EXHIBIT 10.1  
  
  
 LIMITED LIABILITY COMPANY AGREEMENT  
 OF  
 DIVOT - RFG JOINT VENTURE, L.L.C.  
  
  
 This Limited Liability Company Agreement of DIVOT - RFG JOINT VENTURE,  
L.L.C. (the "Company") is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 1998 and is effective as of  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 1998 (this "Agreement") by and between EAGLE GOLF ENTERPRISES,  
INC., a Florida corporation ("EAGLE"), and DIVOT GOLF CORPORATION, a Florida  
corporation ("DIVOT"), as members (collectively, the "Members").  
  
 WHEREAS, the Members desire to operate the Company as a limited  
liability company under the Florida Act for the purposes set forth herein.  
  
 NOW THEREFORE, in consideration of the agreements and obligations set  
forth herein and for other good and valuable consideration, the receipt and  
sufficiency of which are hereby acknowledged, the Members hereby agree as  
follows:  
  
 ARTICLE 1  
  
 DEFINED TERMS  
  
 Section 1.1 Definitions. Unless the context otherwise requires, the  
terms defined in this Article I shall, for the purposes of this Agreement, have  
the meanings herein specified.  
  
 "Affiliate" means with respect to a specified Person, any entity or other  
Person that directly or indirectly controls, is controlled by, or is under  
common control with, the specified Person. As used in this definition, the term  
"control" means the possession, directly or indirectly, of the power to direct  
or cause the direction of the management and policies of an entity, whether  
through ownership of voting securities, by contract or otherwise.  
  
 "Agreement" means this Limited Liability Company Agreement, as amended,  
modified, supplemented or restated from time to time. References in the Florida  
Act to "regulations" shall mean this Agreement.  
  
 "Articles" means the Articles of Organization of the Company and any and  
all amendments thereto and restatements thereof filed on behalf of the Company  
with the office of the Secretary of State of the State of Florida pursuant to  
the Florida Act.  
  
 "Capital Account" means, with respect to any Member, the capital account  
maintained for such Member in accordance with the provisions of Section 4.4  
hereof.  
  
 "Capital Contribution" means, with respect to any Member, the aggregate  
amount of money and the initial Gross Asset Value of any property (other than  
money) contributed to the Company pursuant to Section 4.1 hereof with respect to  
such Member's Interest.  
  
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 "Code" means the Internal Revenue Code of 1986, as amended from time to  
time, or any corresponding federal tax statute enacted after the date of this  
Agreement.  
  
 "Company Minimum Gain Chargeback Allocation" means the allocations  
required by ss.1.704-2(f) of the Treasury Regulations.  
  
 "Covered Person" means a Member; any Affiliate of a Member; the Management  
Committee or any member thereof; any officers, directors, shareholders,  
partners, employees, representatives or agents of a Member, any Affiliate of a  
Member, or the Management Committee; any employee or agent of the Company or its  
Affiliates; any Tax Matters Member of the Company; or the President of the  
Company.  
  
 "Depreciation" means, for each Fiscal Year or other period, an amount  
equal to the depreciation, amortization or other cost recovery deduction  
allowable with respect to an asset for such Fiscal Year or other period;  
provided, however, that if the Gross Asset Value of an asset differs from its  
adjusted basis for federal income tax purposes at the beginning of such Fiscal  
Year or other period, Depreciation shall be an amount that bears the same ratio  
to such beginning Gross Asset Value as the federal income tax depreciation,  
amortization or other cost recovery deduction with respect to such asset for  
such Fiscal Year or other period bears to such beginning adjusted tax basis; and  
provided further, that if the federal income tax depreciation, amortization or  
other cost recovery deduction for such Fiscal Year or other period is zero,  
Depreciation shall be determined with reference to such beginning Gross Asset  
Value using any reasonable method selected by the Management Committee.  
  
 "Fiscal Year" means (i) the period commencing upon the formation of the  
Company and ending on December 31, 1998, (ii) any subsequent twelve (12) month  
period commencing on January 1 and ending on December 31.  
  
 "Florida Act" means Chapter 608, Florida Statutes, as amended from time to  
time.  
  
 "Xxxxx Identification" means the name "Xxxxx," "Xxx Xxxxx" or "Xxxxxxx  
Xxxxx", the likeness, image and endorsement of Xxxxx, the facsimile signature of  
Xxxxxxx Xxxxx and the Eagle Design xxxx, and also including without limitation  
the "Xxxxx Collection Marks" and "Xxx Xxxxx Collection," all as more  
specifically defined or provided for in the License Agreement.  
  
 "Gross Asset Value" means, with respect to any asset, such asset's  
adjusted basis for federal income tax purposes, except as follows:  
  
 (a) the initial Gross Asset Value of any asset contributed by a  
Member to the Company shall be the gross fair market value of such asset, as  
reasonably agreed to by the contributing Member and the Management Committee;  
  
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 (b) the Gross Asset Value of all Company assets shall be adjusted to  
equal their respective gross fair market values, as reasonably determined by the  
Management Committee and all Members, as of the following times: (a) the  
acquisition of an additional interest in the Company by any new or existing  
Member in exchange for more than a de minimis Capital Contribution; (b) the  
distribution by the Company to a Member of more than a de minimis amount of  
Company assets as consideration for an interest in the Company; and (c) the  
liquidation of the Company within the meaning of Treasury Regulation  
ss.1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to Clause  
(a) and Clause (b) of this sentence shall be made only if the Management  
Committee and all Members reasonably determine that such adjustments are  
necessary or appropriate to reflect the relative economic interests of the  
Members in the Company; and  
  
 (c) the Gross Asset Value of any Company asset distributed to any  
Member shall be the gross fair market value of such asset on the date of  
distribution, as reasonably determined by the Management Committee and such  
Member.  
  
 If the Gross Asset Value of an asset has been determined or adjusted  
pursuant to Paragraph (a) or Paragraph (b) above, such Gross Asset Value shall  
thereafter be adjusted by the Depreciation taken into account with respect to  
such asset for purposes of computing Profits and Losses.  
  
 "Interest" means a Person's share of the allocations of the Company and a  
Person's rights to receive distributions of the Company's assets in accordance  
with the provisions of this Agreement and the Florida Act, whether as a Member  
or an assignee of a Member's Interest.  
  
 "License Agreement" means that certain License Agreement between Xxx  
Xxxxx Enterprises, Inc., Xxxxxxx Xxxxx and the Company dated even date  
herewith.  
  
 "Management Committee" has the meaning set forth in Section 6.1 hereof.  
  
 "Member" means any Person named as a member of the Company on Schedule A  
hereto and includes any Person admitted as an Additional Member or a Substitute  
Member pursuant to the provisions of this Agreement, in such Person's capacity  
as a Member of the Company, and "Members" means two (2) or more of such Persons  
when acting in their capacities as Members of the Company. For purposes of the  
Florida Act, the Members shall constitute one (1) class or group of members.  
  
 "Member Minimum Gain Chargeback Allocations" mean the allocations required  
by ss.1.704-2(i)(3) of the Treasury Regulations.  
  
 "Member Nonrecourse Deduction Allocations" mean the allocations required  
by ss.1.704-2(i)(2) of the Treasury Regulations.  
  
 "Xxxxxx Products" means the products listed in the current Xxxxxx Golf  
Catalog (titled "Xxxxxx Golf 1998 Retail Catalog", containing 49 pages) and  
attached to this Agreement as Exhibit "I", and incorporated herein by reference.  
  
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 "Net Cash Flow" means, for each calendar month, Fiscal Year or other  
period of the Company for which it must be determined, the gross cash receipts  
of the Company from all sources other than Capital Contributions, less: (i) all  
amounts actually paid by or for the account of the Company during the same  
period pursuant to budgets, models, expense policies and business plans approved  
by all the Members from time to time; (ii) reasonable reserves for reasonably  
foreseeable expenses and other contingencies described in budgets and business  
plans approved by all the Members; and (iii) payments of principal and interest  
on any Company borrowings from Members or their Affiliates and expenses  
reimbursed to Members or Affiliates, provided they are approved in advance by  
all of the Members. Net Cash Flow shall not be reduced by depreciation,  
amortization, cost recovery deductions, depletion, similar allowances or other  
non-cash items, but shall be increased by any reduction of reserves previously  
established.  
  
 "Nonrecourse Deduction Allocations" means the nonrecourse deductions as  
defined in ss.1.704-2(c) of the Treasury Regulations.  
  
 "Percentage Interest" means a Member's Percentage Interest (from Schedule  
A). The Percentage Interest of EAGLE shall not be diluted without its prior  
written consent. Voting shall at all times be based upon the Members' Percentage  
Interests (including times when the Capital Accounts of all Members is negative  
or zero), except as provided in this Agreement.  
  
 "Person" includes any individual, corporation, association, partnership  
(general or limited), joint venture, trust, estate, limited liability company,  
or other legal entity or organization.  
  
 "Profits" or "Losses" means, for each Fiscal Year, an amount equal to the  
Company's taxable income or loss for such Fiscal Year, determined in accordance  
with ss.703(a) of the Code (but including in taxable income or loss, for this  
purpose, all items of income, gain, loss or deduction required to be stated  
separately pursuant to ss.703(a)(1) of the Code), with the following  
adjustments:  
  
 (a) any income of the Company exempt from federal income tax and not  
otherwise taken into account in computing Profits or Losses pursuant to this  
definition shall be added to such taxable income or loss;  
  
 (b) any expenditures of the Company described in ss.705(a)(2)(B) of  
the Code (or treated as expenditures described in ss.705(a)(2)(B) of the Code  
pursuant to Treasury Regulation ss.1.704-1 (b)(2)(iv)(i)) and not otherwise  
taken into account in computing Profits or Losses pursuant to this definition  
shall be subtracted from such taxable income or loss;  
  
 (c) in the event the Gross Asset Value of any Company asset is  
adjusted in accordance with Paragraph (b) or Paragraph (c) of the definition of  
"Gross Asset Value" above, the amount of such adjustment shall be taken into  
account as gain or loss from the disposition of such asset for purposes of  
computing Profits or Losses;  
  
 (d) gain or loss resulting from any disposition of any asset of the  
Company with respect to which gain or loss is recognized for federal income tax  
purposes shall be computed by reference to the Gross Asset Value of the asset  
disposed of, notwithstanding that the adjusted tax basis of such asset differs  
from its Gross Asset Value;  
  
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 (e) in lieu of the depreciation, amortization and other cost recovery  
deductions taken into account in computing such taxable income or loss, there  
shall be taken into account Depreciation for such Fiscal Year or other period,  
computed in accordance with the definition of "Depreciation" above; and  
  
 (f) notwithstanding any other provisions of this definition, any items  
which are specially allocated pursuant to Section 8.2 hereof shall not be taken  
into account in computing Profits or Losses.  
  
 "Substitute Member" means a Person who is admitted to the Company as a  
Member pursuant to Section 14.1 hereof, and who is named as a Member on an  
amended Schedule A to this Agreement.  
  
 "Tax Matters Member" has the meaning set forth in Section 11.1 hereof.  
  
 "Treasury Regulations" means the income tax regulations, including  
temporary regulations, promulgated under the Code, as such regulations may be  
amended from time to time (including corresponding provisions of succeeding  
regulations).  
  
  
 ARTICLE 2  
  
 FORMATION AND TERM  
  
 Section 2.1 Formation.  
  
 (a) The Members hereby agree to form the Company as a limited  
liability company pursuant to the provisions of the Florida Act, and agree that  
the rights, duties and liabilities of the Members shall be as provided in the  
Florida Act, except as otherwise provided herein.  
  
 (b) The name and mailing address of each Member and the amount  
contributed to the capital of the Company shall be listed on Schedule A attached  
hereto. The Management Committee shall be required to update Schedule A from  
time to time as necessary to accurately reflect the information therein. Any  
amendment or revision to Schedule A made in accordance with this Agreement shall  
not be deemed an amendment to this Agreement. Any reference in this Agreement to  
Schedule A shall be deemed to be a reference to Schedule A as amended and in  
effect from time to time.  
  
 (c) The Members, or an authorized person on their behalf, shall  
execute, deliver and file the Articles and any and all amendments thereto and  
restatements thereof.  
  
 Section 2.2 Name. The name of the Company formed and continued is  
DIVOT - RFG JOINT NEW VENTURE, L.L.C., or such other name as in available under  
the Florida Act and agreed upon by all of the Members. The business of the  
Company may be conducted upon compliance with all applicable laws under any  
other name designated by the Management Committee, provided that any name  
containing "Eagle" or "Xxxxx" or any part of the Xxxxx Identification shall  
require prior written consent of EAGLE.  
  
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 Section 2.3 Term. The term of the Company shall commence on the date  
the Articles are filed in the office of the Secretary of State of the State of  
Florida and shall continue until December 31, 2058, unless the Company is  
dissolved before such date in accordance with the provisions of this Agreement.  
  
 Section 2.4 Registered Agent and Office. The Company's registered  
agent and office in Florida shall be Xxx Xxxxx Xxxx Xxxxxx, Xxxxx 000, 000 Xxxxx  
Xxxxxxxx Xxxxxx, Xxxxx, Xxxxxxx 00000. At any time, the Management Committee may  
designate another registered agent and/or registered office.  
  
 Section 2.5 Principal Place of Business. The principal place of  
business of the Company shall be Xxx Xxxxx Xxxx Xxxxxx, Xxxxx 000, 000 Xxxxx  
Xxxxxxxx Xxxxxx, Xxxxx, Xxxxxxx 00000. At any time, the Management Committee may  
change the location of the Company's principal place of business.  
  
 Section 2.6 Qualification in Other Jurisdictions. Subject to Section  
2.2, the Management Committee shall cause the Company to be qualified, formed or  
registered under assumed or fictitious name statutes or similar laws in any  
jurisdiction in which the Company transacts business. The President of the  
Company shall execute, deliver and file any certificates (and any amendments  
and/or restatements thereof) necessary for the Company to qualify to do business  
in a jurisdiction in which the Company may wish to conduct business.  
  
  
 ARTICLE 3  
  
 PURPOSE AND POWERS OF THE COMPANY  
  
  
  
 Section 3.1 Purpose. The purpose of the Company shall be to distribute  
and market on an exclusive basis various golf products manufactured by DIVOT (or  
by its subsidiaries and other Affiliates, including without limitation, Xxxxxx  
Golf, Inc., a Massachusetts corporation, or any successor business entity of  
Xxxxxx Golf, Inc. (hereinafter "XXXXXX")), such products as are agreed upon in  
writing by EAGLE and DIVOT from time to time, including the Licensed Products so  
agreed upon and described in the License Agreement signed on even date herewith,  
and such additional Licensed Products as may hereafter be agreed upon from time  
to time pursuant to the terms and conditions of the License Agreement. DIVOT  
(and its subsidiaries and other Affiliates, including without limitation,  
XXXXXX) shall cause all business developments, enterprises, ventures, alliances  
and other undertakings or opportunities relating to the manufacture,  
distribution, marketing and sale of golf accessories and golf apparel (including  
but not limited to clothing, shoes, socks and other footwear, gloves, belts,  
hats and headwear, luggage and carry-alls or travel bags, golf bags and covers,  
bag tags, golf-related gifts, divot tools eyewear/sunglasses, club head covers,  
towels, umbrellas and golf jewelry and other golf collectibles) to be directed  
to and undertaken by the Company for its exclusive profit and benefit,  
irrespective of the fact that certain representatives, employees, agents and  
other resources of DIVOT and such subsidiaries and other Affiliates may be  
separately involved in developing such business undertakings and opportunities;  
provided, however, that, notwithstanding anything in this Agreement to the  
contrary, nothing herein shall prevent, limit, or restrict DIVOT or Xxxxxx or  
any of their Affiliates) in its or their manufacture, distribution, or sale of  
the Xxxxxx Products.  
  
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 The Company and its business shall be operated, developed and advanced in  
a manner consistent with the reasonable business judgement and commercial  
standards that an experienced and prudent manager would exercise and be governed  
by when controlling and administering a comparable start-up venture. The  
Company's purposes and business plan shall be implemented and advanced by DIVOT  
and the Management Committee on a best efforts basis, with the primary goals of  
successfully growing its business and maximizing the value of the Members'  
Interests.  
  
 Section 3.2 Powers of the Company. The Company shall have the power  
and authority to take any and all actions necessary, appropriate, proper,  
advisable, incidental or convenient to or for the furtherance of the purpose set  
forth in Section 3.1, including, but not limited to, the power:  
  
 (a) to conduct its business, carry on its operations and have and  
exercise the powers granted to a limited liability company by the Florida Act in  
any state, territory, district or possession of the United States, or in any  
foreign country that may be necessary, convenient or incidental to the  
accomplishment of the purpose of the Company;  
  
 (b) to acquire by purchase, lease, contribution of property or  
otherwise, own, hold, operate, maintain, finance, improve, lease, sell, convey,  
pledge, mortgage, transfer, demolish or dispose of any real or personal property  
that may be necessary, convenient or incidental to the accomplishment of the  
purpose of the Company;  
  
 (c) to enter into, perform and carry out contracts of any kind  
(including contracts with any Member or Affiliate thereof, subject to Section  
6.4) necessary to the accomplishment of the purpose of the Company;  
  
 (d) to xxx and be sued, make claims and defend, and participate in  
administrative or other proceedings, in its name;  
  
 (e) to appoint employees and agents of the Company, and define  
their duties and fix their compensation;  
  
 (f) subject to the provisions of Article 12, to indemnify certain  
Persons in accordance with the Florida Act and to obtain any and all types of  
insurance;  
  
 (g) to borrow money and issue evidences of indebtedness (including  
loans from any Member or Affiliate thereof, subject to Section 6.4) and to  
secure any of the same by a mortgage, pledge or other lien on the assets of  
the Company;  
  
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 (h) to pay, collect, compromise, litigate, arbitrate or otherwise  
adjust or settle any and all other claims or demands of or against the  
Company or to hold such proceeds against the payment of contingent  
liabilities; and  
  
 (i) to make, execute, acknowledge and file any and all documents or  
instruments necessary, convenient or incidental to the accomplishment of the  
purpose of the Company.  
  
  
 ARTICLE 4  
  
 CAPITAL CONTRIBUTIONS, MEMBER INTERESTS,  
 CAPITAL ACCOUNTS AND FUTURE CAPITAL REQUIREMENTS  
  
 Section 4.1 Capital Contributions.  
  
 (a) As set forth on Schedule A hereto, the Members shall make Capital  
Contributions in cash or other property to the Company described therein, and  
shall have original Capital Account balances equal to the amount of such Capital  
Contributions.  
  
 (b) No Member shall be required to make additional Capital  
Contributions without the prior written consent of such Member. The parties  
acknowledge that EAGLE shall not be required to make any additional Capital  
Contributions, or make any loans or advances to the Company, and that the Member  
Interest of EAGLE shall not be diluted without its prior written consent.  
  
 Section 4.2 Additional Contributions, Advances and Efforts of  
DIVOT.  
  
 (a) DIVOT shall also contribute to the Company the full sales,  
distribution, marketing, communications, information systems, financial and  
accounting services (including systems and controls), all production and  
manufacturing, distributing and other resources of DIVOT (and its subsidiaries  
and other Affiliates, including without limitation, XXXXXX), including the time  
services and other benefits of management and administrative personnel of DIVOT  
and its Affiliates. Such resources shall be provided to the Company on an  
as-needed basis, but nevertheless at such times and in a manner consistent with  
the reasonable business judgement and commercial standards that an experienced  
and prudent manager would exercise and be governed by when controlling and  
administering a comparable start-up venture, and with the primary goals of  
successfully growing the Company's business and maximizing the value of the  
Members' Interests.  
  
 (b) The direct incremental costs of providing such services and resources  
to the Company shall be reimbursed by the Company to DIVOT (or XXXXXX or the  
other Affiliate providing the same) the from time to time as sufficient revenue  
is available to the Company. Notwithstanding the foregoing, DIVOT or XXXXXX  
shall provide all executive and management services to the Company at no cost;  
provided, however that after the Company's systems and operations have been  
substantially developed and implemented, and the Management Committee believes  
it to be in the Company's best interest to fully dedicate all of the services of  
one or more persons to the management or administration of the Company, then the  
direct costs of providing such dedicated services to Company shall be a  
reimbursable expense (as hereinafter provided).  
  
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 (c) The determinations of the type and amount of such expenses that are  
reimbursable (and the time for payment thereof by the Company to DIVOT, XXXXXX  
or their Affiliates) shall be made according to a written reimbursement plan,  
policy or model to be jointly developed and agreed upon by the Management  
Committee and all Members, and which in any event shall permit reimbursement of  
expenses related only to the incremental increase in the direct costs (rather  
than indirect costs, such as employee benefits, rent, taxes, professional fees  
not directly related to the Company's business), of providing such services and  
other resources. If the parties cannot agree on such a plan, policy or model  
within 45 days after the date of this Agreement, the Company will retain a  
nationally recognized accounting firm (the fees and costs of which shall be  
borne by the Company) mutually agreeable to the Members, and such accounting  
firm shall develop it for them. The Management Committee and the Members shall  
be bound by such accounting firm's determination.  
  
 (d) The Company shall also enter into such management, services and  
manufacturing agreements with XXXXXX, and any other subsidiaries or Affiliates  
of DIVOT that are to provide services or other resources to the Company  
hereunder (and containing customary and normal terms reasonably acceptable to  
both DIVOT and EAGLE) setting forth the terms of their relationship with the  
Company, and also restricting usage of the Xxxxx Identification and any other  
licensee rights under the License Agreement rights exclusively to the Company.  
  
 Section 4.3 Member's Interest. Each Member shall have the Percentage  
Interest and Interest set forth in Schedule A. A Member's Interest shall for all  
purposes be personal property. A Member has no interest in specific Company  
property, unless and until distributed to such Member.  
  
 Section 4.4 Status of Capital Contributions.  
  
 (a) Except as otherwise provided in this Agreement, the amount of a  
Member's Capital Contributions may be returned to it, in whole or in part, at  
any time, but only with the unanimous consent of the Members.  
  
 (b) No Member or Affiliate thereof shall receive any interest, salary  
or drawing with respect to its Capital Contributions or its Capital Account or  
for services rendered or resources provided on behalf of the Company, except as  
otherwise specifically provided in this Agreement.  
  
 (c) Except as otherwise provided in this Agreement, no Member shall be  
required to lend any funds or make Capital Contributions to the Company or,  
after a Member's Capital Contributions or advances of other resources have been  
fully paid pursuant to Sections 4.1 and 4.2 hereof, to make any additional  
Capital Contributions or advances to the Company. No Member shall have any  
personal liability for the repayment of any Capital Contribution or advances of  
any other Member.  
  
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 Section 4.5 Capital Accounts.  
  
 (a) A separate Capital Account shall be established and maintained for  
each Member. The original Capital Account established for any Member who  
acquires an Interest by virtue of an assignment in accordance with the terms of  
this Agreement shall be in the same amount as, and shall replace, the Capital  
Account of the assignor of such Interest, and, for purposes of this Agreement,  
such Member shall be deemed to have made the Capital Contributions made by the  
assignor of such Interest (or made by such assignor's predecessor in interest).  
To the extent such Member acquires less than the entire Interest of the assignor  
of the Interest so acquired by such Member, the original Capital Account of such  
Member and its Capital Contributions shall be in proportion to the Interest it  
acquires, and the Capital Account of the assignor who retains a partial  
Interest, and the amount of its Capital Contributions, shall be reduced in  
proportion to the Interest it retains.  
  
 (b) The Capital Account of each Member shall be maintained in  
accordance with the following provisions:  
  
 (i) to such Member's Capital Account there shall be credited  
 such Member's Capital Contributions, such Member's distributive share of  
 Profits, special allocations of income and gain, and the amount of any  
 Company liabilities that are assumed by such Member or that are secured by  
 any Company assets distributed to such Member;  
  
 (ii) to such Member's Capital Account there shall be debited  
 the amount of cash and the Gross Asset Value of any Company assets  
 distributed to such Member pursuant to any provision of this Agreement, such  
 Member's distributive share of Losses, special allocations of loss and  
 deduction, and the amount of any liabilities of such Member that are assumed  
 by the Company or that are secured by any property contributed by such Member  
 to the Company; and  
  
 (iii) in determining the amount of any liability for  
 purposes of this Section (b), there shall be taken into account ss.752(c) of  
 the Code and any other applicable provisions of the Code and the Treasury  
 Regulations.  
  
  
 ARTICLE 5  
  
 MEMBERS  
  
  
  
 Section 5.1 Powers of Members. The Members shall have the power to  
exercise any and all rights or powers granted to the Members pursuant to the  
express terms of this Agreement.  
  
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 Section 5.2 Annual Budget and Business Plan. From time to time, but at  
least annually, the Company's officers shall prepare or shall cause to be  
prepared an updated business plan and operating, financing and capital budget  
for the Company, commencing with the first partial Fiscal Year of the Company.  
Each such business plan and budget shall be circulated to the Members for review  
and comment, and upon approval by the Management Committee shall constitute the  
business and budget of the Company for such Fiscal Year. In addition to such  
other limitations as are contained therein, the Company's officers shall make no  
disbursement and shall enter into no binding agreement, without the approval of  
the Management Committee, if such disbursement or binding agreement would be  
inconsistent with (or in light of all available facts and circumstances would  
likely be inconsistent with) the then applicable business plan or budget.  
  
 Section 5.3 Resignation. Except as expressly provided in this Agreement,  
a Member may not withdraw from the Company prior to the dissolution and winding  
up of the Company. If a Member withdraws in violation of the foregoing  
prohibition, such Member shall not be entitled to receive any distributions and  
shall not otherwise be entitled to receive the fair market value of its Interest  
except as otherwise expressly provided for in this Agreement.  
  
 ARTICLE 6  
  
 MANAGEMENT  
  
 Section 6.1 Management of the Company.  
  
 (a) The Management Committee shall consist of XXXXXXXX X. XXXX  
("Xxxx") and four (4) other individuals, all four (4) of whom shall be appointed  
by DIVOT after consultation with all Members. Such four (4) additional members  
of the Management Committee may be removed and replaced at any time and from  
time to time by DIVOT after consultation with all Members. Xxxx shall each serve  
on the Management Committee until he dies, resigns, or is removed by the written  
consent of all of the Members. If Xxxx dies, resigns or is removed by such  
written consent of all Members, then his successor shall be mutually agreeable  
to and appointed by written consent of all of the Members; and the same process  
for written consent to removal/appointment shall continue to apply to all  
successors of Xxxx serving as a member of the Management Committee. The  
authority to vote on actions affecting the Company shall be shared equally among  
the individuals serving on the Management Committee. The Management Committee  
shall meet as often as may be reasonably necessary, as determined in the  
reasonable discretion of the Management Committee members, or at any time upon  
the written demand of a Member. The actions of the Management Committee shall  
bind the Company except as provided herein.  
  
 (b) No decision of the Management Committee shall be made except upon  
majority vote of all of its members at a meeting duly called with at least five  
(5) days notice, specifying the agenda for the meeting (which notice may be  
waived by any of its members, and will be deemed to have been waived if the  
member participates in the meeting and has been provided with an agenda for the  
meeting). Meetings may be held telephonically whereby each of the members  
participating can hear each of the other members. Action by the Management  
Committee may also be taken and represented by a unanimous written consent. The  
Management Committee shall appoint a Secretary who shall be responsible for  
taking minutes of the meetings and safekeeping them on behalf of the Company.  
  
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 (c) Xxxx shall serve as the initial Chief Executive Officer and  
President of the Company ("CEO"), and the CEO shall at all times be responsible  
for the execution of the management actions and decisions and the day-to-day  
operations of the Company, until removed by the written consent of all of the  
Members. If the CEO dies, resigns, or is removed by written consent of all  
Members, then his successor (and all successors in such office succeeding him)  
shall be mutually agreeable to and appointed by the written consent of all of  
the Members. The Management Committee may appoint other individuals to serve as  
officers of the Company, with such titles as it may select, including the titles  
of Vice President, Treasurer and Secretary, to act on behalf of the Company with  
such power and authority as the Management Committee may delegate in writing to  
any such individual, subject to the restrictions and terms of this Agreement;  
provided that no other officer so appointed shall have executive decision-making  
or managerial authority senior to the CEO of the Company (including without  
limitation, the Chairman, if one is appointed), without the written consent of  
all Members.  
  
 (d) A member of the Management Committee may resign at any time by  
giving at least thirty (30) days written notice to the other members of the  
Management Committee (or such shorter time period acceptable to such members).  
The resignation of any member of the Management Committee shall take effect upon  
the expiration of said 30-day period or at such earlier time as determined by  
the Management Committee. Unless otherwise specified in such notice, the  
acceptance of such resignation shall not be necessary to make it effective. His  
successor shall be appointed in the manner provided in Section 6.1(a).  
  
 Section 6.2 Powers of the Management Committee. Except as otherwise  
specifically provided in this Agreement, the Management Committee shall have  
full, exclusive and complete discretion, right, power, and authority to manage,  
control and make all decisions affecting the business and affairs of the Company  
and to do or cause to be done any and all acts, at the expense of the Company on  
the terms provided herein, deemed by the Management Committee to be necessary or  
appropriate to effectuate the business of the Company purposes and objectives of  
the Company as set forth in this Agreement. Except as otherwise specifically  
provided in this Agreement, and without limiting the generality of the  
foregoing, the Management Committee shall have the power and authority to  
execute all documents or instruments, perform all duties and powers and do all  
things for and on behalf of the Company in all matters necessary, desirable,  
convenient or incidental to the business of the Company.  
  
 The expression of any power or authority of the Management Committee in  
this Agreement shall not in any way limit or exclude any other power or  
authority which is not specifically or expressly set forth in this Agreement  
provided the exercise of any such other power or authority is consistent with  
this Agreement and the Florida Act.  
  
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 Section 6.3 No Management by Other Persons. No Person other than the  
Management Committee members and the duly appointed officers of the Company and  
its authorized agents shall take part in the management, or the operation or  
control of the business and affairs of the Company. All such members, officers  
and agents shall at all times comply with the terms and conditions of the  
License Agreement. Except as expressly delegated by the Management Committee or  
as required by the Florida Act, no Person other than the Management Committee  
and the duly appointed officers or other authorized agents of the Company shall  
be an agent of the Company or have any right, power or authority to transact any  
business in the name of the Company or to act for or on behalf of or to bind the  
Company.  
  
 Section 6.4 Restrictions on Authority of the Management Committee and  
President. Notwithstanding anything to the contrary in this Article 6, neither  
the Management Committee nor the President shall have any authority to take any  
of the following actions without the unanimous written consent of all Members:  
  
 (i) To take any action that would cause a breach of or otherwise be  
 inconsistent with the License Agreement (or the stock registration rights  
 agreement relating to the DIVOT stock issued to Licensor or its Affiliates  
 thereunder);  
  
 (ii) To admit any additional Members at any time;  
  
 (iii) To cause the dissolution or liquidation of the Company, the  
 sale of substantially all of its business or assets, or the merger,  
 consolidation or other reorganization of the Company; or  
  
 (iv) To take any action requiring the consent or agreement of all  
 Members pursuant to this Agreement.  
  
 The President and the Management Committee shall also disclose in  
 writing to all Members any and all transactions between the Company and  
 Affiliates of any Member, Management Committee member, and officer or agent  
 of the Company before such transactions are implemented. The other Members,  
 the President and other officers, and the Management Committee shall take no  
 actions that would cause the Company to impair any of EAGLE's (or Xxxxxxx  
 Xxxxx'x or his Affiliates') commercial alliances, agreements, endorsement  
 arrangements or other gainful commitments with other Persons, including  
 without limitation those commitments set forth in the list of "Eagle or Xxx  
 Xxxxx Commitments" attached as Schedule B hereto, and any renewal of such  
 commitments.  
  
 Section 6.5 Reliance by Third Parties. Any Person dealing with the  
Company or the Management Committee may rely upon a certificate signed by the  
Management Committee as to:  
  
 (i) the identity of the Management Committee or any  
 member hereof;  
  
 (ii) the existence or non-existence of any fact or facts which  
 constitute a condition precedent to acts by the Management Committee or in  
 any other manner germane to the affairs of the Company;  
  
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 (iii) the Persons who are authorized to execute and  
 deliver any instrument or document of or on behalf of the Company; or  
  
 (iv) any act or failure to act by the Company or as to any  
 other matter whatsoever involving the Company or any Member.  
  
  
 ARTICLE 7   
  
 AMENDMENTS AND MEETINGS  
  
 Section 7.1 Amendments. Any amendment to this Agreement or the  
Articles shall be adopted and be effective as an amendment thereto only if it  
receives the affirmative vote of all of the Members, or such amendment is in  
writing and executed by all of the Members.  
  
 Section 7.2 Meeting of the Members.  
  
 (a) Meetings of the Members may be called at any time by the  
Management Committee or any Member. Each Member shall in writing authorize an  
individual to represent and act for it by proxy on all matters in which a Member  
is entitled to participate, including waiving notice of any meeting, voting or  
otherwise participating at a meeting, and to provide such consents, approvals or  
agreements of a Member as required in this Agreement. Every such proxy shall be  
signed by the Member.  
  
 (b) Each meeting of Members shall be conducted by the President, and  
such a meeting shall be called with at least five (5) days but not more than  
thirty (30) days notice, specifying the agenda for the meeting. Such notice may  
be waived by any of the Members at any time, and will be deemed to have been  
waived if the Member participates in the meeting and has been provided with a  
written agenda for the meeting. Meetings may also be held telephonically whereby  
each of the Members can hear each of the other Members. The Management  
Committee, in its sole discretion, shall establish all other provisions relating  
to meetings of Members, including the time, place or purpose of any meeting at  
which any matter is to be voted on by any Members, voting in person or by proxy  
or any other matter with respect to the exercise of any such right to vote;  
provided, however, any Member shall have the right to introduce agenda items for  
each meeting. Except as expressly provided in this Agreement or the License  
Agreement (concerning matters affecting the License Agreement), decisions of the  
Members shall be made upon the vote of a majority in Interest of the Members.  
Action by the Members may also be taken and represented by a unanimous written  
consent. The Company's Secretary shall be responsible for taking minutes of the  
Member meetings and safekeeping them on behalf of the Company.  
  
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 ARTICLE 8  
  
 ALLOCATIONS  
  
 Section 8.1 Profits and Losses.  
  
 (a) For each Fiscal Year of the Company, after giving effect to the  
allocation rules of Section 8.2 hereof, net Profits for any Fiscal Year shall be  
allocated as follows:  
  
 (i) First, between the Members in proportion to and in the inverse  
order to which Losses were allocated to them pursuant to Section 8.1(b) below  
until the cumulative Profits allocated pursuant to this Section 8.1(a)(i) equal  
the cumulative Losses allocated pursuant to Section 8.1(b); and  
  
 (ii) Second, between the Members in proportion to their  
Percentage Interests.  
  
 (b) For each Fiscal Year of the Company, after giving effect to the  
allocations required by Section 8.2 hereof, net Losses for any Fiscal Year shall  
be allocated as follows:  
  
 (i) First, between the Members in proportion to and to extent of  
their positive Capital Account balances; and  
  
 (ii)Second, between the Members in proportion to their Percentage  
Interests; provided that no Member shall be allocated Losses in excess of the  
amount of the "economic risk of loss" it bears for the Company's indebtedness,  
as determined under Treasury Regulation 1.752-2 (in which case, the excess Loss  
shall be reallocated to the Member who bears such economic risk of loss for the  
indebtedness, to the extent of the respective amounts of such economic risk of  
loss it bears).  
  
 Section 8.2 Special Allocations.  
  
 (a) The Company shall make the qualified income offset allocation  
required by the alternate test for economic effect under ss.1.704-1(b)(2)(ii)(d)  
of the Treasury Regulations.  
  
 (b) In the event any Member has a deficit Capital Account at the end  
of any Fiscal Year that is in excess of the sum of (i) the amount such Member is  
obligated to restore to the Company pursuant to ss.1.704-1(b)(2)(ii)(c) of the  
Treasury Regulations, (ii) the amount such Member is deemed to be obligated to  
restore pursuant to the next to the last sentence of ss.1.704-2(g)(1) of the  
Treasury Regulations and (iii) the amount such Member is deemed to be obligated  
to restore pursuant to the next to the last sentence of ss.704-2(i)(5) of the  
Treasury Regulations, such Member shall be specially allocated items of Company  
income and gain in the amount of such excess as quickly as possible, provided  
that an allocation pursuant to this Section 8.2(ii) shall be made if and only to  
the extent that such Member would have a deficit Capital Account in excess of  
such sum after all other allocations provided in this Article 8 have been  
tentatively made as if Section 8.2(a) and this Section 8.2(b) were not in the  
Agreement.  
  
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 (c) The Company shall make all (1) Member Nonrecourse Deduction  
Allocations; (2) Member Minimum Gain Chargeback Allocations; and (3) Company  
Minimum Gain Chargeback Allocations.  
  
 (d) The Company shall make all Nonrecourse Deduction Allocations to  
the Members in proportion to their Percentage Interests.  
  
 (e) To the extent an adjustment to the adjusted tax basis of any  
Company asset pursuant to Code ss.734(b) or Code ss.743(b) is required, pursuant  
to ss.1.704-1(b)(2)(iv)(m) of the Treasury Regulations, to be taken into account  
in determining Capital Accounts, the amount of such 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 such basis) and such  
gain or loss shall be specially allocated to the Members in a manner consistent  
with the manner in which their Capital Accounts are required to be adjusted  
pursuant to such Section of the Treasury Regulations.  
  
 (f) The allocations set forth in this Section 8.2 (collectively the  
"Regulatory Allocations") are intended to comply with certain requirements of  
ss.1.704-1 and -2 of the Treasury Regulations. Notwithstanding any other  
provisions of this Article 8 (other than the Regulatory Allocations), the  
Management Committee shall, with the advice and assistance of the Company's tax  
accountants, take the Regulatory Allocations into account in allocating other  
Profits, Losses, and items of income, gain, loss, deduction and Code  
ss.705(a)(2)(B) expenditures among the Members so that, to the extent possible,  
the net amount of such allocations of other Profits, Losses, and other items and  
the Regulatory Allocations to each Member shall be equal to the net amount that  
would have been allocated to each such Member if the Regulatory Allocations had  
not occurred.  
  
 Section 8.3 Allocation Rules.  
  
 (a) In the event Members are admitted to the Company pursuant to this  
Agreement on different dates, the Profits (or Losses) allocated to the Members  
for each Fiscal Year during which Members are so admitted shall be allocated  
among the Members in proportion to their Percentage Interests during such Fiscal  
Year in accordance with ss.706 of the Code, using any convention permitted by  
law and selected by the Management Committee.  
  
 (b) For purposes of determining the Profits, Losses or any other items  
allocable to any period, Profits, Losses and any such other items shall be  
determined on a daily, monthly or other basis, as determined by the Management  
Committee using any method that is permissible under ss.706 of the Code and the  
Treasury Regulations thereunder.  
  
 (c) Except as otherwise provided in this Agreement, all items of  
Company income, gain, loss, deduction and any other allocations not otherwise  
provided for shall be divided among the Members in the same proportions as they  
share Profits and Losses for the Fiscal Year in question.  
  
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 (d) The Members are aware of the income tax consequences of the  
allocations made by this Article 8 and hereby agree to be bound by the  
provisions of this Article 8 in reporting their shares of Company income and  
loss for income tax purposes.  
  
 (e) Solely for purposes of determining a Member's proportionate share  
of the "excess nonrecourse liabilities" of the Company within the meaning of  
Treasury Regulations ss.1.752-3(a)(3), the Members' interests in Company Profits  
shall be in accordance with their Percentage Interests.  
  
 (f) The Management Committee shall have reasonable discretion, with  
respect to each Fiscal Year, to request from the Commissioner of the Internal  
Revenue Service a waiver, pursuant to ss.1.704-2(f)(4) or 1.704-2(i)(4) of the  
Treasury Regulations, of the minimum gain chargeback requirement of ss.  
1.704-2(f) of the Regulations or the member minimum gain chargeback requirement  
of ss.1.704-2(i)(4) of the Treasury Regulations, respectively, if the  
application of such chargeback would cause a permanent distortion of the  
economic arrangement of the Members.  
  
 Section 8.4 Other Tax Allocations: Section 704(c) of the Code.  
  
 (a) In accordance with ss.704(c) of the Code and the Treasury  
Regulations thereunder, income, gain, loss and deduction with respect to any  
property contributed to the capital of the Company shall, solely for income tax  
purposes, be allocated among the Members so as to take account of any variation  
between the adjusted basis of such property to the Company for federal income  
tax purposes and its initial Gross Asset Value (computed in accordance with the  
definition in Section 1.1 hereof).  
  
 (b) In the event the Gross Asset Value of any Company asset is  
adjusted pursuant to Paragraph (ii) of the definition of "Gross Asset Value"  
contained in Section 1.1 hereof, subsequent allocations of income, gain, loss  
and deduction with respect to such asset shall take account of any variation  
between the adjusted basis of such asset for federal income tax purposes and its  
Gross Asset Value in the same manner as under ss.704(c) of the Code and the  
Treasury Regulations thereunder.  
  
 (c) Any elections or other decisions relating to allocations under  
this Section 8.4, including the selection of any allocation method permitted  
under Treasury Regulation ss.1.704-3, shall be made by the Management Committee  
in any manner that reasonably reflects the purpose and intention of this  
Agreement. Allocations pursuant to this Section 8.4 are solely for purposes of  
federal, state and local taxes and shall not affect, or in any way be taken into  
account in computing, any Member's Capital Account or share of Profits, Losses,  
other items or distributions pursuant to any provision of this Agreement.  
  
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 ARTICLE 9   
  
 DISTRIBUTIONS  
  
 Section 9.1 Net Cash Flow. Except as otherwise provided in Article 15  
hereof (relating to the dissolution of the Company), any distribution of the Net  
Cash Flow during any Fiscal Year shall be made to the Members in proportion to  
their Percentage Interests.  
  
 Section 9.2 Distribution Rules.  
  
 (a) Net Cash Flow shall be distributed at such times as the Management  
Committee decides in its reasonable discretion, giving consideration to the  
investment expectations of the Members and customary rates of return for  
participation in similar types of business ventures; provided, however, that at  
a minimum, the Management Committee shall distribute Net Cash Flow on a  
quarterly basis (and in a manner that will allow the Members to timely submit  
estimated federal and state income tax payments utilizing such funds) to the  
extent necessary to cover the federal and aggregate state income taxes  
applicable to the taxable Profits of the Company for the quarter to which the  
quarterly distribution of Net Cash Flow relates. For purposes of computing the  
amount of these minimum distributions, the highest marginal individual tax  
brackets for both federal and state income tax purposes shall be used (and  
including each state where the Company's taxable Profits are subject to income  
tax).  
  
 (b) All amounts withheld pursuant to the Code or any provision of any  
foreign, state or local tax law or treaty with respect to any payment,  
distribution or allocation to the Company or the Members shall be treated as  
amounts distributed to the Members pursuant to this Article 9 for all purposes  
of this Agreement, provided that such amounts are calculated in accordance with  
Section 9.2(a). The Management Committee is authorized to withhold from  
distributions to the Members and to pay over to any federal, foreign, state or  
local government any amounts required to be so withheld pursuant to the Code or  
any provision of any other federal, foreign, state or local law or treaty, and  
shall allocate such amounts to those Members with respect to which such amounts  
were withheld.  
  
 Section 9.3 Limitations on Distribution. Notwithstanding any provision  
to the contrary contained in this Agreement, the Company shall not make a  
distribution to any Member on account of its Interest in the Company if (a)  
there has been no agreement by the Management Committee and the Members relating  
to the plan, policy or model providing for reimbursement of certain expenses of  
DIVOT or its Affiliates as contemplated in Section 4.2 of this Agreement, or (b)  
such distribution would violate the solvency standards under Section 608.426 of  
the Florida Act or other applicable insolvency or fraudulent conveyance laws.  
  
  
 ARTICLE 10  
  
 BOOKS AND RECORDS  
  
 Section 10.1 Inspection Rights Pursuant to Law. Without limiting any  
right which the Members enjoy under the Florida Act, it is agreed that the  
Company shall have obligations to the Members as set forth in Sections 10.2  
through 10.3 respecting books, records and financial statements of the Company.  
  
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 Section 10.2 Books, Records and Financial Statements.  
  
 (a) At all times during the continuance of the Company, the Company  
shall maintain, at its registered office and principal place of business all  
records and materials referred to in Florida Act Section 608.4101, including  
without limitation, separate books of account for the Company that shall show a  
true and accurate record of all costs and expenses incurred, all charges made,  
all credits made and received and all income derived in connection with the  
operation of the Company business in accordance with generally accepted  
accounting principles consistently applied ("GAAP"), and, to the extent  
inconsistent therewith, in accordance with this Agreement. Such books of  
account, together with a certified copy of this Agreement and of the  
Certificate, shall at all times be maintained at the principal place of business  
of the Company and shall be open to inspection, examination and audit at  
reasonable times by each Member and its duly authorized representatives for any  
purpose reasonably related to such Member's interest in the Company. This  
provision shall be in addition to and not in substitution of any approval,  
examination, verification, audit and other rights EAGLE or its Affiliates may  
have under the License Agreement.  
  
 (b) The Management Committee shall prepare and maintain, or shall  
cause to be prepared and maintained, the books of account of the Company. Not  
later than thirty (30) days after the close of each month, the Management  
Committee shall prepare (or shall cause to be prepared) in accordance with GAAP  
financial statements (including balance sheets, income statements and statements  
of cash flows) fairly presenting the financial position, results of operations  
and changes in financial position of the Company as of the end of such calendar  
month or, in the case of calendar months which end coincident with the end of a  
calendar quarter or the end of a Fiscal Year, such calendar quarter or Fiscal  
Year, as the case may be.  
  
 Section 10.3 Accounting Method. For both financial and tax reporting  
purposes and for purposes of determining Profits and Losses, the books and  
records of the Company shall be kept on the accrual method of accounting applied  
in a consistent manner and shall reflect all Company transactions and be  
appropriate and adequate for the Company's business.  
  
  
 ARTICLE 11   
  
 TAX MATTERS  
  
 Section 11.1 Tax Matters Member.  
  
 (a) DIVOT is hereby designated as "Tax Matters Member" of the Company  
for purposes of ss.6231(a)(7) of the Code and shall have the power to manage and  
control, on behalf of the Company, any administrative proceeding at the Company  
level with the Internal Revenue Service relating to the determination of any  
item of Company income, gain, loss, deduction or credit for federal income tax  
purposes.  
  
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 (b) The Tax Matters Member shall, within five (5) business days of the  
receipt of any notice from the Internal Revenue Service in any administrative  
proceeding at the Company level relating to the determination of any Company  
item of income, gain, loss, deduction or credit, mail a copy of such notice to  
each Member.  
  
 Section 11.2 Right to Make Section 754 Election. The Tax Matters  
Member may, upon receiving the written consent of each other Member, make or  
revoke, on behalf of the Company, an election in accordance with ss.754 of the  
Code, so as to adjust the basis of Company property in the case of a  
distribution of property within the meaning of ss.734 of the Code, and in the  
case of a transfer of a Company Interest within the meaning of ss.743 of the  
Code. Each Member shall, upon request of the Tax Matters Member, supply the  
information necessary to give effect to such an election.  
  
 Section 11.3 Taxation as Partnership. The Company shall be  
treated as a partnership for U.S. federal income tax purposes.  
  
 ARTICLE 12  
  
 LIABILITY, EXCULPATION, INDEMNIFICATION  
 AND BUSINESS OPPORTUNITIES  
  
 Section 12.1 Liability.  
  
 (a) Except as otherwise provided by the Florida Act, the debts,  
obligations and liabilities of the Company, whether arising in contract, tort or  
otherwise, shall be solely the debts, obligations and liabilities of the  
Company, and no Covered Person shall be obligated personally for any such debt,  
obligation or liability of the Company solely by reason of being a Covered  
Person.  
  
 (b) Except as otherwise expressly required by law, a Member, in its  
capacity as Member, shall have no liability in excess of (a) the amount of its  
Capital Contributions, (b) its share of any assets and undistributed profits of  
the Company, (c) its obligation to make other payments expressly provided for in  
this Agreement, and (d) the amount of any distributions wrongfully distributed  
to it.  
  
 Section 12.2 Exculpation.  
  
 (a) No Covered Person shall be liable to the Company or any other  
Covered Person for any loss, damage or claim incurred by reason of any act or  
omission performed or omitted by such Covered Person in good faith on behalf of  
the Company and in a manner reasonably believed to be within the scope of  
authority conferred on such Covered Person by this Agreement, except that a  
Covered Person shall be liable for any such loss, damage or claim incurred by  
reason of such Covered Person's gross negligence or willful misconduct.  
  
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 (b) A Covered Person shall be fully protected in relying in good faith  
upon the records of the Company and upon such information, opinions, reports or  
statements presented to the Company by any Person as to matters the Covered  
Person reasonably believes are within such other Person's professional or expert  
competence and who has been selected with reasonable care by or on behalf of the  
Company, including information, opinions, reports or statements as to the value  
and amount of the assets, liabilities, Profits, Losses or Net Cash Flow or any  
other facts pertinent to the existence and amount of assets from which  
distributions to Members might properly be paid.  
  
 Section 12.3 Indemnification. To the fullest extent permitted by  
applicable law, a Covered Person shall be entitled to indemnification from the  
Company for any loss, damage or claim incurred by such Covered Person by reason  
of any act or omission performed or omitted by such Covered Person provided  
that: (i) any such action was undertaken in good faith on behalf of the Company  
and in a manner reasonably believed to be in, or not opposed to, the best  
interests of the Company, (ii) any such action was reasonably believed to be  
within the scope of authority conferred on such Covered Person by this  
Agreement, and (iii) with respect to any criminal action or proceeding, such  
Covered Person had no reasonable cause to believe his action or omission was  
unlawful, except that no Covered Person shall be entitled to be indemnified in  
respect of any loss, damage or claim incurred by such Covered Person by reason  
of gross negligence or willful misconduct with respect to such acts or  
omissions; provided, , that any indemnity under this Section 12.3 shall be  
provided out of and to the extent of Company assets only (including the proceeds  
of any insurance policy obtained pursuant to Section 12.5 however hereof), and  
no Covered Person shall have any personal liability on account thereof.  
  
 Section 12.4 Expenses. To the fullest extent permitted by applicable  
law, expenses (including legal fees) incurred by a Covered Person in defending  
any claim, demand, action, suit or proceeding shall, from time to time, be  
advanced by the Company prior to the final disposition of such claim, demand,  
action, suit or proceeding upon receipt by the Company of an undertaking by or  
on behalf of the Covered Person to repay such amount if it shall be determined  
that the Covered Person is not entitled to be indemnified as authorized in  
Section 12.3 hereof.  
  
 Section 12.5 Insurance. The Company shall purchase and maintain  
insurance, to the extent and in such amounts as the Management Committee shall,  
in its sole discretion, deem reasonable, on behalf of Covered Persons and such  
other Persons as the Management Committee shall determine, against any liability  
that may be asserted against or expenses that may be incurred by any such Person  
in connection with the activities of the Company or such indemnities, regardless  
of whether the Company would have the power to indemnify such Person against  
such liability under the provisions of this Agreement. The Management Committee  
and the Company may enter into indemnity contracts with Covered Persons and such  
other Persons as the Management Committee shall determine and adopt written  
procedures pursuant to which arrangements are made for the advancement of  
expenses and the funding of obligations under Section 12.4 hereof and containing  
such other procedures regarding indemnification as are appropriate.  
  
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 Section 12.6 Ancillary Opportunities; Right of First Offer. In the event  
DIVOT or any of its subsidiaries or other Affiliates, either alone or with  
another Person or group (for this purpose, a "Venturer") desire to engage in any  
business similar to that of the Company, the Company shall have the prior right  
to consider such proposed business opportunity, and to instead undertake such  
opportunity for the benefit of Company, either for itself or as a joint venturer  
with a capital partner, joint venturer or other Person. Before such business  
opportunity may be undertaken by any Venturer, the Members shall be provided  
with a written plan for the proposed business opportunity, with sufficient  
detail for them to make an informed decision as to whether the Company should  
accept or reject the opportunity. The opportunity may be rejected only if all  
Members agree in writing to reject it. It shall be accepted by the Company if  
any Member votes to accept it. If the opportunity is so rejected, then the  
Venturer shall be entitled to proceed with the plan and pursue the business  
opportunity without further involvement by the Company or any liability  
hereunder; provided, however, that, notwithstanding anything in this Agreement  
to the contrary, nothing herein shall prevent, limit, or restrict DIVOT or  
Xxxxxx (or any or their Affiliates) in its or their manufacture, distribution,  
or sale of the Xxxxxx Products.  
  
 Section 12.7 Additional Golf Professional Endorsements. In the event the  
Company or a Venturer, as defined in Section 12.6, desires to engage in any  
business opportunity employing or utilizing in any manner the endorsement, name,  
likeness, image or other persona of any other professional golfer (female or  
male), the business opportunity shall be presented to the Management Committee  
in the same manner as described in Section 12.6, and in any event prior to any  
commitment being made to the professional golfer in question by the Company or a  
Venturer. EAGLE shall have the right, in EAGLE's sole and absolute discretion,  
to decide whether the Company should accept or reject such business opportunity,  
and the other Members hereby agree to vote their Interests and to take such  
other actions as may be appropriate or necessary to cause such acceptance or  
rejection to occur, and to formalize such determination.  
  
 ARTICLE 13  
  
 ADDITIONAL MEMBERS  
  
 Section 13.1 Admission. By approval of all of the Members, the Company  
is authorized to admit any Person as an additional member of the Company (each,  
an "Additional Member" and collectively, the "Additional Members"). Each such  
Person shall be admitted as an Additional Member at the time such Person (i)  
executes this Agreement or a counterpart of this Agreement and (ii) is named as  
a Member on an amended Schedule A hereto.  
  
 Section 13.2 Allocations. Additional Members shall not be entitled to  
any retroactive allocation of the Company's income, gains, losses, deductions,  
credits or other items; provided that, subject to the restrictions of ss.706(d)  
of the Code, Additional Members shall be entitled to their respective share of  
the Company's income, gains, losses, deductions, credits and other items arising  
under contracts entered into before the effective date of the admission of any  
Additional Members to the extent that such income, gains, losses, deductions,  
credits and other items arise after such effective date. To the extent  
consistent with ss.706(d) of the Code and Treasury Regulations promulgated  
thereunder, the Company's books may be closed at the time Additional Members are  
admitted (as though the Company's tax year had ended) or the Company may credit  
to the Additional Members pro rata allocations of the Company's income, gains,  
losses, deductions, credits and items for that portion of the Company's Fiscal  
Year after the effective date of the admission of the Additional Members.  
  
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 ARTICLE 14  
  
 ASSIGNABILITY OR INTERESTS  
  
 Section 14.1 Assignability of Interests.  
  
 (a) Except as otherwise provided in this Article 14, no Member may  
assign the whole or any part of its Interest without the prior written consent  
of all other Members, which consent may be given or withheld in the sole and  
absolute discretion of such other Members. If the prior written consent of the  
other Members is obtained for any such assignment, such assignment shall,  
nevertheless, not entitle the assignee to become a Substitute Member or to be  
entitled to exercise or receive any of the rights, powers or benefits of a  
Member other than the right to receive distributions to which the assigning  
Member would be entitled, unless the assigning Member designates, in a written  
instrument delivered to the other Members, its assignee to become a Substitute  
Member and all of the other Members consent to the admission of such assignee as  
a Member; and provided further, that such assignee shall not become a Substitute  
Member without having first executed an instrument reasonably satisfactory to  
the other Members accepting and agreeing to the terms and conditions of this  
Agreement, including a counterpart of this Agreement, and without having paid to  
the Company a fee sufficient to cover all reasonable expenses of the Company in  
connection with such assignee's admission as a Substitute Member.  
  
 (b) Notwithstanding the foregoing, EAGLE (and any assignee or  
Substitute Member that is a "Permitted Assignee" as defined below, and which  
hereafter acquires its Interest from EAGLE or another Permitted Assignee) shall  
be permitted to assign, at any time and from time to time, all or any part of  
its Interest to a Permitted Assignee. For this purpose "Permitted Assignee"  
means a Person that is (i) an Affiliate of Xxxxxxx or Xxxxx Xxxxx, (ii) a  
natural or adoptive lineal ancestor or descendant of either of Xxxxxxx or Xxxxx  
Xxxxx, (iii) a trust, estate, guardianship or custodianship, including those  
established under any the Uniform Gifts to Minors Act of any state, for an  
individual described in the preceding clause (ii), and (iv) entities under the  
control of Xxxxxxx or Xxxxx Xxxxx and one or more other Permitted Assignees;  
provided, however, that no transfer shall be made under this section if such  
transfer or transfers would result in EAGLE. Xxxxxxx or Xxxxx Xxxxx, and any  
Affiliate of EAGLE and Xxxxxxx or Xxxxx Xxxxx to own a Percentage Interest or  
Percentage Interests, in the aggregate, of less than 2%. EAGLE shall have the  
right to designate that any Permitted Assignee shall be admitted as a Substitute  
Member.  
  
 (c) Notwithstanding the foregoing, DIVOT shall have the right to  
assign, at any time and from time to time, all or part of its Interest to any  
corporation or other entity in which DIVOT is a majority owner, determined by  
both its voting rights or voting power, and its economic rights aggregating all  
ownership interests, whether common or preferred, DIVOT shall have the right to  
designate that any such assignee shall be admitted as a Substitute Member.  
  
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 (d) If a Member assigns all or part of its Interest in the Company  
and the assignee is entitled to become a Substitute Member, such assignee shall  
be admitted to the Company effective immediately prior to the effective date of  
the assignment (as defined in Section 14.3 hereof), and, immediately following  
such admission, the assigning Member shall cease to be a Member of the Company  
to the extent of the portion of the Interest assigned hereunder. In such event,  
the Company shall not dissolve if the business of the Company is continued  
without dissolution in accordance with Section 15.2(g) hereof. For purposes of  
this Article 14, "assignment" shall include any sale, transfer, conveyance,  
pledge or grant of a security interest in an Interest, and any "involuntary  
transfer" such as a sale of an Interest in connection with any bankruptcy or  
similar insolvency proceedings, or a divorce or other marital settlement  
involving any Member, or any other disposition or encumbrance of an Member  
Interest.  
  
 Section 14.2 Recognition of Assignment by Company or Other Members. No  
assignment, or any part thereof, that is in violation of this Article 14 shall  
be valid or effective, and neither the Company nor the Management Committee or  
any Member shall recognize the same for any purpose of this Agreement, including  
the purpose of making distributions of Net Cash Flow pursuant to Section 9.1  
hereof with respect to such Interest or part thereof. Neither the Company nor  
the Management Committee shall incur any liability as a result of refusing to  
make any such distributions to the assignee of any such invalid assignment.  
  
 Section 14.3 Effective Date of Assignment. Any valid assignment of a  
Member's Interest, or part thereof, pursuant to the provisions of this Article  
14 shall be effective as of the close of business on the day preceding the  
closing of the transaction evidencing the assignment, unless all consents have  
not been obtained, in which case the effective date shall be on such date all of  
the written consents to such assignment have been obtained, or such other date  
as the assigning Member and all Members agree upon. The Company shall, from the  
effective date of such assignment, thereafter pay all further distributions on  
account of the Interest (or part thereof), so assigned, to the assignee of such  
Interest, or part thereof. As between any Member and its assignee, Profits and  
Losses for the Fiscal Year of the Company in which such assignment occurs shall  
be apportioned for federal income tax purposes in accordance with any convention  
permitted under ss.706(d) of the Code and selected by the Management Committee.  
  
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 Section 14.4 Right of First Refusal.  
  
 (a) Except in the case of a transfer involving a Permitted Assignee or  
an assignee approved by all of the Members, in the event of any proposed  
assignment of all or any part of an Interest, the Member proposing to make such  
assignment, or the third party foreclosing upon the Interest succeeding thereto  
as a result of an "involuntary transfer," shall give to the Members a written  
notice ("assignment notice") stating the terms of the proposed assignment and  
the name, address and a resume for the Person(s) to whom the proposed assignment  
would be made; the assignment notice shall be accompanied by sufficiently  
detailed information relating to the fair market valuation of the Interest, and  
such other information reasonably requested by the Members. Upon receiving the  
assignment notice, the other Members shall have the option, for a period of 60  
days from the date that it receives the assignment notice, to vote that the  
Company acquire all of that portion of the Interest subject to the assignment  
notice, for the same consideration and other terms and conditions contained in  
the assignment notice. If this right of first refusal is exercised by the other  
Members (and the Company), the closing shall occur within 30 days of the  
exercise of such option.  
  
 (b) If the other Members (and the Company) fail to exercise their  
right of first refusal within the 60 day period, the Interest covered by the  
assignment notice may then be assigned to the Person(s) described in the  
assignment notice, for exactly the same consideration and other terms and  
conditions provided therein; provided however, that such Person acquiring the  
Interest in question shall not become a Substitute Member unless the assignee  
has been approved in such capacity under Section 14.1. In the event that the  
other Members (and the Company) do not exercise this right of first refusal, the  
proposed assignment shall be closed within 60 days following the 60-day period  
described in subsection (a) above. If such closing does not occur within that  
time period, then the Interest in question shall once again become subject to  
the restrictions of this Article 14 and this Agreement.  
  
 Section 14.5 "Tag-along" Rights of EAGLE.  
  
 (a) Sale of Company Interest. In the event DIVOT or its Affiliates, acting  
either alone or with any other Members or assignees that previously acquired an  
Interest from DIVOT, proposes to assign more than 51% in aggregate of the total  
membership Interests owned by them in a transaction other than one contemplated  
in Section 14.1(c) (a "Block Sale"), such Block Sale transfer shall not be  
effectuated unless, and until, EAGLE has been provided with the opportunity to  
sell all or any part of its Interest at the same time and for the same  
consideration and same terms and conditions that apply to the Block Sale. The  
obligations of the Block Sale participants under this Section 14.5 to afford  
EAGLE the ability to exercise its "tag-along" rights shall be discharged if (i)  
EAGLE is provided with written notice to participate in the Block Sale  
transaction, together with a detailed description of the terms and conditions  
thereof, including the computation and proposed letter of understanding or  
definitive agreement describing the purchase price and all of the other terms  
and conditions of the transaction, and such other due diligence materials EAGLE  
may reasonably request; and (ii) EAGLE thereafter fails to exercise its rights  
  
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to participate in the proposed transaction within 30 days after receiving such  
written notice. For purposes of computing the purchase price or other  
consideration in any such Block Sale transaction, any securities or other  
property to be received by the assigning Members of their Affiliates shall be  
valued at their fair market value, and any compensation to be paid to any  
officers, directors, owners or other principals or Affiliates of such Members,  
shall also be taken into account in computing the amount of consideration to be  
received by the assigning Members, and the corresponding amount that EAGLE shall  
be entitled to receive if it elects to exercise his "tag-along" rights and  
participate in the Block Sale transaction.  
  
 (b) Sale of XXXXXX. In the event that (i) DIVOT proposes to sell,  
transfer, exchange, assign or otherwise dispose of stock or other securities of  
XXXXXX, whether by separate sale or by merger, consolidation, share exchange,  
recapitalization or other reorganization involving XXXXXX, or (ii) XXXXXX, DIVOT  
and/or any other shareholders or security holders of XXXXXX, issue, enter into  
or participate in any agreements, options, warrants, debentures, convertible  
securities or similar instruments the effect of which is to provide for  
contingent or future ownership of stock or other securities of XXXXXX  
(collectively "Investment Instruments"); and the effect of such transaction  
would cause DIVOT to own stock or other securities of XXXXXX that entitles DIVOT  
to own less than 51% of both the voting rights and economic participation in  
XXXXXX'x outstanding stock and other securities (when assuming maximum issuance  
of shares and exercise of rights under all Investment Instruments); then a  
"Xxxxxx Sale" will be deemed have occurred for purposes of this Agreement. DIVOT  
agrees that if EAGLE shall elect, DIVOT shall not permit a Xxxxxx Sale to be  
effectuated unless, and until, DIVOT's Interest in the Company are sold to the  
same Persons that would own and control XXXXXX as the result of the Xxxxxx Sale.  
The fair price of DIVOT's Interest and the other customary terms and conditions  
of the transfer of DIVOT's Interest to such Persons acquiring ownership of  
XXXXXX shall be as DIVOT and such Persons reasonably agree upon. The obligations  
of DIVOT to afford EAGLE the ability to exercise its election rights hereunder  
shall be discharged if (i) EAGLE is provided with written notice of the Xxxxxx  
Sale transaction, together with a detailed description of the terms and  
conditions thereof, including the computation and proposed letter of  
understanding or definitive agreement describing the purchase price and all of  
the other terms and conditions of the transaction, and such other due diligence  
materials EAGLE may reasonably request; and (ii) EAGLE thereafter fails to  
exercise its election to have DIVOT sell its Interest to participate in the  
proposed transaction within 30 days after receiving such written notice.  
  
 Section 14.6 Put Option of EAGLE. In the event that a "Eagle Withdrawal  
Event" occurs, as defined below, EAGLE shall have the right to cause the Company  
to purchase the entire Interest of EAGLE, together with the Interest of any  
Permitted Assignee ("Eagle Interest"), upon giving written notice of such event  
to the Management Committee, and providing the Company with a reasonable  
opportunity to cure the circumstances giving rise to the Eagle Withdrawal Event  
within a reasonable cure period agreed upon by both the Company and EAGLE, but  
in no event shall the cure period continue for more than thirty (30) days  
without the consent of EAGLE. In the event that EAGLE exercises this put option,  
the Company shall be required to purchase the entire Eagle Interest, for cash,  
within thirty (30) days of receiving the put option notice (or if applicable,  
within fifteen (15) days after the cure period elapses). The Eagle Interest  
shall be valued at its aggregate book value as of the month end immediately  
  
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preceding the events giving rise to EAGLE's rights to exercise the put option.  
The purchase price shall be allocated among the holders of the Eagle Interest in  
proportion to the relative Interests held by each holder of a Eagle Interest.  
For purposes of this Agreement, a Eagle Withdrawal Event shall mean any of the  
following: (i) breach of this Agreement by another Member; (ii) intentional  
misconduct or gross negligence by representatives of DIVOT or other members of  
the Company's management causing a material and adverse effect on the Company  
business (except acts involving EAGLE or its Shareholders, directors or  
officers); (iii) the commission of a morally reprehensible crime or other  
socially unacceptable conduct causing ill repute to the Company by any Person  
having significant involvement in the management of the Company; or (iv) the  
Company has not achieved gross revenues of $1,000,000 or more for the twelve  
(12) month period ending on the second anniversary of the date hereof and for  
each Fiscal Year commencing thereafter, except in this case the 30-day period  
set forth above shall be increased to sixty (60) days, during which 60-day  
period EAGLE agrees to meet with DIVOT in good faith to discuss the Company and  
its business opportunities, this Agreement, and the propriety of EAGLE'S taking  
action under this Section 14.6(iv).  
  
 ARTICLE 15  
  
 DISSOLUTION, LIQUIDATION AND TERMINATION  
  
 Section 15.1 No Dissolution. The Company shall not be dissolved by the  
admission of Additional Members or Substitute Members in accordance with the  
terms of this Agreement.  
  
 Section 15.2 Events Causing Dissolution. The Company shall be  
dissolved and its affairs shall be wound up upon the occurrence of any of the  
following events:  
  
 (a) the expiration of the term of the Company, as provided in  
Section 2.3 hereof;  
  
 (b) the written consent of all Members;  
  
 (c) at such time as there are no Members;  
  
 (d) the entry of a decree of judicial dissolution under of the  
Florida Act.  
  
 (e) the termination of the License Agreement;  
  
 (f) the breach of that certain stock registration rights agreement to be  
entered into by DIVOT and an Affiliate of EAGLE pursuant to the License  
Agreement, or the failure of DIVOT to register and maintain the registration of  
the DIVOT stock issued pursuant thereto within the time and for the period set  
forth in section C.2. of such registration rights agreement, unless DIVOT cures  
such breach by entering into an agreement with the holders of such DIVOT stock  
to purchase such stock for a price in cash equal to its then fair market value  
(which shall not be less than the public market price per share thereof), as  
determined by an appraiser mutually agreed upon by DIVOT and such holders (the  
cost of which appraiser shall be borne by DIVOT and the Company);  
  
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 (g) upon the bankruptcy or dissolution of a Member, unless all remaining  
Members agree in writing within 30 days after such event to continue the  
business of the Company; provided, however, that the Company shall nonetheless  
be dissolved if the License Agreement is terminated upon the happening of or in  
connection with either of such events; or  
  
 (h) EAGLE's election to dissolve in the event the Company has not achieved  
gross revenue of $1,000,000 or more for the twelve (12) month period ending on  
the second anniversary of the date hereof and for each Fiscal Year commencing  
thereafter, if it has not elected to exercise its put option pursuant to Section  
14.6; provided, however, that EAGLE agrees that it shall not elect to dissolve  
the Company hereunder, without first giving DIVOT sixty (60) days prior written  
notice, during which 60-day period EAGLE agrees to met with DIVOT in good faith  
to discuss the Company, its business opportunities, this Agreement, and the  
propriety of EAGLE'S taking action under this section.  
  
 Section 15.3 Notice of Dissolution. Upon the dissolution of the  
Company the Management Committee shall promptly notify the Members of such  
dissolution.  
  
 Section 15.4 Liquidation. Upon dissolution of the Company, the  
Management Committee (in such capacity, the "Liquidating Trustee") shall carry  
out the winding up of the Company and shall immediately commence to wind up the  
Company's affairs; provided, however, that a reasonable time shall be allowed  
for the orderly liquidation of the assets of the Company and the satisfaction of  
liabilities to creditors so as to enable the Members to minimize the normal  
losses attendant upon a liquidation. The Members shall continue to share Profits  
and Losses and other items during liquidation in the same manner, as specified  
in Article 8 hereof, as before liquidation. The proceeds of liquidation shall be  
distributed in the following order and priority:  
  
 (a) to creditors of the Company, including Members who are creditors,  
to the extent otherwise permitted by law, and consistent with the subordination  
or other terms and conditions therein pertaining to priority of satisfaction of  
such indebtedness, in full satisfaction of the liabilities of the Company  
(whether by payment or the making of reasonable provision for payment thereof);  
and  
  
 (b) to the Members in accordance with their Percentage Interests.  
  
 Section 15.5 Termination. The Company shall terminate when all of the  
assets of the Company, after payment of or due provision for all debts,  
liabilities and obligations of the Company, shall have been distributed to the  
Members in the manner provided for in this Article 15 and the Certificate shall  
have been canceled in the manner required by the Florida Act.  
  
 Section 15.6 Claims of the Members. The Members and former Members  
shall look solely to the Company's assets for the return of their Capital  
Contributions, and if the assets of the Company remaining after payment of or  
due provision for all debts, liabilities and obligations of the Company are  
insufficient to return such Capital Contributions, the Members and former  
Members shall have no recourse against the Company or any other Member;  
provided, however, that nothing contained herein shall be deemed to limit the  
rights of a Member under applicable law.  
  
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 ARTICLE 16  
  
 MISCELLANEOUS  
  
 Section 16.1 Notices. All notices provided for in this Agreement shall  
be in writing, duly signed by the party giving such notice, and shall be  
delivered, telecopied or mailed by registered or certified mail or by recognized  
overnight delivery service, as follows:  
  
 (a) if given to the Company, in care of the Management Committee at  
the principal place of business of the Company set forth in Section 2.5  
hereof.  
  
 (b) if given to any Member, at the address set forth under its name on  
Schedule A attached hereto, or at such other address as such Member may  
hereafter designate by written notice to the Company.  
  
 Section 16.2 Failure to Pursue Remedies. The failure of any party to  
seek redress for violation of, or to insist upon the strict performance of, any  
provision of this Agreement shall not prevent a subsequent act, which would have  
originally constituted a violation, from having the effect of an original  
violation.  
  
 Section 16.3 Cumulative Remedies. The rights and remedies provided by  
this Agreement are cumulative and the use of any one right or remedy by any  
party shall not preclude or waive its right to use any or all other remedies.  
Said rights and remedies are given in addition to any other rights the parties  
may have by law, statute, ordinance or otherwise.  
  
 Section 16.4 Binding Effect. This Agreement shall be binding upon and  
inure to the benefit of all of the parties and, to the extent permitted by this  
Agreement, their successors, legal representatives and assigns.  
  
 Section 16.5 Interpretation. Throughout this Agreement, nouns,  
pronouns and verbs shall be construed as masculine, feminine, neuter, singular  
or plural, whichever shall be applicable. All references herein to "Articles,"  
"Sections" and "Paragraphs" shall refer to corresponding provisions of this  
Agreement.  
  
 Section 16.6 Severability. The invalidity or unenforceability of any  
particular provision of this Agreement shall not affect the other provisions  
hereof, and this Agreement shall be construed in all respects as if such invalid  
or unenforceable provision were omitted.  
  
 Section 16.7 Counterparts. This Agreement may be executed in any  
number of counterparts with the same effect as if all parties hereto had signed  
the same document. All counterparts shall be construed together and shall  
constitute one instrument.  
  
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 Section 16.8 Integration. This Agreement constitutes the entire  
agreement among the parties hereto pertaining to the subject matter hereof and  
supersedes all prior agreements and understandings pertaining thereto.  
  
 Section 16.9 Governing Law. This Agreement and the rights of the  
parties hereunder shall be interpreted in accordance with the laws of the State  
of Florida, and all rights and remedies shall be governed by such laws without  
regard to principles of conflict of laws.  
  
 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of  
the date first above written.  
  
 MEMBERS:  
  
 DIVOT GOLF CORPORATION  
  
 By:  
 ------------------------------------------  
 Name:  
 Title:  
  
 EAGLE GOLF ENTERPRISES, INC.:  
  
 By:  
 ------------------------------------------  
 Name:  
 Title :  
  
  
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 SCHEDULE A  
  
  
 MEMBERS  
  
 Member's  
 Capital Percentage  
 Name Contribution Interest  
---------------------- -------------- -------------  
DIVOT GOLF CORPORATION $80 CASH 80%  
000 X. Xxxxxxxx Xxxxxx  
Xxxxx 000  
Xxxxx, XX 00000  
  
EAGLE GOLF  
ENTERPRISES, INC., $20 CASH 20%  
000 Xxxxx Xxxx Xxx  
Xxxxx 000  
Xxxx Xxxxx, Xxxxxxx 00000  
  
  
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 SCHEDULE B  
  
 EAGLE OR XXXXXXX XXXXX COMMITMENTS  
  
American Home Products and any renewals thereof  
  
Black Ice Golf - Equipment and club coating. Non-exclusive, RFG holds equity  
position with royalties.  
  
Blockbuster Entertainment - Instructional video, Cuttin' Strokes (1996).  
Non-exclusive, RFG has right to source and distribute.  
  
Bridgestone Sports USA and any renewals thereof - Golf ball (Precept brand) and  
glove. Exclusive to category. License and endorsement fee, with performance  
bonuses.  
  
Capital Mercury - Apparel and any renewals thereof. Exclusive to shirt,  
windshirt, vest and short category, guaranteed minimum, plus royalties.  
  
Corporate Express, Inc. - Joint ventures, alliances and other endorsement  
arrangements with a NYSE company to target Fortune 1000 corporate market with  
corporate merchandise catalogs for employees, customers and award programs.  
  
Cyber Ad - Web site and real time catalog. Exclusive to category, percentage of  
proceeds.  
  
Xxxxxx Art - Gold theme greeting cards.  
  
Electronic Arts - Video golf game featuring stars of the Senior PGA Tour.  
  
Golf Clubs - with any party - Exclusive.  
  
Golf Day - Day planner with golf theme featuring Xxxxxxx. Exclusive to category.  
Guarantee and royalty and distribution rights to corporate markets.  
  
Gustbuster Umbrella - High end, patented golf and fashion umbrellas. Exclusive  
to category.  
  
Hyatt Hotel and Resorts and any renewals thereof  
  
Inpro - Shotmaster hand held computer teaching device. Non-exclusive to  
category.  
  
Lexus and any renewals thereof  
  
Neckwear - High end ties featuring the Xxxxx eagle logo. Non-exclusive.  
  
OCC Sports - Instructional video, 60 Yards In.  
  
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Pro Tour Memorabilia - Signed framed photographs, club heads and balls.  
Non-exclusive. Signing session fee and royalties on sales.  
  
Xxxxxxx Xxxxx Belts - Signature belt collection. Exclusive, guaranteed minimum  
and royalty. Price points to be two-tiered for green grass and lower retail.  
Thirty or so SKU's to start. Three years with automatic renewal.  
  
SBC Catalog - Employee catalog distributed to 200,000 employees with merchandise  
bearing logo's; RFG has 2 pages with various products. Non-exclusive to  
category. Makes margin on sale to catalog entry.  
  
Sikorsky - alliance or other endorsement arrangements  
  
Simon & Xxxxxxxx - Instructional Book, The Elements of Scoring, to be released  
September '98.  
  
Xxxxxxx - Golf shop retailer in specialty niches such as airports. Exclusive to  
category. Equity and guaranteed royalties.  
  
Softspikes - Alternative golf spike. Exclusive to category. Equity.  
  
Southwestern Xxxx and any renewals thereof  
  
Statue Masters - High end statues and busts of RLF. Exclusive to category.  
Royalty percentage and distribution rights.  
  
Stromgren - Lycra support and magnetic therapy for athletes. Exclusive to  
category. Equity, royalties.  
  
Sunglasses - endorsement contract to wear and endorse signature line of  
sunglasses --- non-exclusive to category  
  
West Sports Marketing - Master's collectable card.  
  
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