

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
FC MASTER LLC
(a Delaware limited liability company)

THE UNITS REPRESENTED BY THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH UNITS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM.

THE UNITS REPRESENTED BY THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER SPECIFIED IN THIS AGREEMENT, AND THE COMPANY RESERVES THE RIGHT TO REFUSE THE TRANSFER OF SUCH UNITS UNTIL SUCH RESTRICTIONS HAVE BEEN SATISFIED WITH RESPECT TO ANY TRANSFER. A COPY OF SUCH RESTRICTIONS SHALL BE FURNISHED BY THE COMPANY TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE.

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of
FC MASTER LLC

This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (the “**Agreement**”) of FC Master LLC, a Delaware limited liability company (the “**Company**”), is entered into as of October 25, 2023 (the “**Effective Date**”), by and among the Company and each of the Members listed on the signature pages hereto.

RECITALS

WHEREAS, the Company was formed as a Delaware limited liability company on October 26, 2022, by the filing of a Certificate of Formation for the Company with the Delaware Secretary of State;

WHEREAS, in accordance with the terms contained therein and herein, the Members desire to set forth the rights, preferences and obligations in respect of their membership interests, in accordance with the terms hereof; and upon execution of this Agreement, the Members shall hold that number and class of Units set forth opposite each such Member’s name on **Schedule 1.7**; and

WHEREAS, this Agreement shall constitute a limited liability company agreement within the meaning of Section 18-101(7) of the Act.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereby agree to amend and restate the Original Agreement as follows:

SECTION 1
FORMATION, NAME, PURPOSE, MEMBERS, DEFINITIONS, ETC.

Section 1.1 **General.**

(a) **Formation.** The Members acknowledge that the Company was formed as a Delaware limited liability company on October 26, 2022, by the filing of the Certificate with the Delaware Secretary of State and the Members hereby ratify such filings and registration.

(b) **Further Actions.** Except as otherwise set forth herein, to the fullest extent permitted under the Act, sole and exclusive authority to manage the business, affairs and operations of the Company shall be vested in a sole manager (the “**Manager**”). The Manager shall cause the Company (or duly appointed officer or other representative of the Company, as an “authorized person” within the meaning of the Act) to execute, deliver and/or file such documents and/or take such other actions as may be necessary to maintain the Company’s status as a limited liability company under the Act and as a “partnership” under the Code, and to carry

out the business purposes of the Company as set forth in **Section 1.3** hereof, including, causing the Company to be (or become and remain) qualified, formed or registered under assumed or fictitious name statutes, qualification to do business statutes and similar laws in any jurisdiction in which the Company transacts business and executing, delivering and/or filing all certificates or other instruments (and any amendments and restatements thereof) which may be required in connection therewith. The Members shall, at the request of the Manager, promptly execute such documents and furnish such information as may be necessary to enable the Manager to perform, on behalf of the Company, or to enable the Company to perform those actions contemplated under this **Section 1.1(b)**.

(c) **Conflicts.** In the event of any conflict between the terms or provisions of this Agreement and the Certificate (as the same may be amended from time to time) or between this Agreement and any of the terms or provisions of the Act (except any provisions of the Act which, by their terms, may not be superseded by the terms of this Agreement), the terms or provisions of this Agreement shall control.

Name; Principal Office. The name of the Company is “FC Master LLC”. The principal office of the Company shall be located at such place as the Manager may designate by written notice to the Members from time to time.

Purposes. The purpose and business of the Company shall be limited to investing in and owning Equity Interests of Target and its Subsidiaries and engaging in all activities necessary or incidental to the foregoing. Notwithstanding anything herein to the contrary, nothing set forth herein shall be construed as authorizing the Company to possess any purpose or power, or to do any act or thing, forbidden by law to a limited liability company organized under the laws of the State of Delaware. Subject to the Act and the provisions of this Agreement, the Company may, with the approval of the Manager, enter into and perform under any and all documents, agreements and instruments, all without any further act, vote or approval of any Member.

Registered Agent; Registered Office. The Company’s registered agent and registered office in the State of Delaware are specified in the Certificate. The Manager, on behalf of the Company, may change the registered office and/or the registered agent of the Company (in any state or other jurisdiction where appointment of a registered agent is required) from time to time.

Commencement and Term. The term of the Company commenced on the filing of its Certificate and shall thereafter continue in perpetuity unless sooner dissolved, liquidated and terminated as provided in **Section 9** hereof.

Income Tax Classification. The Company is classified as a “partnership” for federal income tax purposes. The Members acknowledge and agree that it is not the purpose or intent of the Members to cause the Company to be treated (or elect to be treated) for federal income tax purposes as an association taxable as a corporation. The Members intend that the Company not be a partnership (including, but not limited to, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement (except for tax purposes as set forth in the next succeeding sentence of this **Section 1.6**), and neither this Agreement nor any other document entered into by the Company or any Member relating to the subject matter of this Agreement shall be construed to suggest otherwise. The Members intends

that the Company shall be treated as a “partnership” for federal and, if applicable, state or local income tax purposes, and each Member and the Company shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment. The Members acknowledge and agree that it is not the purpose or intent of the Members to cause the Company to be treated (or elect to be treated) for federal income tax purposes as an association taxable as a corporation.

Members. The names and addresses of the Members, their respective Units and Membership Percentages of each class of Units are listed on **Schedule 1.7** attached hereto. Except as otherwise permitted by, and subject to the terms of, **Section 8** hereof, additional or substitute “members” of the Company may be admitted only with the prior written consent of the Manager, which consent may be given or arbitrarily withheld in the Manager’s sole and absolute discretion. The Manager shall cause **Schedule 1.7** attached hereto to be updated from time to time to reflect any sale or other disposition by a Member of all or any portion of such Member’s Units or the admission of any additional or substitute “members” of the Company in accordance with the express terms hereof, or, otherwise, to reflect any change in the information of any Member set forth therein (to the extent known or made known to the Manager).

Definitions. Words and phrases capitalized throughout this Agreement, but which are not otherwise defined herein (or in the Recitals hereto or the opening paragraph hereof), shall have the respective meanings ascribed thereto in **Appendix A** or **Appendix B** attached hereto and made a part hereof.

SECTION 2

UNITS; MEMBER CAPITAL CONTRIBUTIONS/ MEMBER LOANS

Initial Capital Contributions; Units. Membership Interests in the Company are divided into unit increments (each, a “Unit” and collectively, the “Units”) and fractions thereof. A fractional Unit entitles the holder thereof to the appropriate fraction of the rights and privileges of a whole Unit. Subject to **Section 2.2(b)**, the Company is authorized to issue an unlimited number of Units; provided, however, without the consent of the Manager, the Company shall not be authorized to issue any Units (or fractional thereof) not otherwise issued as of the Effective Date hereof. Any Units repurchased by the Company after the Effective Date hereof in accordance with this Agreement will no longer be deemed to be outstanding for any purposes of this Agreement and the Company will not be permitted to reissue any such repurchased Units in whole or in part at any time thereafter, without the consent of the Manager.

Section 2.2 Additional Capital Contributions.

(a) **Other Additional Capital Contributions.** No Member shall be required or, except as specified in **Section 2.2(b)** below, permitted to make any additional Capital Contributions to the Company.

(b) **Voluntary Additional Capital Contributions/Capital Calls.**

(i) If the Manager determines, in its reasonable discretion, that the Company requires additional equity funds, the Manager is authorized to solicit and/or

accept such additional equity funds, as a contribution to the capital of the Company, from any Person, provided, each Member is provided a reasonable opportunity to contribute each Member's Proportionate Share, or other mutually agreeable portion, of the total additional funds otherwise then being solicited based upon the terms and conditions determined by the Manager in its sole discretion. For purposes hereof, a Member shall be deemed to have waived a Member's right to contribute such Member's Proportionate Share of any additional Capital Contributions solicited by the Manager, from time to time, in accordance with this **Section 2.2(b)**, if such Member shall fail to contribute such Member's Proportionate Share thereof within thirty (30) days (or such longer period as may be specified by the Manager) of receipt of a written notice (a "**Voluntary Capital Call Notice**") from the Manager (or duly authorized representative of the Company acting at the direction of the Manager) specifying: (A) the total additional funds which the Manager is then seeking be contributed to the Company by a Member or Members, (B) the reason such additional funds are required (i.e., the proposed use(s) by the Company of such additional funds), (C) the rights and preferences or relative rights and preferences to be afforded to the Members that contribute such additional Capital Contributions, and (D) such Member's Proportionate Share of such total additional funds.

(ii) If any Member fails to timely contribute (or affirmatively elects not to contribute) its Proportionate Share of the aggregate additional Capital Contributions to which a Voluntary Capital Call Notice relates (such Member being referred to as a "**Nonfunding Member**") in accordance with **Section 2.2(b)(i)** above, then each (or any) other Member who timely contributed such Member's Proportionate Share (as defined above) thereof (a "**Funding Member**"), may elect to make an additional Capital Contribution to the Company not in excess of the maximum amount the Nonfunding Member could have contributed under said Voluntary Capital Call Notice (or, if there is more than one Funding Member, up to each such Funding Member's Proportionate Share, or other mutually agreeable portion, of such maximum amount) within such time period as may be reasonably set forth in writing from the Company to the Funding Members notifying them of the amount or amounts that such Nonfunding Member or Members failed to contribute to the Company in accordance with the Voluntary Capital Call Notice.

(iii) Any amounts a Member contributes to the Company under this **Section 2.2(b)** shall be in immediately available funds and deposited in a bank account owned by the Company, to be held or used for the purposes described in the Voluntary Capital Call Notice to which such contribution relates. All such amounts so contributed by any Member shall be treated as an additional Capital Contribution by such Member to the Company for all purposes of this Agreement (including for purposes of maintaining the Members' Capital Accounts and **Section 3.1(b)** hereof).

(iv) In the event that any Nonfunding Member fails to timely contribute (or affirmatively elects not to contribute) its Proportionate Share of any additional Capital Contributions pursuant to a Voluntary Capital Call Notice and the Funding Member or Members fail to elect and timely contribute such additional Capital Contributions to the Company to the extent of the amount the Nonfunding Member or Members could have contributed under said Voluntary Capital Call Notice, then for a period of ninety (90)

days following the delivery of such Voluntary Capital Call Notice, the Company and the Manager shall be free to offer and sell such additional Membership Interests (or Units) to any Person or Persons, including any Member or Affiliate thereof, at a price not less than the price set forth in the Voluntary Capital Call Notice and on terms and conditions not substantially more favorable to proposed offeree than the terms and conditions set forth in the Voluntary Capital Call Notice. Any such additional Membership Interests not so issued and sold within such 90-day period may not be issued and sold by the Company unless the Company once again complies with the requirements of this **Section 2.2(b)**.

(v) Notwithstanding anything to the contrary contained herein, the Company may, in order to expedite the sale or issuance of Membership Interests (or Units) under this **Section 2.2**, sale or issue all or a portion of such Membership Interests (or Units) to one or more Persons (each, an “**Initial Subscribing Member**”) without complying with the provisions of this **Section 2.2**; provided, that prior to such issuance or sale, either (A) each Initial Subscribing Member agrees to offer to sell to each Unit Holder who is not an Initial Subscribing Member (each such Unit Holder, an “**Other Member**”) such Unit Holder’s Membership Percentage of such Membership Interests on the same terms and conditions as issued to the Initial Subscribing Members or (B) the Manager shall resolve to offer to sell an additional amount of such Membership Interests to each Other Member so as to provide such Other Members with rights substantially similar to the rights outlined in this **Section 2.2**. The Initial Subscribing Members or the Company, as applicable, shall offer to sell such Membership Interests to each Other Member within sixty (60) days after the closing of the purchase of the Membership Interests by the Initial Subscribing Members.

Section 2.3 **Member Loans.**

(a) General. In the event that, from time to time, the funds of the Company are insufficient to pay when due any authorized expenses or obligations of the Company or if the Company otherwise requires additional funds, the Manager, in its reasonable discretion, may cause the Company to borrow all or any portion of such funds from any Person, including any Member or Members (or Affiliate(s) of any Member or Members) as the Manager may determine in its sole and absolute discretion.

(b) Repayment of Member/Affiliate Loans. Any loans made (or deemed made) to the Company by a Member or Members, or any Affiliate(s) thereof, from time to time, as provided in **Section 2.3(a)** above (or **Section 2.4** below), shall be repaid by the Company from its first available proceeds, as determined by the Manager in its reasonable discretion, and before distributions of Available Cash (or other cash or property) are made by the Company to the Members (or any Member), together with interest, as in effect from time to time during the period the principal amount of such loan (or loans) remain(s) outstanding. In the event there shall be outstanding loans (or deemed loans) to the Company made by any two or more Members (or Affiliates thereof) in accordance with **Section 2.3(a)** (or **Section 2.4**) hereof, any amounts otherwise to be paid by the Company in repayment of such loan or loans shall be paid, pro rata, among all such loans, based on the then relative outstanding balance of each such loan unless all lending Members (or Affiliates thereof) otherwise mutually agree.

Member Guarantees. No Member shall be required (or permitted) to guarantee any loan or obligation of the Company unless agreed to by such Member and approved by the Manager. In the event a Member agrees to guarantee any Company loan or obligation with the consent of the Manager, and is later required to make any payment under such Member's guarantee thereof (excluding any payment required to be made by reason of such Member's breach of its obligations under such guarantee), then such payment shall be treated as a loan by such Member to the Company, to be repaid as provided in **Section 2.3(b)** above which shall bear interest on the outstanding principal balance thereof at the Prime Rate as in effect from the time during the period such principal amount of such loan remains outstanding.

Section 2.5 Maintenance of Capital Accounts/Reports; Withdrawal of Capital; No Interest.

(a) **Capital Accounts.** An individual Capital Account shall be determined and maintained by the Company for each Member as provided in **Section I** of **Appendix B** attached hereto. Upon the sale, exchange or assignment of all or a portion of an interest in the Company, the Capital Account of the transferor, or the portion thereof that is attributable to the transferred interest, if the transferor disposed of less than the transferor's entire interest in the Company, shall be carried over to the transferee.

(b) **No Right to Withdraw Capital/No Right to Interest.** Except as otherwise provided in **Section 3** hereof, no Member shall be entitled to withdraw all or any portion of such Member's Capital Contributions or the balance in such Member's Capital Account, in money or other property, prior to dissolution of the Company, and then only in accordance with the provisions of the Act and **Section 9.3** hereof. Neither the Manager, nor any Member shall be personally liable for the payment or return of any portion of any Member's Capital Contributions. No interest will be paid on account of any Capital Contributions (or on the credit balance in any Member's Capital Account). No Member shall have the right to receive or demand property other than cash in return for such Member's Capital Contributions, and no Member shall have priority over any other Member, either as to the return of such Member's Capital Contributions or as to distributions, except to the extent otherwise expressly specified in this Agreement.

Representations and Warranties of Members. By execution and delivery of this Agreement or a joinder hereto, as applicable, each of the Members represents and warrants to the Company and acknowledges that:

(a) The Units have not been registered under the Securities Act or the securities laws of any other jurisdiction, are issued in reliance upon federal and state exemptions for transactions not involving a Public Offering and cannot be disposed of unless (i) they are subsequently registered or exempted from registration under the Securities Act and (ii) the provisions of this Agreement have been complied with;

(b) Such Member is an "accredited investor" within the meaning of Rule 501 promulgated under the Securities Act, as amended by Section 413(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act;

(c) Such Member's Units are being acquired for its own account solely for investment and not with a view to resale or distribution thereof;

(d) Such Member has conducted its own independent review and analysis of the business, operations, assets, liabilities, results of operations, financial condition and prospects of the Company and the Company's subsidiaries and such Member acknowledges that it has been provided adequate access to the personnel, properties, premises and records of the Company and the Company's subsidiaries for such purpose;

(e) The determination of such Member to acquire Units has been made by such Member independent of any other Member and independent of any statements or opinions as to the advisability of such purchase or as to the business, operations, assets, liabilities, results of operations, financial condition and prospects of the Company and the Company's subsidiaries that may have been made or given by any other Member or by any agent or employee of any other Member;

(f) Such Member has such knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of an investment in the Company and making an informed decision with respect thereto;

(g) Such Member is able to bear the economic and financial risk of an investment in the Company for an indefinite period of time;

(h) The execution, delivery and performance of this Agreement have been duly authorized by such Member and do not require such Member to obtain any consent or approval that has not been obtained and do not contravene or result in a default in any material respect under any provision of any law or regulation applicable to such Member or other governing documents or any agreement or instrument to which such Member is a party or by which such Member is bound;

(i) This Agreement is valid, binding and enforceable against such Member in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws of general applicability relating to or affecting creditors' rights or general equity principles (regardless of whether considered at law or in equity); and

(j) Neither the issuance of any Units to any Member nor any provision contained herein will entitle the Member to remain in the employment of the Company or any of its subsidiaries or affect the right of the Company or any of its subsidiaries to terminate the Member's employment at any time for any reason, other than as otherwise provided in such Member's employment agreement or other similar agreement with the Company or any of its subsidiaries, if applicable.

SECTION 3 DISTRIBUTIONS

Available Cash. Prior to the Company's dissolution in accordance with **Section 9.1** hereof, subject to the following provisions of this **Section 3** and any restrictions on distributions to the Members otherwise specified in this Agreement, the Manager may cause the Company to

distribute its Available Cash, if any, at such time or times and in such amounts as the Manager may determine, to or among the Members pro rata in accordance with their relative Membership Percentages.

Section 3.2 **Withholding/Deemed Loans to Members.**

(a) **Tax Withholding; Treatment.** If the Company is required (as determined in good faith by the Manager) to make a payment (a “**Tax Payment**”) with respect to any Member to discharge any legal obligation of the Company (or the Manager) to make payments to any governmental authority with respect to any federal, foreign, state or local tax liability of such Member arising from such Member’s ownership or disposition of a Membership Interest, then, notwithstanding any other provision of this Agreement to the contrary, the amount of such Tax Payment shall be treated as: (i) a distribution to such Member (and the payment by such Member of the tax to which such payment relates), which shall offset, in whole or part, the first distribution(s), if any, otherwise to be made by the Company to such Member as of the date thereof pursuant to **Section 3.1** or **Section 9.3** hereof, or (ii) to the extent such Tax Payment exceeds the distribution(s) otherwise then to be made to such Member (or if no distribution is then to be made to such Member), a loan by the Company to such Member, which loan shall bear interest at the Prime Rate (as determined as of the date such Tax Payment is made) and be payable upon demand by the Manager or, in the discretion of the Manager, by set off against the first distribution (or distributions) thereafter to be made by the Company to such Member, whether under **Section 3.1** or **Section 9.3** hereof.

(b) **Right of Holdback.** The Manager shall be entitled to hold back any distribution (including Company property to be distributed in-kind) otherwise payable by the Company to any Member if and to the extent the Manager believes, in good faith, that a Tax Payment is or will be required with respect to such Member in the future and the Manager believes that there will not be sufficient subsequent distributions to such Member to make such Tax Payment.

(c) **Special Allocations of Gain or Loss from Sale of Retained Property.** If applicable, in the event Company property, or a portion thereof, to be distributed in-kind to any Member is retained by the Company to make a Tax Payment for such Member, then such property, or applicable portion thereof, shall be deemed for purposes hereof to have been distributed to such Member as of the date such distribution in-kind was otherwise to be have been made and all gain or loss, as determined for federal income tax purposes, from the Company’s sale of such property to fund such Tax Payment, shall be allocated, in full, to such Member.

(d) **Tax Distributions.** Notwithstanding the foregoing to the contrary, subject to the other limitations set forth herein, to the extent of the Company’s Available Cash, the Manager shall cause Tax Distributions for any Taxable Year to be made to the Members during any such year, on a quarterly basis, as of the end of each calendar quarter, calculated, in part, based on the Company’s net taxable income for such Taxable Year through the end of each such calendar quarter, and taking into account the aggregate prior Tax Distributions, if any, made to the Members under this section for such year, which Tax Distributions shall be apportioned among and distributed to the Members in the same proportion as the aggregate amounts of net

taxable income of the Company for such Taxable Year are allocated to the Members hereunder. At the time any distribution is made by the Company to the Members (or any Member) pursuant to this **Section 3.2(d)** for any Taxable Year, the Manager shall cause (or require a duly appointed officer of the Company to cause) such distribution(s) to be designated on the books of the Company as a “**Tax Distribution**” for such year. Any amounts distributed pursuant to this **Section 3.2(d)** as Tax Distributions shall be treated as an advance of any subsequent distributions otherwise distributable to a Member pursuant to **Section 3.1** or **Section 9.3(c)** (as applicable), and such subsequent distribution amounts shall be reduced by the amount distributed as a Tax Distribution to such Member pursuant to this **Section 3.2(d)**. No Tax Distributions shall be made under this **Section 3.2(d)** with respect to the taxable year in which the Company liquidates or in which a Sale of the Company occurs.

Section 3.3 **Limitations on Distributions/Liability for Repayment.**

(a) **Statutory Restrictions.** In accordance with §18-607(a) of the Act, the Company shall not make any distributions (other than guaranteed payments to any Member constituting reasonable compensation for present or past services of such Member to the Company, if applicable) to any of the Members if, immediately following such distribution, the Company would not otherwise have sufficient remaining properties (based on the fair value of its remaining properties) to pay its then total outstanding liabilities, other than liabilities to its Members on account of their Membership Interests in the Company and liabilities of the Company for which the recourse of the applicable Company creditor(s) is or are limited to specified Company property. (For purposes of applying the preceding sentence, the fair value of any Company property that is subject to a liability for which the recourse of an applicable Company creditor is limited, shall be included in the assets of the Company only to the extent that the fair value of such property exceeds that liability.)

(b) **Member Repayment Obligations.** Any Member that receives a distribution made in violation of the terms of **Section 3.3(a)** above and §18-607(a) of the Act, and who knew at the time of such distribution that such distribution was made in violation thereof, shall be liable to the Company for the amount of such distribution.

(c) **Erroneous Distributions.** If the Company has pursuant to a clear and manifest accounting, mathematical or similar error paid to any Member an amount in excess of the amount to which such Member is entitled pursuant to **Section 3.1**, **Section 3.2(d)** or **Section 9.3** hereof, then such Member shall reimburse the Company to the extent of such excess (without interest) within thirty (30) days after demand by the Company to such Member for the reimbursement of such erroneous distribution or the Company shall be entitled to set off the amount of such erroneous distribution against the first distribution (or distributions) thereafter to be made to such Member, whether under **Section 3.1** or **Section 9.3(c)** hereof.

SECTION 4 ALLOCATIONS OF PROFITS AND LOSSES

General Allocation of Profits or Losses. Subject to **Appendix B** attached hereto, Profits or Losses of the Company for each Allocation Period commencing on or after the Effective Date hereof, shall be allocated as follows:

(a) General. Except as otherwise provided in this Agreement, Profits and Losses for any Allocation Period shall be allocated among the Members in such a manner that, as of the end of such Allocation Period, the sum of (i) the Capital Account of each Member, (ii) such Member's share of Company Minimum Gain (as determined according to Regulations § 1.704-2(g)) and (iii) such Member's allocation of Member Nonrecourse Debt Minimum Gain (as determined according to Regulations § 1.704-2(i)(3)) shall be equal to the respective net amounts, positive or negative, which would be distributed to them or for which they would be liable to the Company under this Agreement, determined as if the Company were to (A) liquidate the assets of the Company for an amount equal to their Book Value and (B) distribute the proceeds of liquidation pursuant to **Section 9.3(c)** hereof.

(b) Limitation on Losses. The Losses allocated under **Section 4.1(a)** to any Member shall not exceed the maximum amount of Losses that can be so allocated without causing or increasing an Adjusted Capital Account Deficit with respect to such Member. If some but not all of the Members would have an Adjusted Capital Account Deficit as a consequence of an allocation of Losses pursuant to **Section 4.1(a)**, then the limitation set forth in this **Section 4.1(b)** shall be applied so as to allocate the maximum permissible Losses to each Member under the preceding sentence and Regulations § 1.704-1(b)(2)(ii)(d). In the event that the allocation of Losses to any Member is prohibited under the first sentence of this **Section 4.1(b)**, such Losses shall be allocated to the remaining Members in proportion to their respective positive Adjusted Capital Account balances. With respect to each Allocation Period (including Allocation Periods thereafter), Profits (or, to the extent necessary, gross income) shall be allocated to the Members up to the aggregate of, and in proportion to, any Losses previously allocated to each Member in accordance with this **Section 4.1(b)** in the reverse order in which such Losses were allocated.

Section 4.2 **Allocations of Certain Tax Items.**

(a) Code §704(c). If any property, if applicable, contributed to the Company by any Member is subject to the provisions of Code §704(c), the Members' distributive shares of income, gain, loss and deductions, as computed for income tax purposes, with respect to such property (and, to the extent permitted by the Regulations, with respect to other Company property), shall be determined in accordance with Code §704(c), utilizing such method of accounting as determined by the Manager.

(b) Code §704(c) Principles. In the event the Book Value of any Company asset is adjusted pursuant to **Section I.D.(2) of Appendix B**, 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 Book Value utilizing such method of accounting as determined by the Manager.

Section 4.3 **Miscellaneous.**

(a) Earning of Profits and Losses. For all purposes of this Agreement, including the determination of the allocable share of the Profits or Losses (or items thereof) of a Member who acquires or disposes of a Membership Interest during any Taxable Year, Profits or Losses of the Company (or items thereof) for any Taxable Year shall be allocated to the periods

of such Taxable Year on the “interim closing of the books” method of accounting unless otherwise agreed by the Manager (and, if applicable, a selling Member).

(b) Consistent Tax Reporting. Each Member agrees to report to the appropriate taxing authorities such Member’s share of Company Profits or Losses (and, if different, share of the net taxable income or loss of the Company) consistent with this **Section 4** and **Appendix B** attached hereto.

SECTION 5 MANAGEMENT

Management by Manager. The Initial Manager is hereby appointed as the Manager, and the Manager shall be the “manager” (as defined in the Act) for all purposes under this Agreement. Except for situations in which the approval of the Members (or any class or subset of Members) is expressly and specifically required by the express terms of this Agreement, (i) the Manager shall conduct, direct and exercise full control over all activities of the Company (including all decisions relating to the issuance of Units and the voting and sale of and the exercise of other rights with respect to, securities of the Company, its Subsidiaries, and Target), (ii) all management powers over the business and affairs of the Company shall be exclusively vested in the Manager, and (iii) the Manager shall have the sole power to bind or take any action on behalf of the Company, or to exercise any rights and powers (including, without limitation, the rights and powers to take certain actions, give or withhold certain consents or approvals, or make certain determinations, opinions, judgments, or other decisions) granted to the Company under this Agreement or any other agreement, instrument, or other document to which the Company is a party. The Manager shall serve as the Manager until the earlier of his, her or its (as applicable) death, removal, Incapacity or resignation. The Manager may not be removed or replaced except as set forth in **Section 5.2**.

Section 5.2 Removal and Replacement of the Manager.

(a) The Manager may be removed or replaced at any time by the Majority Members by sending written notice of the removal of the Manager to the Company, that sets forth the effective date of the removal of the Manager, together with the name of the replacement Manager.

Section 5.3 Limitation on Fiduciary Duties; Indemnification.

(a) Fiduciary Duties.

(i) In performing its duties, the Manager will be entitled to rely in good faith on the provisions of this Agreement and on information, opinions, reports, or statements (including financial statements and information, opinions, reports or statements as to the value or amount of the assets, liabilities, Profits or Losses of the Company or any facts pertinent to the existence and amount of assets from which distributions to the Members might properly be paid) that are furnished by one or more of the following Persons or groups: (A) one or more officers or employees of the Company or any Affiliate thereof; (B) any attorney, independent accountant, or other Person employed or engaged by the Company or any Affiliate thereof; or (C) any other Person

who has been selected with reasonable care by or on behalf of the Company or any Affiliate thereof, in each case as to matters which such relying Person reasonably believes to be within any such other Person's or group's professional competence. The preceding sentence will in no way limit any Person's right to rely on information to the extent provided in §18-406 of the Act. The Manager will not be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being the Manager.

(ii) Notwithstanding anything to the contrary contained herein, whenever in this Agreement or any other agreement contemplated herein or otherwise, the Manager is permitted or required to take any action or to make a decision in its "sole discretion" or "discretion," or that it deems "necessary," "necessary or appropriate," "necessary or desirable" or "necessary, appropriate or advisable," or under a grant of similar authority or latitude, the Manager shall, to the fullest extent permitted by applicable law, make such decision in its sole discretion, be entitled to consider such interests and factors as it desires (including the interests of a Member with which the Manager may be affiliated), and shall have no duty or obligation (fiduciary or otherwise) to give any consideration to any interest of or factors affecting the Company, its Subsidiaries or the Members, and shall not be subject to any other or different standards imposed by this Agreement, any other agreement contemplated hereby, under the Act or under any other applicable law or in equity other than the implied contractual covenant of good faith and fair dealing that cannot be waived pursuant to the Act.

(iii) To the extent that, at law or in equity, the Manager or any Member (individually, a "**Covered Person**") has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, such Covered Person shall have only the duties provided in this Agreement, any other duties (including fiduciary duties) are expressly waived by the Members and, except as otherwise specifically provided in this Agreement, such Covered Person shall not be liable to the Company or to any other Covered Person for its breach of fiduciary duty for such Covered Person's good faith reliance on the provisions of this Agreement or for breach of contract and breach of duties (including fiduciary duties), or for any approval or authorization granted by the Company or any other Covered Person. The provisions of this Agreement, to the extent they eliminate or restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the parties to this Agreement to replace such other duties and liabilities of such Covered Person, other than an act or omission which constitutes fraud or willful misconduct.

(iv) Whenever in this Agreement the Manager is permitted or required to take any action or to make a decision in its "good faith", the Manager shall act under such express standard and, to the extent permitted by applicable law, shall not be subject to any other or different standards imposed by this Agreement or any other agreement contemplated herein, and, notwithstanding anything contained herein to the contrary, so long as the Manager believes that the action taken or the decision made is in or not opposed to the best interests of the Company, the resolution, action or terms so made, taken or provided by the Manager shall not constitute a breach of this Agreement or any

other agreement contemplated herein or impose liability upon the Manager or any of its respective Affiliates, heirs, successors, assigns, agents or representatives. Without limiting the foregoing, the Manager may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisors selected by it, and any act taken or omitted to be taken in reasonable reliance upon the opinion of such Persons as to matters that the Manager reasonably believes to be within such person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion.

(v) To the maximum extent permitted by applicable law, each Member hereby waives any claim or cause of action against each present or former Member, and any of their respective Affiliates, employees, agents and representatives for any breach of any fiduciary duty to the Company or its Members by such Person, including as may result from a conflict of interest between the Company or any of its Subsidiaries and such Person, and any liability for breach of fiduciary duties as the Manager is hereby eliminated to the fullest extent permitted by applicable law. Subject to compliance with the express terms of this Agreement, no Member shall be obligated to recommend or take any action that prefers the interests of the Company or any of its Subsidiaries or the other Members over the interests of such Member or its respective Affiliates, employees, agents or representatives and the Company, and the Members hereby waive all fiduciary duties (other than the implied contractual covenant of good faith and fair dealing that cannot be waived pursuant to the Act), if any, of the Members to the Company and the Members, including in the event of any such conflict of interest.

(b) Indemnification.

(i) The Company shall, to the fullest extent permitted by the Act, indemnify and defend each Person who was or is made a party or is threatened to be made a party to or is involved in or participates as a witness with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company), by reason of the fact that it, he or she, or a Person of whom he or she is the legal representative, is or was the Manager or an officer or Member, or is or was serving at the request of the Company as a director, officer, employee, fiduciary or agent of another limited liability company or of a corporation, partnership, joint venture, trust or other enterprise (each a "**Proceeding**"), against all expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Person if such Person acted in good faith, with reasonable care and in a manner such Person reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal Proceeding, had no reasonable cause to believe such Person's conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner which such Person reasonably believed to be in or not opposed to the best interests of the Company, or, with respect to any criminal Proceeding, that the Person had reasonable cause to believe that his or her conduct was unlawful.

(ii) The Company shall, to the fullest extent permitted by the Act, indemnify and defend any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that such Person, or a Person of whom he or she is the legal representative, is or was the Manager or a Member, or is or was serving at the request of the Company as a director, officer, employee, fiduciary or agent of another limited liability company or of a corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection with the defense or settlement of such action or suit if such Person acted in good faith, with reasonable care and in a manner such Person reasonably believed to be in or not opposed to the best interests of the Company and except that no indemnification shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable to the Company unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

(iii) The rights to indemnification and the payment of expenses incurred in defending a Proceeding in advance of its final disposition conferred in this **Section 5.3(b)**, shall not be exclusive of any other right which any Person may have or hereafter acquire under any statute, provision of this Agreement, any other agreement, by affirmative vote of the Majority Members or the Manager (if disinterested).

(iv) Each of the Company and each Member hereby acknowledges that the Manager may have certain rights to indemnification, advancement of expenses and/or insurance provided by one or more Persons other than the Company (collectively, the "**Fund Indemnitors**"). The Company and each of the Members hereby agree (A) that the Company is the indemnitor of first resort (i.e., its obligations to the Manager are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by the Manager are secondary), (B) that the Company shall be required to advance the full amount of expenses incurred by the Manager and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement by or on behalf of any such director or officer to the extent legally permitted and as required by this Agreement (or any agreement between the Company and the Manager), without regard to any rights the Manager may have against the Fund Indemnitors, and, (C) that the Company irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company and each of the Members further agree that no advancement or payment by the Fund Indemnitors on behalf of the Manager with respect to any claim for which such director or officer has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of the Manager against the Company.

(c) Expenses. Subject to the Company having sufficient Available Cash taking into account the Company's operating needs, as determined in the reasonable discretion of the Manager, expenses incurred by the Manager or any Member described in **Section 5.3(b)(i)** or **Section 5.3(b)(ii)** hereof in defending a Proceeding shall be paid by the Company in advance of such Proceeding's final disposition upon receipt of an undertaking by or on behalf of the Manager or such Member to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Company. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Manager deems appropriate.

(d) Employees and Agents. Persons who are not covered by the foregoing provisions of this **Section 5.3** and who are or were the Manager, Members, employees or agents of the Company, or who are or were serving at the request of the Company, as employees, officers or agents of an Affiliate of the Company, may be indemnified, retroactively or prospectively, to the extent authorized at any time or from time to time by the Manager.

(e) Other Terms; Contract Rights.

(i) The provisions of this **Section 5.3** shall be deemed to be a contract right between the Company and each Covered Person who serves in any such capacity at any time while this **Section 5.3** and the relevant provisions of the Act or other applicable law are in effect, and any repeal or modification of this **Section 5.3** or any such law shall not affect any then known (or knowable) right of any such Person or any obligation of the Company with respect to any act, omission, state of facts or Proceeding occurring prior to the time of such repeal or modification or otherwise then existing.

(ii) Except as provided in **Section 5.3**, the Company shall indemnify any such Person seeking indemnification in connection with a Proceeding initiated by such Person only if such Proceeding was authorized by the Manager.

(iii) If the Act is amended after the Effective Date to authorize further or greater limitations on the liability or fiduciary duties of the Manager or Members than that specified herein, then the limitations on liability or fiduciary duties of the Manager or Company officers, as applicable, shall be expanded to the fullest extent permitted by the Act. If the Act is amended to authorize greater indemnification of the Manager or Members or other Persons entitled to indemnification under the foregoing provisions of this **Section 5.3**, then the Company's indemnification obligations to such Person or Persons shall be expanded to the fullest extent permitted by the Act.

(iv) The indemnification and other rights provided for in this **Section 5.3** shall inure to the benefit of the heirs, executors and administrators of any Person entitled to indemnification in accordance with the foregoing provisions of this **Section 5.3**.

Members. No Member, in a Member's capacity as such, shall participate in or have any control over the management of the Company's business or transact any business for the Company; and

no Member, in a Member's capacity as a "member" of the Company, shall have any power to sign for or bind the Company.

Action by the Manager. Any action required or permitted to be taken by the Manager may be evidenced by a written consent or other written instrument signed by the Manager. All such written consents shall be dated and shall be delivered to the Company at its principal office. All such written consents shall have the same force and effect as a requisite vote of the Manager at a meeting thereof duly called.

Reimbursement. The Manager shall be reimbursed by the Company for any reasonable out of pocket expenses directly incurred by it in connection with its performance of any of the duties and responsibilities of such office, subject to submission of adequate substantiating receipts or records and, if applicable, subject to such limitations or other terms and conditions as the Manager may specify or determine, from time to time.

Management Fee. The Manager (or an Affiliate thereof) shall be paid an annual management fee by the Company in accordance with the Management Agreement. The Management Agreement may not be amended, in any material respect, without approval of the Majority Members.

SECTION 6 MEMBER MEETINGS

Section 6.1 Member Meetings.

(a) **Right to Call/Place of Meetings.** The Majority Members or the Manager may call meetings of the Members at any time by giving notice as specified herein below. Meetings of the Members shall be chaired by the Manager (or other individual) selected by the Manager. Unless held by telephone conference, each meeting of the Members shall be held at the principal office of the Company (or at such other location mutually agreed by the Majority Members); provided, any Member (or a Member's designated representative) may participate in any meeting of the Members not held by telephone conference, by use of a conference telephone or similar communications equipment pursuant to which all Persons participating in the meeting (or entitled to participate) can hear and communicate with each other.

(b) **Notice/Waiver of Notice.** Notice of a meeting of the Members shall be given by the Majority Members or the Manager, as the case may be (whichever called the meeting), to each other Member or all Members, as applicable, entitled to vote (or the designated representative of each Member) not later than two (2) days before and not earlier than thirty (30) days before the date designated for such meeting, and, in addition to any other information contained therein or attached thereto, a notice of a meeting of the Members must provide the date and time of such meeting, and a general description of the nature of the business to be transacted thereat. Any Member (or the designated representative of a Member) may waive notice of any meeting of the Members, provided, the attendance of a Member (or a Member's designated representative) at any meeting of the Members shall constitute a waiver of notice of such meeting by such Member, except where such Member (or such Member's designated representative) attends a meeting for the express purpose of objecting, at the start of such

meeting, to the transaction of any business at such meeting because the meeting was not lawfully called or convened.

(c) Meeting Minutes. The Manager shall cause written minutes to be prepared of all actions taken by the Members (or the designated representatives of the Members) at each meeting of the Members, and shall cause a copy thereof to be delivered to all Members (or their designated representatives) with reasonable diligence after the meeting to which the minutes relate.

(d) Adjournment. Any Member (or a Member's designated representative) shall be entitled to a reasonable adjournment of any meeting of the Members upon not less than two (2) business days' prior written notice to the Manager and the other Members (or their respective designated representatives). When a meeting of the Members is adjourned to a different date, time or place, it shall not be necessary to give any notice of the new date, time or place of such meeting, if the new date, time or place of such meeting is announced at such meeting before an adjournment is taken, and any business may be transacted at the adjourned meeting that might have been transacted on the original date of such meeting without the need for any other or further notice.

Quorum; Member Voting. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person or by proxy of the Majority Members shall be required to establish a quorum. A Member entitled to vote may vote either in person or by written proxy signed by the Member or by his, her or its duly authorized attorney in fact. Persons present by telephone shall be deemed to present "in person" for purposes hereof. At each meeting of the Members, each Member entitled to vote (or such Member's designated representative) may vote such Member's Membership Percentage with respect to any matter to be considered at such meeting and which is subject to the vote, consent or approval of the Members (or the Members owning any specified Membership Percentages). Except as may otherwise be expressly provided herein to the contrary, any matter subject to the consent, approval or direction of the Members hereunder or under the Act, shall require the agreement or approval of the Majority Members.

Written Consent to Action. Any action required or permitted to be taken by the Members (or by any Members), whether at a meeting or otherwise, may be taken without a meeting, without prior notice and without a vote, if the action is evidenced by a written consent or other written instrument dated and signed (whether or not in counterparts and whether or not through facsimile or email copies) by that Member or those Members (or its or their designated representative) necessary to authorize or take the action which is the subject of such written consent. All such written Member consent(s) shall be delivered to the Company at its principal office. The Manager, within 30 days after the Company obtains authorization to the taking of any action by a written consent of the Members, shall send a copy thereof to that Member (or those Members), if any, who (or who's designated representative) did not execute the same (or, otherwise, consent, in writing, to the action (or actions) which is (or are) the subject thereof.

SECTION 7 UNREGISTERED SECURITIES

THE UNITS ISSUED BY THE COMPANY HAVE NOT BEEN REGISTERED, QUALIFIED, APPROVED OR DISAPPROVED UNDER ANY FEDERAL, STATE OR FOREIGN SECURITIES LAWS AND HAVE BEEN SOLD OR ISSUED IN BY THE COMPANY IN RELIANCE ON EXEMPTIONS FROM REGISTRATION AFFORDED BY APPLICABLE FEDERAL, STATE AND/OR FOREIGN SECURITIES LAWS.

THE UNITS ISSUED BY THE COMPANY MAY NOT BE OFFERED, SOLD, TRANSFERRED, PLEDGED, HYPOTHECATED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH UNITS UNDER APPLICABLE FEDERAL, STATE AND/OR FOREIGN SECURITIES LAWS, UNLESS SOLD OR OTHERWISE TRANSFERRED PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION AND, IF REQUESTED BY THE MANAGER, THE TRANSFERRING MEMBER FIRST PROVIDES THE COMPANY WITH AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE MANAGER TO SUCH EFFECT, WHICH OPINION SHALL BE AT THE COST AND EXPENSE OF THE COMPANY.

EACH MEMBER HEREBY REPRESENTS AND WARRANTS TO THE COMPANY, THE MANAGER AND EACH OTHER MEMBER THAT EACH SUCH MEMBER HAS ACQUIRED SUCH MEMBER'S UNITS FOR INVESTMENT PURPOSES ONLY. IN ADDITION TO ANY OTHER CONDITIONS IMPOSED BY THIS AGREEMENT, EACH MEMBER ACKNOWLEDGES AND UNDERSTANDS THE ABOVE RESTRICTIVE LEGENDS AND AGREES TO ACCEPT AND ABIDE BY THE ABOVE DESCRIBED RESTRICTIONS ON THE TRANSFERABILITY OF SUCH MEMBER'S UNITS (AND RELATED MEMBERSHIP INTEREST).

SECTION 8 TRANSFERS OF MEMBERSHIP INTERESTS; MEMBER WITHDRAWAL; ADMISSION ADDITIONAL/SUBSTITUTE MEMBERS

Section 8.1 General.

(a) Members' Intent. The ownership and transferability of Units (and related Membership Interests) in the Company are substantially restricted. The Company consists of Members who have surrendered management rights (in exchange for limited liability) based upon the relationship and trust the Members have in the Manager. An unauthorized, direct or indirect Transfer of a Member's Units (and related Membership Interests) could create a substantial hardship to the Company, create conflicts of interest or divided loyalties, jeopardize its capital base, and adversely affect its business purposes and/or tax structure. These restrictions upon ownership and Transfer are not intended as a penalty, but as a method to further the legitimate business purposes of the Company and protect and preserve existing relationships among the Members, which are based on trust, and to protect and preserve the Company's capital and its ability to continue as a going concern. No Member shall Transfer any interest in any Units except in compliance with this **Section 8**. No Unit Holder (the "**Prohibited Unit Holders**") may Transfer, or offer or agree to Transfer all or any part of any interest in such

Prohibited Unit Holder's Units without the prior written consent of the Manager, which consent may be withheld in the Manager's sole discretion, other than (i) pursuant to a Permitted Transfer or (ii) pursuant to a Transfer by a Participating Seller in accordance with the terms of **Section 8.5**.

(b) Non-Recognition of Specified Transfers. The Members agree that the Manager and the Company shall not be required to recognize the interest or purported interest in the Company of any Person who has obtained an interest or a purported interest in the Company, directly or indirectly, as a result of a Transfer which is not authorized by this Agreement, and further agree that any such Transfer shall be null and void for all purposes (except to the extent otherwise provided by law or in this **Section 8**). If there is a doubt as to the ownership of an interest in the Company or who is entitled to a distribution of Available Cash or of other property, including liquidating proceeds, the Manager (or liquidating trustee, if applicable), may accumulate the Available Cash or liquidation proceeds or other property attributable to the interest(s) in question until the issue is resolved to the reasonable satisfaction of the Manager.

Section 8.2 **Limitations on Withdrawal/Transfers of Membership Interests.**

(a) General Restrictions. Except as otherwise set forth in this **Section 8**, no Member shall have the right to: (i) withdraw or resign from the Company prior to the dissolution and winding up of the business and affairs of the Company; or (ii) Transfer, whether voluntary or involuntary, directly or indirectly, all or any portion of such Member's Membership Interest, except as expressly provided herein. Any Transfer of all or any portion of a Membership Interest in violation of the foregoing shall be null and void and of no legal force or effect.

(b) Permitted Transfers. A Member shall be entitled to Transfer such Member's Membership Interest to a Person (a "**Permitted Transfer**") in accordance with the following and subject to such Permitted Transferees compliance with the provisions of **Sections 8.3(a)** and **(b)** below;

(i) Affiliates. Each Member shall be entitled to Transfer all or any portion of such Member's Membership Interest to one or more wholly-owned Affiliates of such Member without the consent of the Manager.

(ii) Upon Death. Upon the death of any Member who is a natural person such Member's Membership Interest may be transferred by will or other instrument taking effect at death of such Member or by applicable laws of intestate succession to such Member's estate executors, administrators, or personal representatives and then to such Member's heirs or distributees without the consent of the Manager.

(iii) To Trusts or Family Members. In the case of any Member who is a natural person such Member's Membership Interest may be transferred to (a) an entity that is wholly-owned by such Member, (b) a trust in which such Member is the sole trustee, or is co-trustee with his or her spouse (provided that such Member controls such trust and no Transfers may be made from such trust without the consent of such Member), or (c) any lineal descendent (including, without limitation, by legal adoption) of such Member. In the case of any Member that is a family-owned limited liability

company, such Member's Membership Interest may be transferred to (a) one or more of such Member's members or controlled Affiliates or (b) a Family Member or employee of one or more of such Member's members or controlled Affiliates.

(b). (c) Consequences of Withdrawal/Transfers in Violation of Section 8.2(a) or

(i) If a Member shall Transfer or suffer a Transfer, directly or indirectly, of all or any portion of such Member's Membership Interest) in violation of **Section 8.2(a)** or **(b)** above, excluding a Transfer consisting solely of a charging order against such Member's Membership Interest, or is otherwise in breach of this Agreement and fails to cure such breach (A) within 10 days of the Company's delivery of notice of such breach to such Member (or its designated representative), or (B) if the breach is curable, but cannot reasonably be cured within said 10 day period, such Member fails to commence efforts to cure such breach and diligently complete the cure thereof within a reasonable time period (not to exceed 10 days) from receipt of notice thereof, then, in addition to such rights and remedies under law to seek injunctive and equitable relief (including seeking specific performance), such Member shall cease to have any: (1) voting rights such Member otherwise has hereunder (or under the Act) for or with respect to such Member's Membership Interest, and (2) any rights such Member otherwise has to participate in the management of the business and affairs of the Company or to inspect books and records of the Company, unless otherwise permitted by written agreement of the Manager in its sole discretion.

(ii) Notwithstanding anything in the preceding paragraph to the contrary, a Member in breach of this **Section 8**, while a "member" of the Company, shall at all times be and remain subject to all applicable obligations, restrictions or limitations imposed on the Members, in general or on such Member specifically, by or under this Agreement (or the Act).

(iii) Except as otherwise specifically provided in this **Section 8**, the reasonable costs and expenses incurred by the Company in connection with the disposition by a Member (or assignee of a Member's Membership Interest not admitted as an additional or substitute "member" of the Company) of a Membership Interest or in connection with an assignee of a Membership Interest being admitted as a substitute "member" of the Company, including any filing, recording and publishing costs and the reasonable fees and disbursements of counsel, shall be paid by and be the sole responsibility of the Member (or assignee) disposing of such interest (and/or the assignee of the transferred Membership Interest, including any assignee to be admitted as an additional or substitute "member" of the Company).

Admission of "Assignees" as Additional or Substitute "Members". An assignee of a Member's Membership Interest, or any portion thereof, including an assignee of a Member's Membership Interest transferred in accordance with the provisions of **Section 8.2(b)** hereof, shall be admitted to the Company as an additional or substitute "member" of the Company, with respect to the transferred Membership Interest, if not otherwise then admitted as a "member," if (and only if) approved, in writing by the Manager, which approval may be given or withheld in

the sole and absolute discretion of the Manager; and, if such consent is given, such assignee executes and/or delivers to the Company the following:

(a) a joinder or amendment to this Agreement, in form and content acceptable to the Manager, pursuant to which such Person shall become bound by all of the terms and provisions of this Agreement in such Person's capacity as a "Member," as the same may be amended in connection with such Person's admission as such; and

(b) such other documents, instruments or agreements, if any, required or requested by the Manager, in its sole discretion, including, but not limited to, a written instrument, in form and content acceptable to the Manager, pursuant to which such Person shall assume all current or future obligations of the transferring Member (or any other predecessor owner of the Membership Interest transferred to such Person) to the Company (or to any other Member) hereunder (or under the Act), to the extent attributable to the transferred interest (which assumption shall be in addition to, and not as a novation or release of liability therefore of or by such transferring Member or other predecessor owner of such Person's Membership Interest).

Section 8.4 General Consequences of Transfers/Dispositions of Membership Interests.

(a) Continuation of the Company. Except as provided below, the Bankruptcy, death, retirement, resignation or expulsion of any Member or the occurrence of any other event which terminates the continued membership in the Company of any Member, shall not cause the Company to be dissolved, and upon and following the occurrence of any such event (subject to the other express provisions of this Agreement), the Company and its business and affairs shall continue without dissolution. The Company shall dissolve upon the occurrence of any event that terminates the continued membership in the Company of the last remaining Member, unless within 90 days after the occurrence of such event, the personal or other legal representative of the last remaining Member agrees, in writing, to continue the Company (such right to continue the Company being expressly granted hereby) and to the admission of the personal or other representative of such last remaining Member, or designee, as an additional or substitute "member" of the Company, effective as of the occurrence of the event that terminated the continued membership in the Company of the theretofore last remaining Member.

(b) Rights of Assignees/Transferring Members. Except otherwise expressly provided herein or as agreed to by the Manager, a Transfer by or with respect to any Member's Membership Interest, or any portion thereof, shall not entitle the assignee thereof to become a "member" of the Company or to exercise any rights or powers of a "Member" hereunder (or under the Act), nor shall the transferring Member have the right to exercise any rights or powers as a "Member" with respect to the transferred Membership Interest. Unless admitted as an additional or substitute "member" of the Company, the assignment of a Membership Interest (not otherwise treated as null and void) shall only entitle the assignee thereof to receive such distribution(s) and to receive such allocations of income, gain, loss, deduction or credit or similar item to which the assigning Member (or other assignor thereof) is (or was) entitled, to the extent attributable to the assigned interest; and, regardless of whether such assignee is admitted as an additional or substitute "member" of the Company, such assignee shall be subject to all of the terms and provisions of this Agreement, including all of the provisions of this **Section 8** and all

applicable obligations, restrictions or limitations imposed on the Members by any other section or provision hereof, in general or on the transferring Member (or other predecessor owner of the transferred interest) specifically by or under this Agreement (or the Act). If an assignee of a Membership Interest becomes admitted as an additional or substitute “member” of the Company as expressly provided herein, then, except as limited by the other terms of this Agreement, the voting, management and other participation rights associated with the transferred Membership Interest shall be held and may be exercised by such assignee, along with all other rights of a “Member” hereunder (to the extent attributable to said transferred Membership Interest).

(c) Cessation of Status as “Member.” A Member ceases to be a “member” of the Company and to have the rights or powers of a “Member” hereunder (and/or under the Act) upon the sale or other disposition of such Member’s entire Membership Interest, including the occurrence of any event (including dissolution, liquidation and termination or death) which results in a complete loss, sale or other disposition of such Member’s entire Membership Interest.

Section 8.5 Approved Sale; Drag Along Obligations.

(a) If the Manager (the “**Approving Party**”) approves a Sale of the Company (as so approved, each an “**Approved Sale**”), then each Unit Holder shall vote for, consent to and raise no objections against such Approved Sale. If the Approved Sale is structured as a (i) merger or consolidation, each Unit Holder (a “**Participating Seller**”) shall waive any dissenter’s rights, appraisal rights or similar rights in connection with such merger or consolidation, (ii) sale of Units, each Participating Seller shall agree to sell all of his, her or its Units and rights to acquire Units on the terms and conditions approved by the Approving Party or (iii) sale of assets, each Participating Seller shall vote for, consent to and raise no objections against such Approved Sale. Subject to the provisions of this **Section 8.5**, each Participating Seller shall take all actions in connection with the consummation of the Approved Sale as reasonably requested by the Approving Party, including, but not limited to, becoming party to a purchase and sale agreement or merger agreement related to the Approved Sale and executing any and all other agreements to be delivered in connection with such Approved Sale. Each Participating Seller hereby constitutes and appoints the Manager, with full power of substitution, as such Participating Seller’s true and lawful representative and attorney-in-fact, in such Participating Seller’s name, place and stead, to execute and deliver any and all agreements that the Manager reasonably believes are consistent with this **Section 8.5(a)**. The foregoing power of attorney is coupled with an interest and may not be revoked in any manner or for any reason. Any out-of-pocket costs incurred by the Manager in taking any such authorized actions in its capacity as attorney and agent for the Participating Seller (including, without limitation legal and other professional fees and amounts paid to creditors holding liens and encumbrances on, and security interests in, the Participating Seller’s Units) shall be for the sole account of the Participating Seller, and shall be deducted from the purchase price payable to the Participating Seller for its Units.

(b) The obligations of the Participating Seller under this **Section 8.5** with respect to an Approved Sale are subject to the satisfaction of the conditions that the consideration to be received by the Unit Holders in connection with such Approved Sale shall be allocated among the Participating Sellers in accordance with **Section 3.1**. Each Participating Seller shall take all actions in connection with the distribution of the aggregate consideration from the sale or exchange by the Participating Seller of Units held by the Participating Seller (whether by sale,

merger, recapitalization, reorganization, consolidation, combination or otherwise) as may be reasonably requested by the Approving Party consistent with **Section 3.1**.

(c) Each Participating Seller Transferring Units pursuant to this **Section 8.5** shall pay its pro rata share (as if such expenses reduced the aggregate proceeds available for distribution or payment to the Unit Holders in such Approved Sale) of the expenses incurred by the Unit Holders in connection with such Transfer if such expenses were incurred at the direction of Approving Party and shall be obligated to join on a several, but not joint and several (except to the extent of any escrow), basis in any indemnification or other obligations that Approving Party agrees to provide in connection with such Transfer. If some or all the consideration received in connection with an Approved Sale is other than cash, then the Manager shall determine the valuation of such assets in good faith.

(d) In no manner shall this **Section 8.5** be construed to grant to any Member or Unit Holder any dissenter's rights or appraisal rights or give any Member or Unit Holder any right to vote in any transaction structured as a merger or consolidation (it being understood that the Members have expressly waived rights under Section 18-210 of the Act and have granted to the Approving Party the sole right to approve or consent to a merger or consolidation of the Company without approval or consent of the Members or Unit Holders or any class or group thereof).

Specific Performance. The Members hereby acknowledge and agree that Membership Interests in the Company cannot be readily purchased or sold on the open market and for that reason, among others, the Members will be irreparably damaged in the event the provisions of this Agreement relating to the sale and purchase of interests in the Company are not specifically enforced. In the event of any controversy concerning the right or obligation to purchase or sell any interest in the Company, such right or obligation shall be enforced in a court of equity by decree of specific performance. Such remedy shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy available to the Members (or any Member) or the Company. If any Person shall institute any action or proceeding to enforce any such provisions, the Person against whom such action or proceeding is brought hereby waives the claim or defense that the Person instituting such action has an adequate remedy at law, and shall not urge in any such action or proceeding that a claim or remedy at law exists.

SECTION 9

DISSOLUTION, WINDING UP AND LIQUIDATING DISTRIBUTIONS

Events of Dissolution. The Company shall be dissolved, and its assets liquidated pursuant to **Section 9.3** below, upon the first to occur of the following (each, an “**Event of Dissolution**”):

(a) the occurrence of any event that terminates the continued membership in the Company of the theretofore last remaining Member, unless the Company is continued in the manner provided in **Section 8.4(a)** above;

(b) the written consent to dissolution signed by the Majority Members;

(c) the entry of a decree of judicial dissolution or the administrative dissolution of the Company, as provided in the Act; and

(d) the occurrence of any other event which causes a dissolution of the Company as set forth in the Act.

Winding Up. Upon the dissolution of the Company, as provided by **Section 9.1** above, the Manager (or, as applicable, if none, the personal or other legal representative of the last remaining Member), shall immediately commence to wind up the Company's affairs and, except as provided in **Section 9.3** hereof, shall distribute all the assets of the Company, in accordance with **Section 9.3** hereof, in liquidation of the Company as soon as practicable. During the wind-up phase of the Company, the Manager (or, if none, the personal or other legal representative of the last remaining Member, as the case may be), may take all actions necessary or appropriate to winding up the business and affairs of the Company, including selling or causing the Company to sell or otherwise dispose of the Company's assets as promptly as possible, but in a manner which is consistent with obtaining the fair market value thereof.

Liquidating Distributions. Upon the winding up of the Company, and its business and affairs following the dissolution of the Company, as provided in **Section 9.1** and **Section 9.2** hereof, the Manager (or, as applicable, if none, the personal or other legal representative of the last remaining Member), shall distribute, or cause the Company to distribute its cash, including the proceeds from the disposition of the Company's noncash assets, as promptly as possible, in the following order of priority:

(a) first, to the Company creditors, including Members (or Affiliates of any Members) (or former Members) who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Company;

(b) unless inconsistent with Treasury Regulation Section 1.704-1(b)(2)(ii)(b), or any successor provision, to set up any reserves which the Manager deems reasonably necessary for contingent or unforeseen liabilities or obligations of the Company arising out of or in connection with the business of the Company; and

(c) after all Capital Account adjustments for the Company's taxable year in which the liquidation occurs (including without limitation adjustments required under Treasury Regulation Section 1.704-1(b)(2)(iv)(e) relating to distributions in kind) to the Members in accordance with **Section 3.1**.

Liquidating Trust. The Manager may cause the Company to establish a trust to receive the distributions to be made to the Members (or the successors or assigns of the last remaining Member) under **Section 9.3** hereof for the purposes of liquidating Company non-cash assets, collecting amounts owed to the Company, and paying liabilities or obligations of the Company. Distributions from this trust, if established, to the Members (in their capacity as such) (or successors or assigns of the last remaining Member) shall occur, from time to time, in the reasonable discretion of the trustee of the liquidating trust, in the same proportions as would have been distributed to the Members (or such successors and assigns) under **Section 9.3** hereof.

Certificate of Cancellation. In accordance with the Act, following the dissolution, wind-up and liquidation of the Company, the Manager (or, if none, the personal or other legal representative of the last remaining Member), shall prepare and file, or cause to be prepared and filed, a Certificate

of Cancellation (to the Company's Certificate), as provided in §18-203 of the Act (or any successor provision thereto).

SECTION 10

BOOKS AND RECORDS

Books and Records. The Company shall maintain, at the Company's principal office, adequate books and records, including all records required to be maintained by the Company pursuant to the Act. The books of the Company, for tax and financial reporting purposes, shall be kept on the accrual method of accounting.

Section 10.2 Tax, Financial and Other Reports.

(a) The Company shall deliver to each Unit Holder annual audited financial statements of Target, promptly after the Company's receipt of the same from Target.

(b) The Company shall use commercially reasonable efforts to deliver to each Member (i) a final Schedule K-1 relating to the Company's prior year within 180 days of the end of the calendar year, and (ii) such other information reasonably requested by such Member in order for such Member to fulfill its federal, state and local tax reporting obligations.

Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, to be made by the Manager, on behalf of the Company, shall be made consistent with the Company's method of accounting for federal income tax purposes.

Income Tax Elections. Except as otherwise provided herein to the contrary, the Manager may cause the Company to make any income tax elections which are otherwise available to the Company under the Code or applicable Treasury Regulations, as determined in the discretion of the Manager.

Confidentiality. Each Member covenants and agrees that financial information, books, records, business strategies, business practices, methodologies, formula or process of the Company or its Affiliates disclosed to Member (collectively, the "**Confidential Information**") shall be maintained confidential by each such Member at all times. Each Member covenants and agrees that each Member shall not at any time divulge or reveal any of the Confidential Information to any Person or utilize any of the Confidential Information for the benefit of any Person, party or entity, except as expressly authorized by this Agreement or with the prior written consent of the Manager.

SECTION 11

PARTNERSHIP REPRESENTATIVE

Employment of Advisors. The Partnership Representative shall employ experienced tax advisors to represent the Company in connection with any audit or investigation of the Company by the Internal Revenue Service and in connection with all subsequent administrative and judicial proceedings arising out of such audit. The fees and expenses of such tax advisors shall be a Company expense and shall be paid by the Company.

Notice and Expenses. The Partnership Representative shall keep the Manager and the other Members reasonably informed of all administrative and judicial proceedings involving the Company or any Company return, as required by the Code, and shall furnish to each Member, if requested in writing, a copy of each notice or other communication received by the Partnership Representative from the Internal Revenue Service not otherwise sent directly to the other Member(s). All reasonable expenses incurred by the Partnership Representative in serving as Partnership Representative shall be a Company expense and shall be paid or reimbursed, without interest, by the Company.

Partnership Representative. [Tesa Ho] shall be the Partnership Representative of the Company; provided, however, if [Tesa Ho] no longer holds an interest in the Company, then such Member as shall be appointed by the Board shall serve as the Partnership Representative. If any state or local tax law provides for a tax matters partner, partnership representative or person having similar rights, powers, authority or obligations, the Partnership Representative shall also serve in such capacity. During such time as [Tesa Ho] is serving as the Partnership Representative, [Tesa Ho] shall appoint a “Designated Individual” to represent the Partnership Representative as required by Prop. Reg. Section 301.6223-1(b)(3), and shall advise the Members of the identity of the Designated Representative. In the event that the Designated Individual resigns, or ceases to have the capacity to act, [Tesa Ho] shall name another qualified Designated Individual within 30 days. The Partnership Representative is authorized to represent the Company before the Internal Revenue Service and any other governmental agency with jurisdiction, and to sign such consents and to enter into settlements and other agreements with such agencies as the Partnership Representative deems necessary or advisable. The Partnership Representative shall make all decisions regarding permitted elections under the Code with respect to tax proceedings and the assessment of taxes by any taxing authority. The Partnership Representative shall keep the Members reasonably informed of all proposed audits, examinations or other administrative and judicial proceedings involving the Company. Notwithstanding anything to the contrary in this Agreement, each Member (including for purposes of this **Section 11.3** any Person who is or becomes a Member but who for any reason ceases to be a Member) (i) hereby covenants to treat each item of income, gain, loss, deduction, or credit attributable to the Company in a manner consistent with the treatment of such income, gain, loss deduction, or credit on the tax return of the Company or as determined in a notice of final partnership adjustment pursuant to Section 6226 of the Code, (ii) hereby agrees to indemnify and hold harmless the Company from such Member’s share of any tax and any penalties, interest and additions to tax attributable to any adjustment to the income, gain, loss, deduction, or credit of the Company pursuant to Section 6226 of the Code and (iii) hereby agrees to take all other actions as the Partnership Representative may reasonably direct with respect to the Member’s (or, in respect of the Member, the Company’s) tax liabilities, including filing an amended return for any “reviewed year” to account for all adjustments under Section 6225(a) of the Code properly allocable to the Member as provided in and otherwise contemplated by Section 6225(c) of the Code and any Treasury Regulations that may be promulgated thereunder. The Company shall, to the fullest extent permitted by law, reimburse and indemnify the Partnership Representative for all expenses, (including legal and accounting fees), claims, liabilities, losses and damages incurred as the Partnership Representative in connection with any examination, administrative or judicial proceeding, or otherwise; *provided, however*, that such indemnification from liability shall not apply to any liability for loss caused by any act or omission which arises out of the fraud, gross negligence, willful misconduct or intentional violation of applicable law

by the Partnership Representative. The provisions of this **Section 11.3** shall survive the termination or dissolution of the Company or the termination of any Member's interest in the Company, any transfer of a Member's interest in the Company or withdrawal as a Member and shall remain binding on the Member.

SECTION 12 MISCELLANEOUS

Notices. All notices or other communications given or made under this Agreement or pursuant to the Act shall be in writing and electronic communications shall be considered to be in writing for this purpose. Notices or other communications to the Manager, any of the Members or the Company shall be deemed to have been given or received (i) upon receipt or (ii) three (3) days after deposit in the United States mail, if sent by registered or certified mail, return receipt requested, postage prepaid or the next business day after deposit with Federal Express (or comparable nationally recognized overnight courier service) for guaranteed next business day delivery service, and addressed as follows:

(a) **Members.** To the Members (or any Member), at the address(es) set forth in **Schedule 1.7** hereto, or at such other address as any Member may specify in a writing given to the Company, the Manager and the other Members in accordance with this **Section 12.1**; or

(b) **Company or Manager.** To the Company at the principal office of the Company specified in **Section 1.2** above (all notices to the Company to be sent to the attention of the Manager).

Binding Effect. Except as stated in this Agreement, every provision of this Agreement shall be binding upon and inure to the benefit each of the Members who are parties hereto and their respective successors and assigns, provided nothing in this **Section 12.2** shall be interpreted as permitting any Transfer by any Member (or other party hereto or other Person bound by the terms hereof) of any rights or obligations of any Member (or any such other Person) hereunder which is not otherwise expressly permitted under another provision of this Agreement.

Construction. Any court or arbitrator shall construe every provision of this Agreement in accordance with its simple and fair meaning and not strictly for or against any Member. No court or arbitrator shall interpret any provision of this Agreement as a penalty upon, or a forfeiture by, any party to this Agreement. The parties hereto shared equally in the drafting of this Agreement and no court or arbitrator construing this Agreement shall construe it more strictly against one party than the other.

Section 12.4 Entire Agreement; Amendments.

(a) **Entire Agreement.** This Agreement, together with its schedules and appendices, and together with the Certificate, constitutes the entire agreement between the Members with respect to its subject matter, and supersedes the Original Agreement and any and all other prior agreements and undertakings with respect to such subject matter among them. No Member is making any guarantee, promise, or undertaking any obligation to or with respect to the Company that is not expressly contained in this Agreement.

(b) Amendments.

(i) Neither this Agreement nor the Certificate may be amended, unless such amendments are required or, otherwise, permitted by any of the terms hereof or shall have been first been consented to, in writing, by the Company and Members holding a majority of outstanding Units; *provided, however* that an amendment or modification modifying the rights or obligations of any Member in a manner that is disproportionately adverse to (i) such Member relative to the rights of other Members in respect of Units of the same class or series or (ii) a class or series of Units relative to the rights of another class or series of Units, shall in each case be effective only with that Member's consent or the consent of the Members holding a majority of the Units in that class or series, as applicable.

(ii) Notwithstanding **clause (i)** above, the Manager may amend this Agreement from time to time in its reasonable discretion to (i) admit new Members or issue additional Units, (ii) create additional classes of Units, or (iii) reflect the repurchase or Transfer of Units in each case in connection with any additional Capital Contributions requested by the Manager and otherwise in accordance with the terms of this Agreement, or to correct any type of typographical or other drafting errors contained herein.

(iii) Copies of any amendments to this Agreement shall be sent all Members as promptly as is reasonably possible following the adoption thereof.

(c) Notwithstanding any provision in this Agreement, the Members acknowledge that the Manager, on behalf of the Company, without any further act, approval or vote of any Member or other Person, may enter into side letters or other writings to or with one or more Members (if applicable, a "**Side Letter**") that have the effect of establishing rights under, or altering or supplementing the terms of, this Agreement; each such agreement may be entered into, amended, modified, waived or terminated by the Manager and the Member who are parties thereto without the consent of any other Member (so long as such amendment or modification does not adversely affect their respective interests hereunder); and no Member not a party to any particular Side Letter is intended to be a third party beneficiary of such Side Letter. The Members agree that any rights established, or any terms of this Agreement altered or supplemented, in a Side Letter to or with a Member shall govern solely with respect to such Member (but not any of Member's assignees or transferees unless so specified in such Side Letter) notwithstanding any other provision of this Agreement.

Section 12.5 **Assignees.**

(a) **Rights of Assignees to Profits/Losses/Distributable Cash.** In the event that any transferee or other successor-in-interest to a Member or to a Membership Interest (resulting from a transfer not treated as null and void hereunder) is not admitted as an additional or substitute "member" of the Company in accordance with the provisions of this Agreement, such transferee or other successor-in-interest shall be treated as an assignee, and shall only have the right to be allocated or distributed the profits, losses or monies or other property, and shall be subject to all of the losses, liabilities, obligations and restrictions, to which the transferring

Member (or other transferor) would otherwise be entitled or subject to, to the extent applicable to the transferred interest.

(b) Application of Agreement to Assignees. In applying the provisions of this Agreement, including **Section 3**, **Section 4** and **Appendix B** hereof or attached hereto, each successor to an interest in the Company, whether admitted as an additional or substitute “member” of the Company, shall be deemed to have made the aggregate Capital Contributions previously made with respect to the assigned interest by any predecessor owner thereof, and to have received the aggregate allocations or distributions previously made to each such predecessor owner, to the extent attributable to the assigned interest.

(c) Limits on Rights of Assignees. An assignee of an interest in the Company who is not otherwise admitted as an additional or substitute “member” of the Company shall not have: (i) voting, consent or approval rights otherwise afforded Members (or any Member) hereunder or under the Act; (ii) the right to interfere in the management or administration of the Company’s business or affairs; or (iii) the right to acquire any information or account of Company transactions or inspect Company books or records during the continuance of the Company, unless expressly allowed by the Act pursuant to any provision thereof which, as a matter of law, cannot be superseded by the foregoing terms of this Agreement.

Headings. Section and other headings contained in this Agreement are for reference purposes only and shall not be considered interpretive of the provisions thereof or hereof.

Severability. Every provision of this Agreement is intended to be severable. If any term or provision is illegal or invalid for any reason, then its illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement.

Further Cooperation. Each Member agrees to perform all such further acts, including executing and/or delivering any other documents or instruments, as may be reasonably requested from time to time by the Manager, to carry out (or better carry out) any of the provisions of this Agreement.

Governing Law; Venue. The laws of the State of Delaware, exclusive of its conflicts of laws provisions, shall govern this Agreement, the organization and internal affairs of the Company, the liability of the Manager (subject to the provisions hereof) and the limited liability of the Members. Venue for any legal or other action arising out of or in any way related to the Company or this Agreement shall lie exclusively in the courts of the State of Illinois and each of the Members (and each other party to this Agreement), on each such Member’s (or other party’s) behalf and on behalf of its or their successors and assigns, hereby consent to the exclusive personal jurisdiction of those courts and waive any other jurisdiction or venue.

Waiver of Action for Partition. Each Member hereby waives any right such Member may have to maintain any action for partition with respect to any assets of the Company.

Counterpart Execution; Facsimile Execution. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. The words “execution,” “signed,” “signature,” and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement shall include images of manually executed

signatures transmitted by facsimile or other electronic format (including, without limitation, “pdf,” “tif” or “jpg”) and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act and any other applicable law.

Time of the Essence. Time is of the essence with respect to each term of this Agreement; provided, that, in the event that the day upon which any event specified herein is to take place falls on a Saturday, Sunday or other business holiday, then such event shall take place on the next succeeding business day.

Independent Legal Representation; Waiver of Conflict of Interests. The Members all acknowledge that Croke Fairchild Morgan & Beres LLC (“**Counsel**”), acted as legal counsel for SPV I and the Company in connection with the preparation of this Agreement and that: (i) the Members have been advised by such Counsel’s representation of the Company in connection therewith will or may conflict with the interests of one or more (or all) Members’ individually, (ii) the Members have been advised, before their execution of this Agreement, to seek the advice of independent counsel on the merits and detriments to such Member of the terms of this Agreement, and (iii) each Member had the opportunity, prior to such Member’s execution of this Agreement, to seek the advice of independent counsel. The Members hereby jointly and severally waive any claim that Counsel’s representation of the Company in connection with the preparation of this Agreement constitutes or creates a conflict of interest.

References. All references in this Agreement to articles, sections or other subdivisions refer to corresponding articles, sections or subdivisions of this Agreement unless expressly provided otherwise. The words “this Agreement,” “herein,” “hereof,” “hereby,” “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited (or limited by the context within which used). Words in the singular form shall be construed to include the plural and vice versa, and words of one gender shall be construed to include all genders, unless the context otherwise requires.

Third-Party Beneficiaries. Except for (a) Members, the Manager, or officers in their capacities as such, (b) the indemnified parties in accordance with **Section 5.3**, or (c) the rights of Counsel to rely on the waivers in **Section 12.13**, any agreement contained herein to make any contribution or to otherwise pay any amount, and any assumption of liability herein contained, express or implied, shall be only for the benefit of the Members who are parties to this Agreement (and their respective permitted successors and assigns), and to the Manager, and such agreements and assumptions shall not inure to the benefit of the obligees under any indebtedness, or to any other Person whomsoever, it being the intention of the Members that no one shall be deemed to be a third-party beneficiary of this Agreement or any portion hereof.

Waiver of Jury Trial. AS A SPECIFICALLY BARGAINED FOR INDUCEMENT FOR EACH OF THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT (AFTER HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL), EACH PARTY HERETO

EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

Prevailing Attorneys' Fees. If any Member or the Company (or the Manager) brings an action to enforce the terms hereof or to declare rights hereunder, the prevailing party (or parties) in any such action shall be entitled to such party's (or parties') court costs and reasonable attorneys' fees and costs, whether incurred before, at trial or on appeal or in any bankruptcy or other proceeding (including court order mediation or binding arbitration, if agreed to), to be paid by the non-prevailing party (or parties).

Spousal Consent. If requested by the Company, each Member who is an individual shall cause his or her spouse, as applicable, to execute and deliver a Spousal Consent in the form attached as Exhibit A to this Agreement. The signature of a spouse on a Spousal Consent shall not be construed as making such spouse a Member of the Company or a party to this Agreement except as may otherwise be set forth in such consent. Each Member who is an individual will certify his or her marital status to the Company at the Company's request.

(Signature Page Follows)

The Company and undersigned Members have executed and delivered this Agreement as of the date set forth below.

COMPANY:

FC MASTER LLC

By: _____

Name: Tesa Ho

Title: Manager

SIGNATURE PAGES OF CLASS A UNIT HOLDERS

Tesa Ho

Alan Xi

SCHEDULE 1.7

MEMBER INFORMATION

On file with the Company.

FC Master LLC

CLASS A UNIT HOLDER SIGNATURE PAGE

(For Corporations, Partnerships, Limited Liability Companies and Trusts)

The undersigned, in connection with the issuance of Class A Units of FC Master LLC, a Delaware limited liability company (the “**Company**”), hereby executes and agrees to become a party to, and a holder of Class A Units, a “Class A Unit Holder” and a “Member” under, that certain Limited Liability Company Agreement of the Company, dated as of October [●], 2022 (the “**LLC Agreement**”), and, effective as of the date set forth below, shall be entitled to all of the rights and benefits, and subject to all of the obligations, of a holder of Class A Units, a “Class A Unit Holder” and “Member” under the LLC Agreement. All of the securities of the Company owned, from time to time, by the undersigned shall be subject to the provisions of the LLC Agreement.

This Counterpart Signature Page may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. The words “execution,” “signed,” “signature,” and words of like import in this Counterpart Signature Page shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, “pdf,” “tif” or “jpg”) and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act and any other applicable law.

This Counterpart Signature Page shall take effect and shall become a part of the LLC Agreement upon its execution and delivery to the Company by the undersigned.

(Print Name of Unit Holder)

Dated as of: _____

By: _____

Name: _____

Title: _____

Received an accepted as of _____, 20____.

FC Master LLC

By: _____

Name: Tesa Ho

Title: Manager

FC Master LLC

CLASS A UNIT HOLDER SIGNATURE PAGE

(For Individuals)

The undersigned, in connection with the issuance of Class A Units of FC Master LLC, a Delaware limited liability company (the “**Company**”), hereby executes and agrees to become a party to, and a holder of Class A Units, a “Class A Unit Holder” and a “Member” under, that certain Amended and Restated Limited Liability Company Agreement of the Company, dated as of October [●], 2022 (the “**LLC Agreement**”), and, effective as of the date set forth below, shall be entitled to all of the rights and benefits, and subject to all of the obligations, of a holder of Class A Units, a “Class A Unit Holder” and “Member” under the LLC Agreement. All of the securities of the Company owned, from time to time, by the undersigned shall be subject to the provisions of the LLC Agreement.

This Counterpart Signature Page may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. The words “execution,” “signed,” “signature,” and words of like import in this Counterpart Signature Page shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, “pdf,” “tif” or “jpg”) and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act and any other applicable law.

This Counterpart Signature Page shall take effect and shall become a part of the LLC Agreement upon its execution and delivery to the Company by the undersigned.

Signature

Print Name: _____

Dated as of _____

Received an accepted as of _____, 20____.

FC Master LLC

By: _____

Name: Tesa Ho

Title: Manager

EXHIBIT A

FORM OF SPOUSAL CONSENT

Dated _____, 202__

Reference is hereby made to the Amended and Restated Limited Liability Company Agreement, dated as of October [●], 2022, among FC Master LLC, a Delaware limited liability company (the “**Company**”), and the parties signatory thereto (as amended, restated, supplemented or otherwise modified from time to time, the “**LLC Agreement**”). Capitalized terms used herein but not otherwise defined shall have the meaning ascribed thereto in the LLC Agreement.

This Spousal Consent is being delivered pursuant to Section 12.18 of the LLC Agreement, copies of which have been provided to the undersigned (“**Spouse**”), as applicable. Spouse, as the spouse of _____ (the “**Relevant Member**”), consents to all of the provisions of the LLC Agreement and to the extent that Spouse may lawfully do so, Spouse confirms that the Relevant Member may act alone with respect to all matters in connection with the LLC Agreement. Spouse also confirms that the Relevant Member may enter into agreements pursuant to the LLC Agreement, as applicable, and consent to and execute amendments thereof, without further signature or consent of, or notice to, Spouse. Spouse further agrees not to take any action to oppose or otherwise hinder the operation of the provisions of the LLC Agreement.

To the extent of any property interest that Spouse may have in such Relevant Member’s Units, Spouse consents to be bound by the terms of the LLC Agreement, including, without limitation, restrictions on transfer and obligations to sell set forth therein.

Name of Spouse:

APPENDIX A GENERAL DEFINITIONS

Capitalized words and phrases used in the Agreement, but which are not otherwise defined therein, shall have the following meanings (or the meanings set forth in **Appendix B** to the Agreement):

“**Act**” means the Delaware Limited Liability Company Act, as it may amended from time to time.

“**Affiliate**” means, with respect to any Person: (i) any other Person directly or indirectly controlling, controlled by or under common control with such Person and/or (ii) any spouse, ancestor, child (including by adoption) or other lineal descendant, sibling or in-law of such Person or of any other Person (who is a natural person) who is an Affiliate of such Person and described in either clause (i) or (ii) above.

“**Assumed Tax Rate**” means, unless otherwise determined by the Manager, the sum of the maximum stated federal, state and local income tax rates (including self-employment and similar taxes and reflecting any reduced rate applicable to any special class of income) to which any Member (or any of such Member’s direct or indirect owners to the extent such Member is a pass through entity for federal income tax purposes) residing in the State of Illinois, may be subject for such tax year, as determined by the Manager based on the information available to it.

“**Available Cash**” means all cash of the Company on hand as of the last business day of any calendar month (or other fiscal period), as determined after payment of all then due or past due Company expenses and obligations (including service fees or management fees), other than cash which is: (i) restricted from distribution under the terms of any agreement to which the Company is a party; or (ii) added to or retained in Company reserves in the discretion of the Manager.

“**Bankruptcy**” means, with respect to any Person, the occurrence of any of the following events:

(a) such Person makes an assignment for the benefit of such Person’s creditors;

(b) such Person files a voluntary petition in bankruptcy;

(c) such Person is adjudged a bankrupt or insolvent or has entered against such Person an order for any relief in any bankruptcy or insolvency proceeding;

(d) such Person files a petition or answer seeking for it any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(e) such Person files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Person in any proceeding of this nature;

(f) such Person seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of such Person or of all or any substantial part of such Person's properties; or

(g) after one hundred and twenty (120) days after the commencement of any proceeding against such Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed; or after ninety (90) days after the appointment, without such Person's consent or acquiescence, of a trustee, receiver or liquidator of such Person or of any substantial part of such Person's property, the appointment has not been vacated or stayed or, if stayed, ninety (90) days following the expiration of any such stay if the appointment has not been vacated.

"Budget Act" means Title XI of the Bipartisan Budget Act of 2015, Public Law No: 114-74 (2015) and any Regulations promulgated thereunder.

"Capital Contribution(s)" means with respect to any Member, the amount of money and the initial Book Value of any property (other than money) contributed by such Member (or predecessor owner of such Member's Units) to the Company with respect to such Member's Units, in accordance with the terms of the Agreement (or the Original Agreement).

"Capital Event" means the (a) sale of all or substantially all of the Company's interest in Target or (b) the sale of all or substantially all of the assets or equity interests of any subsidiary of Target.

"Certificate" means the Certificate of Formation of the Company and any amendments thereto and restatement thereof filed on behalf of the Company with the Delaware Secretary of State pursuant to the Act.

"Class A Unit" means a Unit having the rights and obligations specified with respect to Class A Units in this Agreement.

"Class A Unit Holder" means the Members owning the Class A Units as set forth in **Schedule 1.7**.

"Class A Unreturned Capital Contributions" means the excess of (a) the amount of Capital Contributions made by a Member (and by its predecessors-in-ownership with respect to the interest in the Company owned by such Member) on account of Class A Units, less (b) the aggregate amount of distributions made to such Member (and such Member's predecessors-in-ownership) pursuant to **Section 3.1(b)** (or treated as so made pursuant to **Section 9.3(c)**) from inception of the Company.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Equity Interests" means, with respect to any Person, all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person's capital, whether now outstanding or issued or acquired after the date hereof, including without limitation, common shares, preferred shares, membership interests in a limited liability company,

limited or general partnership interests in a partnership, interests in a trust, interests in joint ventures, interests in other unincorporated organizations or any other equivalent of such ownership interest.

“Family Member” means, with respect to an individual, such individual’s spouse, ancestors, lineal descendants (including, without limitation, by legal adoption) and siblings.

“Incapacity” (or **“Incapacitated”**) means with respect to Person’s ability to manage his or her financial affairs is substantially impaired and such impairment will, in the opinion of such Person’s attending physician or a qualified physician selected by the Company, more likely than not, be expected to continue until his or her death.

“Initial Manager” means Tesa Ho.

“Majority Members” means that Member or those Members entitled to vote owning more than 50% of the total Membership Percentage of Class A Units in the Company, as determined from time to time.

“Member(s)” means the Members signing the Agreement and who are admitted as a “member” of the Company as of the Effective Date and/or such (or each such) other Person, if any, subsequently admitted as an additional or substitute “member” of the Company, from time to time, in accordance with the terms of the Agreement, provided, a Person shall cease to be a “Member” at such time as such Person shall dispose of such Person’s entire Membership Interest in the Company or, otherwise, upon the occurrence of any event, including a Member’s dissolution, liquidation and termination, which results in a transfer or other disposition of such Person’s entire Membership Interest (or other termination of such Person’s status as a “member” of the Company, as specified in the Agreement or in the Act, as the same may be modified or superseded by the Agreement).

“Membership Interest” means the entire interest of a Member (or assignee of a Member’s “transferable interest” not otherwise admitted as an additional or substitute “member” of the Company) in the Company as a “member” thereof (or assignee of a Member’s transferrable interest in the Company), including a Member’s Units, voting rights (as a “Member”) and a Member’s (or assignee’s) interest in and to Company profits, losses and capital, including a Member’s (or assignee’s) right to receive both current and liquidating distributions from the Company. The Members may hold any combination of Membership Interests (including Units of more than one class).

“Membership Percentage” means with respect to each Member, in reference to a Membership Percentage of any class of Units, that ratio, expressed as a percentage, the numerator of which is the number of Units of such class owned by such Member, and the denominator of which is the total Units of such class then outstanding.

“Partnership Representative” has the meaning, with respect to taxable years beginning after December 31, 2017, set forth in Section 6223(a) of the Code and any comparable provisions of foreign, state and local income tax laws.

“Person(s)” means any individual(s) who is (or are) a natural person, partnership(s), limited liability company (or companies), limited liability partnership(s), limited partnership(s), corporation(s), trust(s) and any other association or legal entity.

“Prime Rate” as of a particular date means the prime rate of interest as published on that date in the Wall Street Journal. If the Wall Street Journal is not published on a date for which the Prime Rate must be determined, then the Prime Rate shall be the prime rate published in the Wall Street Journal on the nearest-preceding date on which the Wall Street Journal is published.

“Profits Interests” means an interest as a Member in the Company which is issued in exchange for the performance of services, which at the time the interest is issued, provides the Member with the right to participate in the future Profits and Losses of the Company but does not convey to such Member any right to, or ownership in, the capital of the Company (i.e., the assets of the Company valued at the fair market value as of the date of issuance of such profits interests, reduced by the liabilities of the Company as of such date) at the date of issuance.

“Proportionate Share” means, with respect to any Member having an option to make a voluntary additional Capital Contribution to the Company under **Section 2.2(b)**, a loan (either directly or through an Affiliate of such Member) to the Company pursuant to **Section 2.3**, or having the right and option purchase any Membership Interest under any provision of **Section 8**, that ratio, expressed as a percentage, the numerator of which equals such Member’s Membership Percentage of Units (as otherwise determined, in the case of the purchase of Membership Interest, as of the first date such option may be exercised by such or any other Member, or, if different, such Member’s Membership Percentage of Units as of the expiration of the period during which such option may be exercised), and the denominator of which equals the aggregate Membership Percentages of Units (as otherwise determined, in the case of the purchase of a Membership Interest, as of the first date such option may be exercised by such or any other Member, or, if different, as of the expiration of the period during which such option to purchase may be exercised) of all Members having such option and who otherwise timely exercise such option in accordance with the applicable provisions of the Agreement.

“Public Offering” means a public offering and sale of the Equity Interests of the Company or any Affiliates of the Company for cash registered under the Securities Act of 1933 (and applicable rules and regulations thereunder) filed with the U.S. Securities and Exchange Commission (or any successor thereto) on Form S-1 (or successor form thereto); provided that the following shall not be considered a Public Offering: (i) any issuance of Equity Interests as consideration for a merger or acquisition or (ii) any issuance of Equity Interests or rights to acquire Equity Interests to existing Members (or their Affiliates) or employees of the Company or its Affiliates on Form S-4 or Form S-8 (or any successor forms thereto) or otherwise.

“Sale of the Company” means either (a) the sale, transfer, conveyance or other disposition, in one transaction or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, or (b) a transaction or series of related transactions (including by way of merger, consolidation, recapitalization, reorganization or sale of securities) the result of which is that the Company Unit Holders immediately prior to such transaction are after giving effect to such transaction no longer, in the aggregate, the “beneficial owners” (as such term is defined in Rule 13d-3 and Rule 13d-5 promulgated under

the Securities Exchange Act), directly or indirectly through one or more intermediaries, of more than fifty percent (50%) of the voting power of the outstanding Units of the Company, unless the foregoing change in voting power results from a capital raising transaction in which the Company issues new securities or admits new Members in exchange for new Capital Contributions to the Company. Notwithstanding the foregoing, a “Sale of the Company” shall not include a transfer of the equity of SPV I to a Cayman Islands Foundation.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

“**Securities Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

“**SPV I**” means Fight Club SPV I LLC, a Delaware limited liability company.

“**Subsidiary**” means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity, in any jurisdiction, of which (i) if a corporation or a limited liability company or limited partnership (with voting securities), a majority of the total voting power of Equity Interests thereof entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees (or members of any similar governing body) thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company (without voting securities), a partnership, an association or other business entity, a majority of the Equity Interests thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, a partnership, an association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any managing director, managing member or general partner (or equivalent) of such limited liability company, partnership, association or other business entity.

“**Taxable Year**” means, with respect to the Company, the calendar year (or such other fiscal period, if any, required to be adopted as the “taxable year” of the Company for federal income tax purposes) (or portion thereof during which the Company is in existence).

“**Tax Distribution**” for any Taxable Year of the Company means an amount equal to the “taxable income” of the Company for federal income tax purposes for such Taxable Year multiplied by the Assumed Tax Rate. The “taxable income” of the Company shall mean the taxable income of the Company for such year as determined under Code Section 703(a) without separately stating any items described in Code Section 702(a). If the Company has a net “taxable loss” for the Taxable Year, the Tax Distribution for such Taxable Year shall be zero and the amount of such taxable loss shall be carried forward to future Taxable Years of the Company to be applied against any taxable income of the Company for such future years in determining any Tax Distribution for such future tax years until such taxable loss has been offset in full by net taxable income.

“Transfer” means, as a noun, any voluntary or involuntary sale, exchange pledge, assignment, hypothecation, or other disposition of any rights in tangible or intangible property, and, as a verb, means voluntarily or involuntarily (including, but not limited to, an assignment or other disposition by reason of Bankruptcy) to sell, exchange, pledge, assign, hypothecate or otherwise dispose of such property. For any Member that is a corporation, partnership, joint venture, enterprise, limited liability company, unincorporated association, trust, estate or other business or legal entity, including any state law entity disregarded as a separate entity for federal and state income tax purposes, Transfer shall also mean any voluntary or involuntary, direct or indirect, transfer, assignment, sale, pledge hypothecation, or other disposition of more than fifty percent (50%) of the voting Equity Interests of the Member in a single transaction or a series of related transactions.

“Treasury Regulations” (or **“Regulations”**) means the Treasury Regulations promulgated under the Code, as such Treasury Regulations may be amended and in effect from time to time.

“Unit Holder” means, with respect to any class of Units, a Member (or other Person) owning a Unit or Units of such class.

APPENDIX B SPECIAL TAX AND ACCOUNTING PROVISIONS

I. Tax and Accounting Definitions. The following terms, which are used predominantly in **Section 4** of the Agreement and this **Appendix B**, shall have the meanings set forth below:

A. “**Adjusted Capital Account**” means, with respect to any Member, such Member’s Capital Account as of the end of the relevant Taxable Year, after giving effect to the following adjustments:

(1) credit to such Capital Account any amounts which such Member is obligated to restore pursuant to this Agreement or as determined pursuant to Regulations §1.704-1(b)(2)(ii)(c), or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations §§1.704-2(g)(1) and 1.704-2(i)(5); and

(2) debit to such Capital Account the items described in clauses (4), (5) and (6) of Regulations §1.704-1(b)(2)(ii)(d).

B. “**Adjusted Capital Account Deficit**” means, with respect to any Member, the deficit balance, if any, in such Member’s Adjusted Capital Account. The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulations §1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

C. “**Allocation Period**” means, unless otherwise required pursuant to the Code and Treasury Regulations, (i) the Taxable Year of the Company, (ii) any portion of the Taxable Year for which the Company is required to allocate Profits, Losses and other items of Company income, gain, loss, deduction or other items pursuant to Section 4 or this Appendix B, or (iii) any other period reasonably determined by the Manager as appropriate for a closing of the Company’s books.

D. “**Book Value**” means, with respect to any Company asset, such asset’s adjusted basis for federal income tax purposes, except as follows:

(1) the initial Book Value of any asset (other than money) contributed by a Member to the Company shall be the fair market value thereof as of the date of contribution, as set forth in this Agreement or, if not set forth in this Agreement, as reasonably determined by the Manager and the contributing Member as of the date of contribution;

(2) the Book Value of all Company assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Manager (but subject to Code §7701(g)) if such adjustment is necessary or appropriate, in the judgment of the Manager, to reflect the Members’ relative economic interests in the Company, as of the following times: (i) the acquisition of additional interests in the Company by any new or existing Member in exchange for more than a *de minimis* initial or additional Capital Contribution; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of cash or property as consideration for an interest in the Company; (iii) the issuance by the Company of a non-compensatory option (other than an option to

acquire a *de minimis* interest in the Company); (iv) in connection with the grant of an interest in the Company (other than a *de minimis* interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a member capacity, or by a new Member acting in a partner capacity in anticipation of being a Member; or (v) the Liquidation of the Company; provided that an adjustment described in clauses (i),(ii), (iii) and (iv) immediately above shall be made only if the Manager reasonably determines that such adjustment is necessary to reflect the relative economic interests of the Members in the Company;

(3) the Book Value of any Company asset distributed to any Member shall be adjusted immediately before its distribution to equal its gross fair market value on the date of distribution, as reasonably determined by the Manager;

(4) the Book Values of the Company's assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code §734(b) or Code §743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations §1.704-1(b)(2)(iv)(m); provided, however, that Book Values shall not be adjusted pursuant to this **Section I.D(4)** to the extent that an adjustment pursuant to **Section I.D(2)** above is otherwise made thereto in connection with or as a result of any transaction or event that would otherwise result in an adjustment pursuant to this **Section I.D(4)**; and

(5) if the Book Value of any asset subject to the allowance for depreciation or amortization has been determined or adjusted pursuant to **Section I.D(1)**, **Section I.D(2)**, or **Section I.D(4)** above, such Book Value shall thereafter be adjusted by the Depreciation taken into account, from time to time, with respect to such asset for purposes of computing Profits or Losses of the Company.

For purposes **Section I.D(2)** above, the term “**Liquidation of the Company**” means the date upon which the Company ceases to be a going concern (even though it may continue in existence for the purpose of winding up its affairs, paying its debts and distributing any remaining assets to its Members).

E. “**Capital Account**” means, with respect to any Member, the Capital Account maintained by the Company for such Member in accordance with Regulations §1.704-1(b)(2). Except as otherwise provided in said Regulations section, each Member's Capital Account shall be maintained or adjusted in accordance with the following rules or provisions:

(1) to each such Member's Capital Account, there shall be credited the amount of cash contributed to the Company by such Member and the initial Book Value of any property, other than cash, contributed to the capital of the Company such Member (net of any liability secured by such contributed property that the Company is considered to have assumed or to have taken subject to pursuant to Code §752), such Member's allocable share of Company Profits and any items of income or gain comprising the Profits of the Company that are allocated to such Member, and the amount of any Company liabilities assumed by such Member or that are secured by any Company property distributed to such Member;

(2) to each such Member's Capital Account there shall be debited the amount of cash and the Book Value of any property distributed by the Company to such Member pursuant to any provision of this Agreement (net of Company liabilities secured by such distributed property that such Member is considered to assume or take subject to pursuant to Code §752), such Member's allocable share of Company Losses and any items of expense or loss comprising the Losses of the Company that are allocated to such Member, and the amount of any liabilities of such Member (excluding liabilities taken into account in accordance with **Section I.D(1)** above)) assumed by the Company or that are secured by any property contributed by such Member to the Company;

(3) to the extent that the unrealized income, gain, loss or deduction inherent in property distributed (or deemed to be distributed) in kind (whether or not distributed in liquidation) is not then reflected in the Members' Capital Accounts, the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss and deduction inherent in such property would be allocated among the Members under the Agreement if there were a fully taxable disposition of such property for all cash for its then fair market value, as determined by the Manager, in its reasonable discretion, as of the date of its actual (or deemed) distribution;

(4) in the event that the Book Value of Company assets are adjusted as described in **Section I.D(2)** above, the Members' Capital Accounts shall be adjusted to reflect their allocable share of the gain or loss (not then reflected in the Members' Capital Accounts) which the Company would recognize as of or immediately before such adjustment, if it sold all of its assets, as of such time, for all cash in a fully taxable transaction for an amount equal to such assets' adjusted Book Value;

(5) in the event that any Company property is subject to Code §704(c), or in the event Company property is re-valued, at the election of the Manager, in accordance with Regulations § 1.704-1(b)(2)(iv)(f) and, as a result, has a Book Value different from such property's adjusted income tax basis, the Members' Capital Accounts shall be adjusted in accordance with Regulations §1.704-1(b)(2)(iv)(g) to reflect only allocations to them of Depreciation, if any, allowable for such Company property and by the gain or loss arising from the sale or other disposition of such property, as computed for book purposes and not for income tax purposes, by reference to such property's adjusted Book Value; and

(6) If there is a transfer of a Membership Interest in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Membership Interest.

The foregoing provisions and the other provisions of the Agreement (or this **Appendix B** relating to the maintenance of Capital Accounts are intended to comply with Regulations §1.704-1(b) and §1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations.

F. “**Company Minimum Gain**” has the same meaning as the term “partnership minimum gain” under Regulations §§1.704-2(b)(2) and 1.704-2(d).

G. **“Depreciation”** means, for each Taxable Year, or other fiscal period of the Company, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period for federal income tax purposes, except that if the Book Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Book Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if such depreciation, amortization or other cost recovery deductions with respect to any such asset for federal income tax purposes is zero for any Allocation Period, Depreciation shall be determined with reference to such asset’s Book Value at the beginning of such period using any reasonable method selected by the Manager.

H. **“Economic Risk of Loss”** has the meaning assigned to that term in Regulations §1.752-2(a).

I. **“Member Nonrecourse Debt”** has the same meaning as the term “partner nonrecourse debt” under Regulations §1.704-2(b)(4).

J. **“Member Nonrecourse Debt Minimum Gain”** has the same meaning as the term “partner nonrecourse debt minimum gain” under Regulations §1.704-2(i)(2) and shall be determined in accordance with Regulations §1.704-2(i)(3).

K. **“Member Nonrecourse Deductions”** has the same meaning as the term “partner nonrecourse deductions” under Regulations §1.704-2(i)(1) and shall be determined in accordance with Regulations §1.704-2(i)(2).

L. **“Nonrecourse Debt”** or **“Nonrecourse Liability”** has the same meaning as the term “nonrecourse liability” under Regulations §1.704-2(b)(3).

M. **“Nonrecourse Deductions”** has the meaning set forth in Regulations §1.704-2(b)(1) and shall be determined according to the provisions of Regulations §1.704-2(c).

N. **“Profits”** or **“Losses”** of the Company for each Allocation Period means an amount equal to the Company’s taxable income or loss for each such Allocation Period, as determined for federal income tax purposes in accordance with the accounting method followed by the Company for federal income tax purposes and in accordance with Code §703 (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code §703(a)(1) shall be included in taxable income or loss), subject to the following modifications:

(1) any income of the Company that is exempt from federal income taxation and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss;

(2) any expenditures of the Company described in Code §705(a)(2)(B) or treated as Code §705(a)(2)(B) expenditures pursuant to

Regulations §1.704-1(b)(2)(iv)(i), and not otherwise taken into account, shall be subtracted from such taxable income or loss;

(3) in the event the Book Value of any Company property is adjusted pursuant to **Section I.D.(2)** or **Section I.D.(3)**, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Book Value of the Company property) or an item of loss (if the adjustment decreases the Book Value of the item of Company property) from the disposition of such Company property and shall be taken into account for purposes of computing Profits or Losses;

(4) gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the Company property disposed of, notwithstanding that the adjusted tax basis of such Company property differs from its Book Value;

(5) 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 Allocation Period, computed in accordance with the definition of Depreciation;

(6) to the extent an adjustment to the adjusted tax basis of any item of Company property pursuant to Code §734(b) is required, pursuant to Regulations §1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's Membership Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the item of Company property) or loss (if the adjustment decreases such basis) from the disposition of such item of Company property and shall be taken into account for purposes of computing Profits or Losses;

(7) notwithstanding any other provision of this definition or **Section 4** of the Agreement, any items that are specially allocated pursuant to **Section II** below shall not be taken into account in computing Profits or Losses; and

(8) the amounts of the items of Company income, gain, loss, or deduction available to be specially allocated pursuant to **Section II** below shall be determined by applying rules analogous to those set forth in subsections (1) through (6) above.

II. Special Allocations. Notwithstanding the provisions of **Section 4.1** of the Agreement to the contrary, the following special rules shall apply:

A. Minimum Gain Chargeback. Except as otherwise provided in Regulations § 1.704-2(f), notwithstanding any other provision of this **Appendix B**, if there is a net decrease in Company Minimum Gain during any Allocation Period, each Member shall be specially allocated items of Company income and gain for such Allocation Period (and, if necessary, subsequent Allocation Periods) in an amount equal to such Member's share of the net decrease in

Company Minimum Gain, determined in accordance with Regulations § 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations §§ 1.704-2(f)(6) and 1.704-2(j)(2). This subsection is intended to comply with the minimum gain chargeback requirement in Regulations § 1.704-2(f) and shall be interpreted consistently therewith.

B. Member Minimum Gain Chargeback. Except as otherwise provided in Regulations § 1.704-2(i)(4), notwithstanding any other provision of this **Appendix B**, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Allocation Period, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations § 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Allocation Period (and, if necessary, subsequent Allocation Periods) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations § 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations §§ 1.704-2(i)(4) and 1.704-2(j)(2). This subsection is intended to comply with the minimum gain chargeback requirement in Regulations § 1.704-2(i)(4) and shall be interpreted consistently therewith.

C. Qualified Income Offset. In the event that any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulation §§ 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) has an Adjusted Capital Account Deficit as of the end of any Taxable Year, computed after the application of **Section II.A** and **Section II.B** but before the application of any other provision of this **Section II**, items of Company income and gain shall be allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this subsection shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this **Appendix B** have been tentatively made as if this subsection were not applicable.

D. Nonrecourse Deductions. Nonrecourse Deductions for any Allocation Period (or other applicable period) shall be specially allocated pro rata among the Members in proportion to their respective Percentage Interests, except to the extent that the Code and Treasury Regulations require that such deductions be allocated in some other manner. Any Member Nonrecourse Deductions for any Allocation Period shall be specially allocated to the Member who bears the Economic Risk of Loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations § 1.704-2(i)(1). If more than one Member bears the Economic Risk of Loss with respect to Member Nonrecourse Debt, Member Nonrecourse Deductions attributable thereto shall be allocated between or among such Members in accordance with the ratios in which they share such Economic Risk of Loss.

E. Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset, pursuant to Code Section 734(b) or Section 743(b) is required, pursuant to Regulations § 1.704-1(b)(2)(iv)(m)(2) or Regulations § 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts, the amount of such adjustment to 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 provisions.

F. Curative Allocations.

(1) The allocations set forth in **Sections II.A** through **II.E** of this **Appendix B** are intended to comply with certain requirements imposed by Code §704(b) and the Regulations promulgated thereto (the “**Regulatory Allocations**”). If in any Taxable Year any Regulatory Allocations (which term shall include any other allocations required to be made under Code §704(b) or under the Regulations promulgated thereunder) are made, then in allocating the remainder of the Company’s Profits or Losses (or items thereof) thereafter pursuant to **Section 4.1** of the Agreement, whether in the same Allocation Period or in subsequent Allocation Periods, the Regulatory Allocations shall be taken into account so that, to the maximum extent possible and as quickly as possible, the net amount of allocations made to each of the Members under **Section 4.1** of the Agreement and **Sections II.A** through **II.E** of this **Appendix B** (and otherwise under Code §704(b) and the Regulations promulgated thereunder), and this **Section II.F(1)**, shall be equal to the net amount that would have been allocated to each of the Members solely under **Section 4.1** of the Agreement had the Regulatory Allocations not been applicable. The application of this **Section II.F(1)** and the making of curative allocations pursuant hereto shall be made in any reasonable manner determined by the Manager, following consultation with the Company’s tax advisors.

(2) For purposes of applying **Section II.F(1)** above, Regulatory Allocations which constitute allocations of Nonrecourse Deductions or Member Nonrecourse Deductions shall not be offset by subsequent curative allocations of Profits or items of income or gain comprising the Profits or Losses of the Company pursuant to **Section II.F(1)** prior to the first Taxable Year thereafter during which there is a net decrease in the Company Minimum Gain (or a net decrease in Member Nonrecourse Minimum Gain attributable to a Member Nonrecourse Debt, as the case may be), and then, shall only be offset by curative allocations pursuant to **Section II.F(1)**, if the Manager reasonably determines that such Regulatory Allocations are not offset (or reasonably likely to be offset) by allocations (including expected future allocations) of income or gain under **Section II.A** or **Section II.B** of this **Appendix B**.

III. Excess Nonrecourse Liabilities. For purposes of determining the Members’ Proportionate Share of “excess nonrecourse liabilities,” if any, of the Company

within the meaning of Regulations §1.752-3(a)(3) for any Allocation Period, the Members' respective interests in Company "profits" shall be in the same proportions as their respective relative Membership Percentages during such Allocation Period.

IV. Tax Treatment of Fees Paid by the Company to Member/Affiliate.

For income tax reporting purposes, any and all fees paid by the Company to any Member and/or any Affiliate thereof, shall be treated as expenses of the Company and, if paid to a Member, shall be treated as payments made pursuant to §707(a) of the Code. To the extent that payments of such fees to any Member or Affiliate thereof (or any other fees or compensation paid to any Member or Affiliate thereof) ultimately are not determined to be Code §707(a) payments, the Member receiving such fee or compensation shall be specially allocated gross income of the Company in an amount equal to the amount of such fee or compensation, and the Member's Capital Account shall be adjusted to reflect the payment of such fee or compensation, subject to the next sentence. If the Company's gross income for an Allocation Period is less than the amount of such fee or compensation paid in such year, the Member shall be specially allocated gross income of the Company in the succeeding Allocation Period(s) until the total amount so allocated equals the total amount of such fee or compensation.

V. Related Matters. Any elections or other decisions relating to such allocations shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to **Section II** of this **Appendix B** 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.