

# LIMITED LIABILITY COMPANY AGREEMENT OF AUIS LLC

## **TABLE OF CONTENTS**

### ARTICLE 1 DEFINITIONS

Section 1.1	Definitions.....	1
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### ARTICLE 2 ORGANIZATIONAL MATTERS; PURPOSE; TERM

Section 2.1	Formation of Company.....	4
Section 2.2	Name.....	4
Section 2.3	Registered Office; Registered Agent; Principal Office.....	4
Section 2.4	Foreign Qualification.....	4
Section 2.5	Purpose and Character of Business.....	5
Section 2.6	Term.....	5
Section 2.7	No State Law Partnership.....	5

### ARTICLE 3 ; DISPOSITIONS OF INTERESTS

Section 3.1	Membership.....	7
Section 3.2	Dispositions of Membership Interests.....	7
Section 3.3	Conflicts of Interest.....	7
Section 3.4	Resignation and Removal; Vesting and Conversion of Certain Membership Interests.....	8
Section 3.5	Creation of Additional Membership Interests.....	8
Section 3.6	Information.....	8
Section 3.7	Liability to Third Parties.....	8
Section 3.8	Waiver of Fiduciary Duties.....	8

### ARTICLE 4 MANAGEMENT OF COMPANY

Section 4.1	Management of Company .....	9
Section 4.2	Reliance by Third Parties.....	11
Section 4.3	Compensation of Members.....	11
Section 4.4	Officers.....	11
Section 4.5	Indemnification; Reimbursement of Expenses; Insurance.....	11
Section 4.6	Removal and Appointment of Managers.....	12

### ARTICLE 5 ACCOUNTING AND REPORTING

Section 5.1	Accounts, Reports.....	12
Section 5.2	Bank Accounts.....	12

ARTICLE 6 CAPITAL CONTRIBUTIONS AND FINANCE

Section 6.1 Capital Contributions..... 12  
Section 6.2 Return of Contributions..... 13  
Section 6.3 Member Guaranties..... 13

ARTICLE 7 INVESTMENTS

Section 7.1 Investments..... 13

ARTICLE 8 DISTRIBUTIONS

Section 8.1 Distributions in General..... 13  
Section 8.2 Temporary Distributions to Development and Management..... 13  
Section 8.3 Distributions to Members..... 14  
Section 8.4 Withholding..... 14

ARTICLE 9 CAPITAL ACCOUNTS, ALLOCATIONS, AND TAX MATTERS

Section 9.1 Federal Tax Items..... 15

ARTICLE 10 WITHDRAWAL, DISSOLUTION, LIQUIDATION, AND TERMINATION

Section 10.1 Dissolution, Liquidation, and Termination Generally..... 15  
Section 10.2 Liquidation and Termination..... 15  
Section 10.3 Deficit Capital Accounts..... 16  
Section 10.4 Cancellation of Certificate..... 16

ARTICLE 11 MISCELLANEOUS PROVISIONS

Section 11.1 Notices..... 16  
Section 11.2 Governing Law..... 17  
Section 11.3 Entireties; Amendments..... 17  
Section 11.4 Waiver..... 17  
Section 11.5 Severability..... 17  
Section 11.6 Ownership of Property and Right of Partition..... 17  
Section 11.7 Captions, References..... 17  
Section 11.8 Involvement of Members in Certain Proceedings..... 17  
Section 11.9 Interest..... 17

SCHEDULE 9 CAPITAL ACCOUNTS, ALLOCATIONS, AND TAX MATTERS

LIST OF DEFINED TERMS

**Page No.**

Accounting Policies and Procedures.....	1
Act.....	1
Adjusted Capital Account.....	1
Adjusted Capital Account Deficit.....	1
Adverse Consequences.....	1
Affiliate.....	1
Agreement.....	1
Annual Budget.....	10
Business Day.....	1
Business Plan.....	10
Capital Account.....	1, 2
Capital Contribution.....	1
Cause.....	1
Certificate.....	5
Code.....	1
Company.....	2
Company Manager.....	2
Consent.....	7
control.....	1
Depreciation.....	1
Development.....	1
Encumbrance.....	8
Fiscal Year.....	2
Gross Asset Value.....	1, 3
Incapacity.....	2
including.....	2
Investment.....	2
Investment Entity.....	2
LLC Agreement.....	1
Losses.....	1
Management.....	1
Manager.....	3
Members.....	3
Membership Interests.....	3
notice partner.....	7
Officer.....	11
Partner Nonrecourse Debt.....	1
Partner Nonrecourse Debt Minimum Gain.....	1
Partner Nonrecourse Deductions.....	1
Partnership Minimum Gain.....	1
Person.....	3
Profits.....	1
Region.....	3
Regulations.....	2
Regulatory Allocations.....	2, 5
Reserve Amount.....	3
Sharing Ratios.....	4
Supplement.....	4, 1
Tax matters partner.....	6
Transfer.....	8

**LIMITED LIABILITY COMPANY AGREEMENT OF AUIS LLC**

This Limited Liability Company Agreement, as amended from time to time, and including all Supplements (as defined below) (this “**Agreement**”) is entered into as of \_\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_ as Members.

## Article 1.

### **DEFINITIONS**

#### **Definitions.**

**Section 1.1.** As used in this Agreement, the following terms shall have the following meanings:

“**Accounting Policies and Procedures**” refers to the policies and procedures adopted from time to time by the Company Manager for preparation of Company financial statements, financial projections and other accounting reports.

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

“**Adverse Consequences**” means all actions, suits, proceedings, hearings, investigations, charges, complaints, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, amounts paid in settlement, liabilities, obligations, liens, losses, expenses, and fees, including court costs and reasonable attorney's fees and expenses.

“**Affiliate**” means, with respect to a Person, another Person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Person in question. The term “**control**” as used in the preceding sentence means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Person.

“**Business Day**” means any day other than Saturday, Sunday, or other day on which commercial banks in Georgia are authorized or required to close under the laws of the State of Georgia.

“**Capital Contribution**” means, with respect to each Member, the amount of cash and the initial Gross Asset Value of any property (net of liabilities assumed by the Company resulting from such contribution and liabilities to which the property is subject) contributed to the Company by that Member.

“**Cause**” means, in connection with the retirement of a Member, any of the following reasons: (i) the Member's disregard of his duties hereunder as Member, Manager, or as an Officer of a material nature; (ii) the Member's violation as Member, Manager, or an Officer of any material covenant under this Agreement; (iii) the engagement by the Member in dishonesty of a material nature that relates to the Company, an Investment Entity, or their respective Affiliates; or (iv) the engagement by the Member in criminal conduct, other than minor infractions and traffic violations; provided that, in the cases described in clauses (i) and (ii) preceding, the matter is not cured to the Company Manager's reasonable satisfaction within ten (10) days after the Company Manager shall have notified such Member thereof; provided, however, if the matter cannot be cured within ten (10) days, the Member shall have a reasonable period of time to cure the matter, not to exceed thirty (30) days, if the Member commences to cure the matter within the initial ten (10) day period and diligently pursues the cure to completion.

“**Company**” means AUIS LLC, a Delaware limited liability company.

“**Company Manager**” means Development, and each Person herein designated as “Company Manager” in accordance with this Agreement, in such Person's capacity as a “manager” of the Company within the meaning of the Act, until such Person ceases to be Company Manager.

“**Fiscal Year**” means the date hereof through December 31, 2024, and each calendar year thereafter.

“**Incapacity**” means, with respect to a Member that is an individual, (i) that as a result of the physical or mental disability of such Member, such Member is unable to direct its affairs for a period in excess of six (6) consecutive calendar months, as reasonably determined by the Company Manager (which determination shall be based on the advice and opinion of a competent independent physician), or (ii) a final judgment by a court of competent jurisdiction has been rendered adjudicating such Member incompetent to manage such Member's estate or property.

“**including**” means including, without limitation.

“**Investment**” means any debt or equity or debt with equity or any convertible or exchangeable instrument investment made by (i) an Investment Entity or (ii) the Company, and shall include any “carried” or “promote” interest or rights to income, gain, or profits granted to the Company, or to an Investment Entity, directly or indirectly, in a Person, regardless of whether the Company, or the Investment Entity (as the case may be) is required to contribute equity or loan proceeds to such Person.

“**Investment Entity**” means any Person in which the Company has an Investment.

“**Manager**” means the Company Manager, and each Person hereafter designated as such a Manager in accordance with this Agreement, until such Person ceases to be such a Manager of the Company.

“**Members**” means Development, Management, and each Person from time to time admitted as a member of the Company in accordance with this Agreement in such Person's capacity as a member of the Company within the meaning of the Act, until such Person ceases to be a member of the Company.

“**Membership Interests**” means all of the rights and interests of whatsoever nature of the Members in the Company, including the right to participate in management to the extent herein expressly provided, to receive distributions of funds, and to receive allocations of income, gain, loss, deduction, and credit.

“**Person**” means an individual or entity.

“**Region**” shall mean . Company Manager shall consult regularly with the other Members as to geographic matters such as potential overlaps or the addition of additional cities or areas to the Region.

“**Reserve Amount**” means the amount from time to time established by the Company Manager as a reserve to meet the reasonably anticipated working capital needs of the Company.

“**Sharing Ratios**” means the percentages in which the Members participate in, and bear, certain items.

The initial Management Sharing Ratios (and the initial Members with respect to the Management) are as follows:

Management	100%
	<hr/>
	%
	100%

## Article 2.

### **ORGANIZATIONAL MATTERS; PURPOSE; TERM**

#### **Formation of Company.**

**Section 2.1.** Formation of Company. The Company has been organized as a Delaware limited liability company by the filing of a certificate of formation (the “**Certificate**”) in the office of Delaware Secretary of State by Milo Pinckney, as an “authorized person” within the meaning of the Act.

#### **Name.**

**Section 2.2.** Name. The name of the Company shall be AUIS LLC, and all Company business must be conducted in that name or such other name as the Company Manager may approve.

#### **Registered Office; Registered Agent; Principal Office.**

**Section 2.3.** Registered Office; Registered Agent; Principal Office. The registered office and the registered agent of the Company in the State of Delaware shall be as specified in the Certificate or as designated by the Company Manager. The principal office of the Company shall be at 4953 Presidents Way, Tucker, GA 30084, or at such other location as the Company Manager may approve.

#### **Foreign Qualification.**

**Section 2.4.** Foreign Qualification. Before the Company conducts business in any jurisdiction other than Delaware, the President shall cause the Company to comply with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the President, each Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify, continue, or terminate the Company as a foreign limited liability company in all jurisdictions in which the Company may conduct business.

#### **Purpose and Character of Business.**

**Section 2.5.** Purpose and Character of Business. The Company shall have the power, whether conducted directly or indirectly through any type of Investment in any type of Person, to engage in any activity permitted by law related or complementary to the following activities and approved by the Company Manager: acquiring, owning, holding, maintaining, improving,

constructing, developing, operating, managing, leasing, selling, exchanging and otherwise dealing with real property; the provision of management, leasing, brokerage, development, construction, construction management or other consulting services in respect of real estate; any other business or activity approved by the Company Manager, and the financing of any of the foregoing activities. Without limiting the generality of the foregoing, (a) Investments may take the form of acquisitions of interests in general partnerships, limited partnerships, joint ventures, corporations, syndicates, associations, business trusts, limited liability companies, undivided interests in real property or co-tenancies in real property, sale-leaseback transactions, or the direct acquisition of investment assets; (b) the Company may acquire interests in property subject to, or by assuming, the liens, encumbrances and other title exceptions which affect the property; and (c) the Company may guarantee debts or obligations of any other Person, pledge, mortgage, encumber and grant security interests in Company property, and buy, sell, lease and deal in services, personal property and real property.

**Term.**

**Section 2.6. Term.** The Company shall commence on the effective date of the Certificate and shall have perpetual existence, unless sooner dissolved as herein provided.

**No State Law Partnership.**

**Section 2.7. No State Law Partnership.** The Company shall not be a partnership or joint venture under any state or federal law, and no Member or Manager shall be a partner or joint venturer of any other Member or Manager for any purposes, other than under the Code and other applicable tax laws, and this Agreement may not be construed otherwise.

**Article 3.**

**DISPOSITIONS OF INTERESTS**

**Section 3.1. Membership.**

(a) New members of AUIS, LLC, shall be required to pay the existing members a profit on their membership interests as the new member acquires membership interests from the existing members. The amount of the profit to existing members shall be a decision made on a case by case basis by management of AUIS, LLC. Members take their membership interests on the understanding that their membership interest can be diluted in the future as new members are admitted into the entity in question.

(b) Supplement may be amended with the approval of the Company Manager and without the consent of any other Member being required.

**Section 3.2. Dispositions of Membership Interests.**

**General Restriction.**

(a) General Restriction. A Member may not make an assignment, transfer, or other disposition, voluntarily, involuntarily or by operation of law, ("**Transfer**") of all or any portion of its Membership Interest, nor pledge, mortgage, hypothecate, grant a security interest in, or otherwise encumber (an "**Encumbrance**") all or any portion of its Membership Interest, except with the consent of the Company Manager, which it may grant or withhold in its sole and absolute discretion. Any

attempted Transfer of all or any portion of a Membership Interest, other than in strict accordance with this Section 3.2, shall be void. A Person to whom a Membership Interest is Transferred may be admitted to the Company as a Member only as provided in this Section 3.2 with the consent of the Company Manager, which may be given or withheld in its sole and absolute discretion. In connection with any Transfer of a Membership Interest or any portion thereof and any admission of an assignee as a Member, the Member making such Transfer and the assignee shall furnish the Company Manager with such documents regarding the Transfer as it may request (in form and substance satisfactory to the Company Manager), including a copy of the Transfer instrument, a ratification by the assignee of this Agreement (if the assignee is to be admitted as a Member), and a legal opinion that the Transfer complies with applicable federal and state securities laws and will not cause the Company to be terminated under Section 708 of the Code.

#### **Permitted Transfers.**

- (b) Permitted Transfers. Members may transfer their interest to another member at an agreed upon price with the consent of the Company Manager. Members may not transfer their interest to a non-member without the majority consent of the other members as well as the consent of the Company Manager. When a member dies, their interest will be purchased by the LLC, for full fair market value at the date of the members death. Payment may be made by the LLC, at the same interest rate the Federal Reserve charges banks on the date of the death of the member. Payment may be made over a period of time up to sixty (60) months from start of payment. Full fair market value is to be determined by a licensed business appraiser with appropriate credentials. Should there be a dispute as to full fair market value the representative of the deceased member may appoint their own appraiser. If the two appraisers cannot agree, they may appoint a third appraiser and the majority vote will become the full fair market value for purposes of this section.

#### **Conflicts of Interest.**

**Section 3.3.** Conflicts of Interest. No member may engage in an activity that competes with any of the businesses of AUIS, LLC, at any time without the consent of a majority of the members of AUIS, LLC.

#### **Resignation and Removal; Vesting and Conversion of Certain Membership Interests.**

**Section 3.4.** Resignation and Removal; Vesting and Conversion of Certain Membership Interests. Engaging in an activity that constitutes a conflict of interest without the permissions set forth in the preceding section is grounds for immediate removal of a member. Additionally, financial wrongdoings that affect, or could affect, AUIS, LLC constitutes grounds for immediate removal of a member. Any member may resign at any time. Members in management must give sufficient notice of their resignation to allow for an orderly succession of management. Members who are removed for cause, and managing members who resign without sufficient notice to allow for an orderly succession of management are not entitled to compensation for their membership interests.

#### **Creation of Additional Membership Interests.**

**Section 3.5.** Creation of Additional Membership Interests. Additional Membership Interests may be created and issued to existing Members or to other Persons, and such other Persons may be admitted to the Company as Members in one or more classes, with the approval of the Company Manager on such terms and conditions as the Company Manager may approve at the time of admission. The creation of new Membership Interests, the admission of any new Members, or the creation of any new class or group of Members in accordance with this Agreement may (i) result in the dilution of the Sharing Ratios of existing Members, and (ii) be reflected as an amendment to this Agreement or a Supplement which shall be valid if executed by the Company Manager and the new Member. Any such new Member that is a married individual shall also, as a condition to becoming a Member, cause his or her spouse to execute a Consent.

#### **Information.**



**Section 3.6. Information.** In addition to the other rights specifically set forth in this Agreement, each Member is entitled to the following information under the circumstances and conditions set forth in the Act: (1) true and full information regarding the status of the business and financial condition; (2) promptly after becoming available, a copy of the Company's federal, state and local income tax returns for each year applicable to each; (3) a current list of the name and last known business, residence or mailing address of each Member and Manager; (4) a copy of this Agreement; (5) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each Member and which each Member has agreed to contribute in the future, and the date on which each became a Member and (6) other information regarding the affairs of the Company to which that Member is entitled pursuant to Section 18-305 of the Act (including all Company books and records) to the extent applicable.

**Liability to Third Parties.**

**Section 3.7. Liability to Third Parties.** Except as required by the Act, no Member, solely by reason of being a member, shall be liable for the debts, obligations or liabilities of the Company.

**Waiver of Fiduciary Duties.**

**Section 3.8. Waiver of Fiduciary Duties.** To the maximum extent permitted by law, each Member absolutely and irrevocably waives any and all claims, actions, causes of action, loss, damage and expense including any and all attorneys' fees and other costs of enforcement arising out of or in connection with any breach of any fiduciary duty by any other Member or Manager or any of its Affiliates in the nature of actions taken or omitted by any such other Persons, which actions or omissions would otherwise constitute the breach of any fiduciary duty owed to the Members  
*(or any of them)*

, except a breach of any specific term of this Agreement. It is the express intent of the Members that each Member and Manager and each and all of their Affiliates shall be and hereby are relieved of any and all fiduciary duties which might otherwise arise out of or in connection with this Agreement to the Members or any of them.

**Article 4.**

**MANAGEMENT OF COMPANY**

**Section 4.1. Management of Company .**

(a) The Company Manager shall have complete and exclusive authority to manage the affairs of the Company and to make all decisions with regard thereto, but the day-to-day affairs of the Company shall be directed by the President who shall be fully empowered and authorized to implement the terms and provisions of each approved Business Plan and Annual Budget on behalf of the Company, subject to the limitations set forth in Section 4.1(d). The Members shall have no authority to bind the Company..

(b) Not later than November 1 of each year, the President shall deliver to the Company Manager a detailed proposed business plan (the "**Business Plan**") for the Company's next succeeding fiscal year, which shall include the proposed budget for such year (the "**Annual Budget**"). The Business Plan and Annual Budget shall contain such other information as the President wishes to include and shall contain such information as the Company Manager may request. The Company Manager will review the proposed Annual Budget and Business Plan, and subject to required revisions, approve the same for the next succeeding fiscal year no later than December 31 of each year. The Business Plan and Annual Budget shall include

projected revenues, expenses for the year in question, projected investment activities and such other matters as the President or the Company Manager may deem appropriate. If the Annual Budget provides for a contingency or similar line item, then unless otherwise specifically provided to the contrary therein, the President shall be empowered to expend the amount set forth in such line item for Company obligations. If the Business Plan is not approved by the date set forth above, then: (i) any items or portions thereof that have been approved will become operative immediately; and (ii) with respect to the Annual Budget, the President may expend, in respect of noncapital or recurring expenses in any quarter of the then current calendar year, an amount equal to the budget amount for the corresponding quarter of the immediately preceding calendar year, as set forth on the last approved Annual Budget after giving effect to any material changes to the Company or its properties during the prior year; however, if any contract approved as a part of any prior approved Annual Budget or Business Plan provides for automatic increases in costs thereunder after the beginning of the then current calendar year, then the President may expend the amount of that increase.

(c) Following approval of the Business Plan and Annual Budget, the President shall be authorized to take the actions, incur obligations and make the expenditures therein expressly set forth. The President shall not have any authority or power to take any action on behalf of the Company that would constitute a Major Decision (as defined below), unless the same is specifically contemplated by an approved Business Plan or Annual Budget, or has otherwise been expressly approved in writing by the Company Manager. As used herein, the term “**Major Decision**” shall include the following:

- (1) causing the Company to enter into any agreement which would subject the Company or its assets to any recourse liability for borrowings, or for capital contributions to any Person;
- (2) causing the Company to grant any interests in the assets, profit, and income of the Company;
- (3) causing a dissolution of the Company;
- (4) regarding Company assets, any sale, transfer, exchange, mortgage, financing, hypothecation or encumbrance of all or any part thereof, or any modification of the terms of the foregoing;
- (5) regarding Company financial affairs, (A) determination of major accounting policies including selection of accounting methods and making various decisions regarding treatment and allocation of transactions for federal and state income, franchise or other tax purposes (B) determination of the terms and conditions of all borrowings of the Company and the identity of the lender thereof, and (C) the making of any expenditure or incurrence of any obligation by or for the Company in excess of the lesser of (i) fifteen percent (15%) in excess of, or (ii) \$15,000.00 in excess of, the amount set forth on the applicable Approved Budget therefor;
- (6) regarding any Capital Contributions;
- (7) regarding Company operations, approval of insurance coverages, the underwriters thereof and claims related thereto, the settlement of any litigation that is not fully covered by insurance involving more than \$15,000.00; entering into any contract which obligates the Company for more than \$15,000.00 (except to the extent expressly set forth in an approved Annual Budget) or which cannot be canceled without payment of a cancellation fee or other premium on not more than 30 days prior notice; and entering in any lease for office space;

(8) filing of any petition or consenting to the filing of any petition that would subject the Company to a bankruptcy or similar proceeding;

(9) any other action which, considered before the taking thereof, could reasonably be expected to have a material effect upon the business or affairs of the Company.

(e) Each Manager shall discharge its duties in a good and proper manner as provided for in this Agreement. Each Manager, on behalf of the Company, as applicable, shall enforce agreements entered into by the Company and conduct or cause to be conducted the ordinary business and affairs of the Company in accordance with good industry practice and the provisions of this Agreement. No Manager shall be required to devote a particular amount of time to the Company's business, but shall devote sufficient time to perform its duties hereunder.

### **Reliance by Third Parties.**

**Section 4.2.** Reliance by Third Parties. Any third party doing business with the Company, may rely upon any action taken or document executed by the applicable Manager or any Officer without duty of further inquiry, and may assume that such Manager or Officer has the requisite power and authority to take the action or execute the document in question.

### **Compensation of Members.**

**Section 4.3.** Compensation of Members. Except as otherwise specifically provided herein, no compensatory payment shall be made by the Company to any Member for the services to the Company of such Member or any member or employee of such Member.

### **Officers.**

**Section 4.4.** Officers. The Company Manager shall appoint a President and may, from time to time, designate one or more Persons to be other officers of the Company (an "**Officer**"). No Officer needs to be a resident of the State of Delaware or a Member. Any Officer so designated shall have such title and authority and perform such duties as the Company Manager may, from time to time, designate. Unless the Company Manager decides otherwise, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such Officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to such Officer by the Company Manager. Each Officer shall hold office until his successor shall be duly designated and shall qualify or until his death or until he shall resign or shall have been removed. The salaries or other compensation, if any, of the Officers and agents of the Company shall be fixed from time to time by the Company Manager. Any Officer may resign as such at any time. Any Officer may be removed as such, with or without Cause, by the Company Manager at any time unless otherwise designated at the time of hiring an Officer. Designation of an Officer shall not, in and of itself, create contract rights. The initial Officers of the Company are: Milo Pinckney, President; and Debbie Lecher, Vice President.

### **Indemnification; Reimbursement of Expenses; Insurance.**

**Section 4.5.** Indemnification; Reimbursement of Expenses; Insurance. To the fullest extent permitted by law, and subject to the limitations set forth in this Section 4.5, and with, in each case, the Company Manager's prior approval: (a) the Company shall indemnify each Manager, Officer and Member for the entirety of any Adverse Consequences that a Manager, Officer or Member may suffer including, but not limited to, any Manager, Officer, or Member who was, is or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding ("**Proceeding**"), any appeal therein, or any inquiry

or investigation preliminary thereto, solely by reason of the fact that he or she is or was a Manager, Officer or Member and was acting within scope of duties or under the authority of the Members; (b) the Company shall pay, and advance or if the foregoing is not practicable, reimburse a Manager, Officer or Member for expenses incurred by him or her (1) in advance of any disposition of a Proceeding to which such Manager, Officer or Member was, is or is threatened to be made a party, and (2) in connection with his or her appearance as a witness or other participation in any Proceeding. Such indemnification shall also include counsel fees. The Company may indemnify and advance expenses to an employee or agent of the Company to the same extent and subject to the same conditions under which it may indemnify and advance expenses to the Manager, Officers and Members under the preceding sentence. The provisions of this Section 4.5 shall not be exclusive of any other right under any law, provision of the Certificate or this Agreement, or otherwise. Notwithstanding the foregoing, this indemnity shall not apply to actions constituting gross negligence, willful misconduct or bad faith, or involving a material breach of this Agreement or the duties set forth herein, which breach, in Company Manager's reasonable opinion, causes a substantial loss to the Company, but shall apply to actions constituting simple negligence. The Company may purchase and maintain insurance to protect itself and any Manager, Officer, employee or agent of the Company, whether or not the Company would have the power to indemnify such Person under this Section 4.5. This indemnification obligation shall be limited to the assets of Company, and no Member shall be required to make a Capital Contribution in respect thereof.

#### **Removal and Appointment of Managers.**

**Section 4.6.** Removal and Appointment of Managers. Development may resign as Company Manager at any time, so long as it appoints a new Company Manager, which the new Company Manager shall agree in writing to be bound by this Agreement.

### **Article 5.**

#### **ACCOUNTING AND REPORTING**

##### **Section 5.1. Accounts, Reports.**

(a) The books of account of the Company, at Company expense, shall be kept and maintained by the Company on a cash basis in accordance with generally accepted accounting principles applied on a consistent basis applicable to commercial real estate or on a cash basis as selected by the Company Manager, and, in all events, shall conform with the Accounting Policies and Procedures. The Company shall prepare a reconciliation of such books and records to cash receipts and disbursements. The books of account shall be kept at the principal place of business of the Company.

(b) Each Member, at its expense and under the circumstances and conditions set forth in the Act, may, upon two (2) business day notice, at reasonable times during usual business hours audit, examine, and make copies of or extracts from the books of account records, files, and bank statements of the Company. Such right may be exercised by any Member or by its designated agents or employees. This does not entitle the Member to free copies of any records. Further, Members may not distribute private financial information obtained under this provision to third parties.

##### **Bank Accounts.**

**Section 5.2.** Bank Accounts. The Company shall open and maintain (in the name of the Company) special accounts in a bank or savings and loan association, in which shall be deposited all funds of the Company. Withdrawals therefrom shall be made upon the signatures of such Persons as the President shall designate.

## Article 6.

### **CAPITAL CONTRIBUTIONS AND FINANCE**

#### **Capital Contributions.**

**Section 6.1.** Capital Contributions. The Company Manager shall determine if, as, and when Capital Contributions shall be required to enable the Company to invest in any Investment Entity or to operate its business. Development or Management, in their sole and absolute discretion, may at any time elect to not fund further Capital Contributions with respect to the Company or any Investment, Investment Entity, without any liability whatsoever to the Company or any Member, even if such failure to contribute results in the loss of any opportunity or the forfeiture of any Investment or interest in any Investment Entity, or results in any other penalty or liability.

#### **Return of Contributions.**

**Section 6.2.** Return of Contributions. Except as expressly provided herein, no Member shall be entitled to the return of any part of its Capital Contributions, to be paid interest in respect of either its Capital Account or any Capital Contribution made by it or paid for the fair market value of its Membership Interest upon withdrawal or otherwise. Unrepaid Capital Contributions shall not be a liability of the Company, or of any Member. No Member shall be required to contribute or lend any cash or property to the Company to enable the Company to return any Member's Capital Contributions.

#### **Member Guaranties.**

**Section 6.3.** Member Guaranties. No Member shall undertake to guarantee or otherwise become liable for any obligation of the Company, or an Investment Entity, without the prior approval of the Company Manager.

## Article 7.

### **INVESTMENTS**

#### **Investments.**

**Section 7.1.** Investments. All Investments by the Company shall be made on such terms and conditions as the Company Manager may determine.

## Article 8.

### **DISTRIBUTIONS**

#### **Distributions in General.**

**Section 8.1.** Distributions in General. From time to time, but not less often than semi-annually, the Company Manager shall determine (i) the amount, if any, by which the Company's funds then on hand exceed the Reserve Amount (such excess being referred to herein as "**Excess Funds**"). Excess Funds shall be distributed to the Members as provided in Section 8.2 and Section 8.3.

**Temporary Distributions to Development and Management.**

**Section 8.2.** Temporary Distributions to Development and Management. If the Company Manager determines that there are Excess Funds subject to distribution but that additional Capital Contributions will be required on the part of Development or Management for future Company needs within the next twelve (12) month calendar month period, then the Company Manager may elect to make temporary distributions of such Excess Funds to Development or Management, or both, which distributions shall have the effect of reducing the amount of Capital Contributions outstanding on the part of Development or Management, as applicable. If any such distributions have not been returned by Management or Development, as applicable, by way of making Capital Contributions to the Company within 12 full calendar months following the date of such distribution, then Development and/or Management, as applicable, shall return the amount so distributed to them pursuant to this Section

**Section 8.3. Distributions to Members.**

(a) Not later than May 15 of each calendar year, the Excess Funds derived from the business and operations shall be distributed as follows:

- (1) First, to Development and Management in payment of any return on their Capital Contributions made in proportion to the unpaid balances thereof;
- (2) Next, to Development and Management in return of their unreturned Capital Contributions made in proportion to the unpaid balances thereof;
- (3) Next, subject to Section 8.3(b), to Development and Management in payment of their return on their Capital Contributions made in proportion to the unpaid balances thereof;
- (4) Next, subject to Section 8.3(b), to Management and Development in return of their unreturned Capital Contributions made in proportion to the unpaid balances thereof;

**Withholding.**

**Section 8.4.** Withholding. The Company may withhold distributions or portions thereof if it is required to do so by any applicable rule, regulation, or law, and each Member hereby authorizes the Company to withhold from or pay on behalf of or with respect to such Member any amount of federal, state, local or foreign taxes that the Company Manager reasonably determines that the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement. Any amounts so paid or withheld with respect to a Member pursuant to this Section 8.4 shall be treated as having been distributed to such Member and shall reduce any amounts otherwise distributable to such Member (either currently or in the future) pursuant to Section 8.3 or Article 10.

**Article 9.**

**CAPITAL ACCOUNTS, ALLOCATIONS, AND TAX MATTERS**

**Federal Tax Items.**

**Section 9.1.** Federal Tax Items. Items of income, gain, deduction, loss, credit and all other federal tax items shall be allocated to the Members as provided in Schedule 9 or in any applicable Supplement.

## **Article 10.**

### **WITHDRAWAL, DISSOLUTION, LIQUIDATION, AND TERMINATION**

#### **Section 10.1. Dissolution, Liquidation, and Termination Generally.**

- (a) The Company shall be dissolved upon the first to occur of any of the following:
- (1) The sale or disposition of all of the assets of the Company and the receipt, in cash, of all consideration therefor, and the determination of the Company Manager not to continue the business of the Company directly or through an Investment Entity;
  - (2) The determination of the Company Manager to dissolve the Company; and
  - (3) The occurrence of any event which, as a matter of law, requires that the Company be dissolved.

#### **Liquidation and Termination.**

**Section 10.2.** Liquidation and Termination. Upon dissolution of the Company or such Person as the Company Manager may designate shall act as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein. The costs of liquidation shall be a Company expense, as applicable. Until final distribution, the liquidator shall continue to operate the Company with all of the power and authority of the Company Manager hereunder. The steps to be accomplished by the liquidator are as follows:

- (a) as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made by a firm of certified public accountants acceptable to the Company Manager of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution shall occur or the final liquidation shall be completed, as applicable;
- (b) the liquidator shall cause the Company to satisfy all of the debts and liabilities of the Company or *(whether by payment or the making of reasonable provision for payment thereof)*  
; and
- (c) all remaining assets of the Company shall be distributed to the Members as follows:
  - (1) the liquidator may sell any or all Company property and the sum of any resulting gain or loss from each sale plus the fair market value of such property that has not been sold shall be determined and (notwithstanding the provisions of Article 9) income, gain, loss, and deduction inherent in such property (that has not been reflected in the Capital Accounts

previously) shall be allocated among the Members to the extent possible to cause the Capital Account balance of each Member to equal the amount distributable to such Member under Section 10.2(c)(2); and

(2) Company property shall be distributed to the Members as provided in Section 8.3.

**Deficit Capital Accounts.**

**Section 10.3.** Deficit Capital Accounts. No Member shall be required to pay to the Company, to any other Member or to any third party any deficit balance which may exist from time to time in the Member's Capital Account.

**Cancellation of Certificate.**

**Section 10.4.** Cancellation of Certificate. In the case of the dissolution, liquidation and termination of the Company, on completion of the distribution of Company assets, the Company Manager  
*(or such other person as the Act may require or permit)*

shall file a Certificate of Cancellation with the Secretary of State of Delaware, cancel any other filings made pursuant to Section 2.5, and take such other actions as may be necessary to terminate the existence of the Company. In the case of the dissolution, liquidation and termination of the Company Manager shall file such certificates as may be required by the Act or other law in respect thereof.

**Article 11.**

**MISCELLANEOUS PROVISIONS**

**Notices.**

**Section 11.1.** Notices. All notices provided for or permitted to be given pursuant to this Agreement must be in writing and shall be given or served by (a) depositing the same in the United States mail addressed to the party to be notified, postpaid and certified with return receipt requested, (b) by delivering such notice in person to such party, or (c) by facsimile. All notices are to be sent to or made at the addresses set forth on the signature pages hereto. All notices given in accordance with this Agreement shall be effective upon delivery at the address of the addressee. By giving written notice thereof, each Member shall have the right from time to time to change its address pursuant hereto.

**Governing Law.**

**Section 11.2.** Governing Law. This Agreement and the obligations of the Members hereunder shall be construed and enforced in accordance with the laws of the State of Delaware, excluding any conflicts of law rule or principle which might refer such construction to the laws of another state or country.

**Entireties; Amendments.**

**Section 11.3.** Entireties; Amendments. This Agreement and its exhibits constitute the entire agreement between the Members relative to the formation of the Company. Except as otherwise provided herein, no amendments to this Agreement shall be binding upon any Member unless set forth in a document duly executed by such Member.



### **Waiver.**

**Section 11.4.** Waiver. No consent or waiver, express or implied, by any Member of any breach or default by any other Member in the performance by the other Member of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Member of the same or any other obligation hereunder. Failure on the part of any Member to complain of any act or to declare any other Member in default, irrespective of how long such failure continues, shall not constitute a waiver of rights hereunder.

### **Severability.**

**Section 11.5.** Severability. If any provision of this Agreement or the application thereof to any Person or circumstances shall be invalid or unenforceable to any extent, and such invalidity or unenforceability does not destroy the basis of the bargain between the parties, then the remainder of this Agreement and the application of such provisions to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

### **Ownership of Property and Right of Partition.**

**Section 11.6.** Ownership of Property and Right of Partition. A Member's interest in the Company shall be personal property for all purposes. No Member shall have any right to partition the property owned by the Company.

### **Captions, References.**

**Section 11.7.** Captions, References. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and section headings are for convenience of reference and shall not affect the construction or interpretation of this Agreement. Whenever the terms "hereof", "hereby", "herein", or words of similar import are used in this Agreement they shall be construed as referring to this Agreement in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or a "Section" shall be construed as referring to the indicated article or section of this Agreement unless the context indicates to the contrary.

### **Involvement of Members in Certain Proceedings.**

**Section 11.8.** Involvement of Members in Certain Proceedings. Should any Member become involved in legal proceedings unrelated to the Company's business in which the Company is required to provide books, records, an accounting, or other information, then such Member shall indemnify the Company from all expenses incurred in conjunction therewith.

### **Interest.**

**Section 11.9.** Interest. No amount charged as interest on loans hereunder shall exceed the maximum rate from time to time allowed by applicable law.

## SCHEDULE 9.

### CAPITAL ACCOUNTS, ALLOCATIONS, AND TAX MATTERS

#### Definitions.

Section 1. Definitions. The following terms shall have the following meanings:

- (a) “**Adjusted Capital Account**” means, with respect to a Member, such Member's Capital Account as of the end of each fiscal year, as the same is specially computed to reflect the adjustments required or permitted to be taken into account in applying Regulations Section 1.704-1(b)(2)(ii)(d) (including adjustments for Partnership Minimum Gain and Partner Nonrecourse Debt Minimum Gain).
- (b) “**Adjusted Capital Account Deficit**” means, for each Member, the deficit balance, if any, in that Member's Adjusted Capital Account.
- (c) “**Capital Account**” shall have the meaning set forth in Section 2.
- (d) “**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and any corresponding provisions of succeeding law.
- (e) “**Depreciation**” means, for each taxable year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for the year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of the year or other period, Depreciation will be an amount which bears the same ratio to the beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for the year or other period bears to the beginning adjusted tax basis, provided that if the federal income tax depreciation, amortization, or other cost recovery deduction for the year or other period is zero, Depreciation will be determined with reference to the beginning Gross Asset Value using any reasonable method selected by the Manager.
- (f) “**Gross Asset Value**” has the meaning assigned to it in Section 3.
- (g) “**Partner Nonrecourse Debt**” has the meaning assigned to it in Regulations Sections 1.704-2(b)(4) and 1.752-2.
- (h) “**Partner Nonrecourse Debt Minimum Gain**” has the meaning assigned to it in Regulations Section 1.704-2(i)(3).
- (i) “**Partner Nonrecourse Deductions**” has the meaning assigned to it in Regulations Section 1.704-2(i)(2).
- (j) “**Partnership Minimum Gain**” has the meaning assigned to it in Regulations Section 1.704-2(d).

(k) “**Profits**” and “**Losses**” mean, for each taxable year or other period, an amount equal to the Company's taxable income or loss for the year or other period determined in accordance with Section 703(a) of the Code (*including all items of income, gain, loss or deduction required to be stated separately under*

Section 703(a)(1) of the Code , with the following adjustments:

- (1) Any income that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses will be added to taxable income or loss;
  - (2) Any expenditures described in Code Section 705(a)(2)(B) or treated as Section 705(a)(2)(B) expenditures under Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses, will be subtracted from taxable income or loss;
  - (3) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes will be computed by reference to the Gross Asset Value of the property, notwithstanding that the adjusted tax basis of the property differs from its Gross Asset Value;
  - (4) In lieu of depreciation, amortization and other cost recovery deductions taken into account in computing taxable income or loss, there will be taken into account Depreciation for the taxable year or other period;
  - (5) Any items which are specially allocated under Sections 4(b), 4(c) or 4(d) will not affect calculations of Profits or Losses; and
  - (6) If the Gross Asset Value of any asset is adjusted under Sections 3(b) or 3(c), the adjustment will be taken into account as gain or loss from disposition of the asset for purposes of computing Profits or Losses.
- (l) “**Regulations**” means the regulations promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Code. All references herein to sections of the Regulations shall include any corresponding provisions of succeeding, similar, substitute proposed or final Regulations.
- (m) “**Regulatory Allocations**” has the meaning assigned to it in Section 4(c).

## **Section 2. Capital Accounts.**

### **Establishment and Maintenance.**

(a) Establishment and Maintenance. A separate capital account will be maintained for each Member (each capital account maintained for a Member is herein called a “**Capital Account**”). The Capital Accounts of each Member will be determined and adjusted (with all calculations being made on an individual basis) as follows:

- (1) Each Member's Capital Account will be credited with the Member's Capital Contributions, the Member's distributive share of Profits, any items in the nature of income or gain that are specially allocated to the Member under Sections 4(b) or 4(c), and the amount of any Company liabilities that are assumed by the Member or secured by any Company property distributed to the Member.

(2) Each Member's Capital Account will be debited with the amount of cash and the Gross Asset Value of any Company property distributed to the Member under any provision of this Agreement, the Member's distributive share of Losses, any items in the nature of deduction or loss that are specially allocated to the Member under Section 4(b) or 4(c), and the amount of any liabilities of the Member assumed by the Company or which are secured by any property contributed by the Member to the Company.

(3) If any interest in the Company is transferred in accordance with the terms of this Agreement, the transferee will succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

#### **Modifications by Manager.**

(b) Modifications by Manager. The provisions of this Section 2 and the other provisions of this Agreement relating to the maintenance of Capital Accounts have been included in this Agreement to comply with Section 704(b) of the Code and the Regulations promulgated thereunder and will be interpreted and applied in a manner consistent with those provisions. The Company Manager may modify the manner in which the Capital Accounts are maintained under this Section 2 to comply with those provisions, as well as upon the occurrence of events that might otherwise cause this Agreement not to comply with those provisions; however, without the unanimous consent of all Members, the Company Manager may not make any modification to the way Capital Accounts are maintained if such modification would have the effect of changing the amount of distributions to which any Member would be entitled during the operation, or upon the liquidation, of the Company.

#### **Adjustment of Gross Asset Value.**

**Section 3.** Adjustment of Gross Asset Value. "**Gross Asset Value**", with respect to any asset, is the adjusted basis of that asset for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed  
*(or deemed contributed under*

*Code Sections 704(b) and 752 and the  
Regulations promulgated thereunder)*

by a Member to the Company will be the fair market value of the asset on the date of the contribution, as determined by the Manager.

(b) The Gross Asset Values of all Company assets will be adjusted to equal the respective fair market values of the assets, as determined by the Manager, as of (1) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis*

capital contribution, (2) the distribution by the Company to a Member of more than a  
*de minimis*

amount of Company property as consideration for an interest in the Company if an adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company, and (3) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g).

(c) The Gross Asset Value of any Company asset distributed to any Member will be the gross fair market value of the asset on the date of distribution.

(d) The Gross Asset Values of Company assets will be increased or decreased to reflect any adjustment to the adjusted basis of the assets under Code Section 734(b) or 743(b), but only to the extent that the adjustment is taken into account in determining Capital Accounts under Regulations Section 1.704-1(b)(2)(iv)(m), provided that Gross Asset Values will not be adjusted under this Section 3 to the extent that the Manager determines that an adjustment under Section 3.(b) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment under this Section 3.(d).

(e) After the Gross Asset Value of any asset has been determined or adjusted under Sections 3.(a), 3.(b) or 3.(d), Gross Asset Value will be adjusted by the Depreciation taken into account with respect to the asset for purposes of computing Profits or Losses.

#### **Section 4. Profits, Losses and Distributive Shares of Tax Items.**

##### **Allocations of Profits and Losses.**

(a) Allocations of Profits and Losses. Except as otherwise provided in this Agreement, and after taking into account any allocations under Sections 4.(b) and 4.(c), Profits and Losses of the Company shall be allocated among the Members in a manner such that the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to (i) the distributions that would be made to such Member pursuant to Section 8.3 if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Gross Asset Value, all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Gross Asset Value of the assets securing such liability), and the net assets of the Company were distributed in accordance with Section 8.3 and to the Members immediately after making such allocation, minus (ii) such Member's share of Partnership Minimum Gain and Partner Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets.

##### **Special Allocations.**

(b) Special Allocations. The following special allocations will be made in the following order and priority before the allocations of Profits and Losses under Section 4.(a):

##### **Partnership Minimum Gain Chargeback.**

(1) Partnership Minimum Gain Chargeback. If there is a net decrease in Partnership Minimum Gain during any taxable year or other period for which allocations are made, before any other allocation under this Agreement, each Member will be specially allocated items of Company income and gain for that period (and, if necessary, subsequent periods) in proportion to, and to the extent of, an amount equal to such Member's share of the net decrease in Partnership Minimum Gain during such year determined in accordance with Regulations Section 1.704-2(g)(2). The items to be allocated will be determined in accordance with Regulations Section 1.704-2(g). This Section 4.(b)(1) is intended to comply with the Partnership Minimum Gain chargeback requirements of the Regulations, will be interpreted consistently with the Regulations and will be subject to all exceptions provided therein.

##### **Partner Nonrecourse Debt Minimum Gain Chargeback.**

(2) Partner Nonrecourse Debt Minimum Gain Chargeback. Notwithstanding any other provision of this Section 4 (other than Section 4.(b)(1) which shall be applied first), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain with respect to a Partner Nonrecourse Debt during any taxable year or other period for which allocations are made, any Member with a share of such Partner Nonrecourse Debt Minimum Gain (determined under Regulations Section 1.704-2(i)(5)) as of the beginning of the year will be specially allocated items of Company income and gain for that period (and, if necessary, subsequent periods) in an amount equal to such Member's share of the net decrease in the Partner Nonrecourse Debt Minimum Gain during such year determined in accordance with Regulations Section 1.704-2(g)(2). The items to be so allocated will be determined in accordance with Regulations Section 1.704-2(g). This Section 4.(b)(2) is intended to comply with the Partner Nonrecourse Debt Minimum Gain chargeback requirements of the Regulations, will be interpreted consistently with the Regulations and will be subject to all exceptions provided therein.

#### **Qualified Income Offset.**

(3) Qualified Income Offset .A Member who unexpectedly receives any adjustment, allocation or distribution described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6) will be specially allocated items of Company income and gain in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible.

#### **Nonrecourse Deductions.**

(4) Nonrecourse Deductions. Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated among the Members in proportion to their respective Sharing Ratios obligated on the nonrecourse liabilities giving rise to the Nonrecourse Deductions.

#### **Partner Nonrecourse Deductions.**

(5) Partner Nonrecourse Deductions. Notwithstanding anything to the contrary in this Agreement, any Partner Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which the Partner Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i).

#### **Code Section 754 Adjustments.**

(6) Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset under Code Sections 734(b) or 743(b) is required to be taken into account in determining Capital Accounts under Regulations Section 1.704-1(b)(2)(iv)(m), the amount of the adjustment to the Capital Accounts will be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis), and the gain or loss will be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted under Regulations Section 1.704-1(b)(2)(iv)(m).

#### **Curative Allocations.**

(c) Curative Allocations. The allocations set forth in Section 4.(b) (the “**Regulatory Allocations**”) are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2. The Regulatory Allocations may effect results which would be inconsistent with the manner in which the Members intend to divide Company distributions. Accordingly, the Manager is authorized to divide other allocations of Profits, Losses, and other items among the Members, to the extent that they exist, so that the net amount of the Regulatory Allocations and the special allocations to each Member is

zero. The Manager will have discretion to accomplish this result in any reasonable manner that is consistent with Code Section 704 and the related Regulations.

**Tax Allocations—Code Section 704(c).**

(d) Tax Allocations—Code Section 704(c). For federal, state and local income tax purposes, Company income, gain, loss, deduction or expense (*or any item thereof*)

for each fiscal year shall be allocated to and among the Members to reflect the allocations made pursuant to the provisions of this Section 4 for such fiscal year. In accordance with Code Section 704(c) and the related Regulations, income, gain, loss and deduction with respect to any property contributed to the capital of the Company, solely for tax purposes, will be allocated among the Members so as to take account of any variation between the adjusted basis to the Company of the property for federal income tax purposes and the initial Gross Asset Value of the property (computed in accordance with Section 3). If the Gross Asset Value of any Company asset is adjusted under Section 3(b), subsequent allocations of income, gain, loss and deduction with respect to that asset will take account of any variation between the adjusted basis of the asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the related Regulations. Any elections or other decisions relating to allocations under this Section 4.(d) will be made in any manner that the Manager determines reasonably reflects the purpose and intention of this Agreement. Allocations under this Section 4.(d) are solely for purposes of federal, state and local taxes and will not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses or other items or distributions under any provision of this Agreement.

**Members Bound.**

(e) Members Bound. Members shall be bound by the provisions of this Section 4 in reporting their shares of Company income and loss for income tax purposes.

**Tax Returns.**

**Section 5.** Tax Returns. The Manager shall cause to be prepared and filed all necessary federal and state income tax returns for the Company, including making the elections described in Section 6. Each Member shall furnish to the Manager all pertinent information in its possession relating to Company operations that is necessary to enable such income tax returns to be prepared and filed.

**Tax Elections.**

**Section 6.** Tax Elections. The following elections shall be made on the appropriate returns of the Company:

- (a) to adopt the calendar year as the Company's fiscal year;
- (b) to keep the Company's books and records on the income-tax method;
- (c) if there is a distribution of Company property as described in section 734 of the Code or if there is a transfer of a Company interest as described in section 743 of the Code, upon written request of any Member, to elect, pursuant to section 754 of the Code, to adjust the basis of Company properties; and

(d) to elect to amortize the organizational expenses of the Company ratably over a period of 60 months as permitted by section 709(b) of the Code.

No election shall be made by the Company or any Member to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of applicable state laws.

**Tax Matters Member.**

**Section 7.** Tax Matters Member. The Company Manager shall be the “**tax matters partner**” of the Company pursuant to section 6231(a)(7) of the Code. As tax matters partner, such Member shall take such action as may be necessary to cause each other Member to become a “**notice partner**” within the meaning of section 6223 of the Code. Such Member shall inform each other Member of all significant matters that may come to its attention in its capacity as tax matters partner by giving notice thereof within ten days after becoming aware thereof and, within such time, shall forward to each other Member copies of all significant written communications it may receive in such capacity. Such Member shall not take any action contemplated by sections 6222 through 6232 of the Code without the consent of the Company Manager. This provision is not intended to authorize such Member to take any action left to the determination of an individual Member under sections 6222 through 6232 of the Code.

**Allocations on Transfer of Interests.**

**Section 8.** Allocations on Transfer of Interests. The Company income, gain, loss or deduction allocable to any Member in respect of any interest in the Company which may have been transferred shall be allocated during such year based upon an interim closing of the Company's books as described in the first sentence of Treasury Regulations § 1.706-1(c)(2)(ii), taking into account the actual results of Company operations during the portion of the year in which such Member was the owner.

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Milo Pinckney, Managing Member