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Pennsylvania Public Utility Commission
Bureau of Transportation & Safety
PO Box 3265
Harrisburg, PA 17105-3265
(717) 787-3834

JAN 07 2011

BUREAU OF
TRANSPORTATION & SAFETY

Application for Motor Common Carrier of Property

Please complete all parts of the following application. Incomplete applications will be returned. All questions may be directed to the Bureau of Transportation & Safety at (717) 787-3834.

1. **Legal Name of Applicant** (Individual, Partnership or Corporation)

Borealis Holdings, LLC

2. **Trade Name** (Attach a copy of fictitious name registration if applicable)

DBA Kelly Chrysler Jeep Dodge

3. **Physical Address** (do not use PO Box)

78 Zents Blvd.
Street Address

Brookville, PA 15825
City, State and Zip Code

(814) 849-2277
Telephone Number

Jefferson
County

4. **Mailing Address** (if different from Physical Address)

Same
Street Address

City, State and Zip Code

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JAN 07 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

5. **Attorney** (if applicable)

John Dennison , 814-849-8316
Attorney's Name & Telephone Number for this Filing

293 Main St, Brookville, PA 15825
Attorney's Address

6. Does applicant currently hold PA PUC authority? Yes No (circle one)

If yes, enter current docket number A-00 _____

7. What type of commodity do you intend to transport? passenger cars
& trucks

8. **Form of Organization** (Check one that applies to this application)

Individual

Partnership

Attach a copy of a Partnership Agreement and list the names and addresses of ALL partners.

Corporation

Attach a copy of the Certificate of Incorporation, Certificate of Authority, or the foreign corporation registration. Include a list of all corporate officers/titles and distribution of shares.

LLC or LLP

Attach a copy of the Certificate of Incorporation, Certificate of Authority, or foreign corporation registration. Include a list of all members (even if there is only one member) and title of each member.

9. **Attachment Checklist**

For Corporations:

Copy of Certificate of Incorporation, Certificate of Authority, or the foreign corporation registration.

List of all corporate officers/titles, names of shareholders and distribution of shares.

For LLPs and LLCs Only:

Copy of Certificate of Incorporation, Certificate of Authority, or foreign corporation registration.

List of all members (even if there is only one member) and title of each member.

For Partnerships Only:

Copy of Partnership Agreement.

List the names and addresses of ALL partners.

For ALL Applicants:

- Fictitious Trade Name Registration (if applicable).
- Copy of Current Safety Rating (if available). ?
- Proof of Insurance (See item 5 on instruction sheet).
- Certified check, money order or attorney's check.

10. **Certification**

Applicant certifies that it is not now engaged in any intrastate transportation of property for compensation between points in Pennsylvania and will not engage in said transportation unless and until authorization is received from the Pennsylvania Public Utility Commission.

Applicant further certifies that it understands the requirements of the Pennsylvania Public Utility Commission, especially as they relate to safety and insurance and that it may be subject to civil penalties, suspension or cancellation of the Certificate for failure to comply with Commission requirements.

Applicant further certifies that it understands that it is subject to an annual assessment based upon its reported gross Pennsylvania intrastate revenues; said assessment to help defray expenses incurred in regulating Motor Common Carriers of Property; and acknowledges that failure to report revenue and pay its annual assessment may result in civil penalties, suspension or cancellation of the Certificate.

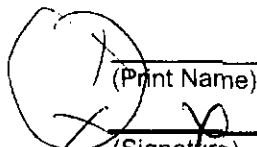
You must sign the following Verification of Application.

Verification of Application

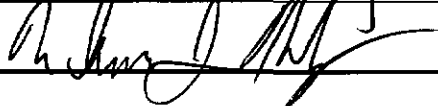
The verification of the application must be completed by the applicant appearing on Line 1 of the application by the named individual, all partners (if a partnership) or by the President or Secretary (if a corporation).

I/we hereby state that the statements made in this application is/are true and correct to the best of my/our knowledge and belief.

The undersigned understands that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 Relating to Unsworn Falsification to Authorities.


William J. Kelly

 (Print Name)


12/21/10

 (Signature) (Date)

*Amendment to
Original
Agreement*

ASSIGNMENT OF MEMBERSHIP INTEREST IN BOREALIS HOLDINGS, LLC

made as of the 2nd day of January, 2007, by and between William S. Kelly, hereinafter referred to as "Assignor",

A
N
D

William J. Kelly, hereinafter referred to as "Assignee",

WHEREAS, the Assignor is the owner of a twenty-five percent (25%) Member Interest in Borealis Holdings, LLC; and

WHEREAS, the Assignor desires to transfer and assign his twenty-five percent (25%) Member Interest in Borealis Holdings, LLC to the Assignee as hereinafter provided.

Now, Therefore, Witnesseth, that for valuable consideration, in hand paid by the Assignee to the Assignor, the receipt whereof the Assignor hereby acknowledges, the parties hereto agree as follows:

1. Assignor hereby assigns, sets over and transfers his twenty-five percent (25%) Member Interest in Borealis Holdings, LLC to the Assignee and further authorizes Borealis Holdings, LLC to reflect the transfer of his Membership Interest on amended Exhibit A to its Operating Agreement dated October 1, 2003.
2. The parties hereto intend to be legally bound.
3. This Assignment is binding upon the parties hereto, their heirs, administrators, executors, successors in interest and assigns.
4. This Assignment shall be effective as of the day and year first above written.

IN WITNESS WHEREOF, the parties hereto have set their signatures to this Assignment.

"Assignor"

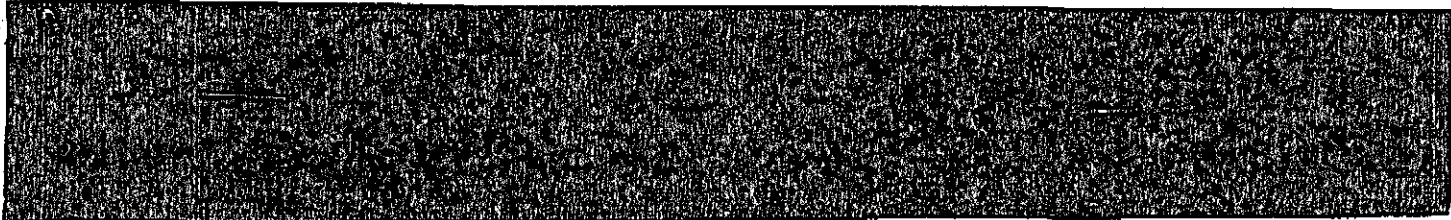
[Signature of William S. Kelly]

William S. Kelly

"Assignee"

[Signature of William J. Kelly]

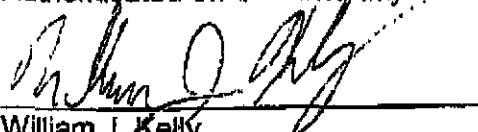
William J. Kelly



Amended Exhibit A to the Operating Agreement dated October 1, 2003, of Borealis Holdings, LLC, to be effective the 2nd day of January, 2007

List of Members	Capital	Percentages of Ownership
William J. Kelly	\$500,000.00	100%

Authenticated on this 2nd day of January, 2007, by William J. Kelly, sole owner.



William J. Kelly

ORIGINAL
agreement

**LIMITED LIABILITY COMPANY
OPERATING AGREEMENT
BOREALIS HOLDINGS, LLC**

This Operating Agreement (this "Agreement") is entered into this 1st day of October, 2003.

Borealis Holding, LLC hereby organizes a limited liability company in accordance with the terms of, and subject to the conditions set forth in, this Agreement.

Section I.

Formation and Name: Office; Purpose; Term

1.1. Organization. A limited liability company shall be organized pursuant to the Law and the provisions of this Agreement.

1.2. Name of the Company. The name of the Company shall be Borealis Holding LLC. The Company may do business under that name trading as Kelly Chrysler and under any other name or names which the Manager selects.

1.3. Purpose. The Company is organized to operate an automobile dealership and may engage in such other endeavors as the Manager may from time to time designate.

1.4. Term. The term of the Company shall begin upon the filing of the Certificate of Organization with the Pennsylvania Department of State and shall continue in existence in perpetuity, unless its existence is sooner terminated pursuant to Section VII of this Agreement.

1.5. Registered Office; Principal Office. The registered office of the Company in the Commonwealth of Pennsylvania shall be located at One Zents Boulevard, Brookville, Pennsylvania or at any other place as selected by the Manager.

1.6. Members. The name and Percentage of each Member are set forth on Exhibit A.

Section II. Defined Terms

The following capitalized terms shall have the meanings specified in this Section. Other terms are defined in the text of this Agreement.

"Adjusted Capital Account Deficit" means, with respect to any Interest Holder, the deficit balance, if any, in the Interest Holder's Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments:

- (i) The deficit shall be decreased by the amounts which the Interest Holder is obligated to restore pursuant to Section 4.4.2, or is deemed obligated to restore pursuant to Regulation Section 1.704-1(b)(2)(ii)(c); and
- (ii) The deficit shall be increased by the items described in Regulation Section 1.704-1(b)(2)(ii)-(d)(4), (5), and (6).

"Adjusted Capital Balance" means, as of any day, an Interest Holder's total Capital Contributions less all amounts actually distributed to the Interest Holder pursuant to Sections 4.2.3.4.1 and 4.4 hereof. If any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Adjusted Capital Balance of the transferor to the extent the Adjusted Capital Balance relates to the Interest transferred.

"Affiliate" means, with respect to any Member, any Person: (i) which owns more than fifty-one percent (51%) of the voting interests in the Member; or (ii) in which the Member owns more than fifty-one percent (51%) of the voting interests; or (iii) in which more than fifty-one (51%) of the voting interests are owned by a Person who has a relationship with the Member described in clause (i) or (ii) above.

"Agreement" means this Agreement, as amended from time to time.

"Capital Account" means the account to be maintained by the Company for each Interest Holder in accordance with the following provisions:

- (i) An Interest Holder's Capital Account shall be credited with the Interest Holder's Capital Contributions, the amount of any Company liabilities assumed by the Interest Holder (or which are secured by Company property distributed to the Interest Holder), the Interest Holder's distributive share of Profit and any item

in the nature of income or gain specially allocated to such Interest Holder pursuant to the provisions of Section IV (other than Section 4.3.3); and

(ii) An Interest Holder's Capital Account shall be debited with the amount of money and the fair market value of any Company property distributed to the Interest Holder, the amount of any liabilities of the Interest Holder assumed by the Company (or which are secured by property contributed by the Interest Holder to the Company), the Interest Holder's distributive share of Loss, and any item in the nature of expenses or losses specially allocated to the Interest Holder pursuant to the provisions of Section IV (other than Section 4.3.3).

If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Interest. If the book value of Company property is adjusted pursuant to Section 4.3.3, the Capital Account of each Interest Holder shall be adjusted to reflect the aggregate adjustment in the same manner as if the Company had recognized gain or loss equal to the amount of such aggregate adjustment. It is intended that the Capital Accounts of all Interest Holders shall be maintained in compliance with the provisions of Regulation Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Regulation.

"Capital Contribution" means the total amount of cash and the fair market value of any other assets contributed (or deemed contributed under Regulation Section 1.704-1(b)(2)(iv)(d)) to the Company by a Member, net of liabilities assumed or to which the assets are subject.

"Capital Proceeds" means the gross receipts received by the Company from a Capital Transaction.

"Capital Transaction" means any transaction not in the ordinary course of business which results in the Company's receipt of cash or other consideration other than Capital Contributions, including, without limitation, proceeds of sales or exchanges or other dispositions of property not in the ordinary course of business, financings, refinancings, condemnations, recoveries of damage awards, and insurance proceeds.

"Cash Flow" means all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any noncash charges, but less cash funds used to pay current operating expenses and to pay or establish

reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by the Manager. Cash Flow shall not include Capital Proceeds but shall be increased by the reduction of any reserve previously established.

"Code" means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

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

"Interest" means a Person's share of the Profits and Losses of, and the right to receive distributions from, the Company.

"Interest Holder" means any Person who holds an Interest, whether as a Member or as an unadmitted assignee of a Member.

"Involuntary Disassociation" means, with respect to any Member, the occurrence of any of the following events:

- (i) The Member makes an assignment for the benefit of creditors;
- (ii) The Member files a voluntary petition of bankruptcy;
- (iii) The Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;
- (iv) The Member files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
- (v) The Member seeks, consents to, or acquiesces in the appointment of a trustee for, receiver for, or liquidation of the Member or of all or any substantial part of the Member's properties;
- (vi) The Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in Subsections (i) through (v);
- (vii) Any proceeding against the Member seeking reorganization,

arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, continues for one hundred twenty (120) days after the commencement thereof, or the appointment of a trustee, receiver, or liquidator for the Member or all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed for one hundred twenty (120) days or, if the appointment is stayed, for one hundred twenty (120) days after the expiration of the stay during which period the appointment is not vacated;

(viii) If the Member is an individual, the Member's death or adjudication by a court of competent jurisdiction as incompetent to manage the Member's person or property;

(ix) If the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust;

(x) If the Member is a partnership or another limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company;

(xi) If the Member is a corporation, the dissolution of the corporation or the revocation of its charter; or

(xii) If the Member is an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

"Law" means the Pennsylvania Limited Liability Company Law of 1994, 15 Pennsylvania Consolidated Statutes, Chapter 89, as amended from time to time.

"Manager" is the Person designated as such in Section V.

"Member" means each Person signing this Agreement and any Person who subsequently is admitted as a member of the Company.

"Member Loan Nonrecourse Deductions" means any Company deductions that would be Nonrecourse Deductions if they were not attributable to a loan made or guaranteed by a Member within the meaning of Regulation Section 1.704-2(i).

"Membership Rights" means all of the rights of a Member in the Company,

including a Member's: (i) Interest; (ii) right to inspect the Company's books and records; (iii) right to participate in the management of and vote on matters coming before the Company; and (iv) unless this Agreement or the Certificate of Organization provide to the contrary, right to act as an agent of the Company.

"Minimum Gain" has the meaning set forth in Regulation Section 1.704-2(d). Minimum Gain shall be computed separately for each Interest Holder in a manner consistent with the Regulations under IRC Section 704(b).

"Negative Capital Account" means a Capital Account with a balance of less than zero.

"Nonrecourse Deductions" has the meaning set forth in Regulation Section 1.704-2(b)(1). The amount of Nonrecourse Deductions for a taxable year of the Company equals the net increase, if any, in the amount of Minimum Gain during that taxable year, determined according to the provisions of Regulation Section 1.704-2(c).

"Nonrecourse Liability" means any liability of the Company with respect to which no Member has personal liability determined in accordance with Code Section 752 and the Regulations promulgated thereunder.

"Percentage" means, as to a Member, the percentage set forth after the Member's name on Exhibit A, as amended from time to time, and as to an Interest Holder who is not a Member, the Percentage of the Member whose Interest has been acquired by such Interest Holder, to the extent the Interest Holder has succeeded to that Member's Interest.

"Person" means and includes any individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

"Positive Capital Account" means a Capital Account with a balance greater than zero.

"Profit" and **"Loss"** mean, for each taxable year of the Company (or other period for which Profit or Loss must be computed) the Company's taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

- (i) All items of income, gain, loss, deduction, or credit required to be stated

separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss;

(ii) Any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss;

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

(iv) Gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes;

(v) In lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and

(vi) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 4.3 hereof shall not be taken into account in computing Profit or Loss.

"Regulation" means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

"Transfer" means, when used as a noun, any voluntary sale, hypothecation, pledge, assignment, attachment, or other transfer; and, when used as a verb, means, voluntarily to sell, hypothecate, pledge, assign, or otherwise transfer.

"Voluntary Withdrawal" means a Member's dissociation with the Company by means other than by a Transfer or an Involuntary Withdrawal.

Section III.
Members; Capital; Capital Accounts

3.1. Initial Capital Contributions. Upon the execution of this Agreement, the Members shall contribute to the Company cash in the amounts respectively set forth on Exhibit A.

3.2. Additional Capital Contributions.

3.2.1. If the Manager at any time or from time to time determines that the Company requires additional Capital Contributions, then the Manager shall give notice to each Member of (i) the total amount of additional Capital Contributions required, (ii) the reason the additional Capital Contribution is required, (iii) each Member's proportionate share of the total additional Capital Contribution (determined in accordance with this Section), and (iv) the date each Member's additional Capital Contribution is due and payable, which date shall be thirty (30) days after the notice has been given. The total additional Capital Contribution which the Manager may require the Members to contribute during the term of this Agreement shall not exceed One Thousand and 00/100 Dollars (\$1,000.00) in the aggregate. A Member's proportionate share of the total additional Capital Contribution shall be equal to the product obtained by multiplying the Member's Percentage and the total additional Capital Contribution required. A Member's proportionate share shall be payable in cash or by certified check.

3.2.2. Except as provided in Section 3.2.1, no Member shall be required to contribute any additional capital to the Company, and no Member shall have any personal liability for any obligation of the Company.

3.2.3. If a Member fails to pay when due all or any portion of any Capital Contribution, the Manager shall request the non-defaulting Members to pay the unpaid amount of the defaulting Member's Capital Contribution (the "Unpaid Contribution"). To the extent the Unpaid Contribution is contributed by any other Member, the defaulting Member's Percentage shall be reduced and the Percentage of each Member who makes up the Unpaid Contribution shall be increased, so that each Member's Percentage is equal to a fraction, the numerator of which is that Member's total Capital Contribution and the denominator of which is the total Capital Contributions of all Interest Holders. The Manager shall amend Exhibit A accordingly. This remedy is in addition to any other remedies allowed by law or by this Agreement.

3.3. No Interest on Capital Contributions. Interest Holders shall not be paid interest on their Capital Contributions.

3.4. Return of Capital Contributions. Except as otherwise provided in this Agreement, no Interest Holder shall have the right to receive the return of any Capital Contribution.

3.5. Form of Return of Capital. If an Interest Holder is entitled to receive a return of a Capital Contribution, the Interest Holder shall not have the right to receive anything but Cash in return of the Interest Holder's Capital Contribution.

3.6. Capital Accounts. A separate Capital Account shall be maintained for each Interest Holder.

3.7. Loans. Any Member may, at any time, make or cause a loan to be made to the Company in any amount and on those terms upon which the Company and the Member agree.

Section IV. Profit, Loss, and Distributions

4.1. Distributions of Cash Flow and Allocations of Profit or Loss Other Than Capital Transactions.

4.1.1. Profit or Loss Other Than from a Capital Transaction. After giving effect to the special allocations set forth in Section 4.3, for any taxable year of the Company, Profit or Loss (other than Profit or Loss resulting from a Capital Transaction, which Profit or Loss shall be allocated in accordance with the provisions of Sections 4.2.1 and 4.2.2) shall be allocated to the Interest Holders in proportion to their Percentages.

4.1.2. Cash Flow. Cash Flow for each taxable year of the Company shall be distributed to the Interest Holders in proportion to their Percentages no later than seventy-five (75) days after the end of the taxable year.

4.1.2 Notwithstanding anything else to the contrary, William S. Kelley and anyone who receives an Interest from him, shall only be entitled to distributions from the Company which equal the amount of any income liability on account of the Profit of the Company being reportable by him on his income tax return or on the income tax

return of a transferee. Except for the amount required to pay the income tax liability of William S. Kelly, all such Profit shall be allocated and/ or distributed to William J. Kelley. In addition, all Losses and Cash Flow shall be allocated or distributed to William J. Kelly.

4.2. Distributions of Capital Proceeds and Allocation of Profit or Loss from Capital Transactions.

4.2.1. Profit. After giving effect to the special allocations set forth in Section 4.3, Profit from a Capital Transaction shall be allocated as follows:

4.2.1.1. If one or more Interest Holders has a Negative Capital Account, to those Interest Holders, in proportion to their Negative Capital Accounts, until all of those Negative Capital Accounts have been reduced to zero.

4.2.1.2. Any Profit not allocated pursuant to Section 4.2.1.1 shall be allocated to the Interest Holders in proportion to, and to the extent of, the amounts distributable to them pursuant to Section 4.2.3.4.1 and 4.2.3.4.3.

4.2.1.3. Any Profit in excess of the foregoing allocations shall be allocated to the Interest Holders in proportion to their Percentages.

4.2.2. Loss. After giving effect to the special allocations set forth in Section 4.3, Loss from a Capital Transaction shall be allocated as follows:

4.2.2.1. If one or more Interest Holders has a Positive Capital Account, to those Interest Holders, in proportion to their Positive Capital Accounts, until all Positive Capital Accounts have been reduced to zero.

4.2.2.2. Any Loss not allocated to reduce Positive Capital Accounts to zero pursuant to Section 4.2.2.1 shall be allocated to the Interest Holders in proportion to their Percentages.

4.2.3. Capital Proceeds. Capital Proceeds shall be distributed and applied by the Company in the following order and priority:

4.2.3.1. To the payment of all expenses of the Company incident to the Capital Transaction; then

4.2.3.2. To the payment of debts and liabilities of the Company then due and outstanding (including all debts due to any Interest Holder); then

4.2.3.3. To the establishment of any reserves which the Manager deems necessary for liabilities or obligations of the Company; then

4.2.3.4. The balance shall be distributed as follows:

4.2.3.4.1. To the Interest Holders in proportion to their Adjusted Capital Balances, until their remaining Adjusted Capital Balances have been paid in full;

4.2.3.4.2. If any Interest Holder has a Positive Capital Account after the distributions made pursuant to Section 4.2.3.4.1 and before any further allocation of Profit pursuant to Section 4.2.1.3, to those Interest Holders in proportion to their Positive Capital Accounts; then

4.2.3.4.3. The balance, to the Interest Holders in proportion to their Percentages.

4.2.3.4.4. Notwithstanding anything else to the contrary, William S. Kelley and anyone who receives an Interest from him, shall only receive distributions from the Company which equal the amount of any income liability on account of such Profit from a Capital Transaction being reportable by him on his income tax return or on the income tax return of a transferee. Except for the amount required to pay the income tax liability of William S. Kelly, the Profit from a Capital Transaction shall be allocated and/ or distributed to William J. Kelley. All Losses from a Capital Transaction shall be allocated to William J. Kelley.

4.3. Regulatory Allocations.

4.3.1. Qualified Income Offset. No Interest Holder shall be allocated Losses or deductions if the allocation causes an Interest Holder to have an Adjusted Capital Account Deficit. If an Interest Holder receives (1) an allocation of Loss or deduction (or item thereof) or (2) any distribution, which causes the Interest Holder to have an Adjusted Capital Account Deficit at the end of any taxable year, then all items of income and gain of the Company (consisting of a *pro rata* portion of each item of Company income, including gross income and gain) for that taxable year shall be allocated to that Interest Holder, before any other allocation is made of Company items for that taxable

year, in the amount and in proportions required to eliminate the excess as quickly as possible. This Section 4.3.1 is intended to comply with, and shall be interpreted consistently with, the "qualified income offset" provisions of the Regulations promulgated under IRC Section 704(b).

4.3.2. Minimum Gain Chargeback. Except as set forth in Regulation Section 1.704-2(f)(2), (3), and (4), if, during any taxable year, there is a net decrease in Minimum Gain, each Interest Holder, prior to any other allocation pursuant to this Section IV, shall be specially allocated items of gross income and gain for such taxable year (and, if necessary, subsequent taxable years) in an amount equal to that Interest Holder's share of the net decrease of Minimum Gain, computed in accordance with Regulation Section 1.704-2(g). Allocations of gross income and gain pursuant to this Section 4.3.2 shall be made first from gain recognized from the disposition of Company assets subject to nonrecourse liabilities (within the meaning of the Regulations promulgated under Code Section 752), to the extent of the Minimum Gain attributable to those assets, and thereafter, from a *pro rata* portion of the Company's other items of income and gain for the taxable year. It is the intent of the parties hereto that any allocation pursuant to this Section 4.3.2 shall constitute a "minimum gain chargeback" under Regulation Section 1.704-2(f).

4.3.3. Contributed Property and Book-ups. In accordance with IRC Section 704(c) and the Regulations thereunder, as well as Regulation Section 1.704-1(b)(2)(iv)(d)(3), income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the Interest Holders so as to take account of any variation between the adjusted basis of the property to the Company for federal income tax purposes and its fair market value at the date of contribution (or deemed contribution). If the adjusted book value of any Company asset is adjusted as provided herein, subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take account of any variation between the adjusted basis of the asset for federal income tax purposes and its adjusted book value in the manner required under IRC Section 704(c) and the Regulations thereunder. The Manager shall determine the applicable method of applying IRC Section 704(c) and the Regulations thereunder.

4.3.4. IRC Section 754 Adjustment. To the extent an adjustment to the tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or

loss (if the adjustment decreases basis), and the gain or loss shall be specially allocated to the Interest Holders in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Regulations.

4.3.5. Nonrecourse Deductions. Nonrecourse Deductions for a taxable year or other period shall be specially allocated among the Interest Holders in proportion to their Percentages.

4.3.6. Member Loan Nonrecourse Deductions. Any Member Loan Nonrecourse Deduction for any taxable year or other period shall be specially allocated to the Interest Holder who bears the risk of loss with respect to the loan to which the Member Loan Nonrecourse Deduction is attributable in accordance with Regulation Section 1.704-2(i).

4.3.7. Guaranteed Payments. To the extent any compensation paid to any Member by the Company, including any fees payable to any Member pursuant to Section 5.3 hereof, is determined by the Internal Revenue Service not to be a guaranteed payment under Code Section 707(c) or is not paid to the Member other than in the Person's capacity as a Member within the meaning of Code Section 707(a), the Member shall be specially allocated gross income of the Company in an amount equal to the amount of that compensation, and the Member's Capital Account shall be adjusted to reflect the payment of that compensation.

4.3.8. Unrealized Receivables. If an Interest Holder's Interest is reduced (provided the reduction does not result in a complete termination of the Interest Holder's Interest), the Interest Holder's share of the Company's "unrealized receivables" and "substantially appreciated inventory" (within the meaning of Code Section 751) shall not be reduced, so that, notwithstanding any other provision of this Agreement to the contrary, that portion of the Profit otherwise allocable upon a liquidation or dissolution of the Company pursuant to Section 4.4 hereof which is taxable as ordinary income (recaptured) for federal income tax purposes shall, to the extent possible without increasing the total gain to the Company or to any Interest Holder, be specially allocated among the Interest Holders in proportion to the deductions (or basis reductions treated as deductions) giving rise to such recapture. Any questions as to the aforesaid allocation of ordinary income (recapture), to the extent such questions cannot be resolved in the manner specified above, shall be resolved by the Manager.

4.3.9. Withholding. All amounts required to be withheld pursuant to Code Section 1445 or 1446 or any other provision of federal, state, or local tax law shall be

treated as amounts actually distributed to the affected Interest Holders for all purposes under this Agreement.

4.4. Liquidation and Dissolution.

4.4.1. If the Company is liquidated, the assets of the Company shall be distributed to the Interest Holders in accordance with the balances in their respective Capital Accounts, after taking into account the allocations of Profit or Loss pursuant to Sections 4.1 or 4.2, if any, and distributions, if any, of cash or property, if any, pursuant to Sections 4.1 and 4.2.3.

4.4.2. No Interest Holder shall be obligated to restore a Negative Capital Account.

4.5. General.

4.5.1. Except as otherwise provided in this Agreement, the timing and amount of all distributions shall be determined by the Manager.

4.5.2. If any assets of the Company are distributed in kind to the Interest Holders, those assets shall be valued on the basis of their fair market value, and any Interest Holder entitled to any interest in those assets shall receive that interest as a tenant-in-common with all other Interest Holders so entitled. Unless the Members otherwise agree, the fair market value of the assets shall be determined by an independent appraiser who shall be selected by the Manager. The Profit or Loss for each unsold asset shall be determined as if the asset had been sold at its fair market value, and the Profit or Loss shall be allocated as provided in Section 4.2 and shall be properly credited or charged to the Capital Accounts of the Interest Holders prior to the distribution of the assets in liquidation pursuant to Section 4.4.

4.5.3. All Profit and Loss shall be allocated, and all distributions shall be made to the Persons shown on the records of the Company to have been Interest Holders as of the last day of the taxable year for which the allocation or distribution is to be made. Notwithstanding the foregoing, unless the Company's taxable year is separated into segments, if there is a Transfer or an Involuntary Withdrawal during the taxable year, the Profit and Loss shall be allocated between the original Interest Holder and the successor on the basis of the number of days each was an Interest Holder during the taxable year; provided, however, the Company's taxable year shall be segregated into two or more segments in order to account for Profit, Loss, or proceeds attributable to a Capital Transaction or to any other extraordinary nonrecurring items of

the Company.

4.5.4. The Manager is hereby authorized, upon the advice of the Company's tax counsel, to amend this Article IV to comply with the Code and the Regulations promulgated under IRC Section 704(b); provided, however, that no amendment shall materially affect distributions to an Interest Holder without the Interest Holder's prior written consent.

**Section V.
Management: Rights, Powers, and Duties**

5.1. Management.

5.1.1. Manager. The Company shall be managed by a Manager, who may, but need not, be a Member. William S. Kelly is hereby designated to serve as the Manager. The Manager shall serve for a term of one year or until its successor has been elected and qualified. The term of the Manager shall automatically renew unless terminated in writing by the Manager or by Members holding at least fifty-one percent (51%) of the Percentages held by all members.

5.1.2. General Powers. The Manager shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated, and to make all decisions affecting such business and affairs, including without limitation, for Company purposes, the power to:

5.1.2.1. Acquire by purchase, lease, or otherwise, any real or personal property, tangible or intangible;

5.1.2.2. Construct, operate, maintain, finance, and improve, and to own, sell, convey, assign, mortgage, or lease any real estate and any personal property;

5.1.2.3. Sell, dispose, trade, or exchange Company assets in the ordinary course of the Company's business;

5.1.2.4. Enter into agreements and contracts and to give receipts, releases, and discharges;

5.1.2.5. Purchase liability and other insurance to protect the Company's

properties and business;

5.1.2.6. Borrow money for and on behalf of the Company, and, in connection therewith, execute and deliver instruments authorizing the confession of judgment against the Company;

5.1.2.7. Execute or modify leases with respect to any part or all of the assets of the Company;

5.1.2.8. Prepay, in whole or in part, refinance, amend, modify, or extend any mortgages or deeds of trust which may affect any asset of the Company and in connection therewith to execute for and on behalf of the Company any extensions, renewals, or modifications of such mortgages or deeds of trust;

5.1.2.9. Execute any and all other instruments and documents which may be necessary or in the opinion of the Manager desirable to carry out the intent and purpose of this Agreement, including, but not limited to, documents whose operation and effect extend beyond the term of the Company;

5.1.2.10. Make any and all expenditures which the Manager, in its sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities under this Agreement, including, without limitation, all legal, accounting, and other related expenses incurred in connection with the organization and financing and operation of the Company;

5.1.2.11. Enter into any kind of activity necessary to, in connection with, or incidental to, the accomplishment of the purposes of the Company; and

5.1.2.12. Invest and reinvest Company reserves in short-term instruments or money market funds.

5.1.3. Extraordinary Transactions. Notwithstanding anything to the contrary in this Agreement, the Manager shall not undertake any of the following without the approval of the Members:

5.1.3.1. Any Capital Transaction;

5.1.3.2. The Company's lending more than \$1000.00 on any one occasion;

5.1.3.3. The admission of additional Members to the Company;

5.1.3.4. The Company's engaging in business in any jurisdiction which does not provide for the registration of limited liability companies;

5.1.3.5. The Company's electing to exercise any Purchase Option pursuant to Section 6.4; and

5.1.3.6. Any act in violation of Section 8942 of the Law.

5.1.4. Limitation on Authority of Members.

5.1.4.1. No Member is an agent of the Company solely by virtue of being a Member, and no Member has authority to act for the Company solely by virtue of being a Member.

5.1.4.2. This Section 5.1 supersedes any authority granted to the Members pursuant to Section 8941 of the Law. Any Member who takes any action or binds the Company in violation of this Section 5.1 shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

5.1.5. Resignation of Manager. The Manager may resign upon ninety (90) days written notice to the Members, after which notice the Members may elect a new Manager.

5.1.6. Removal of Manager. The Members, at any time and from time to time and for any reason, may remove the Manager then acting and elect a new Manager.

5.2. Meetings of and Voting by Members.

5.2.1. A meeting of the Members may be called at any time by the Manager or by those Members holding at least fifty-one percent (51%) of the Percentages then held by Members. Meetings of Members shall be held at the Company's principal place of business or at any other place in Pennsylvania designated by the Person calling the meeting. Not less than ten (10) nor more than ninety (90) days before each meeting, the Person calling the meeting shall give written notice of the meeting to each Member

entitled to vote at the meeting. The notice shall state the time, place, and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting the Member signs a waiver of the notice which is filed with the records of Members' meetings, or is present at the meeting in person or by proxy. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person or by proxy of Members holding not less than fifty-one percent (51%) of the Percentages then held by Members constitutes a quorum. A Member may vote either in person or by written proxy signed by the Member or by his duly authorized attorney-in-fact.

5.2.2. Except as otherwise provided in this Agreement, the affirmative vote of members holding fifty-one percent (51%) or more of the Percentages then held by Members shall be required to approve any matter coming before the Members.

5.2.3. In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating the consent of Members holding a majority of the Percentages then held by Members.

5.2.4. Except as otherwise provided in this Agreement, wherever the Law requires unanimous consent to approve or take any action, that consent shall be given in writing and, in all cases, shall mean, rather than the consent of all Members, the consent of Members holding one hundred percent (100%) or more of the Percentages then held by Members.

5.3. Personal Services.

5.3.1. No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the Manager, no Member shall perform services for the Company or be entitled to compensation for services performed for the Company.

5.3.2. Unless approved by Members holding at least Sixty (60%) of the Percentages then held by Members, the Manager shall not be entitled to compensation for services performed for the Company. However, upon substantiation of the amount and purpose thereof, the Manager shall be entitled to reimbursement for expenses reasonably incurred in connection with the activities of the Company.

5.4. Duties of Parties.

5.4.1. The Manager shall devote such time to the business and affairs of the Company as is necessary to carry out the Manager's duties set forth in this Agreement.

5.4.2. Except as otherwise expressly provided in Section 5.4.3, nothing in this Agreement shall be deemed to restrict in any way the rights of any Member, or of any Affiliate of any Member, to conduct any other business or activity whatsoever, and the Member shall not be accountable to the Company or to any Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to their respective rights (or the rights of their respective Affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of any other Member or the Member's Affiliates.

5.4.3. Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms.

5.5. Liability and Indemnification.

5.5.1. The Manager shall not be liable, responsible, or accountable, in damages or otherwise, to any Member or to the Company for any act performed by the Manager within the scope of the authority conferred on the Manager by this Agreement, except for fraud, gross negligence, or an intentional breach of this Agreement.

5.5.2. The Company shall indemnify the Manager for any act performed by the Manager within the scope of the authority conferred on the Manager by this Agreement, except for fraud, gross negligence, or an intentional breach of this Agreement.

5.6. Power of Attorney.

5.6.1. Grant of Power. Each Member constitutes and appoints the Manager as the Member's true and lawful agent and attorney-in-fact ("Attorney-in-Fact"), and in the Member's name, place and stead, to make, execute, sign, acknowledge, and file:

5.6.1.1. one or more certificates of organization;

5.6.1.2. all documents (including amendments to articles of

organization) which the Attorney-in-Fact deems appropriate to reflect any amendment, change, or modification of this Agreement;

5.6.1.3. any and all other certificates or other instruments required to be filed by the Company under the laws of the Commonwealth of Pennsylvania or of any other state or jurisdiction, including, without limitation, any certificate or other instruments necessary in order for the Company to continue to qualify as a limited liability company under the laws of the Commonwealth of Pennsylvania;

5.6.1.4. one or more fictitious or trade name certificates; and

5.6.1.5. all documents which may be required to dissolve and terminate the Company and to cancel its certificate of organization.

5.6.2. Irrevocability. The foregoing power of attorney is irrevocable and is coupled with an interest, and, to the extent permitted by applicable law, shall survive the death or disability of a Member. It also shall survive the Transfer of an Interest, except that if the transferee is approved for admission as a Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the Attorney-in-Fact to execute, acknowledge, and file any documents needed to effectuate the substitution. Each Member shall be bound by any representations made by the Attorney-in-Fact acting in good faith pursuant to this power of attorney, and each Member hereby waives any and all defenses which may be available to contest, negate, or disaffirm the action of the Attorney-in-Fact taken in good faith under this power of attorney.

Section VI. Transfer of Interests and Withdrawals of Members

6.1. Transfers.

6.1.1. No Person may Transfer all or any portion of or any interest or rights in the Person's Membership Rights or Interest unless the following conditions ("Conditions of Transfer") are satisfied:

6.1.1.1. The Transfer will not require registration of Interests or Membership Rights under any federal or state securities laws;

6.1.1.2. The transferee delivers to the Company a written instrument

agreeing to be bound by the terms of Section VI of this Agreement.

6.1.1.3. The Transfer will not result in the termination of the Company pursuant to IRC Section 708;

6.1.1.4. The Transfer will not result in the Company being subject to the Investment Company Act of 1940, as amended;

6.1.1.5. The transferor or the transferee delivers the following information to the Company: (i) the transferee's taxpayer identification number; and (ii) the transferee's initial tax basis in the Transferred Interest; and

6.1.1.6. The transferor complies with the provisions set forth in Section 6.1.4.

6.1.2. If the Conditions of Transfer are satisfied, then a Member or Interest Holder may Transfer all or any portion of that Person's Interest. The Transfer of an Interest pursuant to this Section 6.1 shall not result, however, in the Transfer of any of the transferor's other Membership Rights, if any, and the transferee of the Interest shall have no right to: (i) become a Member; (ii) exercise any Membership Rights other than those specifically pertaining to the ownership of an Interest; or (iii) act as an agent of the Company.

6.1.3. Each Member hereby acknowledges the reasonableness of the prohibition contained in this Section 6.1 in view of the purposes of the Company and the relationship of the Members. The Transfer of any Membership Rights or Interests in violation of the prohibition contained in this Section 6.1 shall be deemed invalid, null and void, and of no force or effect. Any Person to whom Membership Rights are attempted to be transferred in violation of this Section shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive distributions from the Company or have any other rights in or with respect to the Membership Rights.

6.1.4. Right of First Offer.

6.1.4.1. If an Interest Holder (a "Transferor") desires to Transfer all or any portion of, or any interest or rights in, the Transferor's Interest (the "Transferor Interest"), the Transferor shall notify the Company of that desire (the "Transfer Notice"). The Transfer Notice shall describe the Transferor Interest. The Company shall have the option (the "Purchase Option") to purchase all of the Transferor's Interest for a price (the "Purchase Price") an amount equal to the Appraised Value as determined pursuant to

Section 6.4.

6.1.4.2. The Purchase Option shall be and remain irrevocable for a period (the "Transfer Period") ending at 11:59 p.m., local time, at the Company's principal office on the thirtieth (30th) day following the Transfer Notice is given to the Company.

6.1.4.3. At any time during the Transfer Period, the Company may elect to exercise the Purchase Option by giving written notice of its election to the Transferor. The Transferor shall not be deemed a Member for the purpose of voting on whether the Company shall elect to exercise the Purchase Option.

6.1.4.4. If the Company elects to exercise the Purchase Option, the Company's notice of its election shall fix a closing date (the "Transfer Closing Date") for the purchase, which shall not be earlier than five (5) days after the date of the notice of election or more than thirty (30) days after the expiration of the Transfer Period.

6.1.4.5. If the Company elects to exercise the Purchase Option, the Purchase Price shall be paid in cash on the Transfer Closing Date.

6.1.4.6. If the Company fails to exercise the Purchase Option, the Transferor shall be permitted to offer and sell for a period of ninety (90) days (the "Free Transfer Period") after the expiration of the Transfer Period at a price not less than the Purchase Price. If the Transferor does not Transfer the Transferor Interest within the Free Transfer Period, the Transferor's right to Transfer the Transferor Interest shall cease and terminate.

6.1.4.7. Any Transfer of the Transferor Interest made after the last day of the Free Transfer Period or without strict compliance with the terms, provisions, and conditions of this Section and other terms, provisions, and conditions of this Agreement, shall be null, void, and of no force or effect.

6.1.5. Permitted Transfers

6.1.5.1 Notwithstanding anything set forth in this Agreement to the contrary, any Member may at any time, and from time to time, transfer all or any portion of, or any interest or rights in, the Member's Interest to any family member or to another Member owning a Membership Interest. Any family member shall be subject to the provisions of this Agreement as if he or she had been an original signatory hereon.

6.2. Voluntary Withdrawal. No Member shall have the right or power to Voluntarily Withdraw from the Company.

6.3. Involuntary Withdrawal. Immediately upon the occurrence of an Involuntary Withdrawal, the successor of the Withdrawn Member shall thereupon become an Interest Holder but shall not become a Member. If the Company is continued as provided in Section 7.1.3, the successor Interest Holder shall have all the rights of an Interest Holder but shall not be entitled to receive in liquidation of the Interest, pursuant to Section 8933 of the Law, the fair market value of the Member's Interest as of the date the Member involuntarily withdrew from the Company.

6.4. Appraised Value.

6.4.1. The term "Appraised Value" means the appraised value of the Withdrawing Member's equity in the Company's assets as hereinafter provided. Within thirty (30) days after demand by either one or the other, the Company and the Withdrawing Member shall each appoint an appraiser to determine the value of the Withdrawing Member's equity in the Company's Assets. If the two appraisers agree upon this value, they shall jointly render a single written report stating that value. If the two appraisers cannot agree upon the Withdrawing Member's equity value in the Company's assets, they shall each render a separate written report and shall appoint a third appraiser, who shall appraise the Company's assets and determine this value, and shall render a written report of his opinion thereon. Each party shall pay the fees and costs of the appraiser appointed by that party, and the fees and other costs of the third appraiser shall be shared equally by both parties.

6.4.2. The Withdrawing Member's equity value contained in the aforesaid joint written report or written report of the third appraiser, as the case may be, shall be the Appraised Value; provided, however, that if the value of the equity contained in the appraisal report of the third appraiser is more than the higher of the first two appraisals, the higher of the first two appraisals shall govern; and provided, further, that if the value of the equity contained in the appraisal report of the third appraiser is less than the lower of the first two appraisals, the lower of the first two appraisals shall govern.

Section VII.
Dissolution, Liquidation, and
Termination of the Company

7.1. Events of Dissolution. The Company shall be dissolved upon the happening of any of the following events:

7.1.1. When the period fixed for its duration in Section 2.4 has expired;

7.1.2. Upon the unanimous written agreement of all of the Members;

7.1.3. Upon the occurrence of an Involuntary Withdrawal of a Member, unless the remaining Members, within ninety (90) days after the occurrence of the Involuntary Withdrawal, unanimously elect to continue the business of the Company pursuant to the terms of this Agreement; or

7.1.4. Upon the entry of an order of judicial dissolution under Section 8972 of the Law.

7.2. Procedure for Winding Up and Dissolution. If the Company is dissolved, the Manager shall wind up its affairs. On winding up of the Company, the assets of the Company shall be distributed, first, to creditors of the Company, including Interest Holders and the Manager who are creditors, in satisfaction of the liabilities of the Company, and then to the Interest Holders in accordance with Section 4.4.

7.3. Filing of Certificates of Dissolution. If the Company is dissolved, the Manager shall file Certificate of Dissolution with the Department of State of the Commonwealth of Pennsylvania at the time set forth in the Law. If there is no Manager, then the Certificate of Dissolution shall be filed by the remaining Members; if there are no remaining Members, the Certificate shall be filed by the last Person to be a Member; if there is neither a Manager, remaining Members, or a Person who last was a Member, the Certificate shall be filed by the legal or personal representatives of the Person who last was a Member.

Section VIII.

Books, Records, Accounting, and Tax Elections

8.1. Bank Accounts. All funds of the Company shall be deposited in a bank account or accounts maintained in the Company's name. The Manager shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

8.2. Books and Records.

8.2.1. The Manager shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of the transactions with respect to the conduct of the Company's business. The records shall include, but not be limited to, complete and accurate information regarding the state of the business and financial condition of the Company, a copy of the articles of organization and operating agreement and all amendments to the articles and operating agreement; a current list of the names and last known business, residence, or mailing addresses of all Members; and the Company's federal, state, or local tax returns.

8.2.2. The books and records shall be maintained in accordance with sound accounting practices and shall be available at the Company's principal office for examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours.

8.2.3. Each Member shall reimburse the Company for all costs and expenses incurred by the Company in connection with the Member's inspection and copying of the Company's books and records.

8.3. Annual Accounting Period. The annual accounting period of the Company shall be its taxable year. The Company's taxable year shall be selected by the Manager, subject to the requirements and limitations of the Code.

8.4. Reports. Within seventy-five (75) days after the end of each taxable year of the Company, the Manager shall cause to be sent to each Person who was a Member at any time during the accounting year then ended: (i) an annual compilation report, prepared by the Company's independent accountants in accordance with standards issued by the American Institute of Certified Public Accountants; and (ii) a report summarizing the fees and other remuneration paid by the Company to any Member, the Manager or any Affiliate in respect of the taxable year. In addition, within seventy-five (75) days after the end of each taxable year of the Company, the Manager shall cause to be sent to each Person who was an Interest Holder at any time during the taxable year then ended, that tax information concerning the Company which is necessary for preparing the Interest Holder's income tax returns for that year. At the request of any Member, and at the Member's expense, the Manager shall cause an audit of the Company's books and records to be prepared by independent accountants for the

period requested by the Member.

8.5. Tax Matters Partner. The Manager shall be the Company's tax matters partner ("Tax Matters Partner"). If the Manager is not a Member, the Member designated by vote of a majority in interest of the Members shall serve as Tax Matters Partner. The Tax Matters Partner shall have all powers and responsibilities provided in IRC Section 6231, *et seq.* The Tax Matters Partner shall keep all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Partner. The Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Tax Matters Partner in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Partner may not compromise any dispute with the Internal Revenue Service without the approval of the Members.

8.6. Tax Elections. The Manager shall have the authority to make all Company elections permitted under the Code, including, without limitation, elections of methods of depreciation and elections under IRC Section 754. The decision to make or not make an election shall be at the Manager's sole and absolute discretion.

8.7. Title to Company Property.

8.7.1. Except as provided in Section 8.7.2, all real and personal property acquired by the Company shall be acquired and held by the Company in its name.

8.7.2. The Manager may direct that legal title to all or any portion of the Company's property be acquired or held in a name other than the Company's name. Without limiting the foregoing, the Manager may cause title to be acquired and held in its name or in the names of trustees, nominees, or straw parties for the Company. It is expressly understood and agreed that the manner of holding title to the Company's property (or any part thereof) is solely for the convenience of the Company, and all of that property shall be treated as Company property.

Section IX.
General Provisions

9.1. Assurances. Each Member shall execute all such certificates and other documents and shall do all such filing, recording, publishing, and other acts as the

Manager deems appropriate to comply with the requirements of law for the formation and operation of the Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the property of the Company.

9.2. Notifications. Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a "notice") required or permitted under this Agreement must be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, return receipt requested. Any notice to be given hereunder by the Company shall be given by the Manager. A notice must be addressed to an Interest Holder at the Interest Holder's last known address on the records of the Company. A notice to the Company must be addressed to the Company's principal office. A notice delivered personally will be deemed given only when acknowledged in writing by the person to whom it is delivered. A notice that is sent by mail will be deemed given three (3) business days after it is mailed. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees.

9.3. Specific Performance. The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party who may be injured (in addition to any other remedies which may be available to that party) shall be entitled to one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

9.4. Complete Agreement. This Agreement constitutes the complete and exclusive statement of the agreement among the Members. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty. Except as expressly provided otherwise herein, this Agreement may not be amended without the written and unanimous consent of all of the Members.

9.5. Applicable Law. All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the Commonwealth of Pennsylvania.

9.6. Section Titles. The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or

the intent of the provisions hereof.

9.7. Binding Provisions. This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

9.8. Jurisdiction and Venue. Any dispute or matter arising under this Agreement may only be brought before the nearest office of American Arbitration Association to Brookville, Pennsylvania, whose decision shall be final and binding.

9.9. Terms. Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the Person may in the context require.

9.10. Separability of Provisions. Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

9.11. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

9.12. Estoppel Certificate. Each Member shall, within ten (10) days after written request by any Member or the Manager, deliver to the requesting Person a certificate stating, to the Member's knowledge, that: (a) this Agreement is in full force and effect; (b) this Agreement has not been modified except by any instrument or instruments identified in the certificate; and (c) there is no default hereunder by the requesting Person, or if there is a default, the nature and extent thereof. If the certificate is not received within that ten (10) day period, the Manager shall execute and deliver the certificate on behalf of the requested Member, without qualification, pursuant to the power of attorney granted in Section 5.6.

Section X Option to Purchase

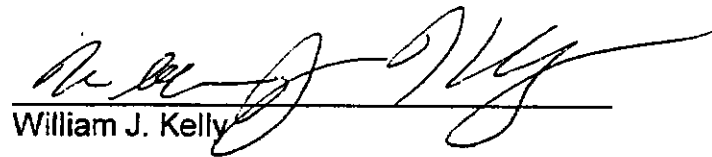
Notwithstanding anything to the contrary as set forth in this Agreement, William

S. Kelly, intending to be legally bound, hereby grants to William J. Kelly an irrevocable option during the term of this Agreement to purchase his full and complete Membership Interest as soon as William J. Kelly is approved as a Dealer by DaimlerChrysler, its successors and assigns. The value of the Membership Interest of William S. Kelley shall conclusively be deemed to be the value of his Capital Account on the day that William J. Kelly signs a Dealer Agreement with DaimlerChrysler, its successors and assigns.

IN WITNESS WHEREOF, the undersigned has signed and executed this Agreement as of the day and year first above written.

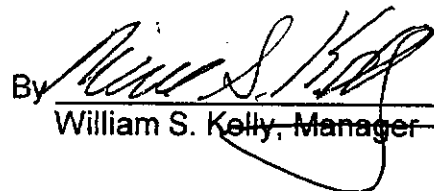


William S. Kelly



William J. Kelly

Borealis Holdings, LLC

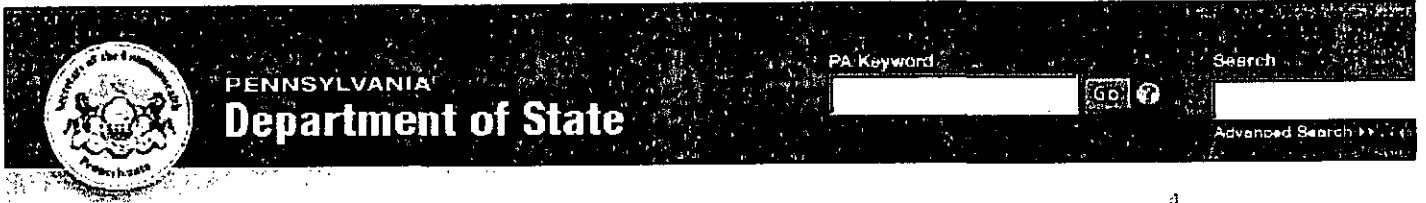
By 

William S. Kelly, Manager

**Limited Liability Company
Operating Agreement**

**Exhibit A
List of Members, Capital, and Percentages**

William S. Kelly	\$00.00	25%
William J. Kelly	\$500,000.00	75%



[DOS Homepage](#)

Entity Details

Acceptance from the State

Request

- [New Request](#)
- Free Search
- [General Name Search](#)
- [Old Name Search](#)
- [Orphan Search](#)

Basic Entity Information

Entity Type (PENNSYLVANIA LIMITED LIABILITY COMPANY (BUSINESS))
Entity Name BOREALIS HOLDINGS, LLC
Entity No. 3167832
Filing Date 10/01/2003 **Letter of Consent** No
Address 1 ZENTS BLVD
 BROOKVILLE Pennsylvania USA 15825
County Jefferson **Jurisdiction** -
Purpose SELL/REPAIR AUTOMOBILES
Limited Authority No

Instrument History

Doc Type	Microfilm #	Micro # Start	Micro # End	Filing Date	Comr
LIMITED LIABILITY COMPANY	2003071	224	225	10/01/2003	

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Entity Details

Acceptance from the State

Request

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Basic Entity Information

Entity Type FICTITIOUS NAME
Entity Name KELLY CHRYSLER JEEP DODGE
Entity No. 3177003
Filing Date 10/09/2003 **Letter of Consent** No
Address 1 ZENTS BOULEVARD
 BROOKVILLE Pennsylvania USA 15825
County Jefferson **Jurisdiction** -
Purpose SELLING AND REPAIRING AUTOMOBILES
Limited Authority No

Fictitious Owners

1 BOREALIS HOLDINGS LLC

Instrument History

Doc Type	Microfilm#	Micro# Start	Micro# End	Filing Date	Comr
FICTITIOUS NAME	-	-	-	10/09/2003	

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< Address Amendment >

**PENNSYLVANIA DEPARTMENT OF STATE
CORPORATION BUREAU**

**Fictitious Name
Amendment, Withdrawal, Cancellation**
(54 Pa.C.S.)

- Amendment (§ 312)
 Withdrawal (§ 313)
 Cancellation (§ 313)

Name		
Address		
City	State	Zip Code

Document will be returned to the name and address you enter to the left.



Commonwealth of Pennsylvania
FICTITIOUS NAME AMENDMENT 3 Page(s)

Fee: \$70



T0726147055

In compliance with the requirements of 54 Pa.C.S. Ch.3 (relating to fictitious names), the undersigned entity or entities, desiring to amend, withdraw or cancel from a fictitious name registration, hereby state(s) that:

1. The fictitious name is:
Kelly Chrysler Jeep Dodge

2. The address of the principal place of business, including number and street, if any, is (the Department is authorized to conform to the records of the Department):

<u>1 Zents Boulevard</u>	<u>Brookville</u>	<u>PA</u>	<u>15825</u>	<u>Jefferson</u>
Number and street	City	State	Zip	County

3. The last preceding filing with respect to this fictitious name was made in the Department on
10/9/03 (Date) at _____ (Roll and Film).

4. A brief statement of the character or nature of the business or other activity to be carried on under or through the fictitious name is:
Selling and repairing automobiles

PA DEPT. OF STATE

SEP 14 2007

5. Check one or more of the following, as appropriate:

The fictitious name has been changed to:

The principal place of business set forth in paragraph 2 has been changed to (PO Box alone not acceptable):

78 Zents Boulevard	Brookville	PA	15825	Jefferson
Number and street	City	State	Zip	County

The following party(ies) has (have) been added to the registration and their signature(s) appear(s) at the end of this application.

Name	Number and street	City	State	Zip
------	-------------------	------	-------	-----

The following party(ies) has (have) withdrawn from the business and their signature(s) appear(s) at the end of this application.

Name	Number and street	City	State	Zip
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The fictitious name registration is cancelled.

6. Check boxes for Application for Amendment Only:

This amendment, without reference to any other filing sets forth all information with respect to the fictitious name which would be required in an original filing under the Fictitious Names Act.

The applicant is familiar with the provisions of 54 Pa.C.S. § 332 (relating to effect of registration) and understands that filing under the Fictitious Names Act does not create any exclusive or other right in the fictitious name.

7. *Optional-See Instruction F:* This application has been executed by an agent heretofore designated for that purpose in a prior filing in this registration.

IN TESTIMONY WHEREOF, the undersigned has (have) caused this Application for Amendment, Withdrawal or Cancellation of/from Fictitious Name to be executed this

31st day of August, 2007.

Adding party(ies) signature(s)

Withdrawing party(ies) signature(s)

All current party(ies) signature(s)

Name of Entity

Title

Name of Entity

Signature

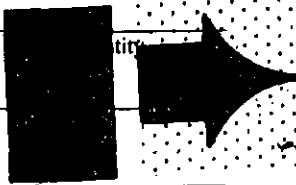
Title

Signature

Title

Title

Manager
Title



A handwritten signature in black ink is written over the signature line of the right party.