalia under this Agreement; *provided, however*, that payment of

any invoice(s) outstanding at the time of such assignment shall be made to PrayWorks unless Vandalia is otherwise directed by David P. Pray.

10. Termination. Notwithstanding anything contained herein to the contrary, this Agreement may be terminated by either party upon the default of the other party, upon ten (10) days' written notice, which notice shall specify in detail the default(s) of the defaulting party. Upon issuance of a notice of default, David P. Pray of PrayWorks and Stephen B. Farmer and/or Andrew A. Payne III of Vandalia shall immediately enter into good faith negotiations for a period of fourteen (14) calendar days to resolve the default. If the default is resolved, the party issuing the notice of default shall withdraw same in writing. If the default is not resolved, the party issuing the notice of default shall reaffirm such default in writing.

In addition, each party hereto shall have the unconditional right to terminate this Agreement with or without default of the other party upon fourteen (14) days' notice to the other party.

11. Intellectual Property. PrayWorks acknowledges and agrees that, provided Vandalia is not in default of its obligations to PrayWorks hereunder, all right, title and interest in all intellectual property and work product developed for or on behalf of Vandalia solely by PrayWorks during the term hereof or thereafter, in the performance of Services under or pursuant to the terms of this Agreement ("Work Product"), in whatever media or form, shall be and remain the exclusive property of Vandalia. It is the mutual understanding of the parties that the Work Product and all parts and copies thereof shall be deemed "works made for hire." In addition, to the extent any Work Product, or any part thereof, is, whether by operation of law or otherwise, deemed or considered not

to be a "work made for hire," PrayWorks hereby unconditionally and irrevocably sells, transfers and assigns and agrees to sell, transfer and assign to Vandalia, all of the entire right, title and interest of PrayWorks in and to all such Work Product, whether having arisen or been created during or after PrayWorks' performance of Services for Vandalia under this Agreement.

12. Arbitration. All claims, disputes and other matters in controversy arising out of or related to this Agreement and the performance thereof shall be resolved by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Arbitration hearings shall be held in Charleston, West Virginia. The award of the arbitrator(s) shall be binding and enforceable in the Circuit Court of Kanawha County, West Virginia. No person not a party to this Agreement shall be made a party to such arbitration without the consent of the parties hereto and such other person(s). In the event of any arbitration hereunder, the prevailing party shall be reimbursed its reasonable attorneys' fees and costs.

13. Representatives. In the performance of its obligations hereunder, Vandalia appoints Stephen B. Farmer and Andrew A. Payne III as its representatives to act independently or together as they shall determine. In the performance of its obligations hereunder, PrayWorks appoints David P. Pray as its representative. The designated representatives of the parties shall not be changed without consent of the other party, which consent shall not be unreasonably withheld.

Vandalia further covenants and agrees that its representative(s) appointed hereunder shall reasonably cooperate with PrayWorks to allow timely performance of the Services hereunder, and to that end such representative(s) shall have appropriate authority

to make decisions and determinations requested of Vandalia by PrayWorks with regard to the Project. In addition, Vandalia shall ensure that IB will reasonably cooperate with PrayWorks and acknowledge PrayWorks' role as provider of the enumerated Services with respect to the Project.

14. Notices. Any and all notices required hereunder shall be given in writing by facsimile, email or courier to the following addresses:

TO PRAYWORKS, LLC:
PrayWorks, LLC
Attention: David P. Pray
Rt. 2 Box 331B
Charleston, West Virginia 25314
Fax: (304) 342-6973
Email: dave@prayworks.com

With Copy to:
Paul G. Papadopoulos, Esquire
Robinson & McElwee PLLC
P.O. Box 1791
Charleston, West Virginia 25326
Fax: (304) 344-9566
Email: pgp@ramlaw.com

TO VANDALIA CAPITAL, II LLC:
Vandalia Capital, II LLC
Attention: Andrew A. Payne III
300 Capitol Street
Suite 1503
Charleston, West Virginia 25301
Fax: (304) 343-9240
Email: Andrewpayne3@Gmail.com

With Copy to:
Stephen B. Farmer
746 Myrtle Road
Charleston, West Virginia 25314
Fax: (304) 346-5980
Email: sbfarmer@FCCLaw.net

15. **Independent Contractor.** PrayWorks shall be deemed to be acting hereunder as an independent contractor.

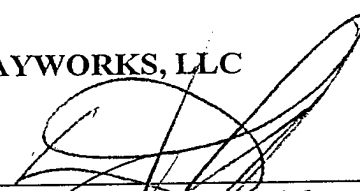
16. **Disclosure of Interest.** The parties hereby acknowledge that David P. Pray is a Member of Vandalia.

17. **Governing Law.** This Agreement and the performance of the parties hereunder shall be governed by the law of the State of West Virginia.

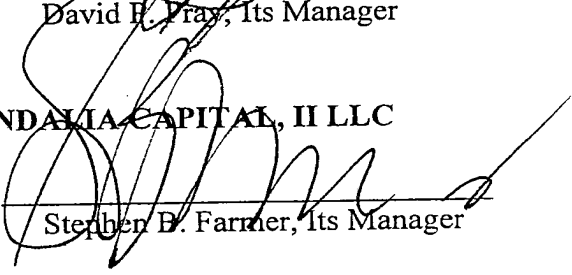
18. **Entire Understanding.** This Agreement represents the entire integrated agreement between PrayWorks and Vandalia and supersedes all prior negotiations, representations or agreements, either written or oral, with regard to the subject matter herein. This Agreement may be amended only by written instrument signed by both PrayWorks and Vandalia.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as evidenced below.

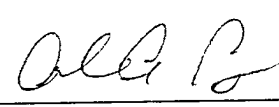
PRAYWORKS, LLC

By: 
David P. Pray, Its Manager

VANDALIA CAPITAL, II LLC

By: 
Stephen B. Farmer, Its Manager

and

By: 
Andrew A. Payne III, Its Manager