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Merger

DEC 2 8 2012

T. BROWN

CSC. CORPORATION SERVICE COMPANY®

120015813 9

ACCOUNT NO. : I20000000195

REFERENCE : 475258 3112D

AUTHORIZATION :

COST LIMIT : $ 80.00

ORDER DATE : December 27, 2012

ORDER TIME : 2:44 PM

ORDER NO. : 475258-005

CUSTOMER NO: 3112D

ARTICLES OF MERGER

EFFECTIVE DATE
12-31-12

FSC SMARTCOMP HOLDING, INC.

INTO

FSC SMARTCOMP, LLC

FILED
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DIVISION OF CORPORATIONS
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PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

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XX _____ PLAIN STAMPED COPY

CONTACT PERSON: Susie Knight

DEC 2 8 2012

EXAMINER'S INITIALS: T. BROWN

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
12 DEC 27 PM 4:50

Certificate of Merger
For
Florida Limited Liability Company

EFFECTIVE DATE
12-31-12

The following Certificate of Merger is submitted to merge the following Florida Limited Liability Company(ies) in accordance with s. 608.4382, Florida Statutes.

FIRST: The exact name, form/entity type, and jurisdiction for each **merging** party are as follows:

Name	*Jurisdiction*	*Form/Entity Type*
FSC SmartComp, LLC	Florida	LLC
FSC SmartComp Holding, Inc.	Florida	Corporation

SECOND: The exact name, form/entity type, and jurisdiction of the **surviving** party are as follows:

Name	Jurisdiction	Form/Entity Type
FSC SmartComp, LLC	Florida	LLC

THIRD: The attached plan of merger was approved by each domestic corporation, limited liability company, partnership and/or limited partnership that is a party to the merger in accordance with the applicable provisions of Chapters 607, 608, 617, and/or 620, Florida Statutes.

FOURTH: The attached plan of merger was approved by each other business entity that is a party to the merger in accordance with the applicable laws of the state, country or jurisdiction under which such other business entity is formed, organized or incorporated.

FIFTH: If other than the date of filing, the effective date of the merger, which cannot be prior to nor more than 90 days after the date this document is filed by the Florida Department of State:

Effective 5:00 p.m. on December 31, 2012

SIXTH: If the surviving party is not formed, organized or incorporated under the laws of Florida, the survivor's principal office address in its home state, country or jurisdiction is as follows:

Not applicable

SEVENTH: If the survivor is not formed, organized or incorporated under the laws of Florida, the survivor agrees to pay to any members with appraisal rights the amount, to which such members are entitles under ss.608.4351-608.43595, F.S.

EIGHTH: If the surviving party is an out-of-state entity not qualified to transact business in this state, the surviving entity:

a.) Lists the following street and mailing address of an office, which the Florida Department of State may use for the purposes of s. 48.181, F.S., are as follows:

Street address:

Mailing address:

b.) Appoints the Florida Secretary of State as its agent for service of process in a proceeding to enforce obligations of each limited liability company that merged into such entity, including any appraisal rights of its members under ss.608.4351-608.43595, Florida Statutes.

NINTH: Signature(s) for Each Party:

Name of Entity/Organization:	Signature(s):	Typed or Printed Name of Individual:
FSC SmartComp, LLC	Dr S Va, PT	Shannon Vissman
FSC SmartComp Holding, Inc.	Dr S Va, PT	Shannon Vissman

Corporations:	Chairman, Vice Chairman, President or Officer *(If no directors selected, signature of incorporator.)*
General partnerships:	Signature of a general partner or authorized person
Florida Limited Partnerships:	Signatures of all general partners
Non-Florida Limited Partnerships:	Signature of a general partner
Limited Liability Companies:	Signature of a member or authorized representative

Fees:		
	For each Limited Liability Company:	$25.00
	For each Corporation:	$35.00
	For each Limited Partnership:	$52.50
	For each General Partnership:	$25.00
	For each Other Business Entity:	$25.00

Certified Copy (optional): $30.00

PLAN OF MERGER
OF
FSC SMARTCOMP HOLDING, INC.
INTO
FSC SMARTCOMP, LLC

This **PLAN OF MERGER** (the "Plan of Merger") of FSC SmartComp, LLC, a Florida limited liability company ("FSC"), and FSC SmartComp Holding, Inc., a Florida corporation ("FSC Holding"), providing for the merger (the "Merger") of FSC Holding with and into FSC pursuant to Sections 607.1108 and 608.438(2) of the Florida Statutes, is made as of the 27th day of December, 2012.

Background

A. FSC Holding has elected to be treated as a subchapter S corporation for federal and state income tax purposes.

B. The shareholders of FSC Holding desire to liquidate FSC Holding and reorganize as a Florida limited liability company taxed as a partnership for federal and state income tax purposes. FSC is a newly organized Florida limited liability company which has not previously conducted business and was formed solely for purposes of the effecting the Merger.

C. For federal and state income tax purposes, the Merger is intended to be treated as a complete liquidation of FSC Holding and the contribution of the assets and liabilities of FSC Holding to FSC by FSC Holding's shareholders. Subsequent to the merger, FSC will be treated as a partnership for federal and state income tax purposes.

ARTICLE I
Survivor

At the Effective Time (as hereinafter defined), FSC Holding will merge with and into FSC and the separate existence of FSC Holding will cease. FSC shall continue its existence under applicable Florida law.

ARTICLE II
The Merger

Upon the Merger becoming effective, FSC will succeed to and possess, without further act or deed, all the rights, privileges, immunities, franchises, powers and purposes of FSC Holding, and all property of every kind, whether real, personal or mixed, of FSC Holding (including without limitation all debts and obligations due or belonging to FSC Holding). From

and after the Effective Time, FSC will be responsible and liable for all of the liabilities, debts and obligations of FSC Holding, as if FSC had itself incurred them, and all rights of creditors will be preserved unimpaired.

ARTICLE III
Manner of Effecting the Merger

3.1 At the Effective Time, all of the issued and outstanding common stock of FSC Holding immediately before the Merger becomes effective shall be converted into membership interests of FSC on the basis of one percent membership interest in FSC for each one share of common stock of FSC Holding.

3.2 At the Effective Time, each issued and outstanding membership interest of FSC outstanding immediately before the Merger shall be cancelled and any amount paid therefore shall be returned. Immediately following the Merger, the membership interests of FSC shall be owned by the former shareholders of FSC Holding in the same proportion as they held common stock in FSC Holding immediately prior to the Merger.

ARTICLE IV
Articles of Organization; Operating Agreement

4.1 The Articles of Organization of FSC in effect at the Effective Time shall continue as the Articles of Organization of FSC until the same shall thereafter be altered or amended.

4.2 The Operating Agreement of FSC in effect at the Effective Time shall be amended and restated and, subsequent to the Effective Time, shall be in the form attached as Exhibit "A" hereto.

ARTICLE V
Conditions Precedent to the Obligations of the Parties

The obligations of FSC and FSC Holding, respectively, under this Plan of Merger are subject to the fulfillment, prior to or at the Effective Time, of the following condition:

At the time for filing this Plan of Merger or the Articles of Merger as provided for in Article VII hereof, neither FSC nor FSC Holding shall be precluded, directly or indirectly, by any order or injunction of a court of competent jurisdiction from consummating the Merger, and no action shall have been taken, and no statute, rule or regulation shall have been enacted or adopted by any government or governmental agency, which action, statute, rule or regulation remains in effect and would, directly or indirectly, render illegal the consummation of the Merger.

ARTICLE VI
Post-Adoption Amendment

At any time prior to the filing pursuant to Article VII of this Plan of Merger (or Articles or Certificate of Merger in respect thereof), this Plan of Merger may be amended, to the maximum extent permitted by applicable law, or terminated by action of the manager of FSC or by the President of FSC Holding.

ARTICLE VII
Filing of Certificate; Effective Time

Upon approval of this Plan of Merger by the manager and member of FSC and by the shareholders and members of the Board of Directors of FSC Holding, and upon satisfaction of the conditions set forth in Article V hereof, (i) this Plan of Merger or Articles of Merger in lieu thereof, executed in accordance with the requirements of the Florida Limited Liability Company Act and Florida Statutes, shall be filed with the Secretary of the of the State of Florida. The Merger shall be effective at 5:00 p.m. on December 31, 2012 (the "Effective Time").

FSC SMARTCOMP HOLDING, INC.
(a Florida corporation)

By:_____
Name: Shannon Vissman
Title: President

FSC SMARTCOMP HOLDING, INC.
(a Florida corporation)

By: _____
Name: Shannon Vissman
Title: President

FSC SMARTCOMP, LLC
(a Florida limited liability company)

By: _____
Name: Shannon Vissman
Title: Manager

EXHIBIT "A"
FORM OF AMENDED AND RESTATED LIMITED LIABILITY COMPANY
OPERATING AGREEMENT FOR FSC SMARTCOMP, LLC

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY

OPERATING AGREEMENT

for

FSC SMARTCOMP, LLC

A Florida Limited Liability Company

Dated as of December 31, 2012

THE MEMBERSHIP INTERESTS REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, OR REGISTERED OR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH MEMBERSHIP INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE MEMBERSHIP INTERESTS REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS, AND CONDITIONS WHICH ARE SET FORTH HEREIN.

This **AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT** (this "**Agreement**") for FSC SmartComp, LLC, a Florida limited liability company (the "**Company**"), is made and entered into effective as of December 31, 2012, by and among the persons set forth on the signature page as members (individually, a "**Member**," and collectively, the "**Members**"), as Members.

A G R E E M E N T

WHEREAS, the Company was formed under the Act pursuant to Articles of Organization filed on December 18, 2012, in the office of the Department of State of the State of Florida for purposes of engaging in permissible business activity;

WHEREAS, an original operating agreement was executed by Shannon Vissman as sole member as of December 18, 2012 (the "**Original Agreement**");

WHEREAS, the Company was formed to be the successor to FSC SmartComp Holding, Inc., a Florida corporation (**"FSC Holding"**), and has entered into a Plan of Merger with FSC Holding (the **"Plan of Merger"**);

WHEREAS, as of the date of this Agreement, pursuant to the Plan of Merger, FSC Holding has completely liquidated by merging with and into the Company (the **"Merger"**), with the Company surviving the Merger and with the shareholders of FSC Holding exchanging their stock in FSC Holding for membership interests in the Company; and

WHEREAS, the Members desire to enter into this Agreement to provide for, among other matters, the Merger, the admission of Jill Vissman, Lawrence Kent, Maurice Kent, Christopher Feeney and Kenneth Hannigan as additional Members of the Company, the management of the business of the Company, the respective rights, obligations and interests of the Members to each other and to the Company and certain other matters.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby amend and restate the Original Agreement, in its entirety, as follows:

1. Definitions; Construction.

1.1. **Definitions.** When used in this Agreement, unless the context otherwise requires, the following terms shall have the meanings set forth below:

"**Act**" means the Florida Limited Liability Company Act, F.S.A. §608.401, et seq., as the same may be amended from time to time.

"**Agreement**" means this Amended and Restated Limited Liability Company Operating Agreement, as originally executed and as amended and/or restated from time to time.

"**Articles**" means the Articles of Organization of the Company originally filed with the Department of State of the State of Florida, as amended and/or restated from time to time.

"**Bankrupt**" means, with respect to any Person: (a) the filing of an application by such Person for, or such Person's consent to, the appointment of a trustee, receiver, or custodian of its assets; (b) the entry of an order for relief with respect to such Person in proceedings under the United States Bankruptcy Code, as amended or superseded from time to time; (c) the making by such Person of a general assignment for the benefit of creditors; (d) the entry of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of the assets of such Person unless the proceedings and the trustee, receiver, or custodian appointed are dismissed within one hundred twenty (120) days; or (e) the failure by such Person generally to pay such Person's debts as the debts become due within the meaning of Section 303(h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court, or the admission in writing of such Person's inability to pay its debts as they become due.

"**Capital Account**" means with respect to any Member the capital account that the Company establishes and maintains for such Member pursuant to Exhibit B.

"**Capital Contribution**" means a contribution in cash or property to the capital of the Company (and if required by the context of this Agreement, "Capital Contribution" shall also refer to the total amount of cash and the fair market value of property so contributed).

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time, and the corresponding provisions of any succeeding law.

"**Company**" means the limited liability company organized in accordance with this Agreement.

"**Majority Interest**" means, in connection with any vote, approval or consent of the Members, the affirmative vote, approval or consent of Members that, taken together, hold more than fifty percent (50%) of the aggregate of all Percentage Interests of Members entitled to act on such matter.

"**Managers**" means the Persons designated or appointed from time to time as provided in Section 7.1.

"**Member**" means each Person who (a) is identified as a Member on Exhibit A, has been admitted to the Company as a Member in accordance with the Articles or this Agreement, or is an assignee who has become a Member in accordance with Section 8.5, and (b) has not withdrawn, been removed or if other than an individual, dissolved.

"**Membership Interest**" means a Member's entire interest in the Company including the Member's right to share in income, gains, losses, deductions, credits, or similar items of, and to receive distributions from, the Company pursuant to this Agreement and the Act, the right to vote or participate in the management of the Company to the extent herein provided or as specifically required by the Act, and the right to receive information concerning the business and affairs of the Company.

"**Percentage Interest**" means, for each Member, the percentage interest set forth opposite the name of such Member on Exhibit A, as the same may be adjusted from time to time in accordance with this Agreement.

"**Permitted Transferee**" means (i) another Member, (ii) a descendant of Member, including a child adopted prior to the age of ten.

"**Permitted Trust**" means a trust whose only beneficiaries, to the extent of any interest whatsoever, are Permitted Transferees (excluding Permitted Trusts for purposes of this definition).

"**Person**" means any individual, general partnership, limited partnership, limited liability company, limited liability partnership, corporation, trust, estate, real estate investment trust, association, or other entity.

"**Transfer**" shall mean any sale, transfer, assignment, hypothecation, encumbrance or other disposition, whether voluntary or involuntary, whether by gift, bequest or otherwise. In the case of a hypothecation, the Transfer shall be deemed to occur both at the time of the initial pledge and at any pledgee's sale or a sale by any secured creditor.

1.2. **Rules of Construction.** The following rules of construction shall apply to this Agreement:

1.2.1. This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida without regard to its conflicts of laws provisions, but shall not be construed against the drafter of this Agreement.

1.2.2. The titles of the Sections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

1.2.3. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa, as the context may require.

1.2.4. The term "including" shall in all cases be interpreted as "including, but not limited to."

1.2.5. Each provision of this Agreement shall be considered severable from the rest, and if any provision of this Agreement or its application to any person or circumstances shall be held invalid and contrary to any existing or future law or unenforceable to any extent, the remainder of this Agreement and the application of any other provision to any person or circumstances shall not be affected thereby and shall be interpreted and enforced to the greatest extent permitted by law so as to give effect to the original intent of the parties hereto.

1.2.6. Unless the context clearly requires otherwise, words such as "herein" shall refer to this entire Agreement and not to a particular Section or provision, and references to particular "Sections" shall refer to the Sections of this Agreement.

2. **Organizational Matters.**

2.1. **Formation.** The Company was formed as a Florida limited liability company under the Act through the filing of the Articles with the Florida Department of State and by the

Original Agreement. From and after the date hereof, the rights and liabilities of the Members shall be determined pursuant to the Act and this Agreement.

2.2. **Name.** The name of the Company is "FSC SmartComp, LLC." The business and affairs of the Company may be conducted under that name or, upon compliance with applicable laws, any other name that the Managers may deem appropriate or advisable. The Managers shall file any fictitious name certificates and similar filings, and any amendments thereto, that may be appropriate or advisable.

2.3. **Term.** The existence of the Company commenced on the date of the filing of the Articles with the Department of State of the State of Florida, and shall continue until the Company is dissolved in accordance with the provisions of this Agreement.

2.4. **Principal Office; Registered Agent.** The principal office of the Company shall be as determined by the Managers from time to time. The Company shall continuously maintain a registered agent and office in the State of Florida as required by the Act. The registered agent shall be as stated in the Articles or as otherwise determined by the Managers.

2.5. **Purpose.** The purpose of the Company is to hold, own, manage and sell the assets acquired from FSC Holding as a result of the Merger, including to manage rights in an escrow account (the **"Escrow Account"**) and discharge indemnification obligations pursuant to and as set forth in that certain Securities Purchase Agreement by and among Align Networks Holdings, LLC, Align Networks Sub, Inc., SmartComp, L.L.C., SmartComp Holding Company, Riverside MicroCap Fund I, L.P., FSC SmartComp Holding, Inc., Riverside Micro-Cap Fund I, L.P. as the Securityholders' Representatuve, and the Optionholders identified therein dated as of March 20, 2012. The Company may carry on any other lawful business, purpose, or activity incidental or related to the foregoing that may be carried on by a limited liability company under applicable law.

3. Percentage Interests; Provisions Related to Capital

3.1. **Members and Percentage Interests.** As of the date of this Agreement the Members and their respective Percentage Interests are as set forth on Exhibit A attached to this Agreement.

3.2. **Capital Contributions**. As a result of the Merger, each Member shall be treated as having made a capital contribution equal to its proportional share of the assets of FSC Holding, including the Escrow Account. No Member shall be required at any time to make any additional contributions to the capital of the Company, or be obligated or required under any circumstances to restore any negative balance in his, her or its Capital Account.

3.3. **Additional Capital Contributions.**

3.3.1. No Member shall be obligated to make any additional capital contributions to the Company. If the Company requires additional capital for its operations the Managers may, in their sole discretion, issue a call for additional capital contributions, in which case the Members will have the opportunity, but shall in no event be obligated, to make additional contributions to the Company in proportion to their Percentage Interests. If any Member shall

fail to make his or her proportionate share of any such additional capital contribution, any other Member may make such contribution, and the Percentage Interests of the Members shall be adjusted as set forth in Section 3.3.2 below.

3.3.2. If one or more Members shall fail to contribute his or her proportionate share of any additional capital contributions under Section 3.3.1, the Capital Accounts of the Members shall be adjusted to reflect (i) the additional capital contributions and (ii) the net gain or loss that would have been allocated to each Member under this Agreement if all of the assets of the Company (other than the newly contributed assets) had been sold for their fair market values, and the resulting gain or loss (determined by reference to the prior Gross Asset Value of such assets) had been allocated to the Members in accordance with the terms of this Agreement. Such adjustments to the Capital Accounts shall be made in accordance with Regulation §1.704-(1)(b)(2)(iv)(f). For this purpose, the fair market value of the assets of the Company shall be determined by the Managers. After the Capital Accounts have been adjusted as provided in this Section 3.3.2, the Percentage Interest of each Member shall be adjusted to equal that percentage obtained by dividing the positive balance in such Member's Capital Account by the sum of the positive Capital Account balances of all the Members.

3.4. **Advances.** If the Company requires additional funds for the fulfillment of its purposes, the Company may borrow funds from one or more Members, or from Persons related to one or more Members, on such terms as the Manager and the party or parties making such loans may agree. Unless otherwise agreed by the party or parties making such loans, all loans made under this Section 3.4 shall be repaid in full, with interest, before any distributions are made to the Members under this Agreement.

3.5. **Capital Accounts.** The Company shall maintain an individual Capital Account for each Member in accordance with the provisions set forth in Exhibit B attached hereto.

3.6. **No Interest.** No Member shall be entitled to receive any interest on such Member's Capital Contributions.

3.7. **No Withdrawal.** No Member shall have the right to withdraw such Member's Capital Contributions or to demand and receive property of the Company or any distribution in return for such Member's Capital Contributions, except as may be specifically provided in this Agreement or required by the Act.

4. Distributions to Members.

4.1. **In General.** All cash or property available for distribution to the Members prior to the liquidation and winding up of the Company, as determined by the Managers, shall be distributed to the Members in proportion to their Percentage Interests as of the date of such distribution. In making determinations regarding distributions, the Managers shall be authorized to establish reasonable reserves for working capital, improvements, capital expenditures and the acquisition of other assets by the Company.

4.2. **Return of Distributions.** Except for distributions made in violation of the Act or this Agreement, or as otherwise required by law, no Member shall be obligated to return any

distribution to the Company or pay the amount of any distribution for the account of the Company or to any creditor of the Company.

4.3. **Withholding**. Any tax required to be withheld with respect to any Member under Section 1446 or other provisions of the Code, or under state law, shall be treated for all purposes of this Agreement: (i) as a distribution of cash to be charged against future distributions to which such Member would otherwise have been entitled; or (ii) if determined by the Managers, as a demand loan to such Member.

5. Allocation of Profit and Loss. Subject to the rules set forth in Exhibit B, all Profits and Losses for any taxable year of the Company shall be allocated to the Members in proportion to their Percentage Interests.

6. Members.

6.1. **Limited Liability.** Except as required under the Act or as expressly set forth in this Agreement, no Member shall be personally liable for any debt, obligation, or liability of the Company, whether that debt, obligation, or liability arises in contract, tort or otherwise.

6.2. **Authority of Members**.

6.2.1. The Members, acting solely in their capacities as Members, shall have the right to vote on, consent to, or otherwise approve only those matters as to which this Agreement specifically requires such approval.

6.2.2. No Member acting solely in the capacity of a Member is an agent of the Company, nor can any Member acting solely in the capacity of a Member bind the Company or execute any instrument on behalf of the Company.

6.3. **No Dissociation.** A Member may not resign, withdraw or otherwise dissociate from the Company prior to the dissolution and winding up of the Company. Nothing in this Agreement shall be interpreted as giving a Member the right to withdraw from the Company.

6.4. **Competing Activities.** A Member or Manager may engage or invest in, directly or indirectly, independently or with others, any business activity of any type or description, including without limitation those that might be the same as or similar to the Company's business and that might be in direct or indirect competition with the Company; and neither the Company nor any Member shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. No Member or Manager shall be obligated to present any investment opportunity or prospective economic advantage to the Company. Each Member acknowledges that other Members or the Manager might own or manage other businesses, and each Member hereby waives any and all rights and claims that he may otherwise have against the other Members or the Manager as a result of any such permitted activities.

6.5. **Meetings of Members; Action by Consent.**

6.5.1. Meetings of the Members may be called by any Manager or by Members holding a Majority Interest. Written notice of the time and place of a meeting shall be given to

each Member at least five (5) business days in advance of the date of the meeting. Meetings shall be held at the principal office of the Company or at such other location as specified in the notice. A Member may attend either in person or by proxy. The presence in person or by proxy of Members holding at least a Majority Interest shall constitute a quorum at any meeting.

6.5.2. Any action or decision required or permitted to be taken by the Members under this Agreement may be taken without a meeting if consent in writing setting forth the action so taken is signed and delivered to the Company by Members representing not less than the minimum Percentage Interest necessary under this Agreement to approve the action. The Managers shall notify Members of all actions taken by such consents.

6.6. **Admission of Additional Members.** The Managers may admit additional Members to the Company in exchange for such additional Capital Contributions as the Managers may jointly determine. No additional Member shall become a Member until such additional Member has made any required Capital Contribution and has become a party to this Agreement, and upon the admission of an additional Member the Percentage Interests of all existing Members shall be diluted proportionately.

7. Managers

7.1. **Designation of Managers.** Shannon Vissman and Jill Vissman are designated as the Managers of the Company, each to serve until his or her death, resignation or incapacity. If any Manager shall cease to serve as Manager due to death, resignation or incapacity, a replacement Manager may be designated by Members holding a Majority Interest. The Company is not required to have more than one Manager at any time. A Manager need not be a Member of the Company.

7.2. Duties and Authority of Managers

7.2.1. The Managers shall have full, exclusive and complete discretion, power and authority, subject to the provisions of this Agreement, to manage, control, administer and operate the business and affairs of the Company, including the power to (i) acquire, lease, sell or trade real and personal property on behalf of the Company, (ii) borrow money for or otherwise incur obligations for the Company and execute and deliver notes and mortgages consenting to the confession of judgment against the Company, and (iii) make any expenditures necessary or appropriate in connection with the management of the affairs of the Company.

7.2.2. The Managers shall not do any act in contravention of this Agreement, or possess Company property or assign rights in Company property other than for Company purposes. The Managers shall have no authority to create any note, mortgage, pledge or other obligation, or enter into any guarantee or suretyship agreement, which provides that any Member shall be personally liable for the payment of all or any part thereof, without the express written consent of each Member who will be held personally liable thereunder.

7.2.3. The Managers shall devote only as much time to the business and affairs of the Company as necessary for the proper performance of his or her duties.

7.2.4. Each Manager shall perform his or her duties in good faith, in a manner he or she reasonably believes to be in the best interests of the Company and with the care that an ordinarily prudent person in a like position would use under similar circumstances.

7.3. **Reimbursement of Expenses; Fees.** The Company shall reimburse the Managers for the actual cost paid or incurred by them for goods, materials, and services used by or for the Company. The Managers may be paid such fees as approved from time to time by a Majority Interest of Members.

7.4. **Liability; Indemnification.**

7.4.1. Liability of Member or Manager. No Member or Manager shall be personally liable for any debt, obligation, or liability of the Company, whether that debt, obligation, or liability arises in contract, tort, or otherwise, solely by reason of participating in the management of the Company. No Member or Manager shall be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member in his capacity as such, unless the act giving rise to the claim for indemnification is determined by a court to have constituted fraud, willful misconduct or recklessness on the part of the Member or Manager.

7.4.2. Indemnification. A Member or Manager shall be entitled to indemnification from the Company for any loss, damage, expense or claim incurred by such Person by reason of any act or omission performed or omitted by such Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Person by this Agreement, unless the act or omission giving rise to the claim for indemnification is determined by a court to have constituted fraud, willful misconduct or recklessness on the part of such Person; provided, however, that any indemnity under this Section 7.4.2 shall be provided out of and to the extent of Company assets only, no debt shall be incurred by the Members in order to provide a source of funds for any indemnity, and no Member shall have any personal liability (or any liability to make any additional Capital Contributions) on account thereof.

7.4.3. Expenses. Expenses (including reasonable legal fees) incurred by a Member or Manager in such Person's capacity as such in defending any claim, demand, action, suit, or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit, or proceeding upon receipt by the Company of an undertaking by or on behalf of such Person to repay such amount if it shall be determined that such Person is not entitled to be indemnified as authorized in Section 7.4.3 hereof.

8. Transfer Of Membership Interests.

8.1. **Basic Restrictions.** A Member may not Transfer all or part of the Member's Membership Interest to a person or entity (hereinafter sometimes referred to as an "**Assignee**") unless the Transfer is made in accordance with the provisions of this Section 8. Any purported Transfer in violation of the provisions of this Section 8 shall be null and void and any non-transferring Member, in addition to any other remedies available under this Agreement and at law, in equity and otherwise, may seek to enjoin the Transfer and the transferring Member, or the Member's legal representatives, agrees to submit to the jurisdiction of any court of the State of

Florida and to be bound by any order of the court enjoining the purported Transfer. If a Transfer of a Membership Interest occurs (including a Transfer otherwise prohibited hereby that the Company is compelled by law, judicial process or otherwise to recognize), the Assignee shall have only the rights of an assignee who is not admitted as a Member unless the transferee is admitted as a Member pursuant to Section 8.5 below. An Assignee shall (i) only acquire the transferor's rights to distributions and allocations as provided in Sections 4 and 5 of this Agreement with respect to the Membership Interest (or part thereof) subject to such Transfer (which, as to distributions, shall be subject to the Company's right of offset to satisfy any debts, obligations or liabilities that the transferor Member or the Assignee may have to the Company), (ii) have no rights to any information or accounting of the affairs of the Company, (iii) not be entitled to inspect the books or records of the Company, (iv) not have any other rights conferred on a Member in this Agreement or by law (including, where applicable, the right to grant or withhold approval on any matter that requires the approval of the Members under this Agreement or by law), and (v) not have any right to receive notice of any act, circumstance, event or proposed event or action of which Members are otherwise entitled to receive notice pursuant to this Agreement, or on which Members are otherwise entitled to act or to express consent or dissent.

8.2. **Lifetime Transfers by Members.** During the lifetime of a Member, a Member may only Transfer all or a portion of his or her Membership Interest if (i) the Transfer is to a Permitted Trust or a Permitted Transferee, or (ii) the Transfer is approved in writing by all of the Managers. In addition to the other requirements of this Section 8.2, unless such requirement is waived by the Managers, no Transfer of any Membership Interest may be made unless the Company shall have received, at the expense of the Member seeking to effect the Transfer, an opinion of counsel satisfactory to the Managers that the proposed Transfer (i) may be effected without registration of the Membership Interests under the Securities Act of 1933, as amended, (ii) would not be in violation of any applicable state securities or "Blue Sky" law (including investment suitability standards) and (iii) will not cause a termination of the Company for federal income tax purposes.

8.3. **Bequest of Interests.** The bequest by a Member of all or any portion of the Member's Membership Interest to one or more Permitted Transferees shall be effective without approval of the Company or the Members. If a Membership Interest is bequeathed to a Person other than a Permitted Transferee then the Company shall have the right, but shall not be required, to purchase such Membership Interest from such non-Permitted Transferee for the fair market value of such Membership Interest. For this purpose, the fair market value of the Membership Interest shall be valued on a going concern basis, and shall take into account applicable discounts for lack of marketability and lack of control. If the Company and the non-Permitted Transferee are unable to agree on such fair market value, they shall jointly select and pay for an appraiser, whose decision as to value shall be binding on both parties.

8.4. **Bankruptcy of a Member; Involuntary Transfers.** If any Member becomes Bankrupt, the following shall apply:

8.4.1. The trustee in bankruptcy or other successor in interest of the Bankrupt Member shall be entitled to receive the shares of revenues and other income, receipts, or gain which the Bankrupt Member would have been entitled to receive under the terms of this

Agreement (net of the Member's share of the Company costs, expenses and losses) until the time, if any, that the Membership Interest of the Bankrupt Member is purchased as described in Section 8.4.2., but the trustee in bankruptcy or other successor in interest shall not thereby become a Member, nor have any of the other rights herein conferred upon the bankrupt Member.

8.4.2. For a period of two years after the occurrence of the bankruptcy, the Company and the other Members shall have the right, but not the obligation, to purchase the Bankrupt Member's Membership Interest for its fair market value, as determined in an independent appraisal performed by a certified public accountant or other qualified appraiser selected by the Managers. Unless the Managers currently intend to liquidate the Company, the fair market value of the Bankrupt Member's Interest shall be determined based on the Bankrupt Member's right to receive distributions from the Company, assuming the Company will continue as a going concern, rather than on the basis of a hypothetical liquidation of the Company. The appraiser shall take all relevant facts and circumstances into account, including, without limitation, minority discounts, lack of liquidity and restrictions on Transfer. At least 25% of such purchase price shall be paid in cash, with the remainder payable by means of a promissory note bearing interest at the applicable federal rate of interest in effect on the date of such purchase under Section 1274 of the Code and payable in equal quarterly payments over a period not to exceed five (5) years.

8.4.3. If all or a portion of the Membership Interest held by a Member is transferred involuntarily or by operation of law (including without limitation a Transfer made in connection with divorce proceedings), and if the Company is compelled by law, judicial process or otherwise to recognize such Transfer, then the Member who held such Membership Interest shall be considered a Bankrupt Member, and the provisions of Sections 8.4.1 and 8.4.2 above shall apply to the Membership Interest (or portion thereof) that was transferred involuntarily or by operation of law.

8.5. **Admission of Assignee as Substitute Member.** An Assignee who acquires all or any portion of an existing Member's Membership Interest shall not be admitted to the Company as a substitute Member unless, in addition to meeting the other requirements set forth in this Section 8, the additional requirements set forth in this Section 8.5 are satisfied:

8.5.1. the Managers consent to such substitution, which consent may be given or withheld for any reason which the Managers deem appropriate or for no reason;

8.5.2. the assigning Member grants the Assignee the right to be admitted as a substitute Member, provided however, that such grant shall not be required in the case of a Transfer which occurs by reason of the death, dissolution or bankruptcy of the assigning Member;

8.5.3. the Assignee shall have accepted and agreed to be bound by the terms and provisions of this Agreement by executing a counterpart thereof and other documents or instruments as the Managers may require in order to effect the admission of the Assignee as a Member; and

8.5.4. if required by the Managers, the Assignee pays to the Company a sum that is sufficient to cover all expenses (including legal fees) connected with the admission of the Assignee as a substitute Member pursuant to this Agreement and the Act.

9. Books And Records; Accounting; Tax Matters.

9.1. **Books and Records.** The Managers may, in their discretion, cause the books and records of the Company to be kept, and the financial position and the results of its operations to be recorded, in accordance with the accounting methods followed for federal income tax purposes. The books and records of the Company shall reflect all the Company transactions and shall be appropriate and adequate for the Company's business.

9.2. **Delivery to Members and Inspection.**

9.2.1. Subject to such standards as may be established by the Managers, upon the request of any Member for purposes reasonably related to the interest of that Person as a Member, the Managers shall make available to the requesting Member information required to be maintained by Section 9.1.

9.2.2. Any request, inspection, or copying of information by a Member under this Section 9.2 may be made at such Members' expense by a Member or such Member's agent or attorney.

9.3. **Financial Statements.** The Managers shall provide any Member with such unaudited financial statements of the Company as such Member may from time to time reasonably request.

9.4. **Tax Returns**. The Managers shall send or cause to be sent to each Member within ninety (90) days after the end of each taxable year, or as soon as practicable thereafter, such information as is necessary to complete such Member's federal and state income tax or information returns. The Managers shall cause the income tax and information returns for the Company to be timely filed with the appropriate authorities.

9.5. **Other Filings**. The Managers also shall cause to be prepared and timely filed, with appropriate federal and state regulatory and administrative bodies, amendments to, or restatements of, the Articles and all reports required to be filed by the Company with those entities under the Act or other then current applicable laws, rules and regulations.

9.6. **Bank Accounts**. The Managers shall maintain the funds of the Company in one or more separate bank accounts in the name of the Company, and shall not permit the funds of the Company to be commingled in any fashion with the funds of any other Person.

9.7. **Accounting Decisions and Reliance on Others**. All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Managers. The Managers may rely upon the advice of the Company's accountants as to whether such decisions are in accordance with accounting methods followed for federal income tax purposes.

9.8. **Tax Matters.**

9.8.1. Status of Company as Partnership. It is intended that the Company shall be treated as a partnership for federal and state income tax purposes. Unless the Members unanimously agree in writing neither the Company nor any Member may make an election for the Company to be taxable as a corporation for federal income tax purposes or to be excluded from the application of the provisions of subchapter K of chapter I of subtitle A of the Code or any similar provisions of applicable state law, and no provision of this Agreement shall be construed to sanction or approve such an election.

9.8.2. Tax Elections. Except as otherwise provided in this Agreement, including Section 9.8.1 above, the Managers may cause the Company to make any elections permitted under applicable tax law.

9.8.3. Tax Matters Partner. If the Company is subject to the consolidated audit procedures of Sections 6221 to 6225 of the Code, the "tax matters partner" of the Company pursuant to Section 6231(a)(7) of the Code shall be a Member that is designated as such by the Managers. Any Member who is designated "tax matters partner" shall take such action as may be necessary to cause each other Member to become a "notice partner" within the meaning of Section 6223 of the Code. Any Member who is designated "tax matters partner" shall inform each other Member of all significant matters that may come to his attention in his capacity as "tax matters partner" and shall forward to each other Member copies of all significant written communications he may receive in that capacity. Shannon Vissman shall be the initial tax matters partner.

10. Dissolution And Winding Up

10.1. **Dissolution.** The Company shall be dissolved, its assets shall be disposed of, and its affairs shall be wound up on the first to occur of the following:

10.1.1. The occurrence of any event of dissolution specified in the Articles;

10.1.2. The entry of a decree of judicial dissolution pursuant to Section 8972 of the Act;

10.1.3. The vote of the Managers and a Majority Interest of the Members; or

10.1.4. The sale of all or substantially all of the assets of the Company.

The Company shall not be dissolved upon the bankruptcy or other event of dissociation with respect to any Member of the Company, unless there are no remaining Members to continue the Company.

10.2. **Winding Up.** Upon the occurrence of any event specified in Section 10.1, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors. The Managers shall be responsible for overseeing the winding up and liquidation of the Company, shall take full account of the assets and liabilities of the Company, shall either cause its assets to be sold to any Person or distributed to a Member, and if sold, as promptly as is consistent with obtaining the fair market value thereof, shall cause the proceeds therefrom, to the extent sufficient therefor, to

be applied and distributed as provided in Section 10.5 herein. The Person(s) winding up the affairs of the Company shall give written notice of the commencement of winding up by mail to all known creditors and claimants whose addresses appear on the records of the Company. All actions and decisions required to be taken or made by such Person(s) under this Agreement shall be taken or made only with the consent of all such Person(s).

10.3. **Distributions in Kind.** Any non-cash asset distributed to one or more Members shall first be valued at its fair market value to determine the gain or loss that would have been included in the amounts allocated pursuant to Section 5 and Exhibit B if such asset were sold for such value. Such gain or loss shall then be allocated pursuant to Section 5 and Exhibit B, and the Members' Capital Accounts shall be adjusted to reflect such allocations. The amount distributed and charged to the Capital Account of each Member receiving an interest in such distributed asset shall be the fair market value of such interest (net of any liability secured by such asset that such Member assumes or takes subject to).

10.4. **Determination of Fair Market Value.** For purposes of Sections 10.2 and 10.3, the fair market value of each asset of the Company shall be determined by the Managers.

10.5. **Order of Distributions Upon Liquidation.** After determining that all known debts and liabilities of the Company in the process of winding up, including without limitation debts and liabilities to Members who are creditors of the Company, have been paid or adequately provided for, the remaining assets shall be distributed to the Members in accordance with their positive Capital Account balances, after such Capital Accounts have been adjusted to take into account all allocations of Profits and Losses, as specified in this Agreement, for the Company's taxable year during which liquidation occurs. Liquidating distributions shall be made by the end of the Company's taxable year in which the Company is liquidated, or, if later, within ninety (90) days after the date of such liquidation.

10.6. **Limitations on Payments Made in Dissolution.** Each Member shall be entitled to look solely to the assets of the Company for the return of such Member's positive Capital Account balance. Notwithstanding that the assets of the Company remaining after payment of or due provision for all debts, liabilities, and obligations of the Company may be insufficient to return the Capital Contributions or share of Profits reflected in such Member's positive Capital Account balance, a Member shall have no recourse against the Company or any other Member.

10.7. **Articles of Dissolution.** Upon completion of the winding up of the affairs of the Company, the Managers, or other Person(s) winding up the affairs of the Company, shall cause to be filed in the office of, and on a form prescribed by, the Department of State of the State of Florida, articles of dissolution as provided in the Act.

10.8. **Termination.** The Company shall terminate when all of the assets of the Company have been distributed in the manner provided for in this Section 10, and the articles of dissolution is filed in accordance with Section 10.7.

10.9. **No Action for Dissolution.** Except as expressly permitted in this Agreement, a Member shall not take any voluntary action that directly causes a dissolution of the Company.

11. Miscellaneous

11.1. **Complete Agreement.** This Agreement (including any schedules or exhibits hereto) and the Articles constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the Members or any of them. No representation, statement, condition, or warranty not contained in this Agreement or the Certificate shall be binding on the Members or have any force or effect whatsoever. To the extent that any provision of the Articles conflicts with any provision of this Agreement, the terms of this Agreement shall control as between the parties hereto.

11.2. **Binding Effect.** Subject to the provisions of this Agreement relating to transferability, this Agreement shall be binding upon and inure to the benefit of the Members, and their respective successors and assigns.

11.3. **Parties in Interest.** Except as expressly provided in the Act, nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any Persons other than the Members and their respective successors and assigns nor shall anything in this Agreement relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.

11.4. **Attorneys' Fees.** In any dispute between the parties hereto or their representatives concerning any provision of this Agreement or the rights and duties of any person or entity hereunder, the party or parties prevailing in such dispute shall be entitled, in addition to such other relief as may be granted, to the reasonable attorneys' fees and court or arbitration costs incurred by reason of such litigation or arbitration.

11.5. **Additional Documents and Acts.** Each Member agrees to execute and deliver, from time to time, such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

11.6. **Notices.** Any notice to be given or to be served upon the Company or any party hereto in connection with this Agreement shall be in writing (which may include facsimile) and shall be deemed to have been given and received when delivered to the address specified by the party to receive the notice. The respective address of each Member shall be as set forth on Exhibit A. Any party may, at any time by giving five (5) days' prior written notice to the other parties, designate any other address in substitution of the foregoing address to which such notice shall be given.

11.7. **Amendments.** Any amendment to this Agreement shall be adopted and be effective as an amendment hereto only if approved in writing by the Managers and Members holding a Majority Interest; provided, however, that, (i) no amendment shall reduce the Capital Account of any Member, any Member's rights to distributions with respect thereto, any Member's interest in Profits and Losses of the Company, or any Member's voting rights unless such Member has consented in writing to such amendment and (ii) the unanimous approval of the Members shall be required to alter or amend any provision of this Agreement that provides that certain actions may be taken only with the unanimous consent or approval of the Members.

The Managers may amend Exhibit A hereto at any time and from time to time to reflect the admission or withdrawal of any Member, or the change in any Member's Capital Contributions, or any changes in the Member's addresses, all as contemplated by this Agreement.

11.8. **No Interest in Company Property; Waiver of Action for Partition.** No Member has any interest in specific property of the Company. Without limiting the foregoing, each Member irrevocably waives during the duration of the Company any right that such Member may have to maintain any action for partition with respect to the property of the Company.

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

11.10. **Investment Representation.** Each Member hereby represents to, and agrees with, the other Members and the Company that such Member is acquiring the Membership Interest for investment purposes for such Member's own account only and not with a view to or for sale in connection with any distribution of all or any part of the Membership Interest. No other Person will have any direct or indirect beneficial interest in or right to the Membership Interest.

IN WITNESS WHEREOF, the Members of FSC SmartComp, LLC have executed this Agreement, effective as of the date first written above.

_____
Shannon Vissman

_____
Jill Vissman

_____
Christopher Feeney

_____
Kenneth Hannigan

_____
Lawrence Kent

_____
Maurice Kent

EXHIBIT A

MEMBERS AND PERCENTAGE INTERESTS

Dated as of December 31, 2012

Name and Address	Percentage Interest
Shannon Vissman 1241 Turnberry Drive Pittsburgh, PA 15241	31%
Jill Vissman 1241 Turnberry Drive Pittsburgh, PA 15241	31%
Lawrence Kent 404 East Lancaster Avenue Wayne, PA 19087	5%
Maurice Kent 404 East Lancaster Avenue Wayne, PA 19087	5%
Christopher Feeney 6902 Belmont Court Bradenton, FL 34202	23%
Kenneth Hannigan 1501 Network Drive Canonsburg, PA 15317	5%
	100%

EXHIBIT B

Provisions Related to Maintenance of Capital Accounts and Allocation of Profits and Losses

B.1. **Additional Definitions.** In addition to the terms defined in other provisions of this Agreement, the following terms shall have the meanings set forth below:

"**Adjusted Capital Account**" shall mean, with respect to any Member, the balance in the Member's Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments (i) increasing the Capital Account by any amounts that the Member is obligated to restore or is deemed to be obligated to restore pursuant to Regulation Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1) and 1.704-2(i)(5); and (ii) reducing the Capital Account by the items described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6). The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"**Adjusted Capital Account Deficit**" means the deficit balance, if any, in a Member's Adjusted Capital Account."

"**Company Minimum Gain**" has the same meaning as "partnership minimum gain" set forth in Regulation Sections 1.704-2(b)(2) and 1.704-2(d).

"**Depreciation**" shall mean for each taxable year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, 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 year or other period, 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 year or other period bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Tax Matters Partner, and if the Company uses the "remedial allocation method" under Regulation Section 1.704-3(d) with respect to any asset, Depreciation for that asset shall be computed in accordance with Regulation Section 1.704-3(d)(2).

"**Excess Nonrecourse Liabilities**" has the same meaning as set forth in Regulation Section 1.752-3(a)(3).

"**Gross Asset Value**" with respect to any asset shall mean 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 the asset, as determined by the contributing Member and the Company.

(2) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Tax Matters Partner, 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 contribution of money or other property;

(ii) the distribution by the Company to a Member of more than a de minimis amount of money or other property as consideration for an interest in the Company;

(iii) the liquidation of the Company for federal income tax purposes within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g);

except that the adjustments pursuant to clauses (i) and (ii) above shall be made only if the Members reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company.

(3) The Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution.

(4) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of those assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that the adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m) and Section B.2, except that Gross Asset Values shall not be adjusted pursuant to this paragraph (4) to the extent the Tax Matters Partner determines that an adjustment pursuant to paragraph (2) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (4).

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

"**Member Nonrecourse Debt**" has the same meaning as "partner nonrecourse debt" set forth in Regulation Sections 1.704-2(b)(4) and 1.704-2(i).

"**Member Nonrecourse Debt Minimum Gain**" shall have the same meaning as "partner nonrecourse debt minimum gain" set forth in Regulation Section 1.704-2(i) and shall be determined in accordance with the principles of that Section.

"**Member Nonrecourse Deductions**" has the same meaning as "partner nonrecourse deductions" set forth in Regulation Sections 1.704-2(i)(1) and 1.704-2(i)(2).

"**Nonrecourse Deductions**" are deductions having the meaning set forth in Regulation Sections 1.704-2(b)(1) and 1.704-2(c).

"**Profits and Losses**" shall mean for each taxable year or other period, an amount equal to the Company's taxable income or loss for that year or period, determined in accordance with Code Section 703(a) (for these purposes, 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:

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

(2) Any expenditures of the Company described in Code Section 705(a)(2)(B) or that are 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 or Losses pursuant to the foregoing shall be subtracted from such taxable income or loss.

(3) In the event the Gross Asset Value of any Company asset is adjusted pursuant to paragraph (2), (3) or (4) of the definition of Gross Asset Value, the amount of the adjustment shall be taken into account as gain or loss from the disposition of the asset for purposes of computing Profits or Losses.

(4) Gain or loss resulting from any disposition of Company 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 the 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 the taxable year or other period, computed in accordance with the definition of Depreciation under this Agreement.

(6) Notwithstanding the above, any items that are specially allocated pursuant to Sections B.3 or B.4 shall not be taken into account in computing Profits and Losses.

"**Regulations**" means the regulations currently in force from time to time as final or temporary that have been issued by the U.S. Department of the Treasury pursuant to its authority under the Code. If a word or phrase is defined in this Agreement by cross-referencing the Regulations, then to the extent the context of this Agreement and the Regulations require, the term "Member" shall be substituted in the Regulations for the term "partner", the term "Company" shall be substituted in the Regulations for the term "partnership," and other similar conforming changes shall be deemed to have been made for purposes of applying the Regulations.

B.2. **Preparation and Maintenance of Capital Accounts.**

(a) The Capital Account for each Member shall:

(1) be increased by (i) the amount of money contributed by that Member to the Company, (ii) the fair market value of property contributed by that Member to the Company (net of liabilities secured by the contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), and (iii) allocations to that Member of Profits and any other Company income and gain (or items thereof), including loss and deduction described in Regulation Section 1.704-1(b)(2)(iv)(g), and

(2) be decreased by (i) the amount of money distributed to that Member by the Company, (ii) the fair market value of property distributed to that Member by the Company (net of liabilities secured by the distributed property that the Member is considered to assume or take subject to under Section 752 of the Code), and (iii) allocations of Losses and any other Company loss and deduction (or items thereof), including loss and deduction described in Regulation Section 1.704-1(b)(2)(iv)(g).

(b) The Members' Capital Accounts also shall be maintained and adjusted as permitted by the provisions of Regulation Section 1.704-1(b)(2)(iv)(f) and as required by the other provisions of Regulation Sections 1.704-1(b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the Members of depreciation, depletion, amortization, and gain or loss as computed for book purposes rather than the allocation of the corresponding items as computed for tax purposes, as required by Regulation Section 1.704-1(b)(2)(iv)(g). On the transfer or all or part of a Membership Interest, the Capital Account of the transferor that is attributable to the transferred Membership Interest or part thereof shall carry over to the transferee Member in accordance with the provisions of Regulation Section 1.704-1(b)(2)(iv)(1).

B.3. **Regulatory Allocations**. Notwithstanding Section 5 of this Agreement and any other provision in this Exhibit B, the following special allocations shall be made in the following order:

(a) **Limitation on Allocation of Losses**. No Losses shall be allocated to a Member under Section 5 of the Agreement to the extent that such allocation would cause such Member to have an Adjusted Capital Account Deficit at the end of any taxable year. Losses that would have been allocated to a Member but for the preceding sentence shall be allocated (1) first, to Members with positive balances in their Adjusted Capital Accounts, in proportion to and to the extent thereof, and (2) thereafter, among the Members in accordance with their respective interests in the Company, in accordance with Regulation Section 1.704-1(b)(3).

(b) **Minimum Gain Chargeback.** If there is a net decrease in Company Minimum Gain during any Company taxable year, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in accordance with Regulation Section 1.704-2(f). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto.

This Section B.3(b) is intended to comply with the minimum gain chargeback requirement in Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(c) **Member Minimum Gain Chargeback.** If there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Company taxable year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulation Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in accordance with Regulation 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 Regulation Section 1.704-2(i)(4). This Section B.3(c) is intended to comply with the minimum gain chargeback requirement in Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(d) **Qualified Income Offset.** If any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulation Section 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) that would create an Adjusted Capital Account Deficit for such Member, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section B.3(d) shall be made if and only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Agreement have been tentatively made as if this Section B.3(d) and Section B.3(c) were not in the Agreement.

(e) **Gross Income Allocation.** If any Member has an Adjusted Capital Account Deficit at the end of any Taxable Year, 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.3(e) shall be made if and only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Agreement have been tentatively made as if this Section B.3(e) were not in the Agreement.

(f) **Nonrecourse Deductions.** Nonrecourse Deductions (and Excess Nonrecourse Liabilities) for any taxable year or other period shall be allocated among the Members in proportion to their respective Percentage Interests.

(g) **Member Nonrecourse Deductions.** Any Member Nonrecourse Deductions for any taxable year or other period 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 Regulation Section 1.704-2(i).

(h) **Curative Allocations.** The allocations set forth in Sections B.3(a) through B.3(g) (the "**Regulatory Allocations**") are intended to comply with certain requirements of Regulation Section 1.704-1(b). 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.3(h). Therefore, notwithstanding any other provision of this Exhibit B (other than the Regulatory Allocations), the Managers shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner he determines appropriate so that, after such offsetting allocations are made, a 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 this Agreement and all Company items were allocated pursuant to Section 5 of the Agreement. In exercising his discretion under this Section B.3(h), the Manager shall take into account any future Regulatory Allocations that, although not yet made, are likely to offset other Regulatory Allocations previously made. In addition, if as a result of any provision of this Agreement any Member is required to include in income any amounts other than those specifically contemplated by this Agreement and the Company receives a corresponding tax deduction, that deduction (or any part thereof) may, in the discretion of the Manager, be specially allocated to the Member required to include such amount in income.

B.4. Tax Allocations: Code Section 704(c). The provisions specified in Section 5 of the Agreement and Section B.3 above shall govern the maintenance of the Member's Capital Accounts and the allocation of items to the Members for Code Section 704(b) book purposes. The following provisions of this Section B.4 apply solely for the purpose of determining how items of Company income, gain, loss, deduction and credit, as computed for federal income tax purposes, are to be allocated among the Members for federal, state and local tax purposes, and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits or Losses, or the manner in which distributions are made to the Members under this Agreement:

(a) **Contributed Property.** In accordance with Code Section 704(c) and the Treasury 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.

(b) **Revalued Property.** If the Gross Asset Value of any Company asset is adjusted pursuant to paragraph (2) 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 Treasury Regulations thereunder.

(c) **Elections.** Any elections or other decisions relating to allocations pursuant to this Section B.4 shall be made by the Tax Matters Partner in any manner that reasonably reflects the purpose and intention of this Agreement.

B.5. Miscellaneous Allocation Provisions.

(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 Managers using any permissible method under Code Section 706 and the Treasury Regulations promulgated thereunder.

(b) Except as otherwise provided in this Agreement, all items of Company income gain, loss, deduction, and any other allocations not otherwise provided for shall be divided among the Members in the same proportions as they share Profits or Losses, as the case may be, for the year.

(c) For the purpose of determining each Member's share of Excess Nonrecourse Liabilities pursuant to Regulation Section 1.752-3(a)(3), and solely for such purpose, each Member's interest in Company Profits is hereby specified to be such Member's Percentage Interest.