
AMENDED AND RESTATED

LIMITED LIABILITY COMPANY OPERATING AGREEMENT

OF VENTURE ON WILSON, LLC

Effective Date December, 2017

NEITHER THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE REGULATORY AUTHORITY HAS APPROVED OR DISAPPROVED THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT (THIS “**AGREEMENT**”) OR THE LIMITED LIABILITY COMPANY INTERESTS PROVIDED FOR HEREIN. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR REGISTERED OR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS REGISTERED AND QUALIFIED UNDER APPLICABLE FEDERAL AND STATE SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH REGISTRATION AND QUALIFICATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, THE TERMS AND CONDITIONS OF WHICH ARE SET FORTH IN THIS AGREEMENT.

THE SECURITIES REPRESENTED BY THIS AGREEMENT ARE SUBJECT TO AND MAY ONLY BE SOLD, DISPOSED OF OR OTHERWISE TRANSFERRED IN COMPLIANCE WITH CERTAIN RIGHTS OF FIRST REFUSAL AND RIGHTS OF CO-SALE. SUCH RIGHTS OF FIRST REFUSAL AND RIGHTS OF CO-SALE ARE BINDING ON CERTAIN TRANSFEREES OF THESE SECURITIES.

PURCHASERS OF SECURITIES REPRESENTED BY THIS AGREEMENT SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THEIR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

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AMENDED AND RESTATED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF VENTURE ON WILSON, LLC

This Amended and Restated Limited Liability Company Operating Agreement is made as of March 8, 2018 (the “*Effective Date*”) by and among the Manager and those Persons who have or may hereafter become parties to this Agreement, in accordance with the terms hereof, as members (“*Members*”) of the Company and amends and restates in its entirety that certain Limited Liability Operating Agreement of the Company dated December 1, 2017. In consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. When used in this Agreement, the following terms have the meanings specified in this Article I:

(a) “*Act*” shall mean the Arizona Limited Liability Company Act, Title 29, Chapter 4, et seq., of the Arizona Revised Statutes, as it may be amended from time to time and any successor to said law.

(b) “*Affiliate*” of another Person means (i) a Person directly or indirectly (through one or more intermediaries) controlling, controlled by or under common control with that other Person; (ii) a Person owning or controlling ten percent (10%) or more of the outstanding voting securities or beneficial interests of that other Person; or (iii) an officer, manager, director, partner or member of that other Person. For purposes of this Agreement, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. For the avoidance of doubt, no Member shall be deemed, solely by virtue of such membership, to be an Affiliate of the Company.

(c) “*Agreement*” means this Limited Liability Company Operating Agreement of the Company, as amended from time to time.

(d) “*Arbitration Location*” shall mean Phoenix, Arizona.

(e) “*Articles of Organization*” means the Articles of Organization of the Company, as amended and restated from time to time, filed under the Act.

(f) “*Attorney*” shall have the meaning specified in paragraph 12.1.

(g) “*Capital Account*” of a Member means the capital account of such Member determined in accordance with paragraph 3.2 in this Agreement.

(h) “**Capital Contribution**” of a Member means the total amount of cash and other assets contributed (or deemed contributed under Section 1.704-1(b)(2)(iv)(d) of the Treasury Regulations) to the Company by such Member, net of liabilities assumed or to which the assets are subject.

(i) “**Class A Interest**” means an Interest that has been designated as Class A Common.

(j) “**Class A Member**” means a Member holding a Class A Interest.

(k) “**Class B Interest**” means an Interest that has been designated as Class B Common.

(l) “**Class B Member**” means a Member holding a Class B Interest.

(m) “**Class P Interest**” means an Interest that has been designated as Class P Preferred.

(n) “**Class P Member**” means a Member holding a Class P Interest.

(o) “**Closing**” shall mean the issuance of Interests, at the sole discretion of the Manager, in connection with the Company’s purchase of the Company Asset.

(p) “**Closing Date**” shall be the date on which the Closing takes place.

(q) “**Closing Conditions**” shall mean the conditions of the Closing, as determined by the Manager.

(r) “**Code**” means the Internal Revenue Code of 1986, as amended.

(s) “**Company**” shall mean VENTURE ON WILSON, LLC.

(t) “**Company Asset**” shall mean the real property asset described in the Offering Supplement.

(u) “**Consent**” shall mean the approval of a Person to do the act or thing for which the approval is solicited, or the act of granting such approval, as the context may require.

(v) “**Disability**” of an individual means the incapacity of the individual to engage in any substantial gainful activity with the Company by reason of any medically determinable physical or mental impairment that reasonably can be expected to last for a continuous period of not less than twelve (12) months as determined by a competent physician chosen by the Company and consented to by the individual or his legal representative, which consent will not be unreasonably withheld, conditioned or delayed.

(w) “**Disposition Fee**” shall mean an amount payable to the Class B Member upon the liquidation of the Company equal to ten percent (10%) of the net sales price received by the Company (after payments of commissions, fees, etc.) from the sale of a Company Asset.

(x) “**Distributable Cash**” at any time means that amount of the cash then on hand or in bank accounts of the Company which the Manager determines is available for distribution to the Members, taking into account (i) the amount of cash required for the payment of all current expenses, liabilities and obligations of the Company (whether for expense items, capital expenditures, improvements, retirement of indebtedness or otherwise) and (ii) the amount of cash which the Manager deems necessary or appropriate to establish reserves for the payment of future expenses, liabilities, obligations, capital expenditures, improvements, retirements of indebtedness, operations and contingencies, known or unknown, liquidated or unliquidated, including liabilities which may be incurred in litigation and liabilities undertaken pursuant to the indemnification provisions of this Agreement.

(y) “**Distribution**” means the transfer of money or property by the Company to one or more Members with respect to their Interests, without separate consideration.

(z) “**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended.

(aa) “**ERISA Member**” shall mean any Member that is an employee benefit plan subject to ERISA or a “benefit plan investor” within the meaning of the Plan Asset Rules.

(bb) “**Fair Market Value**” of property means the amount that would be paid for such property in cash at the closing by a hypothetical willing buyer to a hypothetical willing seller, each having knowledge of all relevant facts and neither being under a compulsion to buy or sell, as determined by the Manager in good faith.

(cc) “**Fiscal Year**” means the Company’s taxable year, which shall be the taxable year ended December 31, or such other taxable year as may be selected by the Manager in accordance with applicable law.

(dd) “**Fund Minimum Gain**” means the “partnership minimum gain” of the Company computed in accordance with the principles of Sections 1.704-2(b)(2) and 1.704-2(d) of the Treasury Regulations.

(ee) “**Interest**” means with respect to each Member, as of any date, the fractional ownership interest in the Company issued by the Company, which is expressed as a percentage, the numerator of which is such Member’s Capital Contribution and the denominator of which is the sum of the Capital Contributions of all Members. A Member’s Interest represents the totality of the Member’s interests, and the right of such Member to any and all benefits (including, without limitation, allocations of Net Profits and Net Losses and the receipt of distributions) to which a Member may be entitled pursuant to this Agreement and under the Act, together with all obligations of such Member to comply with the terms and provisions of this Agreement and the Act. If any provision requires the Consent of a specified percentage of Interests, such percentage shall be determined by reference to the aggregate Interests of Members granting Consent on the applicable date. The Interests shall include “Class A Common Interests,” “Class B Common Interests” and “Class P Preferred Interests”.

(ff) “**Interest Register**” shall have the meaning specified in paragraph 2.8.

(gg) “**Liquidating Trustee**” shall mean the Manager (or its authorized designee) or, if there is none, a Person selected by the Consent of the Members to act as a liquidating trustee of the Company.

(hh) A “**Liquidity Event**” means the receipt by the Company of a material amount of cash, or non-cash assets that may readily be transferred or liquidated for cash, as set forth in Section 7.1, received by the Company in respect to the sale, liquidation, refinance or payoff of a Company Asset held by the Company or a Merger Event in which the Company is the target entity.

(ii) “**Manager**” means Neighborhood Management, LLC who shall be a “manager” of the Company within the meaning of Section 101.251 of the Act.

(jj) “**Member Minimum Gain**” means the “partner nonrecourse debt minimum gain” of the Company computed in accordance with the principles of Section 1.704-2(i)(3) of the Treasury Regulations.

(kk) “**Member Nonrecourse Deductions**” means the “partner nonrecourse deductions” of the Company computed in accordance with the principles of Sections 1.704-2(i)(1) and (2) of the Treasury Regulations.

(ll) “**Member**” means any Person admitted as a Member Class A Member, Class B Member or Class P Member of the Company pursuant to Section 4.1 that has not ceased to be a Member pursuant to this Agreement or the Act, having the interests and rights associated with membership in a limited liability company pursuant to this Agreement.

(mm) “**Memorandum**” means the Private Placement Memorandum associated with the offering of the Interests in the Company.

(nn) A “**Merger Event**” shall be deemed to occur in the event that the Company merges or consolidates with or into any other entity, and in which the Company is not the parent or surviving company, after giving effect to such transaction, the equity owners of the Company immediately prior to such transaction cease to own at least a majority of the equity interest of the Company.

(oo) “**Nonrecourse Deductions**” means the “nonrecourse deductions” of the Company computed in accordance with Section 1.704-2(b) of the Treasury Regulations.

(pp) “**Net Income**” and “**Net Loss**” means, for each Fiscal Year, the taxable income and taxable loss, as the case may be, of the Company for such Fiscal Year determined in accordance with federal income tax principles, including items required to be separately stated, taking into account income that is exempt from federal income taxation, items that are neither deductible nor chargeable to a capital account and rules governing depreciation and amortization, except that in computing taxable income or taxable loss, the “tax book” value of an asset will be substituted for its adjusted tax basis if the two differ, and any gain, income, deductions or losses specially allocated under Article VI or shall be excluded from the computation. Any adjustment to the “tax” book value of an asset pursuant to Section 1.704-1(b)(2)(iv)(e), (f) and (g) of the Treasury Regulations shall be treated as Net Income or Net Loss from the sale of such asset.

(qq) “**Outside Date**” shall mean the last day of the ten-year period beginning on the date of the Closing unless the Manager has extended such period in accordance with Section 10.2, in which case the “Outside Date” shall mean the expiration of such extended period.

(rr) “**Person**” means any entity, corporation, company, association, joint venture, joint stock company, partnership (including a general partnership, limited partnership and limited liability partnership), limited liability company, trust, real estate investment trust, organization, individual, nation, state, government (including an agency, department, bureau, board, division or instrumentality thereof), trustee, receiver or liquidator.

(ss) “**Plan Asset Rules**” shall mean Section 3(42) of ERISA and the regulations issued by the U.S. Department of Labor at Section 2510.3-101 of Part 2510 of Chapter XXV, Title 29 of the Code of Federal Regulations.

(tt) “**Principal Office Location**” shall mean 4715 N 32nd Street, Suite 105, Phoenix, AZ 85018.

(uu) “**Registered Agent**” if applicable, shall mean shall mean the Manager.

(vv) “**Tax Distributions**” has the meaning set forth in Section 7.1(c).

(ww) “**Tax Matters Partner**” means the Person designated pursuant to Section 9.5(b).

(xx) “**Transfer**” means, with respect to an Interest, the sale, assignment, transfer, other disposition, pledge, hypothecation or other encumbrance, whether direct or indirect, voluntary, involuntary or by operation of law, and whether or not for value, of that Interest. Transfer includes any transfer by gift, devise, intestate succession, sale, operation of law, upon the termination of a trust, as a result of or in connection with any property settlement or judgment incident to a divorce, dissolution of marriage or separation, by decree of distribution or other court order or otherwise.

(yy) “**Treasury Regulations**” means the regulations promulgated by the United States Treasury Department pertaining to a matter arising under the Code.

ARTICLE II

ORGANIZATIONAL MATTERS

2.1 Name. The name of the Company is set forth on the cover page of this Agreement. The business of the Company may be conducted under that name or under any other name that the Manager may determine. The Manager shall notify the Class A Members of any change in the name of the Company.

2.2 Term. The formation date of the Company is generally within 30 days prior to the Effective Date, as further reflected on records maintained by the Manager. The term of the Company commenced on the Effective Date and shall continue in full force and effect until terminated pursuant to Article X.

2.3 Office and Agent. The Company shall maintain its principal office at the Principal Office Location, or at such other place as the Manager may determine from time to time. The Manager shall notify the Class A Members of any change in principal office of the Company. The Registered Agent, if applicable, is the Company's registered agent for service of process on the Company or such other Person with such other address as the Manager may appoint from time to time.

2.4 Purpose of Company. The purpose of the Company shall be: (a) to acquire, own, manage and liquidate one or more Company Assets which shall consist of the real property located described in the Supplement, (b) engage in any and all activities necessary, incidental, proper, advisable or convenient to the foregoing, and (c) to engage in any and all other lawful activities and transactions as may be necessary, advisable, or desirable, as determined by the Manager, in its sole discretion, to carry out the foregoing or any reasonably related activities.

2.5 Intent. It is the intent of the Members that the Company shall be treated as a "partnership" for federal income tax purposes. It also is the intent of the Members that the Company not be operated or treated as a "partnership" for purposes of Section 303 of the United States Bankruptcy Code.

2.6 Qualification. The Manager shall cause the Company to qualify to do business in each jurisdiction where such qualification is required. The Manager shall have the power and authority to execute, file and publish all such certificates, notices, statements or other instruments necessary to permit the Company to conduct business as a limited liability company in all jurisdictions where the Company elects to do business.

2.7 Interest Register. The Manager shall enter the name and contact information concerning, each Member on the register of Members and interest ownership ("**Interest Register**") maintained by the Company. Each Class A Member shall promptly provide the Manager with the information required to be set forth for such Class A Member on the Interest Register and shall thereafter promptly notify the Manager of any change to such information. The Manager, or a designee of the Manager, shall update the Interest Register from time to time as necessary to accurately reflect the information therein as known by the Manager, including, without limitation, admission of new Class A Members, but no such update shall constitute an amendment for purposes of Article 13.1 hereof. Any reference in this Agreement to the Interest Register shall be deemed to be a reference to the Interest Register as amended and in effect from time to time.

2.8 Maintenance of Separate Existence. The Company shall do all things necessary to maintain its limited liability company existence separate and apart from the existence of each holder of an Interest, any Affiliate of each holder of an Interest and any Affiliate of the Company, including maintaining the Company's books and records on a current basis separate from that of any Affiliate of the Company or any other Person. In furtherance, and not in limitation, of the foregoing, the Company shall (i) maintain or cause to be maintained by an agent under the Company's control physical possession of all its books and records (including, as applicable, storage of electronic records online or in "cloud" services), (ii) account for and manage all of its liabilities separately from those of any other Person, including payment by it of any taxes or other governmental charges levied against the Company and (iii) identify or cause to be identified separately all its assets from those of any other Person.

2.9 Title to Company Assets. All assets of the Company shall be deemed to be owned by the Company as an entity, and no holder of any Interest, individually, shall have any direct ownership interest in such assets. Each holder of an Interest, to the extent permitted by applicable law, hereby waives its rights to a partition of the assets and, to that end, agrees that it will not seek or be entitled to a partition of any assets, whether by way of physical partition, judicial sale or otherwise, except as otherwise expressly provided in Article X.

2.10 Events Affecting a Member of the Company Title to Company Assets. The death, bankruptcy, withdrawal, insanity, incompetency, temporary or permanent incapacity, liquidation, dissolution, reorganization, merger, sale of all or substantially all the stock or assets of, or other change in the ownership or nature of a Member shall not dissolve the Company.

2.11 Events Affecting the Manager. The withdrawal, bankruptcy, or dissolution of the Manager, nor the liquidation, reorganization, merger, sale of all or substantially all the stock or assets of, or other change in the ownership or nature of the Manager, shall not dissolve the Company, and upon the happening of any such event, the affairs of the Company shall be continued without dissolution by the Manager or any successor entity thereto.

ARTICLE III

CAPITAL ACCOUNTS

3.1 No Further Capital Contributions. Except as set forth herein, no Member shall be required to make any Capital Contribution beyond such Member's initial Capital Contribution, or lend money to the Company.

3.2 Capital Accounts.

(a) A separate Capital Account shall be established and maintained for each Member.

(b) The Capital Account of Member shall be maintained in accordance with the rules of Section 704(b) of the Code and the Treasury Regulations (including Section 1.704-1(b)(2)(iv) thereof) thereunder. The Capital Accounts shall be adjusted by the Manager upon an event described in Sections 1.704-1(b)(2)(iv)(e) and (f)(5) of the Treasury Regulations in the manner described in Sections 1.704-1(b)(2)(iv)(e), (f) and (g) of the Treasury Regulations if the Manager determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company, and at such other times as the Manager may determine is necessary or appropriate to reflect the relative economic interests of the Members. In determining Fair Market Value of an asset, the provisions of Section 1.704-1 of the Treasury Regulations shall be applied.

(c) If any Interest is Transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account and the respective Interest of the transferor to the extent the Capital Account and Interest is attributable to the Interests so Transferred.

3.3 Interest on Capital. No Member shall be entitled to receive any interest on its Capital Contributions or Capital Account.

3.4 Return of Capital Contributions. Except as otherwise provided in this Agreement, no Interest Holder shall have any right to withdraw or reduce its Capital Contribution.

3.5 Waiver of Action for Partition. Each Member irrevocably waives, during the term of the Company and during the period of its liquidation following dissolution, any right to maintain an action for partition of the Company's assets.

3.6 No Priorities of Members. Subject to the provisions hereof, no Member shall have a priority over any other Member as to any Distribution, whether by way of return of capital or by way of profits, or as to any allocation of Net Income, Net Loss or special allocations.

ARTICLE IV

MEMBERS; MEMBERSHIP CAPITAL

4.1 Admission of Members. The Manager may, at its sole discretion, admit any Person as a Member upon signing a counterpart of this Agreement (which may be done by power of attorney or by any other document or instrument of the Company that by its terms is deemed to be an execution of this Agreement). Such admission shall be effective when the Manager enters the name of such Person on the Interest Register. The Manager shall have the authority, in its sole discretion, to reject any subscription for an Interest in whole or in part. Each Member shall continue to be a member of the Company until it ceases to be a member of the Company in accordance with the provisions of this Agreement.

4.2 Limited Liability. No Member shall be liable to the Company or to any other Member for (i) the performance, or the omission to perform, any act or duty on behalf of the Company, (ii) the termination of the Company and this Agreement pursuant to the terms hereof, or (iii) the performance, or the omission to perform, on behalf of the Company any act in reliance on advice of legal counsel, accountants or other professional advisors to the Company. In no event shall any Member (or former Member) have any liability for the repayment or discharge of the debts and obligations of the Company or be obligated to make any contribution to the Company; *provided, however,* that

(a) appropriate reserves may be created, accrued and charged against the net assets of the Company and proportionately against the Capital Accounts of the Members for contingent liabilities or probable losses or foreseeable expenses that are permitted hereunder, such reserves to be in the amounts that the Manager deems necessary or appropriate, subject to increase or reduction at the Manager's sole discretion; and

(b) each Member shall have such other liabilities as are expressly provided for in this Agreement.

4.3 Nature of Ownership. Interests held by Members constitute personal property.

4.4 Admission of Members after Closing. Except as provided in Article VIII, following the Closing, no additional Members may be admitted to the Company and no existing Members may be issued additional Interests.

4.5 Dealing with Third Parties

Unless admitted to the Company as a Class A Member, as provided in this Agreement, no Person shall be considered a Class A Member. The Company and the Manager need deal only with Persons so admitted as Class A Members. The Company and the Manager shall not be required to deal with any other Person (other than with respect to distributions to assignees pursuant to assignments in compliance with Article VI) merely because of an assignment or transfer of any Interest(s) to such Person whether by reason of the Incapacity of a Member or otherwise; provided, however, that any distribution by the Company to the Person shown on the Company's records as a Member or to its legal representatives, or to the assignee of the right to receive the Company's distributions as provided herein, shall relieve the Company and the Manager of all liability to any other Person who may be interested in such distribution by reason of any other assignment by the Member or by reason of its Incapacity, or for any other reason.

4.6 Interests. The Company shall have two (2) classes of Common Interests, which shall be Class A Common Interests and Class B Common Interests, and one (1) class of Preferred Interest, which will be for the purpose of accounting for the Company's investments and for allocations of net profit, net loss and items thereof with respect to capital invested on or after the date hereof. Each class of Interests shall be held by the Members in proportion to the capital invested by the Members in such Class. The Members' holdings of each Class shall be as set forth on Exhibit A. Notwithstanding the foregoing, the Managing Member may add additional Classes. Each Class shall participate in allocations of income, gain, loss, deduction and credit and distributions of cash and other property of the Company.

4.7 Capital Contributions. No Member shall be required to make any Capital Contribution beyond such Member's initial Capital Contribution, if any, or lend money to the Company. Any Member may, with approval of the Managing Member, make additional Capital Contributions.

4.8 Membership Capital. Upon Closing, each participating Member shall make a Capital Contribution in an amount equal to its accepted "***Subscription Amount***" (as defined in the Member's subscription agreement, the "***Subscription Agreement***") in exchange for an Interest.

(a) No Member shall be paid interest on any Capital Contribution to the Company or on such Member's Capital Account.

(b) No Member shall have any right to demand the return of its Capital Contribution, except upon dissolution of the Company pursuant to Article VII.

4.7 Members are not Agents. Pursuant to Article V of this Agreement, the management of the Company is vested in the Manager. No Member shall have any right to participate in the management of the Company except as expressly authorized by the Act or this Agreement. No Member, acting solely in the capacity of a Member, is an agent of the Company, nor does any Member, unless expressly and duly authorized in writing to do so by the Manager, have any power or authority to bind or act on behalf of the Company in any way, to pledge its credit, to execute any instrument on its behalf or to render it liable for any purpose.

4.10 Expenses. Except as otherwise expressly provided herein, the Company shall bear all organizational and offering expenses of the Company and other expenses attributable to the activities of the Company: (A) including, but not limited to (i) attorneys' and accountants' fees and disbursements on behalf of the Company (ii) insurance, regulatory or litigation expenses (and damages); (iii) expenses incurred in connection with the winding up or liquidation of the Company (other than Permissible Liquidation Expenses); (iv) expenses incurred in connection with any amendments to the constituent documents of the Company and related entities, including the Manager; (v) expenses incurred in connection with distributions to the Members and in connection with any meetings of Members called by the Manager; and (vi) expenses incurred in connection with the preparation of the Company's financial statements, tax returns and Schedule K-1s, and (B) excluding any management fee, regulatory expenses of the Manager, or other costs incurred by Manager in connection with its daily operations including but not limited to (i) salary and other payments to employees or officers of the Manager and (ii) expenses incurred in connection with the carrying or management of investments, including custodial, trustee, record keeping and other administrative fees and expenses, for which the Manager shall be solely responsible.

4.11 Nature of Obligations between Members. Except as otherwise expressly provided herein, nothing contained in this Agreement shall be deemed to constitute any Member, in such Member's capacity as a Member, an agent or legal representative of any other Member or to create any fiduciary relationship between Members for any purpose whatsoever, apart from such obligations between the members of a limited liability company as may be created by the Act. Except as otherwise expressly provided in this Agreement, a Member shall not have any authority to act for, or to assume any obligation or responsibility on behalf of, any other Member or the Company.

4.12 Status Under the Uniform Commercial Code. All Interests in the Company shall be securities governed by Article 8 of the Uniform Commercial Code as in effect from time to time in the State of Arizona. The Interests are not evidenced by certificates, and will remain not evidenced by certificates. The Company is not authorized to issue certificated Interests. The Company will keep a register of the Members' Interests, in which it will record all Transfers of Members' Interests made in accordance with Article VIII of this Agreement.

4.11 Additional Capital Contributions. To the extent that the Company or the Property require additional capital, the Manager may require that each Member make additional capital contributions sufficient to make such additional investments on a pro-rata basis on the terms and at the valuation prescribed by the Manager; if a Member is unable to make its proportionate share of an additional investment within the time period designated by the Manager, then the other Members may purchase their share of the non-subscribing member's additional interests on a pro-rata basis. Any unmet capital contributions may also be met by the Manager or one or more affiliates under such terms as prescribed by the Manager.

ARTICLE V

MANAGEMENT AND CONTROL OF THE COMPANY

5.1 Management. Management of the Company shall be vested in the Manager. Except as otherwise provided in this Agreement and subject to the provisions of the Act, the

Manager has all power and authority to exclusively manage, control and direct the Company and all of its business, affairs, activities and operations. Any power not otherwise delegated pursuant to this Agreement or by the Manager in accordance with the terms of this Agreement shall remain with the Manager.

(a) The Manager may agree to (i) delegate any matters or actions that it is authorized to perform under this Agreement to employees or agents of the Manager or third Persons and (ii) appoint any Persons, with such titles as the Manager may select, to act on behalf of the Company, with such power and authority as the Manager may delegate from time to time to such Persons. Any such delegation may be rescinded at any time by the Manager.

(b) The Manager may from time to time open bank accounts in the name of the Company, and the Manager or a representative of the Manager shall be the signatory thereon. The Company hereby delegates and authorizes the Manager with the authority to open one or more bank accounts on behalf of the Company and be the sole or additional signatory thereon.

(c) Third parties dealing with the Company may rely conclusively upon any certificate of the Manager to the effect that it is acting on behalf of the Company. The signature of the Manager shall be sufficient to bind the Company in every manner to any agreement or on any document.

(d) The Manager may resign at any time upon five days' prior written notice to the Members. Upon such resignation, the Class A Members holding a majority of the outstanding equity interests of the Company ("**Majority Members**") may appoint a successor Manager. The bankruptcy, expulsion, resignation, removal or withdrawal, liquidation, dissolution, reorganization, merger, sale of all or substantially all the stock or assets of, or other change in the ownership or nature of the Manager shall not dissolve the Company, and upon the happening of any such event, the affairs of the Company shall be continued by the Manager or any successor thereto as appointed by the Majority Members. The Manager will not be required to return any fee previously paid. The provisions of this Section 5.1(d) may not be amended or waived without the written consent of the Majority Members. In the event of any conflict between the Manager and the Majority Members, the Majority Members shall control.

5.2 Duties and Obligations of the Manager.

(a) The Manager shall take all action that may be necessary or appropriate for the continuation of the Company's valid existence and authority to do business as a limited liability company under the laws of the State of Arizona and of each other jurisdiction in which such authority to do business is, in the judgment of the Manager, necessary or advisable.

(b) The Manager shall prepare or cause to be prepared and shall file on or before the due date (or any extension thereof) any federal, state or local tax returns required to be filed by the Company.

(c) The Manager shall cause the Company to pay any taxes or other governmental charges levied against or payable by the Company; *provided, however*, that the Manager shall not be required to cause the Company to pay any tax so long as the Manager or the Company is in good faith and by appropriate legal proceedings contesting the validity,

applicability or amount thereof and such contest does not materially endanger any right or interest of the Company. If deemed appropriate or necessary by the Manager, the Company may establish reasonable reserves to fund its actual or contingent obligations under this paragraph 5.2(c).

(d) The Manager shall use its reasonable best efforts to ensure that at no time shall the equity participation in the Company by “benefit plan investors” be “significant,” within the meaning of the Plan Asset Rules. If the Manager becomes aware that the assets of the Company at any time are likely to include plan assets of a benefit plan investor, the Manager may require any or all of the ERISA Members to immediately withdraw so much of their capital in the Company as shall be necessary to maintain the investment of such Members at a level so that the assets of the Company are not deemed to include plan assets under ERISA.

(e) Notwithstanding anything herein to the contrary, to the fullest extent permitted by applicable law, the Manager does not, shall not and will not owe any fiduciary duties of any kind whatsoever to the Company, or to any of the Members, by virtue of its role as the Manager, including, but not limited to, the duties of due care and loyalty, whether such duties were established as of the date of this Agreement or any time hereafter, and whether established under common law, at equity or legislatively defined. It is the intention of the parties to this Agreement that any such fiduciary duties be affirmatively eliminated as permitted by Arizona law and under the Act and the Members hereby waive any rights with respect to such fiduciary duties.

(f) Notwithstanding any other provision of this Agreement or otherwise applicable provision of law or equity, whenever in this Agreement, the Manager is permitted or required to make a decision (i) in its “sole discretion” or “discretion” or under a grant of similar authority or latitude, the Manager shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall, to the fullest extent permitted by applicable law, have no duty or obligation to give any consideration to any interest of or factors affecting the Company or the Members, or (ii) in its “good faith” or under another expressed standard, the Manager shall act under such express standard and shall not be subject to any other or different standards. Unless otherwise expressly stated, for purposes of this paragraph 5.2(f), the Manager shall be deemed to be permitted or required to make all decisions hereunder in its sole discretion.

5.3 Rights or Powers of Class A Members And Class P Members. No Voting Rights. Except as expressly provided otherwise in this Agreement or by operation of law, the Class A Members and Class P Members (as members of the Company) shall have no rights or powers to take part in the management and control of the Company and its business and affairs and shall have no power or authority to act for the Company, or bind the Company under agreements or arrangements with third parties as Members. The Class A Members and Class P Members shall have no right to vote except as explicitly set forth in this Agreement.

5.4 The Manager May Engage in Other Activities. Subject to the terms of any employment or consulting agreement between the Manager and the Company, the Manager is not obligated to devote all of its time or business efforts to the affairs of the Company, *provided that* the Manager shall devote such time, effort and skill as it determines in its sole discretion may be necessary or appropriate for the proper operation of the Company. Subject to the foregoing, the Manager may have other business interests and may engage in other activities in addition to those related to the Company. Except as expressly set forth herein, the Manager and each Class A

Member, and their respective Affiliates may engage in or possess any interest in other business ventures of any kind, nature or description, independently or with others, whether such ventures are competitive with the Company or otherwise. Neither the Company nor any Class A Member shall have the right, by virtue of this Agreement, to share or participate in such other investments or activities of the Manager or to the income derived therefrom.

5.5 Compensation. For its management of the Company, the Manager shall be entitled to receive a fee in the amount of up to five percent (5%) of the amount paid by the Company to acquire any Company Asset, which shall be payable either at the time of the acquisition or at the time of the disposition of such Company Asset. In addition, the Manager shall be entitled to receive an annual fee equal to one percent (1%) of the total capital contributions made by the Class A Members and ten percent (10%) of any profits as set forth in Section 7.1.

5.6 Liability for Certain Acts. The Manager shall exercise its business judgment in managing the business operations and affairs of the Company. Unless fraud, gross negligence, willful misconduct or a wrongful taking shall be proven by a court of competent jurisdiction, after exhaustion of all appeals therefrom, the Manager shall not be liable or obligated to the Class A Members for any mistake of fact or judgment or for the doing of any act or for the failure to do any act by the Managers in conducting the business operations and affairs of the Company. The Manager does not, in any way, guarantee the return of any Class A Member's Capital Contribution or a profit for the Members from the operation of the Company. The Manager is not responsible to any Member for the loss of its investment or a loss in operations unless the result shall have been a result of fraud, gross negligence, willful misconduct or a willful and wrongful taking by such Manager. The Manager shall incur no liability to the Company or to any of the Members as a result of engaging in any other business or venture.

ARTICLE VI

ALLOCATIONS OF NET INCOME AND NET LOSS

6.1 Allocation of Net Income and Net Loss. Except as otherwise provided in this Agreement, Net Income and Net Loss (including individual items of profit, income, gain, loss, credit, deduction and expense) of the Company shall be allocated among the Members in a manner such that the Capital Account balance of each such Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to the distributions that would be made to such Member pursuant to Section 10.4 if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Fair Market Value, all Fund liabilities were satisfied (limited with respect to each nonrecourse liability to the Fair Market Value of the assets securing such liability), and the net assets of the Company were distributed in accordance with Section 10.4 to the Members immediately after making such allocation, adjusted for applicable special allocations, computed immediately prior to the hypothetical sale of assets.

6.2 Allocation Rules.

(a) In the event that Members are issued Interests on different dates, the Net Income or Net Loss allocated to the Members for each Fiscal Year during which Members receive

such Interests shall be allocated among the Members in accordance with Section 706 of the Code, using any convention permitted by law and selected by the Manager.

(b) For purposes of determining the Net Income, Net Loss and individual items of income, gain, loss credit, deduction and expense allocable to any period, Net Income, Net Loss and any such other items shall be determined on a daily, monthly or other basis, as determined by the Manager using any method that is permissible under Section 706 of the Code and the Treasury Regulations thereunder.

(c) Except as otherwise provided in this Agreement, all individual items of Fund income, gain, loss and deduction shall be divided among the Members in the same proportions as they share Net Incomes and Net Loss for the Fiscal Year or other period in question.

6.3 Limitation on Allocation of Net Losses. There shall be no allocation of Net Losses to any Member to the extent that such allocation would create a negative balance in the Capital Account of such Member (or increase the amount by which such Member's Capital Account balance is negative).

6.4 Tax Allocations.

(a) **Generally.** Except as otherwise provided in this Section 6.3, the taxable income or loss of the Company (and items thereof) shall be allocated pro rata among the Members in the same manner as the corresponding items of Net Income, Net Loss and separate items of income, gain, loss, credit, deduction and expense (excluding items for which there are no related tax items) are allocated among the Member for Capital Account purposes.

(b) Special Allocations.

(i) **Minimum Gain Chargeback.** In the event there is a net decrease in the Company Minimum Gain during any Fiscal Year, the minimum gain chargeback provisions described in Sections 1.704-2(f) and (g) of the Treasury Regulations shall apply.

(ii) **Member Minimum Gain Chargeback.** In the event there is a net decrease in Member Minimum Gain during any Fiscal Year, the partner minimum gain chargeback provisions described in Section 1.704-2(i) of the Treasury Regulations shall apply.

(iii) **Qualified Income Offset.** In the event a Member unexpectedly receives an adjustment, allocation or Distribution described in of Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, which adjustment, allocation or distribution creates or increases a deficit balance in that Member's Capital Account, the "qualified income offset" provisions described in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations shall apply.

(iv) **Nonrecourse Deductions.** Nonrecourse Deductions shall be allocated in accordance with and as required in the Treasury Regulations.

(v) **Member Nonrecourse Deductions.** Member Nonrecourse Deductions shall be allocated to the Members as required in Section 1.704-2(i)(1) of the Treasury Regulations.

(vi) *Intention.* The special allocations in this Section 6.3 are intended to comply with certain requirements of the Treasury Regulations and shall be interpreted consistently therewith. It is the intent of the Members that any special allocation pursuant to this Section 6.3 shall be offset with other special allocations pursuant to this Section 6.3. Accordingly, special allocations of Fund income, gain, loss or deduction shall be made in such manner so that, in the reasonable determination of the Manager, taking into account likely future allocations under this Section 6.3, after such allocations are made, each Member's Capital Account is, to the extent possible, equal to what the Capital Account would have been were this Section 6.3 not part of this Agreement.

(c) *Recapture Items.* In the event that the Company has taxable income in any Fiscal Year that is characterized as ordinary income under the recapture provisions of the Code, each Member's distributive share of taxable gain or loss from the sale of Company Assets (to the extent possible) shall include a proportionate share of this recapture income equal to that Member's share of prior cumulative depreciation deductions with respect to the assets which gave rise to the recapture income.

(d) *Tax Credits and Similar Items.* Allocations of tax credits, tax credit recapture, and any items related thereto shall be allocated in such items as determined by the Manager taking into account the principles of Treasury Regulation Section 1.704-1(b)(4)(ii).

(e) *Consistent Treatment.* All items of income, gain, loss, deduction and credit of the Company shall be allocated among the Members for federal income tax purposes in a manner consistent with the allocation under this Article VI. Each Member is aware of the income tax consequences of the allocations made by this Article VI and hereby agrees to be bound by the provisions of this Article VI in reporting its share of Fund income and loss for income tax purposes. No Member shall report on its tax return any transaction by the Company, any amount allocated or distributed from the Company or contributed to the Company inconsistently with the treatment reported (or to be reported) by the Company on its tax return nor take a position for tax purposes that is inconsistent with the position taken by the Company.

(f) *Modifications to Preserve Underlying Economic Objectives.* If, in the opinion of counsel to the Company, there is a change in the Federal income tax law (including the Code as well as the Treasury Regulations, rulings, and administrative practices thereunder) which makes modifying the allocation provisions of this Article VI necessary or prudent to preserve the underlying economic objectives of the Members as reflected in this Agreement, the Manager shall make the minimum modification necessary to achieve such purpose.

6.5 Allocation of Excess Nonrecourse Liabilities. "Excess nonrecourse liabilities" of the Company as used in Section 1.752-3(a)(3) of the Treasury Regulations shall first be allocated among the Member pursuant to the "additional method" described in such section and then in accordance with the manner in which the Manager expects the nonrecourse deductions allocable to such liabilities will be allocated.

6.6 Allocations in Respect of a Transferred Interest. Except as otherwise provided herein, amounts of Net Income, Net Loss and special allocations allocated to the Members shall be allocated among the appropriate Members in proportion to their respective Interests. If there is

a change in any Member's Interest for any reason during any Fiscal Year, each item of income, gain, loss, deduction or credit of the Company for that Fiscal Year shall be assigned pro rata to each day in that Fiscal Year in the case of items allocated based on Interests, and the amount of such item so assigned to any such day shall be allocated to the Member based upon that Member's Interest at the close of that day. Notwithstanding the immediately preceding sentence, the net amount of gain or loss realized by the Company in connection with a sale or other disposition of property by the Company shall be allocated solely to the Members having Interests on the date of such sale or other disposition.

6.7 Allocations in Year of Liquidation Event. Notwithstanding anything else in this Agreement to the contrary, the parties intend for the allocation provisions of this Article VI to produce final Capital Account balances of the Members that will permit liquidating distributions to be made pursuant to the order set forth in Section 10.4. To the extent that the allocation provisions of this Article VI would fail to produce such final Capital Account balances, the Manager may elect, in its sole discretion, to (a) amend such provisions if and to the extent necessary to produce such result and (b) reallocate income and loss of the Company for prior open years (including items of gross income and deduction of the Company for such years) among the Members to the extent it is not possible to achieve such result with allocations of items of income (including gross income) and deduction for the current year and future years, as approved by the Manager. This Section 6.6 shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the Internal Revenue Service or any other taxing authority. The Manager shall have the power to amend this Agreement without the consent of the other Members, as it reasonably considers advisable, to make the allocations and adjustments described in this Section 6.6. To the extent that the allocations and adjustments described in this Section 6.6 result in a reduction in the distributions that any Member will receive under this Agreement compared to the amount of the distributions such Member would receive if all such distributions were made pursuant to the order set forth in Section 10.4, the Company may make a guaranteed payment (within the meaning of Section 707(c) of the Code) to such Member (to be made at the time such Member would otherwise receive the distributions that have been reduced) to the extent such payment does not violate the requirements of Sections 704(b) and 514(c)(9)(E) of the Code or may take such other action as reasonably determined by the Manager to offset such reduction.

ARTICLE VII

DISTRIBUTIONS

7.1 Distributions.

(a) **Regular Distributions of Distributable Cash.** The Company shall first use available assets to repay outstanding debt and other obligations, if any, of the Company. Then, subject to paragraph 7.4, the Company shall make distributions of Distributable Cash, at such times and intervals as the Manager shall determine, including regular distributions of income generated by the Company Asset. Amounts initially apportioned to the Manager shall be distributed to the Manager, and amounts initially apportioned to any Member shall be distributed to such Member, in the following proportions and order of priority:

(i) First, to the Members, Manager or affiliates of a Member or Manager in the amount of any loans made by such Members, Managers or affiliates of a Member or Manager;

(ii) Second, to the Class P Members, pro rata in accordance with the Interests held by them, in an amount equal to the following:

(1) During the first twelve (12) months following the date of the Capital Contribution, an amount equal to three (3) percent of the amount of the respective Class P Member's Capital Contributions; and

(2) Thereafter, , an amount equal to three (3) percent of the amount of the respective Class P Member's Capital Contributions.

(iii) Third, to the Class A Members, pro rata in accordance with Interests held by them.

The Manager may, in its sole discretion, share with one or more Persons all or any portion of any distribution made to the Manager under paragraph 7.1(a)(iv). For the avoidance of doubt, any expenses relating to brokerage commissions, escrow fees, clearing and settlement charges, custodial fees, and any other costs relating to the sale of a Company Asset or other assets to the Members following a Liquidity Event ("*Distribution Expenses*") shall be paid by the Company prior to any distributions to the Members. The amount of assets that are distributable to the Member's will be net of such expenses.

(b) *Non-Cash Distributions.* Whenever a Distribution provided for in this Section 7.1 shall be payable in property other than cash, the value of such Distribution shall be deemed to be the Fair Market Value of such property as determined in good faith by the Manager.

(c) *Return of Distributions.* Any Member receiving a Distribution in violation of the terms of this Agreement shall return such Distribution (or cash equal to the net fair value of any property so distributed, determined as of the date of distribution) promptly following the Member's receipt of a request therefor from the Manager or from any other Member. No third party shall be entitled to rely on the obligations to return Distributions set forth herein or to demand that the Company or any Member make any request for any such return.

7.2 Form of Distribution. Distributions pursuant to this Article VII will be comprised of cash from income generated by a Company Asset and to the extent that, in connection with a Liquidity Event, the Company receives such cash. Regular income distributions will be made at such times as the Manager determines in its sole discretion. Unless otherwise agreed to by the Manager, distributions to a Class A Member will be made to its respective brokerage account; provided that any cash distributions may, in the sole discretion of the Manager, be made, in whole or in part, to the account from which the attributable Capital Contribution was paid.

7.3 Amounts Withheld. Any amounts withheld with respect to a Member pursuant to any federal, state, local or foreign tax law from a Distribution by the Company to the Member shall be treated as paid or distributed, as the case may be, to the Member for all purposes of this Agreement. In addition, the Company may withhold from distributions amounts deemed

necessary, in the sole discretion of the Manager, to be held in reserve for payment of accrued or foreseeable permitted expenses of the Company. Each Member hereby agrees to indemnify and hold harmless the Company from and against any liability with respect to income attributable to or distributions or other payments to such Member. Any other amount that the Manager determines is required to be paid by the Company to a taxing authority with respect to a Member pursuant to any federal, state, local or foreign tax law in connection with any payment to or tax liability (estimated or otherwise) of the Member shall be treated as a loan from the Company to such Member. If such loan is not repaid within thirty (30) days from the date a Manager notifies such Member of such withholding, the loan shall bear interest from the date of the applicable notice to the date of repayment at a rate at the lesser of (a) the one-month LIBOR plus four percent (4%) or (b) the maximum legal interest rate under applicable law, compounded annually. In addition to all other remedies the Company may have, the Company may withhold Distributions that would otherwise be payable to such Member and apply such amount toward repayment of the loan and interest. Any payment made by a Member to the Company pursuant to this paragraph 7.4 shall not constitute a Capital Contribution.

7.4 Member Giveback. Except as required by applicable law or paragraph 7.4, no Member shall be required to repay to the Company any Member or any creditor of the Company all or any part of the distributions made to such Member.

7.5 No Creditor Status. Unless a Member, Manager or affiliate of a Member or Manager has extended a loan to the Company, a holder of Class A Interest(s) shall not have the status of, and is not entitled to the remedies available to, a creditor of the Company with regard to distributions that such holder of Interest(s) becomes entitled to receive pursuant to this Agreement and the Act.

7.6 Member or Manager Loans. The Company may borrow money from a Member, Manager or an affiliate of a Member or Manager on commercially reasonable terms approved by the Manager. Any and all such loans to the Company described in or made in accordance with this Section 7.6 are hereby approved and ratified by the Members. A loan by a Member shall not be treated as a Capital Contribution by the Member or entitle the Member to any increase in the Member's share of the income, gains, losses, deductions, credits or distributions of the Company.

7.7 Limitations on Distributions. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to any holder of Interests on account of its interest in the Company if such distribution would violate the Act or other applicable law.

ARTICLE VIII

TRANSFERS

8.1 Transfers. Except as otherwise expressly provided in this Article VIII, no Member may transfer all or any portion of its Interests without (i) providing the Manager with a written opinion of counsel regarding the compliance of the proposed transfer with all applicable securities laws and (ii) obtaining prior written approval of the Manager, which approval may be withheld in

the Manager's sole and absolute discretion. Any attempted Transfer in violation of this Article VIII hereof shall be null and void *ab initio*, and shall not bind the Company.

8.2 Further Restrictions on Transfers. Notwithstanding anything herein to the contrary, in addition to any other restrictions on a Transfer of an Interest, no Interest may be Transferred (a) without compliance with the Securities Act of 1933, as amended, and any other applicable securities or "blue sky" laws, (b) if, in the determination of the Manager, the Transfer could result in the Company not being classified as a partnership for federal income tax purposes, (c) if, in the determination of the Manager, the Transfer could cause the Company to become subject to the Investment Company Act of 1940, (d) if, in the determination of the Manager, the Transfer would cause a termination of the Company under Section 708(b)(1)(B) of the Code that would have a material adverse effect on the Company, or (e) the transferee is a minor or incompetent.

8.3 Permitted Transfers. The restrictions upon Transfer specified in Section 8.1 shall not apply to any Transfer (a) by a Member who is an individual to (i) such Member's spouse, ex-spouse or domestic partner; (ii) such Member's or Member's spouse's lineal descendants; (iii) any family limited partnership or other entity controlled (which for this purpose shall require that such Member own more than fifty percent (50%) of the equity securities of such entity) by such Member, (iv) a trust established solely for the benefit of such Member, Member's spouse or lineal descendants without regard to age, and (v) from any such trust to the beneficiaries thereof; or (b) by a Member to another Member (each such transferee, a "***Permitted Transferee***"); *provided, however,* that each such Permitted Transferee (other than a Person who is already a Member) pursuant to the foregoing clauses (a), (b) and (c) agrees in writing to become a party to this Agreement and to be subject to the terms and conditions hereof.

8.4 Admission of Transferee as a Member. A Transfer permitted by the Manager shall only transfer the rights of an assignee as set forth in Section 8.6 unless (a) the transferee is a Member or is admitted as a Member and (b) payment to the Company of a transfer fee in cash which is sufficient, in the Manager's sole determination, to cover all reasonable expenses incurred by the Company in connection with the Transfer and admission of the transferee as a Member.

8.5 Involuntary Transfer of Interests. In the event of any involuntary transfer of Interests to a Person, such Person shall have only the rights of an assignee set forth in Section 8.6 with respect to such Interests.

8.6 Rights of Assignee. An assignee has no right to vote, receive information concerning the business and affairs of the Company and is entitled only to receive distributions and allocations attributable to the Interest held by the assignee as determined by the Manager and in accordance with this Agreement.

8.7 Enforcement. The restrictions on Transfer contained in this Agreement are an essential element in the ownership of an Interest. Upon application to any court of competent jurisdiction, a Manager shall be entitled to a decree against any Person violating or about to violate such restrictions, requiring their specific performance, including those prohibiting a Transfer of all or a portion of its Interests.

8.8 Death or Disability of a Member. Upon the Disability or death of a Member, such Member shall cease to be a member of the Company and such disabled Member or the legal representative of such deceased Member's estate (or the trustee of a living trust established by such deceased Member if such Member's Interests have been transferred to such trust) shall have the rights only of an assignee.

8.9 Compulsory Redemption. The Manager may, by notice to any Class A Member, force the sale of all or a portion of such Class A Member's Interest on such terms as the Manager determines to be fair and reasonable, or take such other action as it determines to be fair and reasonable in the event that the Manager determines or has reason to believe that: (i) such Class A Member has attempted to effect a Transfer of, or a Transfer has occurred with respect to, any portion of such Class A Member's Interest in violation of this Agreement; (ii) continued ownership of such Interest by such Member is reasonably likely to cause the Company to be in violation of securities laws of the United States or any other relevant jurisdiction or the rules of any self-regulatory organization applicable to the Manager or its Affiliates; (iii) continued ownership of such Interest by such Class A Member may be harmful or injurious to the business or reputation of the Company or the Manager, or may subject the Company or any Class A Members to a risk of adverse tax or other fiscal consequence, including without limitation, adverse consequence under ERISA; (iv) any of the representations or warranties made by such Member under this agreement or under any Subscription Agreement signed by such Class A Member in connection with the acquisition of an Interest was not true when made or has ceased to be true; (v) any portion of such Class A Member's Interest has vested in any other Person by reason of the bankruptcy, dissolution, incompetency or death of such Class A Member; or (vi) it would not be in the best interests of the Company, as determined by the Manager, for such Class A Member to continue ownership of its Interest.

ARTICLE IX

RECORDS, REPORTS AND TAXES

9.1 Books and Records. The Manager shall maintain all of the information required to be maintained by the Act at the Company's principal office, with copies available at all times during normal business hours for inspection and copying upon reasonable notice by any Class A Member or its authorized representatives for any purpose reasonably related to such Class A Member's status as a member, including as applicable:

(a) true and full information regarding the status of the business and financial condition of the Company;

(b) promptly after becoming available, a copy of the Company's federal, state and local income tax returns, if any, for each Fiscal Year;

(c) a current list of the full name and last known business, residence or mailing address of such Class A Member and each Manager;

(d) a copy of this Agreement and all amendments thereto, together with executed copies of (i) any powers of attorney and (ii) any other document pursuant to which this

Agreement or any amendments thereto have been executed or have been deemed to be executed; and

(e) true and full information regarding the amount of cash contributed by such Class A Member and the date on which such Class A Member became a Class A Member.

9.2 Reports.

(a) *Governmental Reports.* The Company shall file all documents and reports required to be filed with any governmental agency in accordance with the Act.

(b) *Tax Reports.* The Company shall prepare and duly and timely file, at the Company's expense, all tax returns required to be filed by the Company. The Manager shall send or cause to be sent to each Member within ninety (90) days after the end of each Fiscal Year, or such later date as determined in the discretion of the Manager, such information relating to the Company as is necessary for the Member to complete its federal, state and local income tax returns that include such Fiscal Year.

9.3 Bank Accounts. All funds of the Company shall be deposited with banks or other financial institutions in such account or accounts of the Company as may be determined by the Manager and shall not be commingled with the funds of any other Person.

9.4 Tax Elections. Except as otherwise expressly provided herein, the Company shall make such tax elections as the Manager may determine.

9.5 Tax Matters Partner.

(a) *Powers and Duties.* The Tax Matters Partner shall have all of the powers and authority of a tax matters partner under the Code. The Tax Matters Partner shall represent the Company (at the Company's expense) in connection with all administrative and judicial proceedings by the Internal Revenue Service or any taxing authority involving any tax return of the Company, and may expend the Company's funds for professional services and costs associated therewith. The Tax Matters Partner shall provide to the Members prompt notice of any communication to or from or agreements with a federal, state or local authority regarding any return of the Company, including a summary of the provisions thereof.

(b) *Designation of Tax Matters Partner.* The Manager shall be the "tax matters partner" within the meaning of Code Section 6231(a)(7) (the "**Tax Matters Partner**"). The Tax Matters Partner shall take such action as may be necessary to cause each holder of Interests (to the extent permissible under applicable tax law) to become a "notice partner" within the meaning of Section 6231 of the Code. The Tax Matters Partner shall inform each holder of Interests of all significant matters that may come to its attention in its capacity as Tax Matters Partner by giving notice thereof on or before the fifth business day after becoming aware thereof and, within that time, shall forward to each holder of Interests copies of all significant written communications he may receive in that capacity. The Tax Matters Partner may take any action contemplated by Sections 6222 through 6232 of the Code, but this sentence does not authorize the Tax Matters Partner to take any action left to the determination of an individual partner under Section 6222 through 6232 of the Code. Notwithstanding anything to the contrary in this

Agreement, the holders of Interests agree that an election under Section 754 of the Code shall be made by the Company upon the reasonable request of any holder of Interests.

9.6 Confidentiality. All books, records, financial statements, tax returns, budgets, business plans and projections of the Company, all other information concerning the business, affairs and properties of the Company and all of the terms and provisions of this Agreement shall be held in confidence by each Manager and Class A Member and their respective Affiliates, subject to any obligation to comply with (a) any applicable law, (b) any rule or regulation of any legal authority or securities exchange, (c) any subpoena or other legal process to make information available to the Persons entitled thereto or (d) the enforcement of such party's rights hereunder (or under any employment agreement with such Class A Member, if any) in any legal process, arbitration, as a Class A Member, Manager or employee, as applicable. Such confidentiality shall be maintained until such time, if any, as any such confidential information either is, or becomes, published or a matter of public knowledge (other than as a result of a breach of this Section 9.6); provided that each party recognizes that the privilege each has to maintain, in its sole discretion, the confidentiality of a communication relating to such transactions, including a confidential communication with its attorney or a confidential communication with a federally authorized tax practitioner under Section 7525 of the Code, is not intended to be affected by the foregoing provisions of this sentence. Notwithstanding anything to the contrary herein, no Class A Member shall be entitled to receive or review information regarding any other Class A Member of the Company.

ARTICLE X

DISSOLUTION AND LIQUIDATION

10.1 Dissolution. The Company shall be dissolved, its assets disposed of and its affairs wound up upon any of the following:

- (a) the Outside Date;
- (b) the final distribution of the net assets of the Company to the Members or a Liquidating Vehicle in accordance with paragraph 7.3;
- (c) determination by the Manager in its sole discretion to dissolve the Company; or
- (d) entry of a judicial decree of dissolution of the Company pursuant to the Act.

10.2 Date of Dissolution. Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until the assets of the Company have been liquidated and distributed as provided herein. Prior to a dissolution pursuant to Paragraph 10.1, the Manager, in its sole discretion, may extend the period of time between the date of Closing and the Outside Date by unlimited successive one (1) year periods. Notwithstanding the dissolution of the Company, prior to the termination of the Company, the business of the Company and the rights and obligations of the Members, as such, shall continue to be governed by this Agreement.

10.3 Winding Up. Upon the occurrence of any event specified in Section 10.1, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, satisfying the claims of its creditors, and distributing any remaining assets in cash or in kind, to the Members in accordance herewith. The Liquidating Trustee shall be responsible for overseeing the winding up and liquidation of the Company and shall cause the Company to sell or otherwise liquidate all of the Company's assets except to the extent the Liquidating Trustee determines to distribute any assets to the Members in kind, discharge or make provision for all liabilities of the Company and all costs relating to the dissolution, winding up, and liquidation and distribution of assets, establish such reserves as may be necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Members, the amounts of such reserves shall be deemed to be an expense of the Company and shall be deemed income to the extent it ceases to be reserved), and distribute the remaining assets to the Members, in the manner specified in Section 10.4. The Liquidating Trustee shall be allowed a reasonable time for the orderly liquidation of the Company's assets and discharge of its liabilities, so as to preserve and upon disposition maximize, to the extent possible, the value of the Company's assets.

10.4 Liquidation. The proceeds from the liquidation of Company Assets thereof, shall be paid or distributed in the following order:

(a) first, to creditors to the extent otherwise permitted by applicable law in satisfaction of all liabilities and obligations of the Company, including expenses of the liquidation (whether by payment or the making of reasonable provision for payment thereof), other than liabilities for which reasonable provision for payment has been made and liabilities, if any, for distribution to Members;

(b) next, to the establishment of such reserves for contingent liabilities of the Company as are deemed necessary by the Liquidating Trustee (other than liabilities for which reasonable provision for payment has been made and liabilities, if any, for distribution to Members and former Members under the Act);

(c) next, to Members and former Members in satisfaction of any liabilities for distributions under the Act, if any;

(d) next, to the Class P Members, pro rata in accordance with the Interests held by them, in an amount equal to the difference between the amount's received under Section 7.1(a)(ii) and the amount which is an annual cumulative return of ten percent (10%) on such Class P Member's Capital Contributions;

(e) next, to the Class P Members until each Class P Member has received aggregate distributions in an amount equal to such Class P Member's Capital Contribution;

(f) next, to the Class A Members until each Class A Member has received aggregate distributions in an amount equal to such Class A Member's Capital Contribution;

(g) next, to the Class B Member in an amount equal to the Disposition Fee; and

(h) the remainder, to the Class A Members, on a pro rata basis in accordance with their respective Percentage Interests.

10.5 Distributions in Kind. Any non-cash asset distributed to one or more Members shall first be valued by the Manager at its Fair Market Value to determine the Net Income, Loss and special allocations that would have resulted if that asset had been sold for that value, which amounts shall be allocated pursuant to Article VI, and the Members' Capital Accounts shall be adjusted to reflect those allocations. The amount distributed and charged to the Capital Account of each Member receiving an interest in the distributed asset shall be the Fair Market Value of such interest as determined in good faith by the Manager (net of any liability secured by the asset that the Member assumes or takes subject to).

10.6 No Liability. Notwithstanding anything herein to the contrary, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a negative Capital Account balance (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all Fiscal Years, including the Year in which such liquidation occurs), neither that Member nor any Manager shall have any obligation to make any contribution to the capital of the Company, and the negative balance of that Member's Capital Account shall not be considered a debt owed by that Member or any Manager to the Company or to any other Person for any purpose whatsoever; *provided, however*, that nothing in this Section 10.6 shall relieve any Member from any liability under any promissory note or other affirmative commitment such Member has made to contribute capital to the Company.

10.7 Limitations on Payments Made in Dissolution. Except as otherwise specifically provided in this Agreement, each Member shall be entitled to look only to the assets of the Company for Distributions (including Distributions in liquidation) and no Member, Manager or officer of the Company shall have any personal liability therefor.

10.8 Certificate of Cancellation; Articles of Dissolution. Upon completion of the winding up of the Company's affairs, the Manager shall file a Certificate of Cancellation, as applicable.

10.9 Conversion to a Trust. In the event that, on the date of the Ten Year Anniversary, a Liquidity Event has not occurred, the Manager may appoint a third party liquidator or custodian at the expense of the Company and/or distribute the assets of the Company to a liquidating trust or Entity for the benefit of the Members (a "**Liquidating Vehicle**"). Interests in any Liquidating Vehicle shall generally be subject to terms comparable to Interests (including, for the avoidance of doubt, Distribution Expenses); provided that, in addition to other expenses contemplated hereunder, interests in a Liquidating Vehicle may be subject to actual expenses incurred in connection with the ongoing operations of the liquidating vehicle. The manager or the liquidating trustee, in its sole discretion, may establish reserves for contingencies under this paragraph 10.9, including with respect to interests in any liquidating vehicle.

ARTICLE XI

LIMITATION OF LIABILITY; STANDARD OF CARE; INDEMNIFICATION

11.1 Limitation of Liability. The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member, Manager, Tax Matters Partner or officer of the Company shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being an Member, Manager, Tax Matters Partner or officer.

11.2 Standard of Care. No Manager, Class A Member, Tax Matters Partner or officer of the Company shall have any personal liability whatsoever to the Company, any Member, Affiliate of the Company or any Affiliate of any Member on account of such Person's status as Manager, Member, Tax Matters Partner or officer of the Company or by reason of such Person's acts or omissions in connection with the conduct of the business of the Company so long as such Person acts in good faith for a purpose which the Person reasonably believes to be in, or not opposed to, the best interests of the Company; *provided, however*, that nothing contained herein shall protect any such Person against any liability to which such Person would otherwise be subject by reason of (a) any act or omission of such Person that involves actual fraud or willful misconduct or (b) any transaction from which such Person or its Affiliate derives any improper personal benefit.

11.3 Indemnification. The Company shall indemnify and hold harmless any Person made, or threatened to be made, a party to an action or proceeding, whether civil, criminal or investigative (a "*Proceeding*"), including an action by or in the right of the Company, by reason of the fact that such Person was or is a Manager, a Tax Matters Partner, or an officer of the Company, an Affiliate of a Manager, or an officer, director, shareholder, partner, member, employee or manager of any of the foregoing, from and against all judgments, fines, amounts paid in settlement and reasonable expenses (including investigation, accounting and attorneys' fees) incurred as a result of such Proceeding, or any appeal therein (and including indemnification against active or passive negligence or breach of duty), if such Person acted in good faith, for a purpose which the Person reasonably believed to be in, or not opposed to, the best interests of the Company and, in a criminal Proceeding, in addition, such Person had no reasonable cause to believe that his conduct was unlawful; *provided, however*, that nothing contained herein shall permit any Person to be indemnified or held harmless if and to the extent that the liability sought to be indemnified or held harmless against results from (a) any act or omission of such Person that is determined by the final non-appealable judgment of a court of competent jurisdiction to involve actual fraud, gross negligence or willful misconduct or (b) any transaction from which such Person derived improper personal benefit. The termination of any such civil or criminal Proceeding by judgment, settlement, conviction or upon a plea of guilty or *nolo contendere*, or its equivalent, shall not in itself create a presumption that any such Person did not act in good faith, for a purpose which he reasonably believed to be in, or not opposed to, the best interests of the Company or that he had reasonable cause to believe that his conduct was unlawful. The Company's indemnification obligations hereunder shall survive the termination of the Company. Each indemnified Person shall have a claim against the net assets of the Company for payment of any indemnity amounts from time to time due hereunder, which amounts shall be paid or properly reserved for prior to the making of Distributions by the Company to the Members.

11.4 Contract Right; Expenses. The right to indemnification conferred in this Article XI shall be a contract right. Each Manager's, Tax Matters Partner's, and officer's right to indemnification hereunder shall include the right to require the Company to advance the expenses incurred by the indemnified Person in defending any such Proceeding in advance of its final disposition subject to an understanding to return the amount so advanced if it is ultimately determined that the indemnified Person has not met the standard of conduct required for indemnification.

11.5 Nonexclusive Right. The right to indemnification and the payment of expenses incurred in defending a Proceeding in advance of its final disposition conferred in this Article XI shall not be exclusive of any other right which any Person may have or hereafter acquire under any statute or agreement, or under any insurance policy obtained for the benefit of any Manager, Tax Matters Partner or officer of the Company.

11.6 Severability. If any provision of this Article XI is determined to be unenforceable in whole or in part, such provision shall nonetheless be enforced to the fullest extent permissible, it being the intent of this Article XI to provide indemnification to all Persons eligible hereunder to the fullest extent permitted by applicable law.

11.7 Insurance. The Manager may cause the Company to purchase and maintain insurance on behalf of any Person (including any Manager, Tax Matters Partner or officer of the Company) who is or was an agent of the Company against any liability asserted against that Person and incurred by that Person in any such capacity.

ARTICLE XII

REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 Representations and Warranties of the Members. Each Member is fully aware that (i) the Company and the Manager are relying upon the exemption from registration provided by Section 4(a)(2) of the 1933 Act and Regulation D promulgated thereunder, and (ii) the Company will not register as an investment company under the Investment Company Act, by reason of the provisions of Section 3I(1) thereof that exclude from the definition of "investment company" any issuer that is beneficially owned by not more than 100 investors and that is not making a public offering of its securities. Each Member also is fully aware that the Company and the Manager are relying upon the truth and accuracy of the following representations by each of the Members and in the representations made in its respective Subscription Agreement. Each of the Members hereby represents, warrants and covenants to the Manager and the Company that:

(i) In the case of any Entity, it has been duly formed and is validly existing and in good standing under the laws of its jurisdiction of organization with full power and authority to enter into and to perform this Agreement in accordance with its terms or (ii) in the case of an individual, he or she has the full legal capacity to enter into and to perform this Agreement in accordance with its terms;

(ii) This Agreement is a legal, valid and binding obligation of such Member, enforceable against such Member in accordance with its terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights, and subject, as to enforceability, to the effect of general principles of equity;

(iii) Its Interest is being acquired for its own account, for investment and not with a view to the distribution or sale thereof, subject, however, to any requirement of law that the disposition of its property shall at all times be within its control;

(iv) It is an Accredited Investor;

(v) It is not a participant-directed defined contribution plan;

(vi) It is not an "*investment company*" registered under the Investment Company Act;

(vii) If it is a "*benefit plan investor*" under Section 3(42) of ERISA, it has identified itself as the same in writing to the Manager, its purchase and holding of its Interest is permissible under the documents governing the investment of its assets and under ERISA and the Code;

(viii) It will conduct its business and affairs (including its investment activities) in a manner such that it will be able to honor its obligations under this Agreement;

(ix) It understands and acknowledges that the investments contemplated by the Company involve a high degree of risk. The Member, or its management, has substantial experience in evaluating and investing in real estate and real estate related assets and is capable of evaluating the merits and risks of its investments and has the capacity to protect its own interests. The Member, by reason of its, or its management's, business or financial experience, has the capacity to protect its own interests in connection with proposed investments. The Member has sufficient resources to bear the economic risk of any investments made, including any diminution in value thereof, and shall solely bear the economic risk of any investment;

(x) It has undertaken its own independent investigation, and formed its own independent business judgment, based on its own conclusions, as to the merits of the Company Assets and investing in the Company. The Member is not relying and has not relied on the Manager or any of their Affiliates for any evaluation or other investment advice in respect of the Company Asset or the advisability of investing in the Company and has had all questions answered and requests fulfilled that the Member has deemed to be material to the Member's decision to invest in the Company.

(xi) It has had the opportunity to consult with legal counsel of its choice and has read and understands this Agreement and the Subscription Agreement and the Company's Memorandum and the Supplement.

12.2 Further Instruments. Cooperation of Members. Each Member shall furnish, from time to time, to the Manager within five calendar days after receipt of the Manager's request therefor (or such other amount of time as specified by the Manager) such further instruments

(including any designations, representations, warranties, and covenants), documentation and information as the Manager deems to be reasonably necessary, appropriate or convenient: (i) to facilitate the Closing or satisfy any Closing Conditions; (ii) to satisfy applicable anti-money laundering requirements; (iii) for any tax purpose; or (iv) for any other purpose that is consistent with the terms of this Agreement.

ARTICLE XIII

POWER OF ATTORNEY

13.1 Each Member, by its execution hereof, hereby irrevocably makes, constitutes and appoints each of the Manager and the Liquidating Trustee, if any, in such capacity as Liquidating Trustee for so long as it acts as such (each is hereinafter referred to as the “*Attorney*”), as its true and lawful agent and attorney-in-fact, with full power of substitution and full power and authority in its name, place and stead, to make, execute, sign, acknowledge, swear to, record and file (i) this Agreement and any amendment to this Agreement that has been adopted as herein provided; (ii) the original Certificate of Formation and all amendments thereto required or permitted by law or the provisions of this Agreement; (iii) all instruments or documents required to effect a transfer of Interest; (iv) all certificates and other instruments deemed advisable by the Manager or the Liquidating Trustee, if any, to carry out the provisions of this Agreement, and applicable law or to permit the Company to become or to continue as a limited liability company wherein the Members have limited liability in each jurisdiction where the Company may be doing business; (v) all instruments that the Manager or the Liquidating Trustee, if any, deems appropriate to reflect a change, modification or termination of this Agreement or the Company in accordance with this Agreement including, without limitation, the admission of additional Members or substituted members pursuant to the provisions of this Agreement, as applicable; (vi) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Company; (vii) all conveyances and other instruments or papers deemed advisable by the Manager or the Liquidating Trustee, if any, including, without limitation, those to effect the dissolution and termination of the Company (including a Certificate of Cancellation); (viii) all other agreements and instruments necessary or advisable to consummate any purchase or sale of Company Assets; and (ix) all other instruments or papers that may be required or permitted by law to be filed on behalf of the Company.

13.2 The foregoing power of attorney:

- a. is coupled with an interest, shall be irrevocable and shall survive and shall not be affected by the subsequent death, disability or Incapacity of any Member or any subsequent power of attorney executed by a Member;
- b. may be exercised by the Attorney, either by signing separately as attorney-in-fact for each Member or by a single signature of the Attorney, acting as attorney-in-fact for all of them;
- c. shall survive the delivery of an assignment by a Member of all or any portion of its Interest; except that, where the assignee of all of such Member’s Interest

has been approved by the Manager for admission to the Company, as a Substituted Member, the power of attorney of the assignor shall survive the delivery of such assignment for the sole purpose of enabling the Attorney to execute, swear to, acknowledge and file any instrument necessary or appropriate to effect such substitution; and

- d. is in addition to any power of attorney that may be delivered by a Member in accordance with its Subscription Agreement entered into in connection with its acquisition of Interest.

13.3 Each Member shall execute and deliver to the Manager within five (5) days after receipt of the Manager's request therefor such further designations, powers-of-attorney and other instruments as the Manager reasonably deems necessary to carry out the terms of this Agreement.

ARTICLE XIV

MISCELLANEOUS

14.1 Amendments.

14.1.1 This Agreement is subject to amendment only with the written Consent of the Manager and the Majority Members; *provided, however*, that no amendment to this Agreement may:

- (a) Modify the limited liability of a Member; modify the indemnification and exculpation rights of the parties that are expressly indemnified in this Agreement ("*Indemnified Parties*"); or increase in any material respect the liabilities or responsibilities of, or diminish in any material respect the rights or protections of, any Member under this Agreement, in each case, without the Consent of each such affected Member or Indemnified Party, as the case may be;

- (b) Alter the interest of any Member in income, gains and losses or amend any portion of Article IV without the Consent of each Member adversely affected by such amendment; *provided, however*, that the admission of additional Members in accordance with the terms of this Agreement shall not constitute such an alteration or amendment;

- (c) Amend any provisions hereof that require the Consent, action or approval of Members without the Consent of such Members; or

- (d) Amend or waive any provision of this paragraph 14.1.1 or paragraph 5.1(d).

14.1.2 Notwithstanding the limitations of paragraph 14.1.1, ministerial or administrative amendments as may in the discretion of the Manager be necessary or appropriate and such amendments as may be required by law may be made from time to time without the Consent of any of the Members; *provided, however*, that no amendment shall be adopted pursuant to this paragraph 14.1.2 unless such amendment would not alter, or result in the alteration of, the limited

liability of the Members or the status of the Company as a “partnership” for federal income tax purposes.

14.1.3 Upon the adoption of any amendment to this Agreement, the amendment shall be executed by the Manager and, if required, shall be recorded in the proper records of each jurisdiction in which recordation is necessary for the Company to conduct business. Any such adopted amendment may be executed by the Manager on behalf of the Members pursuant to the power of attorney granted in paragraph 13.1.

14.2 Offset Privilege. The Company may offset against any monetary obligation owing from the Company to any Members or Manager any monetary obligation then owing from that Member or Manager to the Company; *provided, however*, that such offset right shall only apply to any monetary obligation owed to such Member or Manager in their capacity as a Member or Manager.

14.3 Notices.

(a) Any notice or other communication (collectively, “notice”) to be given to the Company, the Manager or any Member in connection with this Agreement shall be in writing and shall be delivered or mailed by registered or certified mail, postage prepaid, sent by facsimile or electronic mail or otherwise delivered by hand or messenger.

(b) Each Member hereby acknowledges that the Manager shall be entitled to transmit to such Member exclusively by e-mail (or other means of electronic messaging) all notices, correspondence and reports, including without limitation such Member’s Schedule K-1s.

(c) Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given upon the earlier of (i) receipt, (ii) when delivered in person, (iii) when dispatched by electronic facsimile transfer or electronic mail at the number or address set forth below, (iv) one (1) business day after having been dispatched by a nationally recognized overnight courier service if receipt is evidenced by a signature of a person regularly employed or residing at the address set forth below for such party or (v) three (3) business days after being sent by registered or certified mail, return receipt requested, postage prepaid. Any such notice must be given, if (x) to the Company, to the Company’s principal place of business, facsimile number or email address, to the attention of the Chief Executive Officer, or if no Chief Executive Officer, a Manager and (y) to any Member or Manager, to such Member’s or Manager’s address or number specified on **Schedule A** hereto or in the records of the Company. Any party may by notice pursuant to this Section 14.3 designate any other address as the new address to which notice to such Person must be given.

14.4 Waiver. No course of dealing or omission or delay on the part of any party in asserting or exercising any right hereunder shall constitute or operate as a waiver of any such right. No waiver of any provision hereof shall be effective, unless in writing and signed by or on behalf of the party to be charged therewith. No waiver shall be deemed a continuing waiver or future waiver or waiver in respect of any other breach or default, unless expressly so stated in writing.

14.5 Governing Law. This agreement shall be construed, performed and enforced in accordance with the laws of the State of Arizona, without giving effect to its conflict of laws

principles to the extent such principles or rules would require or permit the application of the laws of another jurisdiction.

14.6 Dispute Resolution.

(a) **General Dispute Resolution.** Any dispute, controversy or Claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, before three arbitrators, administered by the American Arbitration Association under and in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

(b) **Location.** Any arbitration shall be held in the Arbitration Location.

(c) **Costs.** Each of the parties shall equally bear any arbitration fees and administrative costs associated with the arbitration. The prevailing party, as determined by the arbitrators, shall be awarded its costs and reasonable attorneys' fees incurred in connection with the arbitration.

(d) **Consent to Jurisdiction.** Each of the parties hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any Arbitration Location, for recognition or enforcement of any award determined pursuant to this Section 14.6.

14.7 Remedies. In the event of any actual or prospective breach or default of this Agreement by any party, the other parties shall be entitled to seek equitable relief, including remedies in the nature of injunction and specific performance (without being required to post a bond or other security or to establish any actual damages). In this regard, the parties acknowledge that they will be irreparably damaged in the event this Agreement is not specifically enforced, since (among other things) the Interests are not readily marketable. All remedies hereunder are cumulative and not exclusive, may be exercised concurrently and nothing herein shall be deemed to prohibit or limit any party from pursuing any other remedy or relief available at law or in equity for any actual or prospective breach or default, including the recovery of damages.

14.8 Severability. The provisions hereof are severable and in the event that any provision of this Agreement shall be determined to be illegal, invalid or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions hereof shall not be affected, but shall, subject to the discretion of such court, remain in full force and effect, and any illegal, invalid or unenforceable provision shall be deemed, without further action on the part of the parties, amended and limited to the extent necessary to render such provision, as so amended and limited, legal, valid and enforceable, it being the intention of the parties that this Agreement and each provision hereof shall be legal, valid and enforceable to the fullest extent permitted by applicable law.

14.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A facsimile, PDF or DocuSign (or similar service) signature shall be deemed an original. Furthermore, any signature to an interest subscription or purchase agreement shall constitute consent to and a signature to this Agreement. All parties hereto hereby consent to transact business with the Company and each of the other parties hereto via electronic signature (including via

Docusign or similar service). Each party hereto understands and agrees that their signature page may be disassembled herefrom and attached to the final version of this Agreement (which version shall be distributed to such parties prior to any applicable closing).

14.10 IRS Circular 230 disclosure. Any discussion of United States federal tax issues contained in the Subscription Documents or concerning the Subscription and the Company, by the Company, Manager and their respective counsel, is not intended or written to be relied on by the other for purpose of avoiding penalties imposed under the Internal Revenue Code. Each party should seek advice from an independent tax adviser based on their particular circumstances.

14.11 Further Assurances. Each Party shall promptly execute, deliver, file or record such agreements, instruments, certificates and other documents and take such other actions as the Manager may reasonably request or as may otherwise be necessary or proper to carry out the terms and provisions of this Agreement and to consummate and perfect the transactions contemplated hereby.

14.12 Assignment. Except as otherwise provided herein, this Agreement, and any right, interest or obligation hereunder, may not be assigned by any party without the prior written consent of the Company and set forth in Article VIII hereof. Any purported assignment without such consent shall be *ab initio* null and void and without effect.

14.13 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns. This Agreement is not intended, and shall not be deemed, to create or confer any right or interest for the benefit of any Person not a party to this Agreement.

14.14 Titles and Captions. The titles and captions of the Articles and Sections of this Agreement are for convenience of reference only and do not in any way define or interpret the intent of the parties or modify or otherwise affect any of the provisions hereof and shall not have any effect on the construction or interpretation of this Agreement.

14.15 Construction. This Agreement shall not be construed against any party by reason of such party having caused this Agreement to be drafted.

14.16 Entire Agreement. This Agreement constitutes the entire understanding and agreement among the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings and agreements relating thereto (written or oral).

(Signature Page Follows)

IN WITNESS WHEREOF, the undersigned has executed this Operating Agreement effective as of the date first set forth above.

COMPANY:

VENTURE ON WILSON, LLC an Arizona limited liability company

By: Neighborhood Management, LLC
Its: Manager

By: _____

Name: John P. Kobierowski

Title: Manager

The signatories above hereby consent to transact business via electronic signature (including via DocuSign) and understand and agree that its signature page may be disassembled herefrom and attached to the final version of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Operating Agreement effective as of the date first set forth above.

MANAGER:

NEIGHBORHOOD MANAGEMENT, LLC

By: _____

Name: John P. Kobierowski

Title: Manager

The signatories above hereby consent to transact business via electronic signature (including via DocuSign) and understand and agree that its signature page may be disassembled herefrom and attached to the final version of this Agreement.