

**Operating Agreement**  
**of**  
**Southern Storage L. L. C.**

This Operating Agreement of Southern Storage L. L. C. is entered into by and among the Members of Southern Storage L. L. C., who are the persons executing this Agreement.

**Article I**  
**Formation and Term**

The Members have formed a limited liability company pursuant to the Tennessee Limited Liability Company Act effective upon the filing of Articles Of Organization with the office of the Tennessee Secretary Of State. The Company shall continue for a period ending on the earlier of:

1. The date on which the Company is voluntarily dissolved by agreement of the Members; or
2. The date on which the Company is dissolved by operation of law, judicial decree, or as otherwise provided in this Agreement.

**Article II**  
**Offices**

The address of the initial Registered Office of the Company is 555 Main Street, Memphis, Tennessee, and the name of its initial Registered Agent at such address is Sam Spade.

The principal office of the Company shall be located at: 555 Main Street, Memphis, Tennessee. The Company may have such other offices, either within or without such State, as the Members may designate or as the business of the Company may require from time to time.

The registered office of the Company required by the Tennessee Limited Liability Company Act to be maintained in the State of Tennessee may be, but need not be, identical with the principal office in the State of Tennessee, and the address of the registered office may be changed from time to time by the Members in accordance with the Tennessee Limited Liability Company Act.

**Article III**  
**Membership Interests and Capital Accounts**

Section A. Membership Interests. A Member's Membership Interest in the Company shall be in proportion to such Member's capital contributions to the Company, as adjusted from time to time, but not less often than annually, to reflect additional contributions, allocations of profit and loss and withdrawals.

Section B. Initial Capital Contributions. The initial capital contribution of each Member shall be as set forth in the minutes of the Organizational Meeting of this Company.

Section C. Additional Capital Contributions. It is the intention of the Members that the Company's business and activities shall be conducted in such a manner that additional capital contributions shall not be required; to that end, the Members shall attempt to conduct activities in such a way that the Company's business can be conducted with the initial capital contributions as augmented by debt financing and proceeds from operations. However, to the extent that additional capital contributions are required, such additional capital contributions may be called for if 80% of the Membership Interests then outstanding agree that such additional capital contributions are required. Such additional capital contributions shall be payable by each Member in proportion to such Member's Membership Interest, unless 80% of the Members should agree that additional capital contributions should be made in a different manner, in which event the Membership Interests of the Members shall be adjusted accordingly. In the event any Member shall fail to make any such additional capital contribution within sixty days of written demand from the remaining Members, then such Member shall be in breach of its obligations hereunder and the Company and the other Members shall have the rights and remedies set forth in this Agreement.

Section D. Loans by Members. Loans by Members to the Company shall not be capital contributions to the Company nor shall loans be credited to the Capital Account of the lending Member or entitle such lending Member to any increase in such Member's share of the Company's profits or of the distributions of the Company or subject such Member to any greater proportion of the losses which the Company may sustain. Loans in accordance with the foregoing sentence shall be a debt due from the Company to such lending Member and shall be, together with accrued interest thereon, reimbursed to the Member making such loan prior to any distribution to the Members in connection with the dissolution of the Company.

Section E. Limitation of Liability. A Member shall not be subject to assessment nor shall a Member be personally liable for any of the debts or obligations of the Company or any of the losses of the Company beyond the Member's capital contributions and the Member's share of undistributed net profits of the Company.

Section F. Capital Accounts. A separate Capital Account shall be maintained for each Member. Each Member's Capital Account shall be increased by:

1. The cumulative amount of cash and the net fair market value of any property that has been contributed to the capital of the Company by such Member (or such Member's predecessors in interest); and
2. The cumulative amount of the Company's net profit that has been allocated to such Member (or such Member's predecessors in interest);

and shall be decreased by:

3. The cumulative amount of the Company's net loss that has been allocated to such Member (or predecessors in interest of such Member);
4. The cumulative amount of cash and the fair market value of all other property that has been distributed to such Member (or predecessors in interest of such Member).

Section G. General. No Member shall receive any interest, salary, or drawing with respect to such Member's capital contributions or Capital Account or for services rendered on behalf of the Company or otherwise in such Member's capacity as a Member of the Company, except as otherwise provided in this Agreement. No Member shall receive any distribution from the Company, except as provided in this Agreement or by law.

#### **Article IV** **Profit and Loss Allocation**

Section A. Net Profit or Net Loss. Net profit or net loss for any fiscal year shall be allocated among the Members in proportion to such Member's Membership Interests when compared to the total Membership Interests of the Company.

Section B. Allocations in General. 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 allocated among the Members in the same proportions as they share net profit or net loss, as the case may be, for any fiscal year. For purposes of determining the net profit, net loss or any other items allocable to any period, net profit, net loss and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Members using any permissible method under Section 706 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

Section C. Distribution of Cash. Cash distributions shall be made to the Members upon the approval of the Members holding at least 50% of the Membership Interests. All cash distributions made to the Members shall be in proportion to their Membership Interests.

Section D. Allocations with Respect to Varying Interests. Allocations and distributions to persons who in any taxable year of the Company were Members for less than the entire taxable year or whose Membership Interest varied during any taxable year shall be made in accordance with whatever reasonable method the Members may choose to implement the provisions of Sections 706(c) of the Internal Revenue Code or similar successor provisions. In order to accomplish this result, the Members may elect not to allocate any net loss attributable to any portion of the Company's taxable year before such Member acquired such Member's interest in the Company.

Section E. Income From Contributed Property. Notwithstanding any provision of this Agreement to the contrary, to the extent required by law, income, gain, loss and deduction attributable to property contributed to the Company by a Member shall be allocated among the Members so as to take into account any variation between the tax basis of the property and the fair market value thereof at the time of contribution, in accordance with the requirements of Section 704(c) of the Internal Revenue Code, as amended, and the applicable Treasury Regulations thereunder.

Section F. Imputed Interest. Notwithstanding any provision of this Agreement to the contrary, in the event the Company is entitled to a deduction for imputed interest under any provision of the Internal Revenue Code on any loan or advance from a Member, such deduction shall be allocated solely to such Member.

Section G. Imputed Distribution to Member. Notwithstanding any provision of this Agreement to the contrary, to the extent the payment of any expenditure by the Company is treated as a distribution to a Member for federal income tax purposes, there

shall be a gross income allocation to such Member in the amount of such distribution.

Section H. Depreciation Recapture. Notwithstanding any provision of this Agreement to the contrary, if items of income or gain to be allocated include income or gain treated as ordinary income for federal income tax purposes because they are attributable to the recapture of depreciation under Section 1245 or 1250 of the Code, then such income or gain, to the extent treated as ordinary income, shall be allocated to, and reported by, the Members in proportion to their then respective cumulative allocations of depreciation.

## **Article V** **Transfer of Membership Interest**

Section A. Transfer of Membership Interests. Subject to the laws of the State of Tennessee and the terms of this Agreement, Membership Interests of the Company shall be transferable upon the books of the Company by the holders thereof, upon surrender and cancellation of certificate(s) for a like number of Membership Interests. No transfer of any Membership Interest shall be permitted unless 80% of the Members, other than the transferring or assigning Members, approve, in writing, the transfer or assignment to the transferee or assignee. The transferee or assignee of any Membership Interest shall have no right to participate in the management of the business and affairs of the Company or to become a Member unless 80% of the Members, other than the transferring or assigning Members, approve, in writing, the transfer or assignment to the transferee or assignee.

Section B. Conditions Precedent to Transfer. Notwithstanding other provisions of this Agreement, no transfer of a Member's Membership Interest shall be effective unless and until all of the following conditions have been satisfied;

1. The instrument of transfer shall be in form and substance satisfactory to the remaining Members;
2. The transferor and transferee named therein shall execute and acknowledge such other instrument or instruments as the remaining Members may deem necessary or desirable to effectuate the acceptance of the transferee as a Member;
3. The transferee shall execute a written acceptance of all of the terms and provisions of this Agreement as, and to the extent that, the same may have been amended; and
4. The transferor or transferee shall pay all reasonable expenses connected with acceptance of a Member, including, but not limited to, legal fees and costs.

Section C. No Dissolution or Termination. The transfer of a Membership Interest in the Company pursuant to the terms of this Agreement shall not dissolve or terminate the Company. No Member shall have the right to have the Company dissolved or to have such Member's capital contribution returned except as provided in this Agreement.

Section D. Prohibition of Assignment. Notwithstanding the provisions of this Article, no sale, exchange or transfer of a Member's Membership Interest may be made if the Membership Interest sought to be sold, exchanged or transferred, when added to

the total of all other Membership Interests sold, exchanged or transferred within the period of twelve consecutive months prior thereto, would result in the termination of the Company under Section 708 of the Code. In the event of a transfer of any Membership Interest, the Members will determine, in their sole discretion, whether or not the Company will elect pursuant to Section 754 of the Internal Revenue Code to adjust the basis of the assets of the Company.

Section E. Withdrawal from the Company. The Company shall have no obligation to purchase some or all of the Company's Membership Interest held by a Member. No Member may partially or completely withdraw from the Company.

Section F. Restrictions on Transfer and Encumbrance. Except as otherwise specifically permitted, each of the Members agrees that he or she will not, without the prior written consent of 80% of the Members, transfer, assign, sell, give, pledge, hypothecate or otherwise encumber his or her Membership Interest, and any attempt to do any of the foregoing without such prior written consent shall be null and void and of no effect.

In the event of a proposed sale or other disposition for value to an outside party of all or any portion of his or her Membership Interest by any Member (the "Seller"), whether voluntary or involuntary, advance written notice thereof shall be given by certified mail, return receipt requested, to the Company and the remaining Members, specifying the name of the prospective purchaser or transferee, the extent of the Membership Interest proposed to be sold or otherwise disposed of (the "Offered Interest"), and the price and all other terms and conditions of the proposed transaction.

For a period of thirty days after its receipt of such notice, the Company shall have the first right and option to purchase the entire Offered Interest on the same terms as are set forth in the notice. The Company may purchase the Offered Interest utilizing such assets, lines of credit or other sources of funds as may be obtained for such purpose. Thereafter, the Offered Interest so purchased by the Company shall be retired; and all further allocations and distributions of the Company to the Members shall be in the proportion which the Membership Interest of each remaining Member bears to the Membership Interests of all remaining Members after retirement of the Offered Interest.

In the event the Company shall not elect to purchase the Offered Interest, for a period of thirty days after the end of the Company's option to purchase period, the remaining Members shall have the first right and option to purchase the entire Offered Interest on the same terms as are set forth in the notice. If more than one Member desires to purchase the Offered Interest, the Offered Interest shall be allocated among those Members desiring to purchase in proportion to the size of their respective Membership Interests.

In the event the Company and the remaining Members shall not elect to purchase the Offered Interest, the Seller shall have the right, for a period of thirty days, to sell or otherwise dispose of the Offered Interest to the proposed purchaser or transferee (the "Purchaser") upon the same terms and conditions and for the same price as were set forth in the Seller's notice to the Company. If such transaction with the Member is not consummated within the period specified above, the Company's and the remaining Members' right to purchase the Offered Interest shall once again be reinstated as set forth herein, and the Seller shall not have the right to sell the Offered Interest to a Purchaser until the Seller has once again complied with all provisions of this Section.

If a sale or other disposition to an outside party is effected in compliance with the

provisions of this Section, the Members shall be deemed to have approved the Purchaser's right to participate in the management of the business and affairs of the Company and to become a Member of the Company.

## **Article VI** **Members**

Section A. Annual Meeting. The annual meeting of the Members shall be held at 9:00 A.M. on the first Tuesday of April in each year, beginning with the year 2001, for the purpose of electing Managers and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day. If the election of Managers shall not be held on the day designated herein for any annual meeting of the Members, or at any adjournment thereof, the Members shall cause the election to be held at a special meeting of the Members as soon thereafter as conveniently may be.

Section B. Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by a Manager or by holders of 20% of the Units of the Company entitled to vote at the meeting.

Section C. Place of Members' Meeting. The Members may designate any place, either within or without the State of Tennessee, as the place of meeting for any annual meeting or for any special meeting called by the Members. A waiver of notice signed by all Members entitled to vote at a meeting may designate any place, either within or without the State of Tennessee, as the place for the holding of such meeting. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal office of the Company in the State of Tennessee.

Section D. Notice of Meeting. Notice shall be given for each special meeting to each Member of record entitled to vote at such meeting stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called. Such notice shall be given not less than ten nor more than sixty days before the date of the meeting in writing, unless oral notice is reasonable under the circumstances. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member's address as it appears on the Units of Equity Ownership transfer books of the Company, with postage thereon prepaid.

Section E. Closing of Transfer Books or Fixing of Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any dividend, or in order to make a determination of Members for any other proper purpose, the Members of the Company may provide that the Units of Equity Ownership transfer books shall be closed for a stated period but not to exceed, in any case, sixty days. If the Units of Equity Ownership transfer books shall be closed for the purpose of determining Members entitled to notice of or to vote at a meeting of Members, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the Units of Equity Ownership transfer books, the Members may fix in advance a date as the record date for any such determination of Members, such date in any case to be not more than sixty days and not less than ten days prior to the date on which the particular action, requiring such determination of Members, is to be taken. If the Units of Equity Ownership transfer books are not closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members, or Members entitled to receive payment of a dividend, the date on which notice of the

meeting is mailed or the date on which the resolution of the Members declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this section, such determination shall apply to any adjournment thereof.

Section F. Voting Lists. The Manager or agent having charge of the Units of Equity Ownership transfer books for Units of Equity Ownership of the Company shall make, at least ten days before each meeting of Members, a complete list of the Members entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of and the number of Units of Equity Ownership held by each, which list, for a period of ten days prior to such meeting, shall be kept on file at the registered office of the Company and shall be subject to inspection by any Member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Member during the whole time of the meeting. The original Units of Equity Ownership transfer book shall be prima facie evidence as to which Members are entitled to examine such list or transfer books or to vote at any meeting of Members.

Section G. Quorum. A majority of the outstanding Units of Equity Ownership of the Company entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of Members. If a quorum is present, the affirmative vote of a majority of the Units of Equity Ownership represented at the meeting and entitled to vote on the subject matter shall be the act of the Members, unless the vote of a greater number or voting by classes is required by the Tennessee Limited Liability Company Act, the Articles Of Organization, or the Operating Agreement. If less than a majority of the outstanding Units of Equity Ownership are represented at a meeting, a majority of the Units of Equity Ownership so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section H. Telephonic Meeting. Members of the Company may participate in any meeting of the Members by means of conference telephone or similar communication if all persons participating in such meeting can hear one another for the entire discussion of the matter(s) to be voted upon. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

Section I. Voting of Units of Equity Ownership. Subject to the provisions of this Article, each outstanding Unit of Equity Ownership shall be entitled to one vote upon each matter submitted to vote at a meeting of Members, except to the extent that the voting rights of the Units of Equity Ownership of any class or classes are limited or denied by the Articles Of Organization.

Section J. Voting of Units of Equity Ownership by Certain Holders. Units of Equity Ownership standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the Bylaws of such corporation may prescribe, or, in the absence of such provision, as the Board of Directors of such corporation may determine. Units of Equity Ownership held by an administrator, executor, guardian or conservator may be voted by such person, either in person or by proxy, without a transfer of such Units of Equity Ownership into the name of such person. Units of Equity Ownership standing in the name of a trustee may be voted by

such trustee, either in person or by proxy, but no trustee shall be entitled to vote Units of Equity Ownership held by such trustee without a transfer of such Units of Equity Ownership into the name of such trustee. Units of Equity Ownership standing in the name of a receiver may be voted by such receiver, and Units of Equity Ownership held by or under the control of a receiver may be voted by such receiver without the transfer thereof into the name of such receiver if authority so to do be contained in an appropriate order of the court by which such receiver was appointed. A Member whose Units of Equity Ownership are pledged shall be entitled to vote such Units of Equity Ownership until the Units of Equity Ownership have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the Units of Equity Ownership so transferred. Units of Equity Ownership standing in the names of two or more persons shall be voted or represented in accordance with the vote or consent of the majority of the persons in whose names the Units of Equity Ownership stand. If only one such person is present in person or by proxy, such person may vote all the Units of Equity Ownership, and all the Units of Equity Ownership standing in the names of such persons are represented for the purpose of determining a quorum. This Section applies to the voting of Units of Equity Ownership by two or more administrators, executors, trustees, or other fiduciaries, unless the instrument or order of court appointing them otherwise directs.

Section K. Action Without a Meeting. Unless prohibited by the Tennessee Limited Liability Company Act any action required to be taken at a meeting of the Members, or any other action which may be taken at a meeting of the Members, may be taken without a meeting if one or more written consents setting forth the action so taken, shall be signed by Members representing not less than 100% of the Units of Equity Ownership entitled to vote with respect to the subject matter thereof, unless a higher percentage is specified in the Articles Of Organization.

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

Section M. Voting by Ballot. Voting by Members on any question or on any election may be voice unless the presiding Manager shall order or any Member shall demand that voting be by ballot.

Section N. Proxies. At all meetings of Members, a Member may vote either in person or by proxy executed in writing by the Member or by such Member's duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Company before or at the time of the meeting. No proxy shall be valid after nine months from the date of its execution, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it, except where an irrevocable proxy is permitted by statute. Any executor, administrator, guardian, trustee or other fiduciary, may give proxies. The Members may, in advance of any annual or special meeting of the Members, prescribe additional regulations concerning the manner of execution and filing of proxies and the validation of the same, which are intended to be voted at any such meeting.

## **Article VII Management and Managers**

Section A. Management of Company. The Company is to be managed by its Managers.

Section B. Management by Members. The business of the Company shall be conducted under the ultimate management of its Members, who shall have authority to act for the Company in all matters. The Members may authorize any Manager or Managers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Company, and such authority may be general or confined to specific instances.

Section C. Election and Term of Office. The Managers of the Company shall be elected annually by the Members at the annual meeting of Members. If the election of Managers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Vacancies may be filled or new offices created and filled at any meeting of the Members. Each Manager shall hold office until his or her successor shall have been duly elected and qualified or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided. Election or appointment of Managers or agents shall not of itself create contract rights.

Section D. Removal. Any Manager or agent elected or appointed by the Members may be removed by the Members whenever in its judgment the best interests of the Company would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section E. Resignation. Any Manager or agent may resign at any time by giving written notice to the Members or the Managers of the Company. Such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section F. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Members for the unexpired portion of the term.

Section G. Manager. The Manager (or in the event there be more than one Manager, the Managers jointly) shall conduct the day-to-day management of the business of the Company. The Manager shall conduct the business of the Company in a manner consistent with the policies and objectives established from time to time by the Members.

Section H. Compensation. The compensation of the Managers shall be fixed from time to time by the Members.

Section I. Rights and Powers of Managers. Rights and powers of the Managers, by way of illustration but not by way of limitation, shall include the right and power to:

1. Authorize or approve all actions with respect to distribution of funds and assets in kind of the Company; acquire, secure or dispose of investments, including, without limitation, selling and otherwise disposing

of assets of the Company, borrowing funds, executing contracts, bonds, guarantees, notes, security agreements, mortgages and all other instruments to effect the purposes of this Agreement; and execute any and all other instruments and perform any acts determined to be necessary or advisable to carry out the intentions and purposes of the Company.

2. Subject to the limitations imposed by this Agreement, admit additional Members in substitution of Members disposing of their interest in the Company.

3. Perform any and all acts necessary to pay any and all organizational expenses incurred in the creation of the Company and in raising additional capital, including, without limitation, reasonable brokers' and underwriters' commissions, legal and accounting fees, license and franchise fees (it being understood that all expenses incurred in the creation of the Company and the commencement of the Company business shall be borne by the Company); and compromise, arbitrate or otherwise adjust claims in favor of or against the Company and to commence or defend against litigation with respect to the Company or any assets of the Company as deemed advisable, all or any of the above matters being at the expense of the Company; and to execute, acknowledge and deliver any and all instruments to effect any and all of the foregoing.

4. Purchase goods or services from any corporation or other form of business enterprise, whether or not such corporation or business enterprise is owned or controlled by, or affiliated with, the Managers or Members, including management services at the usual and customary rates prevailing in the management industry from time to time for similar services.

5. Establish Company offices at such other places as may be appropriate, hire Company employees and consultants, engage counsel and otherwise arrange for the facilities and personnel necessary to carry out the purposes and business of the Company, the cost and expense thereof and incidental thereto to be borne by the Company.

Section J. Obligations of Managers. The Managers shall manage or cause to be managed the affairs of the Company in a prudent and businesslike manner and shall devote such time to the Company affairs as they shall, in their discretion exercised in good faith, determine is reasonably necessary for the conduct of such affairs. In carrying out their obligations, the Managers shall:

1. Obtain and maintain such public liability, hazard and other insurance as may be deemed necessary or appropriate by the Managers, but in any event in an amount sufficient to replace the building(s), together with improvements, and personal property comprising part of the Company's assets.

2. Deposit all funds of the Company in one or more separate bank accounts, using such banks or trust companies as the Managers may designate (withdrawals from such bank accounts to be made upon such signature or signatures as the Managers may designate).

3. Maintain complete and accurate records of all properties owned or leased by the Company and complete and accurate books of account (containing such information as shall be necessary to record allocations and distributions), and make such records and books of account available for inspection and audit by any Member or his duly authorized representative (at the expense of such Member) during the regular business hours and at the principal office of the Company.

4. Prepare and distribute to all Members tax reporting information.

5. Notify all Members of receipt of any notice of default from any lender, within two days after receipt of such notice.

6. Cause to be filed such certificates and do such other acts as may be required by law to qualify and maintain the Company as a limited liability company under all applicable state laws.

7. Maintain a list, in alphabetical order, of all current Members and past Members, together with the mailing address of each Member.

8. Maintain copies of the Articles Of Organization, any amendments thereto and powers of attorney, if any, pursuant to which the execution of the Articles Of Organization have occurred.

9. Maintain copies of present and past documents relating to the operation and business of the Company.

Section K. Reliance upon Managers. No financial institution or any other person, firm or corporation dealing with the Managers shall be required to ascertain whether the Managers are acting in accordance with this Agreement, but such financial institution or such other person, firm or corporation shall be protected in relying upon the deed, transfer or assurance of, and the execution of such instrument or instruments by, the Managers.

## **Article VIII Indemnification**

Section A. Indemnification of Members and/or Managers. The Company shall indemnify any Members and/or Managers who are or were parties, or who are threatened to be made parties, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, including all appeals, by reason of the fact that such Members and/or Managers are or were Members, Managers or employees of the Company, or are or were serving at the request of the Company as directors, trustees, officers or employees of another limited liability company, corporation, partnership, joint venture, trust or other enterprise, against any and all expenses (including reasonable attorneys' fees), judgments, decrees, fines, penalties and amounts paid in settlement, which were actually and reasonably incurred by such Members and/or Managers in connection with such action, suit or proceeding.

Section B. Limitation on Indemnification. The Company shall not indemnify any Members and/or Managers in the event of (i) a breach of such Members and/or Managers' duty of loyalty to the Company or its Members, (ii) acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, (iii) a

transaction from which such Members and/or Managers derived an improper personal benefit, or (iv) acts or omissions for which indemnification is prohibited under the Tennessee Limited Liability Company Act. Any indemnification provided for in this Article (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the Members and/or Managers is proper in the circumstances because such Members and/or Managers had met the applicable standard of conduct set forth in this Article. Such determination shall be made: (a) by the Members by a majority vote of a quorum consisting of Members who were not parties to such action, suit, or proceeding; or (b) by special legal counsel, selected by the Members by vote as set forth in (a) above.

Section C. Advances of Expenses. Expenses of any persons indemnified hereunder, which were incurred in defending against a civil, criminal, administrative or investigative action, suit or proceeding (including all appeals), or threat thereof, may be paid by the Company in advance of the final disposition of such action, suit or proceeding, if authorized by the Members or Managers (whether disinterested or not) following receipt of a written promise by or on behalf of such Members and/or Managers to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Company.

Section D. Not Exclusive. The indemnification provided in this Article shall not be deemed exclusive of any other rights to which persons indemnified may be entitled under any agreement, vote of Members, or disinterested Managers or otherwise, both as to action in the official capacity of such persons and as to action in another capacity while holding such offices, and shall continue as to persons who have ceased to be Managers or Members and shall inure to the benefit of the heirs, executors, and administrators of such persons.

Section E. Purchase of Insurance. The Company may purchase and maintain insurance on behalf of persons who are Members and/or Managers of the Company against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Company would have the power to indemnify him or her against such liability under the provisions of this Agreement or of the laws of the State of Tennessee.

## **Article IX**

### **Written Instruments, Loans and Deposits**

Section A. Written Instruments. Subject always to the specific directions of the Members, all deeds and mortgages made by the Company to which the Company shall be a party shall be executed in its name by a Manager and attested by a Manager. All other written contracts and agreements to which the Company shall be a party shall be executed in its name by any Officer.

Section B. Loans. No loans shall be contracted on behalf of the Company and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Members. Such authority may be general or confined to specific instances.

Section C. Checks, Drafts, Etc. All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Company, shall be signed by such Manager or Managers, agent or agents of the Company and in such manner as shall from time to time be determined by resolution of the Members.

Section D. Deposits. All funds of the Company not otherwise employed shall be deposited from time to time to the credit of the Company in such banks, trust companies or other depositories as the Members may select.

Section E. Managers' and Members' Contracts. No contract or other transaction between the Company and any other corporation shall be affected or invalidated by the fact that any one or more of the Managers or Members of this Company is or are interested in, or is a director or officer, or are directors or officers of such other corporation, and any Manager or Member, individually or jointly, may be a party or parties to or may be interested in any contract or transaction of this Company or in which this Company is interested; and no contract, act or transaction of this Company with any person or persons, firm or association, shall be affected or invalidated by the fact that any Manager or Member of this Company is a party, or are parties to, or interested in, such contract, act, or transaction, or in any way connected with such person or persons, firm or association and each and every person who may become a Member or Manager of this Company is hereby relieved from any liability that might otherwise exist from contracting with the Company for the benefit of such person or any firm or corporation in which such person may be in any way interested.

## **Article X**

### **Certificates for Units of Equity Ownership and Their Transfer**

Section A. Certificates for Units of Equity Ownership. Subject to the provisions of the Tennessee Limited Liability Company Act, certificates representing Units of Equity Ownership of the Company shall be in such form as may be determined by the Members. Such certificates shall be signed by a Manager and countersigned by a Manager of the Company. The signatures of such Managers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the Company itself or an employee of the Company. All certificates for Units of Equity Ownership shall be consecutively numbered or otherwise identified. All certificates shall state the registered holder's name, the number of Units of Equity Ownership represented thereby and the date of issue. The name of the person to whom the Units of Equity Ownership represented thereby are issued, with the number of Units of Equity Ownership and date of issue, shall be entered on the books of the Company. All certificates surrendered to the Company for transfer shall be canceled, and no new certificate shall be issued until the former certificate for a like number of Units of Equity Ownership shall have been surrendered and canceled; except that in the case of a lost, destroyed, or mutilated certificate, a new one may be issued therefor upon such terms and indemnity to the Company as the Members may prescribe.

Section B. Transfers of Units of Equity Ownership. Subject to the rights conferred by the laws of the State of Tennessee, transfers of Units of Equity Ownership of the Company shall be made only on the books of the Company by the holder of record thereof or by the legal representative of such holder who shall furnish proper evidence of authority to transfer, or by an attorney for such holder thereunto authorized by power of attorney duly executed and filed with a Manager of the Company, and only on surrender for cancellation of the certificate for such Units of Equity Ownership. Except as otherwise provided by law, the person in whose name Units of Equity Ownership stand on the books of the Company shall be deemed the owner thereof for all purposes as regards the Company.

Section C. Units of Equity Ownership Regulations. The Members shall have the power and authority to make all such further rules and regulations not inconsistent

with the laws of the State of Tennessee as they may deem expedient concerning the issue, transfer, and registration of certificates representing Units of Equity Ownership of the Company.

Section D. Lost, Stolen, Mutilated or Destroyed Certificates. The Company may issue a new certificate in place of any certificate previously issued by it and alleged to have been lost, stolen or destroyed. The Company may, in its discretion, require the owner or the owner's legal representative to give the Company a bond or an indemnification containing such terms as the Company may require to protect the Company or any person injured by the execution and delivery of a new certificate.

Section E. Certificate Register. The name and address of the Member to whom each certificate is issued, together with the capital contribution and the date of issue, shall be entered in the Certificate Register of the Company. Any and all changes in Members or their amount of capital contribution shall be reflected by the Secretary in the Certificate Register of the Company.

## **Article XI** **Books and Records**

Section A. Books and Records. The books and records of the Company shall be kept at the principal office of the Company or at such other places, within or without the State of Tennessee, as the Members shall from time to time determine.

Section B. Fiscal Year. The fiscal year of the Company shall end on the last day of December in each year.

Section C. Accounting Method. The Company books shall be kept on the accrual basis and in accordance with reasonable accounting principles consistently applied.

Section D. Right of Inspection. Any Member of the Company shall have the right to examine at any reasonable time or times for any purpose, the books and records of account, minutes and records of Members and to make copies thereof. Such inspection may be made by any agent or attorney of the Member. Upon the written request of any Member of the Company, the Company shall mail to such Member the Company's most recent financial statements, showing in reasonable detail the Company's assets and liabilities and the results of the Company's operations.

## **Article XII** **Distributions to Members**

The Members may from time to time declare, and the Company may pay, distributions on its outstanding Units of Equity Ownership in the manner and upon the terms and conditions provided by its Articles Of Organization and the Tennessee Limited Liability Company Act. The Managers may fix a record date for the determination of the Members entitled to receive any dividend or distribution, or any allotment of rights, or to exercise rights in respect to any change, conversion, or exchange of Units of Equity Ownership. The record date so fixed shall be not more than forty-five days prior to the date or event for the purposes of which it is fixed. When a record date is so fixed, only Members of record on that date are entitled to receive the dividend, distribution, or allotment of rights, or to exercise the rights, as the case may be, notwithstanding any transfer of any Units of Equity Ownership on the books of the Company after the record date.

**Article XIII**  
**Dissolution and Termination**

Section A. Dissolution of the Company. Upon the occurrence of any of the following events, the Company shall be dissolved:

1. the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member, or any other occurrence which terminates a Member's membership in the Company, except where the Members, other than the affected Member, vote unanimously to continue the business of the Company;
2. the term of the Company expires;
3. all or substantially all of the assets of the Company are sold or transferred;
4. the Company ceases its business operations; or
5. the Members unanimously vote to dissolve and terminate the Company.

Section B. Death or Incapacity. In the event the Members continue the business under this Article, upon the death or incompetency of a Member, the Member's personal representative, executor or administrator shall have all of the rights of a Member for the purpose of settling the decedent's estate, as well as such power as the decedent or incompetent possessed, to designate an assignee of the Membership Interest and to join with such assignee regarding the provisions of this Agreement which would permit the assignee to become a Member.

Section C. Winding Up Company Affairs. If the Company is dissolved, the business and affairs of the Company shall continue to be governed by this Agreement during the winding up of the Company's business and affairs.

Section D. Liquidation of the Company. Upon the dissolution and/or termination of the Company, the Managers shall proceed with the liquidation of the Company and sale of its assets. The proceeds of such liquidation shall be applied and distributed in the following order or priority:

1. to the payment of the debts and liabilities of the Company (other than any loans or advances that may have been made by the Members to the Company) and expenses of liquidation;
2. to the payment of any loans or advances made to or for the benefit of the Company by a Member;
3. to the setting up of any reserves which the Managers may deem reasonably necessary in order to meet any contingent or unforeseen liabilities or obligations of the Company arising out of, or in connection with, the business of the Company. Said reserves shall be paid over by the Managers to any financial institution, as escrow agent, with trust authority in the State of Tennessee in order to be held by it for the purpose of disbursing such reserves in payment of any of the aforementioned

contingencies or liabilities; and at the expiration of such period as the Managers shall deem advisable, the financial institution shall distribute the balance remaining in the manner provided in this Section; and

4. to the payment of the balance, if any, of the respective capital accounts of the Members.

Section E. Removal of a Member. In the event that any Member has breached his or her obligations hereunder, has committed any act of fraud, or has committed and not, within a reasonable period of time, remedied, any act of bad faith or gross negligence in carrying out its duties as a Member hereunder, then upon the affirmative vote of 80% of the other Members, such breaching Member may be removed, provided such removal will not jeopardize the tax status of the Company.

Section F. Payment to a Removed, Deceased, Bankrupt or Incompetent Member. If a Member has been removed pursuant to this Article, died or been dissolved, been adjudicated bankrupt or been adjudicated incompetent (such Member and any legal successor and/or representative of such Member to be referred to as a "Terminated Member" and such an event to be referred to as a "Terminating Event"), and if the business of the Company is continued, the Terminated Member shall be entitled to receive from the remaining Members the Stipulated Value of the Terminated Member's Membership Interest, as set forth in this Article. If no Stipulated Value has been established and if the remaining Members and the Terminated Member cannot otherwise agree upon the value of the Terminated Member's Membership Interest, then the Terminated Member shall be entitled to receive from the remaining Members the value of such Terminated Member's Membership Interest determined by reference to an appraisal of the assets of the Company. Such appraisal shall be conducted by two appraisers, one appointed by the Terminated Member and the other appointed by the remaining Members, both of whom shall be designated within thirty days after the Terminating Event. The appraisers shall meet within thirty days of such appointment and shall attempt, within forty-five days of such appointment, to agree upon, and give written notice of the appraised value of the Company's assets to the Company, the remaining Members, and Terminated Member. If such written notice is not given during such period, then at any time after such period, either the Terminated Member or the remaining Members, by written notice to the appraisers, may demand that the appraisers designate a third appraiser. After the appointment of the third appraiser, the appraised value shall be the amount included in a written notice agreed upon by at least two of the three appraisers; provided that before agreeing to an appraised value, the third appraiser shall meet at least once with other appraisers to discuss in good faith the appraisal of the Company's assets. If two of the appraisers have not given a written notice within thirty days of the appointment of the third appraiser, the appraised value of the Company's assets shall be determined solely by the third appraiser, who shall give written notice of such value within thirty days of appointment.

Section G. Stipulated Value. Within ninety days following the close of each fiscal year, or at the annual meeting of the Members, the Members shall review the affairs of the Company and may, by unanimous agreement, stipulate the value of all Membership Interests ("Stipulated Value"). After an initial Stipulated Value is agreed upon by the Members, the Members may, at any subsequent annual meeting, unanimously agree that there is no change in the last Stipulated Value or they may by unanimous agreement agree upon a new Stipulated Value. If the Members fail to agree to maintain the last Stipulated Value or to agree upon a new Stipulated Value, then the Members agree that the Stipulated Value shall be deemed to be the last Stipulated Value plus or minus the net profit or net losses of the Company (and less any

distributions made to Members) since the date as of which the last Stipulated Value was fixed. Any Stipulated Value shall be specifically stated in written minutes of a meeting of the Members, and any Stipulated Value so stated shall be deemed incorporated in this Agreement by reference.

Section H. Covenant Not to Withdraw or Dissolve. Notwithstanding any provision of law, each Member hereby covenants and agrees that the Members have entered into this Agreement based on their mutual expectation that all Members will continue as Members and carry out the duties and obligations undertaken by them hereunder and that, except as otherwise expressly stated in this Agreement, no Member shall withdraw from the Company, be entitled to demand or receive a return of such Member's capital contributions or exercise any power to dissolve the Company without the unanimous consent of the Members.

Section I. Violation of Covenant. If a Member attempts to: (i) cause a partition in breach of this Article or (ii) withdraw from the Company or dissolve the Company in breach of this Article, the Company shall continue and such action attempted by the Member shall be null and void.

#### **Article XIV Miscellaneous**

Section A. Return of Capital Contribution. A Member shall not have the right to demand the return of capital contribution except upon dissolution of the Company and liquidation of its assets; in no event shall a Member have the right to demand and receive property other than cash in return for its capital contribution.

Section B. Applicable Law. This Agreement and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Tennessee.

Section C. Captions. Paragraphs, titles, or captions in no way define, limit, extend or describe the scope of this Agreement nor the intent of any of its provisions.

Section D. Validity. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

Section E. Binding Effect. This Agreement shall inure to and bind all Members, as well as their estates, heirs, personal representatives, successors and assigns.

Section F. Interpretation. As used herein, the masculine includes the feminine and neuter and the singular includes the plural.

Section G. Counterparts. This Agreement or any certificate or amendment pursuant thereto may be executed in counterparts, all of which taken together shall be deemed one original agreement, and shall be binding upon all parties hereto notwithstanding that all parties are not signatory to the same counterpart.

Section H. Amendments. This Operating Agreement may be altered, amended, or repealed by the affirmative vote of 80% of the Members at an annual meeting or at a special meeting called for that purpose, provided that a written notice

shall have been sent to each Member of record entitled to vote at such meeting, which notice shall state the alterations, amendments, additions, or changes which are proposed to be made in such Operating Agreement. Only such changes shall be made as have been specified in the notice. The power of the Members to alter, amend or repeal may be expressly limited in the Articles Of Organization.

Section I. Voting of Interests. Subject always to the specific directions of the Members, any interest issued by any other legal entity which is owned or controlled by the Company may be voted at any meeting of such other entity by any Manager of the Company. Whenever, in the judgment of such Manager, it is desirable for the Company to execute a proxy or give a consent in respect to any legal interest issued by any other entity and owned by the Company, such proxy or consent shall be executed in the name of the Company by such Manager without necessity of any authorization by the Members. Any person or persons designated in the manner above stated as the proxy or proxies of the Company shall have full right, power, and authority to vote the legal interest issued by such other entity and owned by the Company the same as if such legal interest might be voted by the Company.

Section J. Notices. All notices under this Agreement shall be in writing and shall be effective either upon personal delivery or if sent by registered or certified mail, postage prepaid, addressed to the last known address of the party to whom such notice is to be given.

Section K. Waiver of Notice. Whenever any notice is required to be given pursuant to the provisions of the Articles Of Organization, the Tennessee Limited Liability Company Act or this Agreement, a waiver thereof, in writing, signed by the person or entity entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

The undersigned, being all of the Members of Southern Storage L. L. C., a limited liability company, by signing below, hereby evidence their adoption and ratification of the foregoing Operating Agreement.

Executed by all of the Members on the dates indicated.

\_\_\_\_\_  
Sam Spade

November \_\_\_\_\_, 2000  
Date

\_\_\_\_\_  
Henry P. Smith

November \_\_\_\_\_, 2000  
Date