

1287093

FORM D

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

| OMB APPROVAL                                 |              |
|--|--------------|
| OMB Number:                                  | 3235-0076    |
| Expires:                                     | May 31, 2005 |
| Estimated average burden hours per response: | 16.00        |



FORM D

**NOTICE OF SALE OF SECURITIES  
PURSUANT TO REGULATION D,  
SECTION 4(6), AND/OR  
UNIFORM LIMITED OFFERING EXEMPTION**

| SEC USE ONLY  |        |
|---------------|--------|
| Prefix        | Serial |
| DATE RECEIVED |        |

Name of Offering ( check if this is an amendment and name has changed, and indicate change.)  
**CHIMNEY PEAK, LLC, an Alabama Limited Liability Company**

Filing Under (Check box(es) that apply):  Rule 504  Rule 505  Rule 506  Section 4(6)  ULOE

Type of Filing:  New Filing  Amendment



**A. BASIC IDENTIFICATION DATA**

1. Enter the information requested about the issuer

Name of Issuer ( check if this is an amendment and name has changed, and indicate change.)  
**CHIMNEY PEAK, LLC, an Alabama Limited Liability Company**

|   |  |   |
|---|--|---|
| Address of Executive Offices<br><b>2515 East Glenn Avenue, Ste.301 Auburn, AL 36830</b>                   | (Number and Street, City, State, Zip Code) | Telephone Number (Including Area Code)<br><b>(334) 821-8210</b> |
| Address of Principal Business Operations<br>(if different from Executive Offices)<br><b>Same as above</b> | (Number and Street, City, State, Zip Code) | Telephone Number (Including Area Code)<br><b>Same as above</b>  |

Brief Description of Business  
 A venture to acquire 670 acres of undeveloped property in Calhoun County, Alabama for the purpose of development into a mountain area residential and retirement resort.

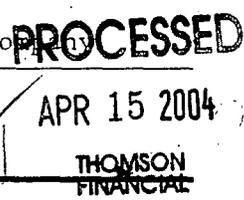
Type of Business Organization

corporation  limited partnership, already formed  other (please specify): **Limited Liability Company**

business trust  limited partnership, to be formed

Actual or Estimated Date of Incorporation or Organization: Month 02 Year 04  Actual  Estimated

Jurisdiction of Incorporation or Organization: (Enter two-letter U.S. Postal Service abbreviation for State: AL)  
 CN for Canada; FN for other foreign jurisdiction)



**GENERAL INSTRUCTIONS**

**Federal:**  
*Who Must File:* All issuers making an offering of securities in reliance on an exemption under Regulation D or Section 4(6), 17 CFR 230.501 et seq. or 15 U.S.C. 77d(6).

*When To File:* A notice must be filed no later than 15 days after the first sale of securities in the offering. A notice is deemed filed with the U.S. Securities and Exchange Commission (SEC) on the earlier of the date it is received by the SEC at the address given below or, if received at that address after the date on which it is due, on the date it was mailed by United States registered or certified mail to that address.

*Where To File:* U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

*Copies Required:* Five (5) copies of this notice must be filed with the SEC, one of which must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear typed or printed signatures.

*Information Required:* A new filing must contain all information requested. Amendments need only report the name of the issuer and offering, any changes thereto, the information requested in Part C, and any material changes from the information previously supplied in Parts A and B. Part E and the Appendix need not be filed with the SEC.

*Filing Fee:* There is no federal filing fee.

**State:**  
 This notice shall be used to indicate reliance on the Uniform Limited Offering Exemption (ULOE) for sales of securities in those states that have adopted ULOE and that have adopted this form. Issuers relying on ULOE must file a separate notice with the Securities Administrator in each state where sales are to be, or have been made. If a state requires the payment of a fee as a precondition to the claim for the exemption, a fee in the proper amount shall accompany this form. This notice shall be filed in the appropriate states in accordance with state law. The Appendix to the notice constitutes a part of this notice and must be completed.

**ATTENTION**

**Failure to file notice in the appropriate states will not result in a loss of the federal exemption. Conversely, failure to file the appropriate federal notice will not result in a loss of an available state exemption unless such exemption is predicated on the filing of a federal notice.**

**A. BASIC IDENTIFICATION DATA**

2. Enter the information requested for the following:

- Each promoter of the issuer, if the issuer has been organized within the past five years;
- Each beneficial owner having the power to vote or dispose, or direct the vote or disposition of, 10% or more of a class of equity securities of the issuer.
- Each executive officer and director of corporate issuers and of corporate general and managing partners of partnership issuers; and
- Each general and managing partner of partnership issuers.

Check Box(es) that Apply:  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner

THOMAS, PAUL H.

Full Name (Last name first, if individual)

2515 East Glenn Avenue, Ste.301, Auburn, AL 36830

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply:  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner

WATSON, GERALD G.

Full Name (Last name first, if individual)

315 Englewood Drive, N.E., Jacksonville, AL 36265

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply:  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner

LAFAYETTE, ERIC H.

Full Name (Last name first, if individual)

703 Pelham Road South, Jacksonville, AL 36265

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply:  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply:  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply:  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply:  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

(Use blank sheet, or copy and use additional copies of this sheet, as necessary)

**B. INFORMATION ABOUT OFFERING**

1. Has the issuer sold, or does the issuer intend to sell, to non-accredited investors in this offering? .....  Yes  No  
 Answer also in Appendix, Column 2, if filing under ULOE.
2. What is the minimum investment that will be accepted from any individual? ..... \$50,000 cash, plus  
 A 1/10 member's interest, representing a percentage interest of 10%  Yes  No debt guarantee
3. Does the offering permit joint ownership of a single unit? .....  Yes  No
4. Enter the information requested for each person who has been or will be paid or given, directly or indirectly, any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in the offering. If a person to be listed is an associated person or agent of a broker or dealer registered with the SEC and/or with a state or states, list the name of the broker or dealer. If more than five (5) persons to be listed are associated persons of such a broker or dealer, you may set forth the information for that broker or dealer only.

Full Name (Last name first, if individual)

N/A

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States) .....  All States

|    |    |    |    |    |    |    |    |    |    |    |    |    |
|----|----|----|----|----|----|----|----|----|----|----|----|----|
| AL | AK | AZ | AR | CA | CO | CT | DE | DC | FL | GA | HI | ID |
| IL | IN | IA | KS | KY | LA | ME | MD | MA | MI | MN | MS | MO |
| MT | NE | NV | NH | NJ | NM | NY | NC | ND | OH | OK | OR | PA |
| RI | SC | SD | TN | TX | UT | VT | VA | WA | WV | WI | WY | PR |

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States) .....  All States

|    |    |    |    |    |    |    |    |    |    |    |    |    |
|----|----|----|----|----|----|----|----|----|----|----|----|----|
| AL | AK | AZ | AR | CA | CO | CT | DE | DC | FL | GA | HI | ID |
| IL | IN | IA | KS | KY | LA | ME | MD | MA | MI | MN | MS | MO |
| MT | NE | NV | NH | NJ | NM | NY | NC | ND | OH | OK | OR | PA |
| RI | SC | SD | TN | TX | UT | VT | VA | WA | WV | WI | WY | PR |

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States) .....  All States

|    |    |    |    |    |    |    |    |    |    |    |    |    |
|----|----|----|----|----|----|----|----|----|----|----|----|----|
| AL | AK | AZ | AR | CA | CO | CT | DE | DC | FL | GA | HI | ID |
| IL | IN | IA | KS | KY | LA | ME | MD | MA | MI | MN | MS | MO |
| MT | NE | NV | NH | NJ | NM | NY | NC | ND | OH | OK | OR | PA |
| RI | SC | SD | TN | TX | UT | VT | VA | WA | WV | WI | WY | PR |

(Use blank sheet, or copy and use additional copies of this sheet, as necessary.)

**C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS**

1. Enter the aggregate offering price of securities included in this offering and the total amount already sold. Enter "0" if the answer is "none" or "zero." If the transaction is an exchange offering, check this box  and indicate in the columns below the amounts of the securities offered for exchange and already exchanged.

| Type of Security  | Aggregate Offering Price | Amount Already Sold |
|---|--------------------------|---------------------|
| Debt .....  | \$ _____                 | \$ _____            |
| Equity .....  | \$ _____                 | \$ _____            |
| <input type="checkbox"/> Common <input type="checkbox"/> Preferred                        |                          |                     |
| Convertible Securities (including warrants) .....   | \$ _____                 | \$ _____            |
| Partnership Interests .....   | \$ _____                 | \$ _____            |
| Other (Specify <u>Member Interest</u> ) <u>Cash - \$500,000 plus debt guarantee</u> ..... | \$ <u>3,528,000</u>      | \$ _____            |
| <u>in LLC</u> of \$3,028,000  |                          |                     |
| Total .....   | \$ <u>3,528,000</u>      | \$ _____            |

Answer also in Appendix, Column 3, if filing under ULOE.

2. Enter the number of accredited and non-accredited investors who have purchased securities in this offering and the aggregate dollar amounts of their purchases. For offerings under Rule 504, indicate the number of persons who have purchased securities and the aggregate dollar amount of their purchases on the total lines. Enter "0" if answer is "none" or "zero."

|   | Number Investors | Aggregate Dollar Amount of Purchases |
|---|------------------|--------------------------------------|
| Accredited Investors .....                    | 10               | \$ <u>3,528,000</u>                  |
| Non-accredited Investors .....                | _____            | \$ _____                             |
| Total (for filings under Rule 504 only) ..... | _____            | \$ _____                             |

Answer also in Appendix, Column 4, if filing under ULOE.

3. If this filing is for an offering under Rule 504 or 505, enter the information requested for all securities sold by the issuer, to date, in offerings of the types indicated, in the twelve (12) months prior to the first sale of securities in this offering. Classify securities by type listed in Part C — Question 1.

| Type of Offering   | Type of Security | Dollar Amount Sold |
|--------------------|------------------|--------------------|
| Rule 505 .....     | _____            | \$ _____           |
| Regulation A ..... | _____            | \$ _____           |
| Rule 504 .....     | _____            | \$ _____           |
| Total .....        | _____            | \$ _____           |

4 a. Furnish a statement of all expenses in connection with the issuance and distribution of the securities in this offering. Exclude amounts relating solely to organization expenses of the insurer. The information may be given as subject to future contingencies. If the amount of an expenditure is not known, furnish an estimate and check the box to the left of the estimate.

|  |                          |          |
|--|--------------------------|----------|
| Transfer Agent's Fees .....                                | <input type="checkbox"/> | \$ _____ |
| Printing and Engraving Costs .....                         | <input type="checkbox"/> | \$ _____ |
| Legal Fees .....   | <input type="checkbox"/> | \$ _____ |
| Accounting Fees .....                                      | <input type="checkbox"/> | \$ _____ |
| Engineering Fees .....                                     | <input type="checkbox"/> | \$ _____ |
| Sales Commissions (specify finders' fees separately) ..... | <input type="checkbox"/> | \$ _____ |
| Other Expenses (identify) _____ .....                      | <input type="checkbox"/> | \$ _____ |
| Total .....  | <input type="checkbox"/> | \$ _____ |

**C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS**

b. Enter the difference between the aggregate offering price given in response to Part C — Question 1 and total expenses furnished in response to Part C — Question 4.a. This difference is the "adjusted gross proceeds to the issuer." .....

\$3,528,000

5. Indicate below the amount of the adjusted gross proceed to the issuer used or proposed to be used for each of the purposes shown. If the amount for any purpose is not known, furnish an estimate and check the box to the left of the estimate. The total of the payments listed must equal the adjusted gross proceeds to the issuer set forth in response to Part C — Question 4.b above.

|  | Payments to<br>Officers,<br>Directors, &<br>Affiliates | Payments to<br>Others                |
|--|--|--------------------------------------|
| Salaries and fees .....  | <input type="checkbox"/> \$ _____                      | <input type="checkbox"/> \$ _____    |
| Purchase of real estate <u>Source of funds: bank loan guaranteed by</u> .....  | <input type="checkbox"/> \$ _____                      | <input type="checkbox"/> \$1,528,000 |
| Members  |  |                                      |
| Purchase, rental or leasing and installation of machinery<br>and equipment .....   | <input type="checkbox"/> \$ _____                      | <input type="checkbox"/> \$ _____    |
| Construction or leasing of plant buildings and facilities .....  | <input type="checkbox"/> \$ _____                      | <input type="checkbox"/> \$ _____    |
| Acquisition of other businesses (including the value of securities involved in this<br>offering that may be used in exchange for the assets or securities of another<br>issuer pursuant to a merger) ..... | <input type="checkbox"/> \$ _____                      | <input type="checkbox"/> \$ _____    |
| Repayment of indebtedness .....  | <input type="checkbox"/> \$ _____                      | <input type="checkbox"/> \$ _____    |
| Working capital <u>Source: adjusted gross proceeds from</u> Members .....  | <input type="checkbox"/> \$ _____                      | <input type="checkbox"/> \$ 500,000  |
| Other (specify): <u>bank credit line available to meet development</u><br><u>expenses, to be guaranteed by each Member</u> .....   | <input type="checkbox"/> \$ _____                      | <input type="checkbox"/> \$1,500,000 |
| .....  | <input type="checkbox"/> \$ _____                      | <input type="checkbox"/> \$ _____    |
| Column Totals .....  | <input type="checkbox"/> \$ _____                      | <input type="checkbox"/> \$ _____    |
| Total Payments Listed (column totals added) .....  | <input type="checkbox"/> \$3,528,000                   |                                      |

**D. FEDERAL SIGNATURE**

The issuer has duly caused this notice to be signed by the undersigned duly authorized person. If this notice is filed under Rule 505, the following signature constitutes an undertaking by the issuer to furnish to the U.S. Securities and Exchange Commission, upon written request of its staff, the information furnished by the issuer to any non-accredited investor pursuant to paragraph (b)(2) of Rule 502.

|  |  |   |
|--|--|---|
| Issuer (Print or Type)<br>CHIMNEY PEAK, LLC      | Signature<br>By: <i>Paul H. Thomas</i>                           | Date<br><i>MARCH</i><br><del>February</del> 17 2004 |
| Name of Signer (Print or Type)<br>PAUL H. THOMAS | Title of Signer (Print or Type)<br>MANAGER <i>Paul H. Thomas</i> |   |

**ATTENTION**

Intentional misstatements or omissions of fact constitute federal criminal violations. (See 18 U.S.C. 1001.)

**E. STATE SIGNATURE**

1. Is any party described in 17 CFR 230.262 presently subject to any of the disqualification provisions of such rule? .....  Yes  No

See Appendix, Column 5, for state response.

2. The undersigned issuer hereby undertakes to furnish to any state administrator of any state in which this notice is filed a notice on Form D (17 CFR 239.500) at such times as required by state law.
3. The undersigned issuer hereby undertakes to furnish to the state administrators, upon written request, information furnished by the issuer to offerees.
4. The undersigned issuer represents that the issuer is familiar with the conditions that must be satisfied to be entitled to the Uniform limited Offering Exemption (ULOE) of the state in which this notice is filed and understands that the issuer claiming the availability of this exemption has the burden of establishing that these conditions have been satisfied.

The issuer has read this notification and knows the contents to be true and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

|   |  |   |
|---|--|---|
| Issuer (Print or Type)<br>CHIMNEY PEAK, LLC | Signature<br>By: <i>Paul H. Thomas</i> | Date<br><i>March</i><br><del>February</del> 17 2004 |
| Name (Print or Type)<br>Paul H. Thomas      | Title (Print or Type)<br>Manager       |   |

**Instruction:**

Print the name and title of the signing representative under his signature for the state portion of this form. One copy of every notice on Form D must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear typed or printed signatures.

APPENDIX

| 1     | 2   |    | 3  | 4  |  |                                    |        | 5   |  |
|-------|---|----|--|--|--|------------------------------------|--------|-----|--|
|       | Intend to sell to non-accredited investors in State (Part B-Item 1) |    |  | Type of security and aggregate offering price offered in state (Part C-Item 1) | Type of investor and amount purchased in State (Part C-Item 2) |                                    |        |     | Disqualification under State ULOE (if yes, attach explanation of waiver granted) (Part E-Item 1) |
| State | Yes   | No |  | Number of Accredited Investors   | Amount   | Number of Non-Accredited Investors | Amount | Yes | No   |
| AL    |   | X  | Member Interest \$400,000 cash                             | 8  | \$400,000 plus debt guarantee of \$2,422,400                   |                                    |        |     |  |
| AK    |   |    | plus debt guarantee of \$2,422,400                         |  |  |                                    |        |     |  |
| AZ    |   |    |  |  |  |                                    |        |     |  |
| AR    |   |    |  |  |  |                                    |        |     |  |
| CA    |   |    |  |  |  |                                    |        |     |  |
| CO    |   |    |  |  |  |                                    |        |     |  |
| CT    |   |    |  |  |  |                                    |        |     |  |
| DE    |   |    |  |  |  |                                    |        |     |  |
| DC    |   |    |  |  |  |                                    |        |     |  |
| FL    |   |    |  |  |  |                                    |        |     |  |
| GA    |   | X  | Member Interest \$100,000 plus debt guarantee of \$605,600 | 2  | \$100,000 plus debt guarantee of \$605,600                     |                                    |        |     |  |
| HI    |   |    |  |  |  |                                    |        |     |  |
| ID    |   |    |  |  |  |                                    |        |     |  |
| IL    |   |    |  |  |  |                                    |        |     |  |
| IN    |   |    |  |  |  |                                    |        |     |  |
| IA    |   |    |  |  |  |                                    |        |     |  |
| KS    |   |    |  |  |  |                                    |        |     |  |
| KY    |   |    |  |  |  |                                    |        |     |  |
| LA    |   |    |  |  |  |                                    |        |     |  |
| ME    |   |    |  |  |  |                                    |        |     |  |
| MD    |   |    |  |  |  |                                    |        |     |  |
| MA    |   |    |  |  |  |                                    |        |     |  |
| MI    |   |    |  |  |  |                                    |        |     |  |
| MN    |   |    |  |  |  |                                    |        |     |  |
| MS    |   |    |  |  |  |                                    |        |     |  |

APPENDIX

| 1     | 2   |    | 3 | 4  |  |                                    |        | 5   |  |
|-------|---|----|---|--|--|------------------------------------|--------|-----|--|
|       | Intend to sell to non-accredited investors in State (Part B-Item 1) |    |   | Type of security and aggregate offering price offered in state (Part C-Item 1) | Type of investor and amount purchased in State (Part C-Item 2) |                                    |        |     | Disqualification under State ULOE (if yes, attach explanation of waiver granted) (Part E-Item 1) |
| State | Yes   | No |   | Number of Accredited Investors   | Amount   | Number of Non-Accredited Investors | Amount | Yes | No   |
| MO    |   |    |   |  |  |                                    |        |     |  |
| MT    |   |    |   |  |  |                                    |        |     |  |
| NE    |   |    |   |  |  |                                    |        |     |  |
| NV    |   |    |   |  |  |                                    |        |     |  |
| NH    |   |    |   |  |  |                                    |        |     |  |
| NJ    |   |    |   |  |  |                                    |        |     |  |
| NM    |   |    |   |  |  |                                    |        |     |  |
| NY    |   |    |   |  |  |                                    |        |     |  |
| NC    |   |    |   |  |  |                                    |        |     |  |
| ND    |   |    |   |  |  |                                    |        |     |  |
| OH    |   |    |   |  |  |                                    |        |     |  |
| OK    |   |    |   |  |  |                                    |        |     |  |
| OR    |   |    |   |  |  |                                    |        |     |  |
| PA    |   |    |   |  |  |                                    |        |     |  |
| RI    |   |    |   |  |  |                                    |        |     |  |
| SC    |   |    |   |  |  |                                    |        |     |  |
| SD    |   |    |   |  |  |                                    |        |     |  |
| TN    |   |    |   |  |  |                                    |        |     |  |
| TX    |   |    |   |  |  |                                    |        |     |  |
| UT    |   |    |   |  |  |                                    |        |     |  |
| VT    |   |    |   |  |  |                                    |        |     |  |
| VA    |   |    |   |  |  |                                    |        |     |  |
| WA    |   |    |   |  |  |                                    |        |     |  |
| WV    |   |    |   |  |  |                                    |        |     |  |
| WI    |   |    |   |  |  |                                    |        |     |  |

APPENDIX

| 1     | 2   |    | 3 | 4  |  |                                    |        | 5   |  |
|-------|---|----|---|--|--|------------------------------------|--------|-----|--|
|       | Intend to sell to non-accredited investors in State (Part B-Item 1) |    |   | Type of security and aggregate offering price offered in state (Part C-Item 1) | Type of investor and amount purchased in State (Part C-Item 2) |                                    |        |     | Disqualification under State ULOE (if yes, attach explanation of waiver granted) (Part E-Item 1) |
| State | Yes   | No |   | Number of Accredited Investors   | Amount   | Number of Non-Accredited Investors | Amount | Yes | No   |
| WY    |   |    |   |  |  |                                    |        |     |  |
| PR    |   |    |   |  |  |                                    |        |     |  |

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**SUBSCRIPTION AGREEMENT  
FOR  
PRIVATE PLACEMENT OF MEMBER'S INTEREST IN  
CHIMNEY PEAK, LLC, an Alabama limited liability company  
800 Financial Center  
Birmingham, AL 35203**

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Subject to the terms and conditions set forth below, the undersigned hereby offers to purchase from Chimney Peak, LLC, an Alabama limited liability company (the "Company"), the following Member's Interest, representing a Percentage Interest as follows:

**MEMBER'S INTEREST**

(    ) 1/10th, representing a 10% Percentage Interest;

*(Please check)*

The undersigned understands that the Member's Interest available to each subscriber is limited.

In connection with the execution of this Agreement and to induce the Company to sell the Member's Interest to the undersigned, the undersigned hereby represents, warrants and agrees as follows:

1. Terms of Offering. I have received, read and examined this Agreement, and am familiar with and understand the terms of the Offering. I have relied solely upon the investigations made by or on behalf of me in evaluating the suitability of an investment in the Company.
2. Status - Accredited Investor or Non-Accredited Investor.

Please initial one or more of the following [(a) through (d)] to indicate your status as an accredited investor:

**INDIVIDUALS**

I am an "accredited investor" as such term is defined in Regulation D under the Securities Act of 1933, as amended (the "Act"), as at the time of the sale of the Shares I fall within the following category:

- \_\_\_\_\_ (a) a natural person whose individual net worth, or joint net worth with that person's spouse, at the time of such person's purchase of a Member's Interest exceeds \$1,000,000. As used in this Agreement, the term "net worth" means the excess of total assets over total liabilities. (In computing net worth for this purpose, the principal residence of the purchaser must be valued at cost, including cost of

improvements, or at a recently appraised value by an institutional lender making a secured loan, net of encumbrances);

\_\_\_\_\_ (b) a natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year. (In determining income, a purchaser should add to purchaser's adjusted gross income any amounts attributable to tax exempt income received, losses claimed as a limited partner in any limited partnership, deductions claimed for depletion, contributions to an IRA or KEOGH retirement plan, alimony payments, and any amount by which income from long-term capital gains has been reduced in arriving at adjusted gross income) or

\_\_\_\_\_ (c) a manager of the Company.

I am an individual and do not qualify under items (a), (b), or (c) above. Therefore,

\_\_\_\_\_ (d) I am not an "accredited investor" as such term is defined in Regulation D under the Act; however, I do hereby represent, warrant, and agree as to the matters contained in Section 1 and Sections 3 through 13 of this Agreement.

In order to meet the conditions for exemption from the registration requirements under the securities laws of certain jurisdictions, purchasers who are residents of such jurisdictions may be required to meet additional suitability requirements.

3. No General Solicitation or Advertising. I acknowledge that no general solicitation or general advertising (including communications published in any newspaper, magazine or other broadcast) has been received by me and that no public solicitation or advertisement with respect to the Offering has been made to me.

4. Experience and Suitability. I am qualified by my knowledge and experience in financial and business matters, investments, securities and private placements to evaluate the merits and risks of an investment in the Member's Interest and to make an informed decision relating thereto. I have the financial capability for making the investment and protecting my interests, and I can afford a complete loss of the investment. The investment is a suitable one for me.

5. No Need for Liquidity. I am aware that I will be unable to liquidate my investment readily in case of an emergency and that the Member's Interest being purchased may have to be held for an indefinite period of time. My overall commitment to investments which are not readily marketable is not disproportionate to my net worth and financial circumstances and the purchase of the Member's Interest will not cause such commitment to become excessive. In view of such facts, I acknowledge that I have adequate means of providing for my current needs, anticipated future needs and possible contingencies and emergencies and have no need for liquidity in the investment in the Member's Interest. I am able to bear the economic risk of this investment.

6. Opportunity to Investigate. Prior to the execution of this Agreement, my advisors and I have had the opportunity to ask questions of, and receive answers from, representatives of the Company concerning the terms and conditions of this transaction, and the finances, operations, business and prospects of the Company. My advisors and I have also had the opportunity to obtain additional information necessary to verify the accuracy of information furnished about the investment. Accordingly, I have independently evaluated the risks of purchasing a Member's Interest, and I am satisfied that I have received information with respect to all matters which I consider material to my decision to make this investment.

7. Risk Factors. I have carefully considered the potential risks relating to the Company and a purchase of the Member's Interest. I fully understand that the Company has no financial and operating history, and that the Member's Interest is a speculative investment which involve a high degree of risk of loss of my entire investment. I am familiar with the general risks of investment in companies with no operating history such as those of the Company. I understand that the Company is subject to all of such risks, and to all of the risks inherent in any early-stage company.

8. Investment Purpose. I am acquiring the Member's Interest for my own account for the purpose of investment and not with a view to, or for resale in connection with, the distribution thereof, nor with any present intention of distributing or selling the Member's Interest. I understand that the Member's Interest have not been registered under the Act or the securities laws of any state, and I hereby agree not to make any sale, transfer or other disposition of any such Member's Interest unless either (i) the Member's Interest first shall have been registered under the Act and all applicable state securities laws, or (ii) an exemption from such registration is available, and the Company has received such documents and agreements from me and the transferee as the Company requests at such time.

9. No Regulatory Approval of Merits. I understand that neither the Securities and Exchange Commission nor the commissioner or department of securities or attorney general of any state has passed upon the merits or qualifications of, nor recommended nor approved, the Member's Interest. Any representation to the contrary is a criminal offense.

10. Independent Advice. I understand that I am urged to seek independent advice from my professional advisors relating to the suitability for me of an investment in the Company in view of my overall financial needs and with respect to the legal and tax implications of such an investment.

11. Indemnification. I understand the meaning and legal consequences of this Agreement and agree to indemnify and hold harmless the Company and each Member and Manager thereof from and against any and all loss, damage or liability due to or arising out of a breach of any representation, warranty or agreement of the undersigned contained in this Agreement.

12. Authority and Noncontravention. The execution and performance hereof violates no order, judgment, injunction, agreement or controlling document to which the undersigned is a party or by which the undersigned is bound.

13. Duration. I understand that I may not cancel, terminate or revoke this Agreement or any agreement made by me hereunder and that this Agreement shall survive my death or disability and shall be binding upon my heirs, executors, administrators, successors and assigns.

14. Further Assurances. Within ten (10) days after receipt of a written request from the Company, I agree to provide such information and to execute and deliver such documents as reasonably may be necessary to comply with any and all laws and ordinances to which the Company is subject.

15. Miscellaneous.

(a) Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and shall be either (i) delivered by hand, (ii) made by telex, telecopy or facsimile transmission, (iii) sent by overnight courier, or (iv) sent by registered mail, return receipt requested, postage prepaid.

If to the undersigned:

To the address designated in Section 16 hereof.

If to the Company:

To the address set forth at the top of this Agreement.

All notices, requests, consents and other communications hereunder shall be deemed to have been given either (i) if by hand, at the time of the delivery thereof to the receiving party at the address of such party set forth above, (ii) if made by telex, telecopy or facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, (iii) if sent by overnight courier, on the next business day following the day such notice is delivered to the courier service, or (iv) if sent by registered mail, on the 5th business day following the day such mailing is made.

(b) Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement shall affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement.

(c) Modifications and Amendments. The terms and provisions of this Agreement may be modified or amended only by written agreement executed by the parties hereto.

(d) Waivers and Consents. The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled

to the benefits of such terms or provisions. No such waiver or consent shall be deemed to be or shall constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given, and shall not constitute a continuing waiver or consent.

(e) Assignment. This Agreement may not be transferred or assigned without the prior written consent of the Company and any such transfer or assignment shall be made only in accordance with applicable laws and any such consent.

(f) Benefit. All statements, representations, warranties, covenants and agreements in this Agreement shall be binding on the parties hereto and shall inure to the benefit of the respective successors and permitted assigns of each party hereto. Nothing in this Agreement shall be construed to create any rights or obligations except among the parties hereto, and no person or entity shall be regarded as a third-party beneficiary of this Agreement.

(g) Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the law of the State of Alabama, without giving effect to the conflict of law principles thereof.

(h) Jurisdiction and Service of Process. Any legal action or proceeding with respect to this Agreement shall be brought in the courts of the State of Alabama or of the United States of America for the Northern District of Alabama. By execution and delivery of this Agreement, each of the parties hereto accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. Each of the parties hereto irrevocably consents to the service of process of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by certified mail, postage prepaid, to the party at its address set forth in Section 18 hereof.

(i) Severability. In the event that any court of competent jurisdiction shall determine that any provision, or any portion thereof, contained in this Agreement shall be unenforceable in any respect, then such provision shall be deemed limited to the extent that such court deems it enforceable, and as so limited shall remain in full force and effect. In the event that such court shall deem any such provision, or portion thereof, wholly unenforceable, the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

(j) Interpretation. The parties hereto acknowledge and agree that: (i) each party and its counsel have reviewed the terms and provisions of this Agreement; (ii) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement; and (iii) the terms and provisions of this Agreement shall be construed fairly as to the parties hereto and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Agreement. Whenever used herein, the singular number shall include the plural, the plural shall include the singular, the use of any gender shall include all persons.

(k) Headings and Captions. The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and shall in no way modify, or affect the meaning or construction of any of the terms or provisions hereof.

(l) Enforcement. Each of the parties hereto acknowledges and agrees that the rights acquired by each party hereunder are unique and that irreparable damage would occur in the event that any of the provisions of this Agreement to be performed by the other party were not performed in accordance with their specific terms or were otherwise breached. Accordingly, in addition to any other remedy to which the parties hereto are entitled at law or in equity, each party hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by the other party and to enforce specifically the terms and provisions hereof in any federal or state court to which the parties have agreed hereunder to submit to jurisdiction.

(m) No Waiver of Rights, Powers and Remedies. No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, shall operate as a waiver of any such right, power or remedy of the party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, shall preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto shall not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement shall entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand.

(o) Counterparts. This Agreement may be executed in one or more counterparts, and by different parties hereto on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. I am purchasing the Member's Interest as follows *(please check as appropriate)*:

|  |   |
|--|---|
| <input type="checkbox"/> individually                                  | <input type="checkbox"/> in trust       |
| <input type="checkbox"/> joint tenants, with<br>rights of survivorship | <input type="checkbox"/> as partnership |
| <input type="checkbox"/> tenants in common                             | <input type="checkbox"/> other: _____   |

Name: \_\_\_\_\_  
*(The Member's Interest will be issued in this name)*

Home:

Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_  
Zip \_\_\_\_\_ Country \_\_\_\_\_  
Telephone \_\_\_\_\_

Business:  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_  
Zip \_\_\_\_\_ Country \_\_\_\_\_  
Telephone \_\_\_\_\_

Communications should be sent to: business \_\_\_\_\_ or home \_\_\_\_\_ address

U.S. Federal Income Tax I.D. No.  
(Social Security Number for Individual Investors) \_\_\_\_\_

17. IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE MEMBER'S INTERESTS HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE MEMBER'S INTERESTS ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISK OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

18. Under penalties of perjury, I certify that:

A. The number shown above is my correct Taxpayer Identification Number;

B. I am not subject to backup withholding either because I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the IRS has notified me that I am no longer subject to backup withholding.

C. I AM SUBSCRIBING FOR THE MEMBER'S INTEREST ONLY AFTER HAVING CONSIDERED AND FULLY UNDERSTOOD ALL OF THE RISKS ASSOCIATED WITH THE INVESTMENT THEREIN.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as a sealed instrument on this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Investor Signature

\_\_\_\_\_  
*Print Name*

\*\*\*\*\*

The foregoing subscription for Member's Interest of 1/10, representing a 10% Percentage Interest, is hereby accepted.

**CHIMNEY PEAK, LLC**

BY:

\_\_\_\_\_  
Paul H. Thomas  
Manager

DATE: \_\_\_\_\_