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JAMES J. WEBB

December 18, 1998

Secretary of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, Florida 32314

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-12/23/98--01041--011  
\*\*\*\*\*285.00 \*\*\*\*\*285.00

RE: OSCEOLA TOBACCO, L.C.  
Our File No. 2597.2

Dear Sir/Madam:

~~100-24147~~ CM

Enclosed herewith please find an original and one (1) copy of the following:

1. Articles of Organization of Osceola Tobacco, L.C.;
2. Operating Agreement for Osceola Tobacco, L.C.; and
3. Certificate of Designation of Registered Agent/Registered Office.

Also enclosed is a check in the amount of \$285.00 for the filing fee and a certified copy of the Articles of Organization. Please return the certified copy in the self-addressed stamped envelope provided for your convenience. If you have any questions or comments regarding the foregoing, please do not hesitate to contact me.

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Very truly yours,

HALEY, SINAGRA & PEREZ, P.A.

  
Christopher J. Dawes  
For the Firm

CJD:rb

Enclosures

cc: J.T. Haley, Esq.

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FLORIDA DEPARTMENT OF STATE

Sandra B. Mortham  
Secretary of State

December 30, 1998

CHRISTOPHER J. DAWES  
HALEY, SINAGRA & PEREZ, P.A.  
100 S. BISCAYNE BLVD., SUITE 800  
MIAMI, FL 33131

SUBJECT: OSCEOLA TOBACCO, L.C.  
Ref. Number: W98000029197

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We have received your document for OSCEOLA TOBACCO, L.C. and your check(s) totaling \$285.00. However, the document has not been filed and is being retained in this office for the following:

An affidavit is required pursuant to section 608.407(2), Florida Statutes, declaring the following: (1) the limited liability company has at least one member; (2) the actual amount of cash contributions; (3) the agreed value and a description of any property other than cash contributed; and (4) the total amount of cash or property anticipated to be contributed by the members.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6025.

Cathy A Mitchell  
Corporate Specialist

Letter Number: 998A00060987

## **ARTICLES OF ORGANIZATION OF OSCEOLA TOBACCO, L.C.**

The undersigned, acting as organizers of OSCEOLA TOBACCO, L.C., under the Florida Limited Liability Company Act, Section 608.401 et seq. adopt the following Articles of Organization:

### **I. NAME OF COMPANY**

The name of the limited liability company (LLC) is OSCEOLA TOBACCO, L.C. (Company)

### **II. PERIOD OF DURATION**

The period of duration is 40 years from the date of the filing of these Articles of Organization with the Florida Secretary of State, unless the Company is sooner dissolved.

### **III. PURPOSE**

The Company is organized for any legal and lawful purpose pursuant to the Florida Limited Liability Company Act, except for the purpose of bank or insurance.

### **IV. REGISTERED AGENT AND OFFICE**

A. The name and address of the initial registered agent for the Company is as follows:

J.T. Haley  
Haley, Sinagra & Perez, P.A.  
100 S. Biscayne Boulevard  
Suite 800  
Miami, Florida 33131

B. The principal address and mailing address for the Company is as follows:

6405 N.W. 36<sup>th</sup> Street  
Suite 107  
Miami, Florida 33166

### **V. MEMBERS**

There are two members: Paul Embury and Mazal Ninio. Until such time as additional members are admitted (if ever), the current members will own the Company in equal parts. The amount of capital contributions to date of the limited partners is \$5,000.00. The total amount contributed and anticipated to be contributed by the limited partners at this time totals \$25,000.00.

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## VI. ADDITIONAL MEMBERS

The members reserve the right to admit additional members on the unanimous agreement of the members as to the admission of, and the consideration to be paid by, such new members, and subject to the terms and conditions of the Company's Operating Agreement.

## VII. OPERATING AGREEMENT

The Operating Agreement of the Company will be executed by each member of the Company and will set forth all provisions for the affairs of the Company and the conduct of its business to the extent that such provisions are not inconsistent with law or these Articles.

## VIII. CONTINUATION ON WITHDRAWAL OF MEMBER

The members will have the right to continue the Company on the death, retirement, resignation, expulsion, bankruptcy or dissolution of a member or occurrence of any event which terminates the continued membership of a member in the Company (collectively, "Withdrawal"), as long as there are at least two remaining members, and the remaining members agree to continue the Company by unanimous written consent within 90 days after the Withdrawal of a member, as set forth in the Operating Agreement of the Company.

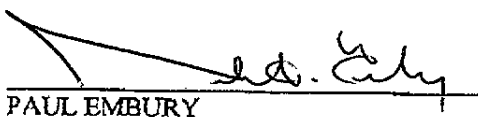
## IX. LIABILITIES OF MEMBERS AND MANAGERS

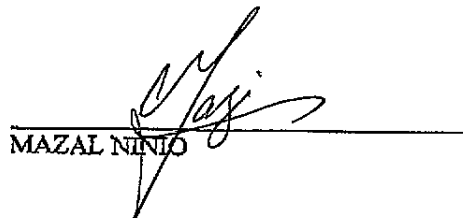
Members and managers of the Company are not liable under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the Company.

## X. MANAGERS

The name and business address of the managers are Paul Embury and Mazal Ninio at 6405 N.W. 36<sup>th</sup> Street, Suite 107, Miami, Florida. The managers may be removed and replaced by the Members only as provided in the Operating Agreement.

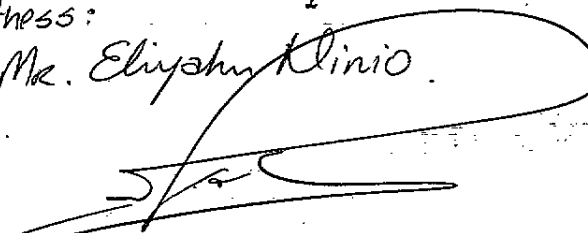
IN WITNESS WHEREOF, the undersigned have caused these Articles of Organization to be executed on the 11 day of Dec, 1998.

  
PAUL EMBURY

  
MAZAL NINIO

witness:

Mr. Elisha Clinio



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## **OPERATING AGREEMENT FOR OSCEOLA TOBACCO, L.C.**

The undersigned, currently the sole members of the Company, do hereby enter into this contract and operating agreement for operation of the above named limited liability company, hereinafter referred to as the "company" or "entity".

### **I.**

#### **Contract and Intent of the Parties**

This operating agreement is a contract between its parties [the members and the company] and is enforceable against any party who violates its terms. All members must sign this operating agreement as a condition precedent of membership.

### **II.**

#### **Office**

The principal office of the company is located at 6405 N.W. 36<sup>th</sup> Street, Miami, Florida. The company may have such other offices, either within or without the state as the members may designate or as the business of the company may require. The registered office of the company as required by the Act to be maintained in the state of Florida may be, but need not be, identical with the principal office, if within the state of Florida, and may be changed from time to time by the members.

### **III.**

#### **Purpose**

The Company is organized for any legal and lawful purpose as permitted by Section 608.40 of the Florida Limited Liability Company Act, except for the purpose of bank or insurance.

### **IV.**

#### **Duration of the Company**

The company shall commence immediately, upon the filing of the articles of organization with the Office of the Florida Secretary of State and shall terminate 40 years thereafter unless otherwise agreed by the Members.

### **V.**

#### **Allocation of Profits and Losses**

Each year prior to thirty [30] days of filing the K-1 return, the members, by majority of capital and profits interest vote, shall determine who is to receive, and in what ratio, the income tax special allocations of profits and losses.

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DIVISION OF CORPORATIONS  
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**VI.  
Capital Contributions**

As the needs of the company require, the members agree to share in all post formation capital contributions, profits and surplus of the company according to the percentage of their beneficial interest. New members may be required to make a capital contribution as a condition of becoming a member. Conditions of membership are to be determined on a case by case basis by the existing members. Each member owns an undivided beneficial interest in the business and company based on their capital accounts.

**VII.  
Additional Capital Contributions**

When any additional capital deemed necessary for the operation of the company, provided, however, that in the event any member deems it advisable to refuse or fails to contribute his share of any or all of the additional capital, then the other members or any one of them may contribute the additional capital not paid in by such refusing member and shall receive therefore an increase in the proportional capital contributed. Unless otherwise agreed, the right to make up additional capital contributions of a refusing member shall be available in the same order as the right to purchase in the case of withdrawal or death of a member, as set forth in paragraph XVII and XVIII.

**VIII.  
Division of Profits and Losses**

Each member shall own a profit interest in the company as set forth in paragraph VI, entitled "Capital Contributions" except as the same may hereafter vary or change as provided in paragraph VII, entitled "Additional Capital Contributions". All profits of the company shall be shared by each member according to their respective percentage of capital interest. A separate capital account shall be maintained for each member. No member shall make any withdrawals from capital without prior approval of the company. If the capital account of the member becomes impaired, his share of subsequent company profits shall be first credited to his capital account until that account has been restored.

**IX.  
Rights and Duties of the Parties**

This entity is to be member managed. Company decisions and actions shall be decided by a vote of majority-in-capital interest of the membership, at meetings regularly called with notice to all members. For purposes of determining a "majority-in-capital interest", a member's interest will be his capital interest in as set forth in paragraph VI, and a majority will mean more than fifty percent (50%).

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JAN 27 PM 2:31

**X.**  
**Costs and Expenses**

Except as herein provided, no member owner shall be separately compensated on a salaried basis for service performed in carrying out the operation of the company. No salaries or individual compensation shall be otherwise payable, without consent of the company, for the normal management. Although the company shall, at all times, employ non-members at a designated salary, members may act in any capacity and serve with or without compensation.

**XI.**  
**Member Duties and Restrictions**

A) No member, without the consent of the members or pursuant to this agreement, may endorse any note or act as an accommodation party, or otherwise become surety for any person in any transaction involving this company. Without the consent of the company or pursuant to this agreement, no member shall, on behalf of the company, borrow or lend money, or make, deliver or accept any commercial paper, or execute any mortgage, security agreement, bond, or lease, or purchase or contract to purchase, or sell or contract to sell any property for or of the company. No member owner shall, except with the consent of the other members or pursuant to this agreement, mortgage, grant a security interest in its share in the member's interests or in the company, its capital assets or property, or do any act detrimental to the best interest of the company or which would make it impossible to carry on the ordinary purpose of the company.

B) The company will be managed by its members. From time to time the managers may allocate specific managerial activities among the various employed staff.

C) Managers are the chief executive officers of the company and responsible for the general overall supervision of the business and affairs of the company. They will preside at meetings of the members. The managers may sign, on behalf of the company, deeds, mortgages, bonds, contracts or other instruments which have been appropriately authorized to be executed by the members, except in the cases where the signing or execution is expressly delegated by the members or by this agreement or by statute to some other officer or agent of the company. In general, the manager will perform all duties as may be prescribed by the members from time to time.

- D) The specific authority and responsibility of the manager includes:
1. To undertake activities to effectuate this agreement and decisions of the members.
  2. To direct and supervise the operation of the company.

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3. Within parameters a may be set by the members, to establish charges for services and products of the company as may be necessary to provide adequate income for the efficient operation of the company.
4. Within the budget established by the members, to set and adjust wages and rates of pay for all personnel of the company and to appoint, hire and dismiss all personnel and regulate their hours of work.
5. To keep the members advised in all matters pertaining to the operation of the company, including services rendered, operating income and expense, financial position, and to this end, shall prepare and submit a report to the members at each regular meeting and at other times as may be directed by the members.

#### **XII. Indemnification**

The Company may indemnify any member, manager, employee or agent against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with action, suit or proceeding, if the members determine that he acted in good faith in a manner he reasonably believed to be in the best interest of the company. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere or its equivalent, will not in itself create a presumption that the person did or did not act in good faith and in a manner which he reasonably believed to be in the best interest of the company and, with respect to any criminal action or proceeding, has reasonable cause to believe that his conduct was unlawful.

#### **XIII. Banking**

All funds of the company shall be deposited in its name in such checking account or accounts as shall be designated by the manager or the members. All withdrawals therefrom are to be made upon written bank instruments which must be signed by the manager or an authorized member.

#### **XIV. Books**

The company books shall be maintained at the company offices, to be retained by the entity, and each member shall have access thereto. The books shall be kept on a calendar year basis, and shall be closed and balanced at the end of each tax year. Each party to this operating agreement hereby covenants and agrees to cause all known business transactions pertaining to the purpose of

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the company, to be entered properly and completely into said books. The company is to furnish copies of annual financial statements to the members and prepare annual tax returns in a timely manner.

**XV.  
Insurance**

During the course of the term for which this company is formed, the company shall carry liability insurance in such amounts as are deemed appropriate by the managers.

**XVI.  
Voluntary Termination**

If the company is dissolved, the members shall proceed with reasonable promptness to liquidate the company. The assets of the company shall be distributed in the following order:

- A. To pay or provide for the payment of all company liabilities to creditors other than members, and liquidating expenses and obligations;
- B. To pay debts owing to members other than for capital and profits;
- C. To pay debts owing to members in respect to capital; and
- D. To pay debts owing to members in respect to profits.

**XVII.  
Withdrawal of Member by Sale**

Any member desirous of selling his share and interest in the company shall give the right of first refusal to purchase said share and interest to the remaining members at the same price as being offered by a bona fide buyer. Each member electing to purchase has the right to purchase that percentage of the share being sold obtained by dividing his respective percentage of the company by the total percentage of all members electing to purchase. The unanimous consent of all members is required for a member to sell his share to a non-member or for an assignee of a member to become a member.

**XVIII.  
Death of a Member**

In the event of the death of a member when there is more than one member, then the deceased's heir or heirs shall be entitled to only succeed to the economic share and interest of the deceased member. The company may, upon unanimous consent of the remaining members, as soon as practicable, provide a document by which the remaining members personally affirm and accept all the terms, conditions and provisions of this operating agreement binding themselves to continue the same business in writing.

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**XIX.**  
**Distributions**

Prior to dissolution and at least annually as income is received by the company, its accounts determined and tax returns filed, the members shall determine funds available for distribution. Upon liquidation, a reasonable reserve as mutually determined in amount shall be established to cover follow-on or subsequent complaint and warranty construction requirements, if any. Liquidation of the company need not be delayed provided that such amounts are properly escrowed and arrangement made for performance of such services as may be required in the interest of the company. Escrows, reserves or liquidating accounts may be established as escrows or otherwise, which activity need not unduly delay the termination of the company for all other purposes.

**XX.**  
**Amendment of Operating Agreement**

This operating agreement may be altered, amended or repealed and a new operating agreement may be adopted only by a majority vote of the membership at any annual, regular or special meeting of the members.

**XXI**  
**Violation of this Operating Agreement**

Any member who violates any term, condition, or provision of this operating agreement shall keep and save harmless the company's property and shall also indemnify the other members from any and all claims, demands and actions of every kind and nature whatsoever which may arise out of or by reason of such violation of any terms and conditions of this operating agreement.

**XXII**  
**Capital Accounts-Income and Credits of Members**

The company shall maintain for each member a capital account which reflects that member's separate distributive share, whether or not distributed, of each class or item for the company income, gain, loss, deduction, or credit described in the IRS sections 702 and 704. If it is determined that a member's allocation of income, gain, loss, deduction, or credit does not have substantial economic effect then his distributive share of such income, gain, loss, deduction, or credit shall be determined in accordance with his interest in the entity. Any special allocations of income, gain, loss or deduction for each member are to be specified in an exhibit to this agreement. Upon liquidation, members must restore any deficits in offset provisions of the IRS Code that specifically allocated later income to members with negative capital accounts.

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**XXIII**  
**Foreign Qualification**

Management shall not permit the company to engage in any business outside the state of Florida unless and until the company has complied with the requirements necessary to qualify the company as a foreign limited liability company in the jurisdiction in which the company shall conduct business.

**XXIV**  
**Lack of Authority**

No member or manager has the authority or power to act for or on behalf of the company, to do any act that would be binding on the company, or to incur any expenditure that has not been approved by a majority interest or such greater interest required by the operating agreement, the articles of organization or applicable law.

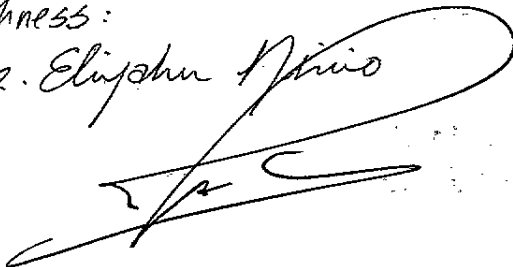
**XV**  
**Counterparts**

This operating agreement may be executed with counterparts, all of which shall be deemed to be one and the same instrument, and it shall be sufficient each party to have executed at least one, but not necessarily the same, counterpart.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective this 11  
day of DECEMBER, 1998.

Witness:

Mr. Elinor Ninio



PAUL EMBURY

MAZAL NINIO

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99 JAN 27 PM 2:48

**CERTIFICATE OF DESIGNATION OF  
REGISTERED AGENT/REGISTERED OFFICE**

PURSUANT TO THE PROVISIONS OF SECTION 608.415 OR 608.507, FLORIDA STATUTES, THE UNDERSIGNED LIMITED LIABILITY COMPANY SUBMITS THE FOLLOWING STATEMENT IN DESIGNATING THE REGISTERED OFFICE/REGISTERED AGENT, IN THE STATE OF FLORIDA.

1. The name of the limited liability company is:

**OSCEOLA TOBACCO, L.C.**

2. The name and address of the registered agent and office is:

**J.T., Haley**

(Name)

**Haley, Sinagra & Perez, P.A.**

**100 S. Biscayne Boulevard, Suite 800**

(P.O. Box or Mail Drop Box **NOT** ACCEPTABLE)

**Miami, Florida 33131**

(City/State/Zip)

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99 JAN 27 PM 2:48

*Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.*

  
(Signature)

12-18-98  
(Date)

**Filing Fee: \$35 for Designation of Registered Agent**

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### ARTICLE VII - Affidavit of Membership and Contributions

The undersigned member or authorized representative of a member of \_\_\_\_\_  
OSCEOLA TOBACCO, L.C. \_\_\_\_\_ certifies:

- 1) the above named limited liability company has at least one member;
- 2) the total amount of cash contributed by the member(s) is \$ 5,000.00 ;
- 3) if any, the agreed value of property other than cash contributed by member(s) is \$ -0- ;  
(A description of the property is attached and made a part hereto.); and
- 4) the total amount of cash and property contributed and anticipated to be  
contributed by member(s) is \$ 25,000.00 .

\_\_\_\_\_  
**Signature of a member or an authorized representative of a member.**

(In accordance with section 608.408(3), Florida Statutes, the execution of this affidavit constitutes an affirmation under the penalties of perjury that the facts stated herein are true.)

  
\_\_\_\_\_  
PAUL EMBURY  
AS AUTHORIZED MEMBER  
AND REPRESENTATIVE OF  
OSCEOLA TOBACCO, L.C.