

**OPERATING AGREEMENT**  
**OF**  
**THOUSAND ROSES FUND, LLC**  
**(A Delaware Limited Liability Company)**

THE MEMBERSHIP INTERESTS REFERRED TO HEREIN HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), NOR HAVE THEY BEEN REGISTERED WITH THE SECURITIES DIVISION OF THE DELAWARE SECRETARY OF STATE OR ANY OTHER SECURITIES ADMINISTRATOR. THE MEMBERSHIP INTERESTS MAY NOT BE TRANSFERRED OTHER THAN IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, WHICH INCLUDE WITHOUT LIMITATION THE REQUIREMENT OF AN EFFECTIVE REGISTRATION STATEMENT IN EFFECT UNDER THE SECURITIES ACT AND REGISTRATION UNDER APPLICABLE STATE LAW OR THE APPLICATION OF AN EXEMPTION FROM REGISTRATION AS DETERMINED BY THE COMPANY. THERE IS NO OBLIGATION OF THE COMPANY TO REGISTER THE MEMBERSHIP INTERESTS UNDER THE SECURITIES ACT, ANY STATE LAW, OR THE LAW OF ANY OTHER JURISDICTION.

THIS AGREEMENT SETS FORTH FURTHER RESTRICTIONS ON TRANSFERS OF THE MEMBERSHIP INTERESTS.

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (this “**Agreement**”) of THOUSAND ROSES FUND, LLC, a Delaware limited liability company (the “**Company**”), is made and entered into effective as of April 4, 2024 (the “**Effective Date**”), by and among the Company, Thousand Roses Managers, LLC, a Delaware limited liability company, as the manager (the “**Manager**”), and those additional “**Persons**” (as defined herein) listed from time to time on **Exhibit A** to this Agreement who have been or shall be admitted as members of the Company in accordance with the terms and conditions of this Agreement (such Persons collectively, the “**Members**”). The Manager and the Members are referred to collectively below as the “**Parties**”.

## RECITALS

WHEREAS, the Manager formed or directed the formation of the Company pursuant to a Certificate of Formation (the “**Charter**”) registered with the Secretary of State of the State of Delaware on the Effective Date;

WHEREAS, the Company has been formed for the purpose of acquiring, owning, holding, managing, administering, selling, and otherwise dealing in certain investment property as more particularly described below; and

WHEREAS, the Parties previously have not adopted an operating agreement for the Company and wish to adopt this Agreement to memorialize the admission of the Manager as the manager, and the Members as members, of the Company, and to memorialize their respective rights and obligations in connection with the ownership, funding, operation, and management of the Company.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

## ARTICLE I ORGANIZATION; GENERAL PROVISIONS

**1.1** **Formation and Continuation.** The Company was formed as a limited liability company under the laws of the State of Delaware on the Effective Date by the filing of the Charter with the Secretary of State of the State of Delaware by the Manager, as required by the Delaware Act. The Parties agree to continue the Company as a limited liability company pursuant to the Delaware Act. The Manager is authorized to take all action necessary or appropriate to comply with all applicable requirements for the operation of the Company as a limited liability company in the State of Delaware and in all other jurisdictions in which the Company may elect to conduct business.

**1.2** **Name.** The name of the Company is “THOUSAND ROSES FUND, LLC”. The Manager is authorized to make any variations in the Company’s name which the Manager may deem necessary or advisable to comply with the laws of any jurisdiction in which the Company may elect to conduct business; provided that such name as varied shall be a name permitted for a limited liability company under the Delaware Act, and the Manager shall promptly give notice of any such variation to the Members.

**1.3** **Principal Office.** The principal place of business and office of the Company is located at 225 S Ingraham Avenue, Suite 4, Lakeland, Florida 33801, and may be located at such other place or places as the Manager may from time to time designate. The Manager may establish such additional places of business of the Company in

such other jurisdictions as it may from time to time determine. The Manager shall provide notice to the Members of any change in the Company's principal place of business.

**14 Registered Office: Registered Agent.**

(a) The registered office of the Company in the State of Delaware shall be the office of the initial registered agent named in the Charter or such other office (which need not be a place of business of the Company) as the Manager may designate from time to time in the manner provided by the Delaware Act.

(b) The registered agent for service of process on the Company in the State of Delaware shall be the initial registered agent named in the Charter or such other Person or Persons as the Manager may designate from time to time in the manner provided by the Delaware Act.

(c) The Manager shall determine and designate the registered office and the registered agent for service of process on the Company in all other States and jurisdictions in which the Company is required to register to transact business.

**15 Purpose.** The sole and exclusive purpose of the Company is and shall be as follows:

(a) to acquire, invest in, own, hold, manage, maintain, dispose of, and otherwise deal in a one hundred percent (100%) beneficial interest (the "**Trust Interest**") in Thousand Roses Land Trust, a Florida land trust (the "**Land Trust**"); noting that the Land Trust has been formed for the sole purpose of holding title to that certain parcel of real estate located at 455 S. Buck Moore Road, Lake Wales, Florida 33853, commonly known as "1000 Roses Retirement Community," and owning, operating, managing, improving, leasing, selling, disposing of, and otherwise dealing in, directly or indirectly, the buildings, facilities, amenities and improvements thereon (collectively, the "**Property**"); and

(b) to acquire, invest in, own, hold, manage, maintain, dispose of, and otherwise deal in any and all property necessary or expedient to the foregoing purposes and activities, to incur indebtedness, both secured and unsecured, to lend, to stake, to enter into and perform contracts and agreements, to engage in such other activities related or incidental thereto, and to exercise all other powers which may be legally exercised by limited liability companies under Delaware law and necessary to, reasonably connected with, or convenient to the conduct, promotion, or attainment of the investment objectives, business, or purposes of the Company or the protection or benefit of the Company and its assets.

**16 Company Property.** The Company shall own all its properties and assets (including, without limitation, the Trust Interest) in its own name and for its own account and, to the fullest extent permitted by Applicable Law, no Member shall have any ownership interest in any Company property or assets in its individual name or right. The Company's assets are vital to the success of the Company, are necessary for it to produce income, gains, and profits for the benefit of the Members, and may not be used to satisfy the individual debts of the Members or any other party. Each Member's Units shall be personal property for all purposes.

**17 Term.** The term of the Company commenced on the Effective Date and shall continue in full force and effect through the date of dissolution and termination of the Company as provided in Article 9 below. At such time as the Company is dissolved, the Manager shall file a Certificate of Cancellation as required by the Delaware Act.

**18 Conflict between Agreement and Statute.** The Parties hereby execute this Agreement as the sole limited liability company agreement and governing instrument for purposes of managing and administering the Company and establishing the affairs of the Company and the conduct of its business in accordance with the provisions of

the Delaware Act. To the extent any provision of this Agreement is prohibited or otherwise invalid or ineffective under the Delaware Act, this Agreement shall be considered to be amended (to the least extent possible) in order to make such provision permitted, valid and effective under the Delaware Act. Subject to the foregoing, if any term in this Agreement governs, provides for, or otherwise addresses any matter (including relations among the Members or between the Members and the Company or the Manager, the rights or duties of a Person, or the activities or affairs of the Company), and such matter is also governed by one or more provisions of the Delaware Act (which statutory provisions are commonly referred to as “default rules”), then such term in this Agreement shall prevail over the corresponding default rule of the Delaware Act. The preceding sentence shall apply whether or not the term in this Agreement expressly states an intent to replace, supplement or otherwise modify such default rule, and whether or not the term in this Agreement applies only partially or by implication to the matter governed by such default rule. It is the intent of the Members that any court (or any arbitrator or other Person charged with the interpretation or enforcement of this Agreement) shall give maximum effect to the principle of freedom of contract and to the enforceability of this Agreement. Accordingly, if a term in this Agreement does not expressly or directly displace or modify a default rule, but enforcement or other effectuation of such term in this Agreement question cannot occur but for the displacement or modification of the default rule, then such default rule shall be deemed to have been displaced or modified accordingly.

The Parties intend and agree that this Agreement shall constitute an executory contract within the meaning of Bankruptcy Code Section 365, recognizing the services to be provided by the Manager of the Company.

## ARTICLE II DEFINITIONS

**21 Definitions.** As used in this Agreement, the following terms shall have the meanings ascribed below (and other defined terms shall have the meanings ascribed to such terms in other Sections of this Agreement):

“**Affiliate**” means, with respect to any Person: (a) any Person directly or indirectly controlling, controlled by, or under common “control” (as defined herein) with such Person (as defined herein); (b) any Person owning and controlling more than fifty percent (50%) of the outstanding voting interests of such Person; (c) any shareholder, member, partner, trustee, owner, director, officer, or manager of such Person; or (d) any Person who is a director, officer, manager, or principal of, or shareholder, member, partner, trustee, owner, or holder of more than fifty percent (50%) of the voting interests of, any Person described in the foregoing Clauses (a) through (c).

“**Applicable Law**” means all applicable provisions of (a) constitutions, treaties, statutes, laws (including the common law), rules, regulations, decrees, ordinances, codes, proclamations, declarations or orders of any Governmental Authority; (b) any consents or approvals of any Governmental Authority; and (c) any orders, decisions, advisory or interpretative opinions, injunctions, judgments, awards, decrees of, or agreements with, any Governmental Authority.

“**Book Value**” of an asset means, as of any particular date, the value at which the asset is reflected on the books of the Company as of such date. In the case of an asset other than cash transferred as a Capital Contribution to the Company, the initial book value of such asset shall be equal to the gross Fair Market Value of such asset, as determined by the Manager and recorded on the books of the Company. Company assets may be revalued, and the Book Value thereof adjusted to equal the respective Fair Market Values thereof, as determined by the Manager, to reflect economic arrangements among the Members upon the admission of additional Members to the Company, or at such other times as are provided for in Treasury Regulations Sections 1.704-1(b)(2)(iv) (including subclause (f) thereof), 1.704-2 or 1.704-3. The Book Value of a Company asset distributed to a Member shall be adjusted to its Fair Market Value as determined on the date of distribution by the Manager in its business judgment. The foregoing adjustments shall be allocated to the Members and reflected in their Capital Accounts in the manner provided in Regulations Section 1.704-1(b)(2)(iv)(f)(2). The Book Value of an

asset shall be reduced by depreciation, amortization, or other cost recovery deductions relating thereto on the books of the Company; in the case of assets the Book Values of which have been adjusted to Fair Market Value, such Book Values shall be reduced by the amount of depreciation, amortization, or other cost recovery deductions relating thereto arising after such adjustment.

**“Business Day”** means any calendar day other than a Saturday, a Sunday, or a day on which commercial banks in the State of Delaware are generally closed for business.

**“Capital Account”** means the account with respect to allocable capital established for each Member and maintained in accordance with the provisions of this Agreement and the Treasury Regulations.

**“Capital Contributions”** (each, a **“Capital Contribution”**) means the total amount of cash or the Fair Market Value of other property contributed to the equity capital of the Company by each Member pursuant to this Agreement. Any reference in this Agreement to the Capital Contribution of either a Member or any assignee of a Member includes any Capital Contribution previously made by any prior Member to whose Units the then-existing Member or assignee succeeded.

**“Capital Transaction”** means a sale, refinance, exchange or other disposition, whether by foreclosure, abandonment or otherwise, of all or substantially all of the properties and assets of the Company (which transaction includes the Property).

**“Class A Units”** means those Units evidencing limited liability company membership interests in the Company issued to and from time to time owned and held by Members pursuant to this Agreement and designated in this Agreement and on **Exhibit A** hereto (as such exhibit may be amended or updated by the Manager from time to time in accordance with this Agreement) as Class A Units.

**“Class B Units”** means those Units evidencing a manager interest in the Company issued to and owned by the Manager (or any successor of the Manager) pursuant to this Agreement and designated in this Agreement and on **Exhibit A** hereto (as such exhibit may be amended or updated by the Manager from time to time in accordance with this Agreement) as Class B Units.

**“Code”** means the United States Internal Revenue Code of 1986, as it may be amended, or any subsequent federal law concerning income tax as enacted in substitution for, or that corresponds with, such Code.

**“Commitment”** means, with respect to any Member, the amount of such Member’s total commitment, and enforceable obligation, to pay and fund capital to the Company in accordance with the terms and conditions of this Agreement, the amount of which commitment is confirmed by and in such Member’s Subscription Agreement executed and delivered to the Company, and as set forth on **Exhibit A** hereto.

**“Company”** means Thousand Roses Fund, LLC a Delaware limited liability company.

**“Control”** means the possession, direct or indirect, of the power and authority to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. The term “controls,” “controlled by” and “under common control with” have correlative meanings, irrespective of whether the term is capitalized.

**“Delaware Act”** means the Delaware Limited Liability Company Act and any successor statute, as amended from time to time.

**“Delay Condition”** means any of the following conditions: (a) the Company is prohibited from purchasing

any Units by any Financing Document or by Applicable Law; (b) a default under any Financing Document has occurred and is continuing; (c) the purchase of any Units would, or in the good-faith opinion of the Manager could, result in the occurrence of an event of default under any Financing Document or create a condition that would or could, with notice or lapse of time or both, result in such an event of default; or (d) the purchase of any Units would, in the good-faith opinion of the Manager, be imprudent in view of the financial condition of the Company, the anticipated impact of the purchase of such Units on the Company's ability to meet its obligations under any institutional financing document or otherwise in connection with its business and operations.

**"Fair Market Value"** means, with respect to any item, the price (in cash or other consideration) at which such item would be sold in a sales transaction between a willing buyer and a willing seller each negotiating on arms-length terms. With respect to all financial and tax accounting matters hereunder, the Manager in its business judgment shall determine the Fair Market Value of an item.

**"Financing Document"** means any credit agreement, guarantee, financing, or security agreement or other agreements or instruments governing indebtedness of the Company.

**"Fiscal Year"** means the period beginning on January 1 and ending on December 31, or any other fiscal period selected by the Manager for financial reporting and tax accounting and compliance purposes.

**"Fund Management and Administration Expenses"** means all fees, costs and expenses (including without limitation those of the property manager, legal counsel, accountants, auditors, consultants and other third party vendors, agents and/or advisors) relating to the management, operation and administration of the Company, including but not limited to fees, costs, and expenses relating to the fees and expenses of the fund administrator (including with regard to its administration, reporting, and other services to the Company); legal, tax, and accounting services to the Company (including the fees and expenses of the Company's attorneys and accountants), as well as any CPA audit and/or review services regarding the Company's financial statements and financial performance; the preparation and distribution of periodic reports to Members; meetings (and conference calls) of and with the Members; fees and expenses of other service providers and vendors to the Company (or to the Manager concerning the Company) relating to the conduct, affairs, business, operations, finances, accounts, distributions, reports, and activities of the Company, the Land Trust, and the Property; loans (including short-term and bridge loans), lines of credit, and indebtedness incurred by, and guarantees provided by, the Company and related fees and expenses (including bank/lender and wire transfer fees and expenses); appraisals and/or valuations conducted (in the discretion of the Manager) by outside appraisal or valuation firms or consultants; government, regulatory, and administrative filings, registrations, and administrative or regulatory authorizations and approvals in connection with the conduct, affairs, business, operations, finances, accounts, and activities of the Company; key person life insurance and D&O (errors and omissions) insurance, if and to the extent such insurance is deemed advisable (and in such amounts and on such terms deemed advisable) in the discretion of the Manager; the Company's rights and remedies (and related fees, costs, and expenses) with respect to any Member who defaults in respect of its obligations to make Capital Contributions (as defined herein) on a timely basis as and when required by the Manager pursuant to Section 3.5 below); indemnification of (and advancement of expenses to) the Manager and other indemnified parties pursuant to this Agreement; disputes, claims, causes of action, litigation, proceedings, settlements, and/or government, regulatory, or administrative investigations, actions, and proceedings involving or relating to the conduct, affairs, business, operations, finances, accounts, or activities of the Company; capital calls and the collection of amounts due to the Company from any party (including from any Member); the Company's bank and financial institution accounts; taxes, if any, imposed on the Company, and any interest or penalties which may be due with respect thereto; and all other matters and activities relating to the conduct, affairs, business, operations, finances, accounts, distributions, reports, and activities of the Company, including in connection with the Company's ongoing activities and ultimate sale or liquidation of assets, distributions, the satisfaction and discharge of obligations, and dissolution.

**"Fund Organization and Offering Expenses"** means the fees, costs, and expenses (including without

limitation those of legal counsel, accountants, consultants and other third party vendors, agents and/or advisors) relating to (a) the formation, documentation, and organization of the Company and the Manager, each as described in the Subscription Documents (including legal, accounting, filing, printing, and other fees and expenses); and (b) the offering of, subscription for, preparation of documents in connection with, and closing of the purchase and sale of Class A Units in, and the funding of initial Capital Contributions to, the Company in connection with the Offering and the closing thereof (and related post-closing activities), including, without limitation, the payment of commissions and other compensation to brokers as approved by the Manager in its discretion in connection with the Company's issuance and sale of Class A Units.

**"Governmental Authority"** means any Federal, State, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.

**"Initial Closing"** means the date on which the Company first closes on the sale and issuance of Class A Units to a Member pursuant to the Member's acceptance of a subscription submitted in the Offering pursuant to the Subscription Documents.

**"Manager"** means, as of the date of execution hereof, Thousand Roses Managers, LLC, a Delaware limited liability company, as the owner and holder of Class B Units as set forth on **Exhibit A** hereto (as such exhibit may be amended or updated by the Manager from time to time in accordance with this Agreement). As the context may specifically require or suggest, **"Manager"** also may mean and refer to a successor manager of the Company designated in accordance with the terms and provisions of the Agreement.

**"Members"** (each, a **"Member"**) means those Members (or each Member) owning and holding from time to time Class A Units in the Company, as set forth on **Exhibit A** hereto (as such exhibit may be amended or updated by the Manager from time to time in accordance with this Agreement).

**"Net Cash from Operations"** means the gross cash proceeds from operations less the portion thereof used to pay or establish reserves for all expenses, debt payments, capital improvements, replacements, and contingencies, all as determined by the Manager in its discretion, provided, however, that Net Cash from Operations shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances and shall not include any item which constitutes Net Proceeds from Capital Transactions. Net Cash from Operations shall be increased by any reductions of reserves previously established, as determined by the Manager.

**"Net Proceeds from Capital Transactions"** means the net proceeds received in connection with a Capital Transaction after (a) the repayment of applicable debt, (b) the payment of all expenses and other amounts required to be paid under the instruments evidencing or relating to such applicable debt, (c) the payment of all expenses related to the transaction, and (d) the retention of such amounts which the Manager in its discretion determines to be necessary to satisfy contingencies and other liabilities or obligations of the Company. Net Proceeds from Capital Transactions shall be increased by any reductions of reserves previously established which reserves previously reduced the Net Proceeds from Capital Transactions, as determined by the Manager. In the event of a sale or other disposition of property in exchange for consideration other than cash, the Manager in its discretion may treat an amount equal to the Fair Market Value of such consideration as cash.

**"Net Distributable Cash"** means, collectively, Net Cash from Operations and Net Proceeds from Capital Transactions.

**"Offering"** means the private placement, issuance, and sale of Class A Units pursuant to the Subscription Documents, and the activities of the Company associated therewith, as the same is and shall be conducted by the

Company in accordance with the Subscription Documents.

**“Percentage Interest”** means, with respect to each Member and its class of Units, the quotient (expressed as a percentage) derived by dividing (a) the total number of Units of such class held by such Member; by (b) the total number of Units of such class held by all the Members, as the same are determined in accordance with this Agreement and as the same are or may be adjusted from time to time in accordance with Article 3 below.

**“Person”** means a natural person, corporation, limited liability company, partnership, joint venture, association, trust, or other business or legal entity, or a non-profit, charitable or other organization, of any kind.

**“Preferred Return”** means, with respect to each Member holding Class A Units, a seven percent (7%) annual return on the balance of such Member’s Unreturned Capital Contribution.

**“Profit” or “Loss”** means, for a period, an amount equal to the Company’s taxable income or loss for such period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments: (a) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profit or Loss shall be added to such taxable income or loss; (b) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv) shall be subtracted from such taxable income or loss; (c) at the Manager’s discretion, in lieu of the amounts of depreciation, amortization, or other cost recovery deductions taken into account in computing such taxable income or loss, the amounts taken into account shall be the amounts determined in the manner provided in Regulations Section 1.704-1(b)(2)(iv)(g)(3); (d) at the Manager’s discretion, in lieu of any tax gain or tax loss recognized by the Company with respect to the disposition of an asset, there shall be taken into account gain or loss recognized by the Company for book purposes under the principles of Treasury Regulations Section 1.704-1(b)(2)(iv), computed by reference to the Book Value of the asset as of the date of disposition rather than by reference to the tax basis of the asset; and (e) at the Manager’s discretion, items of income, gain, loss, or deduction allocated separately pursuant to Section 4.4 hereof shall be excluded from the computation of Profit or Loss. If the Company’s taxable income or loss for such period, as adjusted in the manner provided above, is a positive amount, such amount shall be the Company’s Profit for such period, and if negative, such amount shall be the Company’s Loss for such period.

**“Subscription Agreement”** means the Subscription Agreement provided and utilized by the Company included as part of the Subscription Documents, as (a) executed and delivered to the Company by each Member; and (b) accepted and confirmed, and executed and delivered by, the Company, in each case, in connection with the Company’s issuance and sale of Class A Units to Members in connection with the consummation of the Offering.

**“Subscription Documents”** means the Company’s confidential Subscription Agreement together with the Confidential Private Placement Memorandum, Investor Questionnaire and related instructions, exhibits, and documents referenced therein, relating to the private placement, issuance, and sale by the Company of Class A Units, in the form prepared by or on behalf of the Manager in its discretion and distributed to prospective investors in Class A Units, as the same may be amended and/or supplemented by the Manager from time to time in accordance with the terms thereof, and as completed, executed and delivered by each Member which is or becomes a party thereto.

**“Target Capital Account Balance”** means, with respect to a Member, the respective net amount, positive or negative, which would be distributed to such Member or for which such Member would be liable to the Company under this Agreement, determined as if the Company were to (a) sell all of the assets of the Company for cash in an amount equal to the Book Value of such assets, and (b) distribute the net proceeds of such sale, after providing for the claims of creditors, pursuant to Section 9.2 of this Agreement. In addition, the Target



Capital Account Balance of a Member as determined above shall be adjusted by debiting it in an amount equal to the sum of the Member's share of the Company's "partnership minimum gain" (as determined according to Regulations Section 1.704-2(g)) and such Member's "partner nonrecourse debt minimum gain" (as determined according to Regulations Section 1.704-2(i)(3)). The Target Capital Account Balance shall be calculated for each Member as of the end of each period for which an allocation of Profits or Losses is to be made.

**"Transfer"** means as a noun, any voluntary or involuntary, direct or indirect, transfer, sale, pledge, gift, hypothecation or other disposition and, as a verb, voluntarily or involuntarily, directly or indirectly, to transfer, sell, pledge, give or donate, hypothecate or otherwise dispose of.

**"Treasury Regulations"** and **"Regulations"** means the regulations of the United States Treasury Department pertaining to and/or promulgated under the Code, as amended, and any successor provision thereto.

**"Units"** means units of legal and beneficial manager interests and limited liability company member interests in the Company authorized and issued by the Company pursuant to this Agreement and in accordance with the Delaware Act, and, in the case of Class A Units, issued and sold to each Member acquiring same pursuant to a Subscription Agreement executed and delivered by such Member in connection with the Offering and pursuant to the Subscription Documents (which Subscription Agreement is accepted, executed and delivered by the Company), and which, with respect to all Members, represent: (a) each Member's Capital Contributions, if any, and the right to receive its share of the Profits and Losses, distributions, and liquidation proceeds of the Company in accordance with the terms of this Agreement; (b) the Member's voting, consent, approval, and other rights, if any, provided in this Agreement; and (c) the rights of each Member as a member of a limited liability company under the Delaware Act to the extent consistent with the terms of this Agreement. The term "Units" shall include and consist of Class A Units and Class B Units (each as authorized hereunder, and with such voting, consent, approval, distribution and other rights, and subject to such obligations, as provided herein). Units shall be evidenced by certificates.

**"Unpaid Preferred Return"** means, with respect to each Member holding Class A Units, the excess of (a) the accrued Preferred Return to the Member over (b) all distributions received by the Member under Section 5.3(i)(A) of this Agreement.

**"Unreturned Capital Contribution"** means, with respect to each Member holding Class A Units, an amount equal to the sum of the Capital Contributions made by such Member pursuant to Section 3.5 of this Agreement, reduced (but not below zero) by the sum of distributions made to such Member pursuant to Section 5.3(i)(B) of this Agreement.

## **22 Interpretation.**

(a) For purposes of this Agreement, (a) the words "include", "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein", "hereof", "hereby", "hereto" and "hereunder" refer to this Agreement as a whole. The definitions given for any defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Unless the context otherwise requires, references herein: (d) to Articles, Sections, Exhibits and Schedules mean the Articles and Sections of, and the Exhibits and Schedules attached to, this Agreement; (e) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (f) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

(b) All references in this Agreement to the determination, decision, consent, or approval (or similar words) of or by the Manager or any other Person shall mean such determination, decision, consent, or approval in the sole and absolute discretion of the Manager or such other Person unless expressly provided otherwise herein.

### ARTICLE III MEMBERS AND UNITS; INCOME TAX CLASSIFICATION; COMPANY CAPITAL

**3.1 Members.** The name, address, fax number, total Commitment, Capital Contribution, class of Units, and Percentage Interest of each Member are set forth in **Exhibit A** below, which the Manager shall amend from time to time to reflect changes to the information provided therein.

**3.2 Additional Members.** The Company shall admit Members in connection with the Offering and otherwise in the discretion of the Manager and in accordance with the terms and conditions of this Agreement, including, without limitation the terms and conditions of Sections 3.5, 3.6, and 8.2 below. Each Member shall be required to execute a counterpart signature page to this Agreement, which shall include such Member's Commitment to the Company. After the Initial Closing, the Manager in its discretion may admit additional Members to the Company (each, an "**Additional Member**"), or permit existing Members to increase their respective Commitments, via one or more subsequent subscriptions and closings (each, a "**Subsequent Closing**"). The Manager shall determine in its discretion the portion (or percentage) of Additional Members' total Commitments (or the amount of an existing Member's additional Commitment) required to be funded at each Subsequent Closing, which may vary from closing to closing.

**3.3 Company Units.** As of the date of execution hereof, the authorized equity capital and membership interests of the Company consist of two (2) classes of Units: Class A Units issued to the Members, and Class B Units issued to the Manager. Except as expressly provided otherwise in this Agreement and the non-waivable provisions of the Delaware Act: (a) only the Class B Units shall accord, and only the Manager as the holder of the Class B Units shall have, voting, consent, and approval rights as provided in this Agreement; (b) the Class A Units shall not accord, and the Members as the holders of the Class A Units shall have no, voting, consent, or approval rights; and (c) all references in this Agreement to a vote, consent, approval, or determination by or of the Members, and all issues reserved to the vote, consent, approval, or determination of the Members hereunder, shall refer to and be construed as a reference to the Manager only. Class A Units and Class B Units shall accord such rights to operating and liquidating distributions of the Company as provided in this Agreement.

**3.4 Income Tax Classification.** The Company shall be classified as a partnership for Federal, State, and local income tax purposes.

**3.5 Company Capital; Capital Commitments; Capital Contributions of Commitments.** No Member shall have any obligation to make Capital Contributions to the Company in an aggregate amount in excess of such Member's total Commitment. Each Member shall contribute one hundred percent (100%) of its total Commitment immediately upon executing and delivering its Subscription Agreement to the Company pursuant to the Subscription Documents or otherwise at the Initial Closing. After funding its Commitment in full as aforesaid, each Member shall have the right, but not the obligation, to make additional Capital Contributions to the Company as provided in this Agreement.

**3.6 Additional Funding beyond Commitments.** If the Manager determines in its discretion that additional funds are required above and beyond the Members' total Commitments in order to achieve the purposes of the Company, including, without limitation, to fund working capital requirements, to invest in, maintain, manage or

improve the Property, and/or to service any indebtedness and obligations of the Company, then, subject to the terms and conditions of this Agreement (including without limitation Section 3.7 below), the Company may seek and obtain loans, credit facilities, lines of credit, debt financing, and/or equity financing from any Person (including, without limitation, any Member or any Affiliate of a Member) on such terms and conditions as the Manager may approve in its business judgment. The Manager shall amend **Exhibit A**, including without limitation the adjustment of Percentage Interests, upon the closing of any additional equity financing hereunder.

Without limiting the foregoing, and subject to Section 3.7 below and the other terms and conditions of this Agreement, the Manager shall have the right at any time and from time to time to authorize and cause the Company to create and/or issue additional Units of the Company, in which event, all non-participating Members and their respective Percentage Interests in the Company shall be diluted with respect to such issuance, subject to differences in rights and preferences of different classes, groups, and series of Units. Each Person who acquires Units from the Company shall make, in exchange for such Units, a Capital Contribution to the Company in an amount to be determined by the Manager. The Manager shall amend **Exhibit A**, including without limitation the adjustment of Percentage Interests, upon the closing of any additional equity financing hereunder.

### **3.7 Preemptive Rights.**

(a) Equity Rights. The Members shall have the preemptive right to participate, on a proportionate basis in accordance with their then-current respective Percentage Interests (the “**Pro Rata Portion**”), in any proposed issuance, grant, or sale by the Company of any of the following: (i) capital stock, membership interests, Units, or other equity capital; (ii) any rights or options directly or indirectly to subscribe for or to purchase any capital stock, membership interests, Units, other equity capital or securities containing any profit participation features or to subscribe for or to purchase any securities directly or indirectly convertible into or exercisable or exchangeable for any capital stock, membership interests, Units, other equity capital or securities containing any profit participation features; (iii) any profits interests, equity appreciation rights, phantom equity rights, or other similar rights (the interests and instruments of the kind described in the foregoing Clauses (i) and (ii) collectively, the “**Equity Rights**”; or (iv) any Equity Rights issued or issuable with respect to any outstanding Equity Rights in connection with a combination, recapitalization, conversion, merger, consolidation, or other reorganization.

(b) Procedure. The following terms and conditions shall apply with respect to the Members’ preemptive rights accorded under this Section 3.7 with respect to an issuance of Equity Rights by the Company:

(i) Exercise of Preemptive Rights. The Company shall give written notice to the Members (a “**Funding Notice**”) of any proposed issuance or sale of Equity Rights, setting forth the material terms and conditions of the proposed issuance, including the number and description of the Equity Rights proposed to be issued, and the Percentage Interest such issuance would represent; the proposed issuance date, which shall be at least twenty (20) days from the date of the Funding Notice; and the proposed purchase price per Unit or other Equity Right; and payment terms. Each Member shall have the right, by delivering a written notice of acceptance within ten (10) days after receipt of a Funding Notice (the “**Exercise Period**”), to elect irrevocably to purchase all, but not less than all, of its Pro Rata Portion of the offered Equity Rights at the purchase price set forth in the Funding Notice. The closing of any purchase by any Member shall take place concurrently with the consummation of the issuance, grant, or sale described in the Funding Notice.

(ii) Over-Allotment. No later than three (3) Business Days after the expiration of the Exercise Period, the Company shall notify each Member electing to participate in the issuance in writing of the number of Equity Rights which each electing Member has agreed to purchase (including, for the avoidance of doubt, where such number is zero) (the “**Over-Allotment Notice**”). The Manager in its discretion may grant each Member exercising its right to purchase its Pro Rata Portion of the Equity Rights in full (an “**Exercising Member**”) a right of over-allotment such that if any other Member fails to exercise its right under this Section to purchase its Pro Rata Portion of the Equity Rights (each, a “**Non-Exercising Member**”), such Exercising

Member may purchase its Pro Rata Portion, determined with reference to the Percentage Interests of all the Exercising Members, of such Non-Exercising Member's allotment by giving written notice to the Company within three (3) Business Days of receipt of the Over-Allotment Notice (the "**Over-Allotment Exercise Period**").

(iii) Sale to Prospective Purchaser. If any Member fails to timely purchase its allotment of the offered Equity Rights in accordance with the terms and conditions of this Section, then, after the expiration of the Over-Allotment Exercise Period, if any (or otherwise after the expiration of the Exercise Period), the Company shall be free to complete the proposed issuance or sale of Equity Rights described in the Funding Notice with respect to which Members failed to exercise their preemptive right hereunder on terms no less favorable to the Company than those set forth in the Funding Notice (except that the amount of Equity Rights to be issued or sold by the Company may be reduced); provided, however, that (x) such issuance or sale is closed within thirty (30) days after the expiration of the Over-Allotment Exercise Period; and (y) for the avoidance of doubt, the price at which the Equity Rights are sold is at least equal to or higher than the purchase price described in the Funding Notice. In the event the Company has not sold such Equity Rights within such time period, the Company shall not thereafter issue or sell any Equity Rights without first again offering such Equity Rights to the Members in accordance with the procedures set forth in this Section.

(iv) Closing of Issuance. Upon the issuance or sale of any Equity Rights in accordance with this Section, the Company shall deliver to each Exercising Member certificates (if any) evidencing such the Equity Rights, which Equity Rights shall be issued free and clear of any liens (other than those arising hereunder and those attributable to the actions of the purchasers thereof), and the Company shall so represent and warrant to the purchasers thereof, and further represent and warrant to such purchasers that such Equity Rights shall be, upon issuance thereof to the Exercising Members and after payment therefor, duly authorized, validly issued, fully paid and non-assessable. Each Exercising Member shall deliver to the Company the purchase price for the Equity Rights purchased by it by certified or bank check or wire transfer of immediately available funds. Each party to the purchase and sale of Equity Rights shall take all such other actions as may be reasonably necessary to consummate the purchase and sale.

(c) No Third Party Rights. The provisions of this Section, without limitation, are not for the benefit of any creditor or other Person (other than a Member) to whom any debts, liabilities or obligations are owed by, or who otherwise has any claim against, the Company or any Member, and no creditor or other Person shall obtain any rights under this Section or by reason of this Section, or shall be able to make any claim in respect of any debts, liabilities or obligations against the Company or any Member.

**3.8 No Interest Paid**. No Member shall receive any interest on such Member's Capital Contributions, Capital Account, or Units. Any loans made to the Company by a Member will not increase such Member's Capital Account or Units, but will be a debt due from the Company and repaid accordingly and in accordance with the terms of the loan. Nothing in this Section shall limit the return on capital (if any) to Members in accordance with the terms of this Agreement.

**3.9 No Withdrawal of Capital; No Termination upon Death**. No Member shall have the right to withdraw from the Company as a Member or otherwise to withdraw, demand, or receive from the Company or out of the Company's property and assets any part, and the Company shall not return to a Member, any part of such Member's Capital Contribution or Capital Account, except as expressly provided in this Agreement. Members shall have rights in respect of distributions from the Company, and the Manager shall have the rights, power and authority with respect to distributions (including, without limitation, whether a distribution will be made and the timing and amount of any distribution) exclusively as provided in this Agreement. The death of any Member shall not cause the dissolution of the Company. In such event, the Company and its business shall be continued by the remaining Member or Members in accordance with the terms and conditions of this Agreement.

### 3.10 Company Borrowings and Debt Financing(s).

(a) In General. Subject to the terms and conditions of this Agreement, if the Manager determines in its discretion that additional funds are required in order to achieve the purposes of the Company, including, without limitation, to fund working capital requirements, to fund fees, costs and expenses in connection with the ownership, holding, management, maintenance, and sale or disposition of the Company's properties and assets, and/or to service any indebtedness and obligations of the Company, the Company may seek and obtain loans, credit facilities, lines of credit, and debt financing from any Person (including, without limitation, any Member or any Affiliate of a Member) on such terms and conditions as the Manager may approve in its discretion. Subject to the terms and conditions of this Agreement, a Member or an Affiliate of any Member may make secured or unsecured loans to or for the benefit of the Company or in connection with any business or investment activity, subject to the approval of the Manager. If any Member or Affiliate of any Member shall make any loan or loans to the Company or advance money on behalf of the Company in accordance with the terms and conditions of this Agreement, then the amount of any such loan or advance shall not be treated as a Capital Contribution but shall be a debt due from the Company. The amount of any such loan or advance by a lending Member or its Affiliates shall be repayable out of the cash and assets of the Company. Such loan or advance shall bear interest and have such other terms at competitive market rates as reasonably determined by the Manager in accordance with the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement, no Member shall have any obligation or otherwise be required by the Company to guarantee Company liabilities, borrowings or indebtedness.

(b) Limited Preemptive Rights with Respect to Debt Financing Transactions. Except as expressly provided in Section 3.7 above with respect to Equity Rights as defined therein, no Member shall have any preemptive or similar participation right with respect to any debt financing effectuated or debt securities issued or sold by the Company in accordance with this Agreement.

### 3.11 Capital Accounts.

(a) The Company shall maintain a separate Capital Account for each Member in accordance with the following provisions:

(i) To each Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's allocable share of Profits, any items thereof which are specially allocated pursuant to **Article 4**, and the amount of any Company liabilities which are assumed by such Member or which are secured by, or subject to, any Company property distributed to such Member.

(ii) To each Member's Capital Account there shall be debited the amount of cash and the Fair Market Value of any Company property distributed to such Member pursuant to any provisions of this Agreement, such Member's allocable share of Losses, any items in the nature of expenses or losses which are specially allocated pursuant to **Article 4**, and the amount of any liabilities of such Member which are assumed by the Company or which are secured by, or subject to, any property contributed by such Member to the Company.

(b) Except as provided to the contrary in this Agreement, the foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with each Treasury Regulations. In the event the Manager shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Treasury Regulations, the Company may make such modification. The amounts debited or credited to Capital Accounts with respect to (i) any property contributed to the Company or distributed to a Member, and (ii) any liabilities secured by such contributed or distributed property or assumed by the Company or a Member shall be adjusted

in the event the Company determines that such adjustments are necessary or appropriate pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv). The Manager also may cause Capital Amounts to be revalued in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f), including, but not limited to, upon the admission of Additional Members to the Company, if such a revaluation is necessary to reflect the economic arrangement of all Members. The Manager also may make any appropriate modifications to such allocations in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulations Section 1.704-1(b).

(c) In the event of a Transfer of Units in accordance with this Agreement, the Capital Account balance and other rights attributable to such Units shall be transferred to the assignee. For purposes of determining the Capital Account balance of a Member attributable to a Unit and distributions to be made to a Member with respect to a Unit: (i) the Capital Account balances of the Members set forth on **Exhibit A** hereto, adjustments to such Capital Accounts relating to the allocation of Profits or Losses, distributions, and other items, and other attributes of a Member's Units, shall be apportioned and allocated in equal amounts among all Units held by a Member to which such balances, adjustments, or attributes relate, and (ii) Capital Contributions made by a Member shall be allocated and apportioned in equal amounts among all Units held by the contributing Member, except as may otherwise be specified in writing by such Member and agreed to in a written resolution duly adopted by the Manager.

### **3.12 Liability of Members.**

(a) Subject to Section 3.12(b) below and except for (i) specific obligations (and related liabilities) of Members to the Company as specified in this Agreement, and (ii) the Member's liability for Company indebtedness and obligations under the Delaware Act, no Member shall have any personal liability whatsoever in such Member's capacity as a Member, whether to the Company, to any of the Members, or to the creditors of the Company, for the debts, liabilities, contracts, or any other obligations of the Company, or for any losses of the Company. A Member shall not be required to lend any funds to the Company, to guarantee any Company loans or indebtedness, to make any further capital contributions to the Company, or to repay to the Company, any Member, or any creditor of the Company all or any fraction of any negative amount in a Member's Capital Account.

(b) In accordance with Applicable Law, a Member of the Company may, under certain circumstances, be required to return to the Company, for the benefit of Company creditors, amounts previously distributed to such Member. It is the intent of the Parties that no distribution to any Member shall be deemed a withdrawal of capital, and that no Member shall be obligated to pay any such amount to or for the account of the Company or any creditor of the Company. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Member is obligated to make any such payment, such obligation shall be the obligation of such Member only and not of any other Member.

(c) A Member shall not be personally liable for the payment or repayment of any amounts standing in the account of another Member including, but not limited to, the Capital Contributions. Any such payment or repayment, if required to be made, shall be made solely from the Company's assets.

(d) A Member shall have no personal liability to repay to the Company any portion or all of any negative amount of such Member's Capital Account.

**3.13 Limitations on Withdrawal of Capital Account.** A Member may not withdraw any amounts from such Member's Capital Account unless permitted by the Manager in its discretion. If a withdrawal is permitted by the Manager, the Manager will charge the withdrawing Member an amount equal to actual costs and expenses incurred by the Company in connection with such withdrawal of capital. In addition to the actual costs and expenses incurred in connection with a withdrawal of capital, the Manager may withhold an amount, determined in its

discretion, for liabilities and contingencies of the Company for which such withdrawing Member may be liable under this Agreement (the “**Contingency Reserve**”). After the Manager has determined in its discretion that the liabilities or the contingencies for which the Contingency Reserve was withheld have ceased to exist, any unused portion of the Contingency Reserve shall be returned to the applicable withdrawn Member as soon as it is reasonably practicable.

## **ARTICLE IV ALLOCATIONS**

**4.1 Determination of Profits and Losses.** The Company shall determine its Profits and Losses for each Fiscal Year in accordance with the method of income tax accounting adopted by the Manager consistently applied, and shall allocate Profits and Losses among the Members in the manner provided in this Section.

**4.2 Allocations.** The Company shall allocate the net amount of Profits or Losses for a period among the Members in such manner that, as of the end of such period, the Capital Account balance of each Member equals, or is as close as possible to, the Target Capital Account Balance of such Member. The allocations under this Section 4.2 shall be of the residual amounts of Profits and Losses arising during the period after giving effect to the special allocations of Section 4.4 below made for such period, which shall be made prior to allocations under this Section 4.2.

**4.3 Tax Allocations.**

(a) Except as otherwise provided in this Agreement, for Federal income tax purposes, the Company shall allocate all items of Company income, gain, loss, deduction, amount realized, basis, and credit, and the character and source of such items, among the Members in the same manner in which it allocates the corresponding items to Capital Accounts in accordance with Sections 4.2 or 4.4. The Company shall maintain such books, records, and accounts as are necessary to make such allocations.

(b) The Manager is authorized to make, for tax purposes only, allocations of income, gain, loss, or deduction, and to adopt such conventions, as are necessary or appropriate to comply with the relevant Treasury Regulations or Internal Revenue Service pronouncements under Section 704(c) of the Code, and in particular, in respect of a Capital Contribution of property other than cash and adjustments to the Book Value of Company assets at the times specified in the definition of Book Value. Allocations will be made under methods selected by the Manager and in a manner consistent with Treasury Regulations Section 1.704-3 and in conformity with Treasury Regulations Sections. 1.704-1(b)(2)(iv)(f) and 1.704-1(b)(4)(i).

**4.4 Special Allocations.**

(a) Certain Regulatory Allocations. The allocations set forth in Paragraphs (i), (ii), (iii), (iv), and (v) below shall be made to the extent applicable in the order set forth below.

(i) Allocations of Losses or items of expense or deductions to a Member shall not exceed the maximum amount which can be allocated to the Member pursuant to the limit set forth in Regulations Section 1.704-1(b)(2)(ii)(d). Allocations of such items in excess of such limit shall be made to the other Members pro rata in accordance with Percentage Interests and in accordance with the amounts not in excess of such amount for such other Members.

(ii) Items of income and gains shall be allocated to the Members in such manner as shall cause the Company to make allocations in accordance with provisions in the Regulations relating to: first, “minimum gain chargebacks” under Regulations Sections 1.704-2(f) and related provisions; second, “partner nonrecourse debt minimum gain chargebacks” under Regulations Sections 1.704-2(i)(4) and related provisions;

and third, “qualified income offsets” under Regulations Section 1.704-1(b)(2)(ii)(d) and related provisions.

(iii) In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (A) the amount such Member is obligated to restore, if any, pursuant to any provision of this Agreement, and (B) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of income and gain in the amount of such excess as quickly as possible; provided that an allocation pursuant to this Section 4.4(a)(iii) shall be made only if and to the extent that a Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Agreement (including this Section) have been tentatively made as if this Section 4.4(a)(iii) and the “qualified income offsets” provision of Section 4.4(a)(ii) were not in this Agreement.

(iv) Nonrecourse deductions within the meaning of Regulations Section 1.704-2(b)(1) shall be allocated to the Members pro rata in accordance with their Percentage Interests.

(v) Member nonrecourse deductions within the meaning of Regulations Section 1.704-2(i) shall be allocated to the Members who bears the economic risk of loss with respect to the particular partner nonrecourse liabilities to which they relate in accordance with such Regulations.

(b) Cumulative Special Allocations. The regulatory allocations provided in this Section 4.4 are intended to comply with certain requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2. Such regulatory allocations may affect results which would not be consistent with the manner in which the Members intend to allocate Profits and Losses. Accordingly, the Company shall allocate Profits, Losses, and other items among the Members so as to prevent the regulatory allocations from distorting the manner in which allocations would be made among the Members under Section 4.2 but for the application of the regulatory allocations. In general, the Company shall effectuate such reallocation by specially allocating other Profits, Losses and items of income, gain, loss, and deduction, to the extent they exist, among the Members so that the net or cumulative amount of the regulatory allocations and the special allocations to each Member is zero.

(c) Priority. The allocations under this Section 4.4 shall be made prior to the allocations under Section 4.2.

#### **4.5 Allocations in Event of Transfer: Pro-Rations.**

(a) Subject in all cases to Applicable Law, if there is a Transfer of all or any part of a Member’s Units in accordance with this Agreement, for purposes of allocations of Profits and Losses and distributions of cash and property: (i) the effective date of the Transfer as to the Company will be the effective date stated in the Transfer instrument or such other date as the assignor and assignee agree, but not earlier than the date the Manager receives written notice of the Transfer, or in the case of an involuntary Transfer, the date of the operative event; and (ii) distributions of cash and property with respect to any Units shall be made to the Person who is shown as the holder of such Units in the Company’s books at the time of the distribution.

(b) In the event of a change in a Member’s Percentage Interest during the course of a period as the result of the admission of a new Member, a Transfer of Units by a Member in accordance with this Agreement or any other event, allocations to such Member of Profits, Losses, and other items arising during such period shall be determined in accordance with a closing-of-the-books methodology as of the effective date of the Transfer; provided that, if the Treasury Regulations require another method for making such allocations in such case, or if the Manager approves another method for making such allocations which is reasonable and complies with the Treasury Regulations, then the allocations to such Member shall be made in accordance with such other method.



**4.6 Imputed Interest.** If any Member makes a loan to the Company, or the Company makes a loan to any Member, and interest in excess of the amount actually payable is imputed under Code Sections 7872, 483, or 1271 through 1288 or corresponding provisions of subsequent Federal income tax law, then any item of income or expense of the Company attributable to any such imputed interest shall be allocated solely to the Member who made or received the loan and shall be credited or charged to its Capital Account, and a corresponding Capital Contribution by or distribution to such Member shall be deemed to have occurred, as appropriate.

**4.7 Application of Law: Interpretation of Allocation Provisions.** For purposes of applying the Code and Regulations to the Company and the Members, references in the Code and Regulations to partnerships and partners shall be interpreted as applying to the Company and Members, respectively. The allocation provisions of this Agreement shall be interpreted and applied such that the allocations under this Agreement will be respected, in the judgment of the Manager, by applicable taxing authorities in accordance with the principles of Code Section 704(b) and the Treasury Regulations promulgated thereunder.

## **ARTICLE V DISTRIBUTIONS**

**5.1 Reserves; Timing of Distributions.** The Manager shall establish reserves for the definitive or projected needs of the Company in conducting its business and investment, purchase and ownership activities and/or in preserving its capital, with a consideration of, among other items, payments due on indebtedness (principal and interest) and contingencies. The Manager in its discretion shall determine the level of such reserves and the timing and amount of any and all distributions, and there shall be no obligation to declare or make a distribution from the earnings or Profits of the Company, except as expressly provided in this Agreement.

**5.2 Repayment of Debt to Members.** Prior to making any distributions to Members, the Members in the Manager's discretion may repay the entire principal and all accrued interest in respect of any loans made by Members or their Affiliates to the Company. The Company shall allocate any and all such payments proportionately among the lending Persons according to the total principal and interest outstanding under each loan, subject the express terms of any loan agreement, promissory note, subordination agreement, or other written instrument pertaining to a loan which requires the allocation of payments in a different manner.

**5.3 Distributions.** Subject to Sections 5.4, 5.5 and 5.6 below and the other terms and conditions of this Agreement:

(a) Net Cash from Operations to the Members shall be distributed at such times and from time to time and in such amounts as determined by the Manager as follows: (i) first, pro rata to the Members holding Class A Units until distributions hereunder reduce the Unpaid Preferred Return of such Members to zero; then (ii) thereafter, 70% of such distributions to the Members on a pro rata basis in accordance with their respective Percentage Interests of the Class A Units and 30% of such distributions to the Manager holding Class B Units, until the Company has achieved an internal rate of return ("IRR") of 15%; and (iii) thereafter, 50% to the Members on a pro rata basis in accordance with their respective Percentage Interests of the Class A Units and 50% of such distributions to the Manager holding Class B Units.

(b) Net Proceeds from Capital Transactions to the Members shall be distributed as follows: (i) first, pro rata to the Members holdings Class A Units until distributions hereunder reduce the Unpaid Preferred Return of such Members to zero; (ii) second, pro rata to the Members holding Class A Units until their Unreturned Capital Contributions have been returned in full; and (iii) thereafter, 70% to the Members holding Class A Units on a pro rata basis in accordance with their respective Percentage Interests of the Class A Units and 30% of such distributions to the Manager holding Class B Units.

Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make any distributions to the Members if such distributions would violate the Delaware Act or other Applicable Law or if such distributions are prohibited by the Company's then-applicable debt financing agreements.

In the event the Company makes distributions, it shall have no obligation to do so in kind, and no Member shall have the right to demand or receive any properly declared distribution by the Company in any form other than cash, regardless of the nature of such Member's prior Capital Contributions. If the Company chooses to distribute property other than cash to its Members, the amount of such distribution shall be deemed to be equal to the Fair Market Value of the property distributed, net of any liabilities which such property may be subject to or which may be assumed by the Members in connection therewith.

The Manager shall calculate the amount of distributions to be made (if any) in accordance with this Section, and may rely (and shall be protected in relying) on advice, reports and recommendations of its advisors (including the Company's legal counsel and accountants) in connection with determining such calculations.

Additionally, the Manager shall have the power to make minimum or periodic distributions to Members for purposes of funding the income tax liability associated with the Company's taxable income and gains ("**Tax Distributions**") in the Manager's discretion. In the event the Manager chooses to make Tax Distributions, and such distributions increase the amount of distributions to a Member beyond the amount to which such Member would be entitled in the absence thereof, the excess portion shall be considered an advance of future distributions of Net Distributable Cash allocable to such Member and shall be offset against subsequent distributions as promptly as possible. If any advances to a Member pursuant to this paragraph remain outstanding at the time of the Company's dissolution and liquidation, then the total amount thereof shall be paid from (and set off against) such Member's share of the liquidating proceeds that are distributable to the Member under this Agreement, and if necessary, against any other payments due from the Company to such Member or its Affiliate. For clarity, the Manager in its discretion shall determine the amount, if any, and timing of such minimum or periodic distributions to be made by the Company.

**5.4 Payments to Tax Authorities.** Notwithstanding anything to the contrary in this Agreement, the Company shall withhold such amounts as may be required pursuant to the Code (including Section 1446 thereof), Treasury Regulations thereunder, or any provision of any State, local, or foreign law with respect to any payment, distribution, or allocation of income to the Members, and such withheld amounts shall constitute and be treated for all purposes of this Agreement as amounts distributed to the Members to which such withholdings are attributable, and distributions to be made to such Members shall be reduced by the amount so withheld. The Company shall pay over to any Federal, state, local or foreign government any amounts required to be so withheld in accordance with Applicable Law.

**5.5 Withholding with Respect to Non-U.S. Persons.** The Manager shall have the power to pay on behalf of or with respect to each Member any amount of Federal, State, local, or foreign taxes which the Manager determines that the Company is required, under Applicable Law, to withhold or pay with respect to any amount payable, distributable, or allocable to each such Member pursuant to this Agreement. Any amount paid on behalf of or with respect to a Member pursuant to the preceding sentence (as opposed to withheld from distributions to such Member pursuant to Section 5.4 above) shall constitute an advance by the Company to such Member. The provisions of Section 5.3 above with respect to Tax Distributions shall apply to any such advance, and the Manager is hereby authorized to offset, and shall offset, the advance against amounts otherwise distributable or payable to such Member until the net amount of such advance is reduced to zero.

**5.6 Limitation on Distributions to Members.** The Company shall not distribute cash or property to any Member unless, after such distribution is made, the Fair Market Value of the Company's assets exceeds its liabilities, and unless such distribution is in compliance with any loan agreements or similar documents to which the Company is subject. Additionally, the Company shall have the right to apply any distribution or other amount

otherwise payable to a Member against any sum then due and owing to the Company from that Person.

## **ARTICLE VI MANAGEMENT AND OPERATIONS**

**6.1 Management of the Company.** Subject to the terms and conditions of this Agreement, the Manager is hereby granted the right, power, and authority to do on behalf of the Company all acts and things which are necessary, appropriate, or advisable to manage, and direct the management of, the Company's business and investments, operations, affairs and activities, and fulfill the mission and purposes of the Company, including but not limited to the following (as applicable, for and in the name and on behalf of the Company): (a) the power, at the sole expense of the Company, to conduct and manage the Company's business, properties and assets, activities, and affairs, including, without limitation, the power to exercise any and all voting, consent, approval, determination, and other rights with respect to the Company's interest(s) in the Land Trust (and thus, the Property) and the power to contract with, and compensate, a property manager to conduct the day-to-day business and affairs of the Land Trust (and thus, the Property); (b) the power to cause the Company to acquire, invest in, manage, operate, sell, license, transfer, or otherwise deal with the Company's other properties and assets; (c) the power to enter into contracts and agreements; (d) the power to obtain financing and refinancing, to borrow funds in furtherance of the Company's business and investment activity, to grant mortgages, security interests, or any other liens secured by the Company's assets or otherwise encumber or pledge the Company's assets and/or enter into loan, line of credit, revolving credit or other credit agreements, and any amendments, modifications, or extensions of any of the foregoing from time to time, and to make elections with respect to interest periods, interest rates, prepayment, or other material provisions under any financing; (e) the power to appoint officers, employees, and agents to render services in furtherance of the business, operations and affairs of the Company; (f) the power to create, authorize, and issue Units with such rights, powers, entitlements, preferences, privileges, and duties as determined by the Manager; (g) the power to organize, own, and operate subsidiaries for purposes of acquiring, investing in, owning, managing, operating and ultimately selling and disposing of any properties and assets; (h) the power to seek and obtain any permits, licenses, authorizations, or approvals required by any Governmental Authority in connection with the conduct of the Company's business, operations, and activities; and (i) the power to engage legal counsel to serve as the Company's primary counsel, and to file or defend lawsuits, and to engage and pay the fees and expenses of counsel, accountants, consultants and other advisors.

Subject to the terms and conditions of this Agreement, the Manager alone, in its discretion, shall take all actions in the conduct of the Company's business and investments, operations, activities, and affairs (including in connection with investment and purchase, ownership, holding and management, and liquidation of properties and assets). Subject to the terms and conditions of this Agreement, no actions of the Company or the Manager require the vote, consent, or approval of any Member(s), and all Company actions authorized by the Manager are and will be deemed to be authorized and valid in all respects. Any and all Persons dealing with the Company shall have the right to rely upon the actions of the Manager to bind the Company by its actions or signature. Only the Manager has the authority to act for or on behalf of, and bind, the Company.

**6.2 Authority of Manager.** The Members hereby consent to the exercise by the Manager of the powers and authority conferred on it by Applicable Law and under this Agreement, and to the Manager's exercise of discretion as provided hereunder.

**6.3 Appointment and Election of the Manager; Resignation; Vacancies.** The Members hereby acknowledge and agree and consent to the appointment of Thousand Roses Managers, LLC, a Delaware limited liability company, as the Manager of the Company. The Manager may not be removed by the Members. In the event of the Manager's resignation or dissolution without its assignment to and appointment of a successor Manager, a replacement Manager may be appointed only in writing by the principals of the Manager in accordance with the operating agreement of the Manager.

The Manager unilaterally may assign and transfer its Class B Units and delegate its obligations (without any consent of Members) to an Affiliate or successor entity; and provided further, that the Manager may delegate certain duties with respect to day-to-day management activities as and to the extent provided in this Agreement.

**6.4 Executive Officers; Election; Qualifications; Term of Office; Resignation; Removal; Vacancies.**

The Manager may delegate but shall not be required to delegate certain of its duties hereunder, limited to ordinary course and day-to-day operational tasks and functions of the Company, who may be but shall not be required to be Members. Any officers appointed hereunder shall have only those specific powers and authorities as designated by the Manager from time to time and shall receive compensation for their services only as provided for in written agreements with the Company, and any and all compensation thereunder shall be at prevailing market rates. Any number of offices may be held by the same person. Each such officer shall hold office until the officer's successor is appointed and qualified or until the officer's earlier resignation or removal. Any officer may resign at any time upon written notice to the Manager. The Manager may remove any officer with or without cause at any time. Any vacancy occurring in any office of the Company by death, resignation, removal, or otherwise may be filled for the unexpired portion of the term by the Manager.

**6.5 Action by Consent of Members.** Any matter reserved or put to the vote, consent, approval, or action of a Member or Members under this Agreement or Applicable Law may be effected by one or more written consents given by the consenting Members at or prior to the doing of the act or thing for which the vote, consent, approval, or action is solicited, or, at the Manager's discretion, by the affirmative vote by the consenting Members to the doing of the act or thing for which the vote, consent, approval, or action is solicited at any meeting called and held pursuant to the terms of this Section to consider the doing of such act or thing. A written consent of Members entitled to vote, give consent, or approve shall be sufficient to approve the matters and take the actions set forth therein if signed by Members holding sufficient Units and authority to take the action set forth therein in accordance with this Agreement. Except as expressly provided otherwise in this Agreement, each issue and matter reserved to the power and authority of the Members either under this Agreement or pursuant to Applicable Law, if any, shall require an affirmative vote, consent, or approval, as applicable, of Members holding a majority of the Percentage Interests in the Company.

**6.6 Meetings of Members.** Nothing in this Agreement shall require any meeting of Members in lieu of or in addition to any action by written consent, and, except as required by the Delaware Act, the Company shall not be required to hold a special or annual meeting of Member. If the Manager in its discretion elects to call a meeting of Members, it will provide not less than ten (10) days written notice of such meeting to all other Members. The written notice shall state the proposed action to be taken and shall include any information required by the relevant provisions of this Agreement or by Applicable Law. A Member may issue a proxy or power of attorney to any Person to act on its behalf at any meeting, and the actions of such Person consistently with such proxy or power of attorney shall be deemed to be the actions of such Member.

**6.7 Bank Accounts.** The Manager may from time to time open and maintain accounts for the funds and monies of the Company in the name of the Company with such banks or financial and other institutions selected by the Manager.

**6.8 Authority as to Third Persons.** No third Person dealing with the Company shall be required to investigate the authority of the Manager or secure the approval or confirmation by the Members of any act of the Manager in connection with the conduct of the Company's business. Without limiting the foregoing, the Manager shall have full authority to execute on behalf of the Company any and all agreements, contracts, leases, licenses, conveyances, deeds, mortgages, and other instruments, and the execution thereof by the Manager is the only execution necessary to bind the Company thereto (no signature or evidence of consent of any other Member is required to bind the Company). The Manager may authorize, by separate instrument or document, one or more officers or other Persons to execute all documents, instruments and agreements on behalf of the Company, and any such documents, instruments and agreements executed by such officer or other Person shall be binding upon

the Company as if executed by the Manager.

## **ARTICLE VII**

### **MANAGEMENT FEES; LIMITATION OF RIGHTS AGAINST MANAGER; INDEMNITY**

#### **7.1 Management Fees; Expenses and Reimbursements.**

(a) The Company shall pay the following fees in connection with the services rendered by the Manager (the “**Management Fees**”):

(i) an asset acquisition fee in an amount equal to two percent (2.0%) of the total purchase price of the Trust Interest, payable upon closing of the acquisition thereof by the Company; and

(ii) an asset management fee in an amount equal to one and one-half percent (1.5%) of the gross revenues of the Land Trust, payable on a quarterly basis.

(b) The Company shall pay or reimburse the Manager and/or its Affiliates for “Fund Organization and Offering Expenses” (as defined herein), excluding for this purpose any fees, commissions, and related costs paid by the Company to any broker-dealers in connection with subscriptions for the purchase and sale of Units.

(c) The Company also will pay or reimburse the Manager or its Affiliates for all costs and expenses incurred relating to the management and operation of the Company, the Land Trust, and the Property in accordance with the terms and conditions of this Agreement, including the “Fund Management and Administration Expenses” (as defined herein) (collectively, the “**Management Expenses**”). The Company may maintain reserves sufficient to pay the Management Expenses.

#### **7.2 Exculpation of Covered Persons.**

(a) Covered Persons. As used in this Agreement, the term “**Covered Person**” shall mean the Manager, any of the owners, principals, members, directors, managers, officers, employees, agents, or Affiliates of the Manager, and, at the discretion of the Manager, any other officer, employee, agent, or representative of the Company.

(b) Exculpation of Covered Persons. No Covered Person shall be liable to the Company, any other Member, any other Covered Person, or their respective successors and assigns for any charges, claims, demands, grievances, actions, causes of action, complaints, investigations, suits, proceedings, losses, damages, settlement payments, judgments, fines, penalties, deficiencies, amounts due, liabilities, obligations, costs or expenses (including, without limitation, reasonable attorneys’ and other professional fees and expenses, and all court costs through all appeals, and costs or expenses incurred in investigating, defending against, and/or settling such items) (all the foregoing collectively, “**Claims**”) incurred by reason of any action taken or omitted to be taken by such Covered Person unless it is proven that (i) such action or omission constitutes common law fraud or willful misconduct by such Covered Person, and (ii) such Claim arises or results directly and primarily from the action or inaction of the Covered Person, in either case as determined by a final, non-appealable order of a court of competent jurisdiction. In connection with the foregoing, the termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the Covered Person failed to act in good faith or, with respect to any criminal proceeding, had reasonable cause to believe that such Covered Person’s conduct was unlawful, or that the Covered Person’s conduct constituted common law fraud or willful misconduct.

(c) Good Faith Reliance. A Covered Person shall be fully protected in relying in good faith upon the

records of the Company and upon such information, opinions, reports, or statements (including financial statements and information, opinions, reports, or statements as to the value or amount of the assets, liabilities, Profits or Losses of the Company, or any facts pertinent to the existence and amount of assets from which distributions might properly be paid) of the following Persons or groups: (i) the Manager; (ii) one or more officers or employees of the Company; (iii) any attorney, independent accountant, appraiser, investment manager or advisor, or other expert or professional employed or engaged by or on behalf of the Company; or (iv) any other Person selected in good faith by or on behalf of the Company, in each case as to matters which such relying Person reasonably believes to be within such other Person's professional or expert competence. The preceding sentence shall in no way limit any Person's right to rely on information to the extent provided in the Delaware Act.

### **7.3 Liabilities and Limited Duties of Covered Persons.**

(a) Limitation of Duties of Covered Persons. To the maximum extent allowed by the Delaware Act, this Agreement, including without limitation Section 7.2(b) above, is not intended to create or impose, and does not create or impose, any fiduciary or similar duty or obligation on any Covered Person, including the Manager. Furthermore, to the maximum extent allowed by the Delaware Act, each of the Members and the Company hereby waives any and all fiduciary duties which, absent such waiver, may be implied or imposed by the Delaware Act or any other Applicable Law, and in doing so, acknowledges and agrees that the duties and obligation of each Covered Person to each other and to the Company are only as expressly set forth in this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person which otherwise may be existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person. To the extent that, at law or in equity, any Covered Person has duties and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for such Covered Person's good-faith reliance on the provisions of this Agreement.

(b) Discretion. Whenever in this Agreement a Covered Person is permitted or required to make a decision (including a decision that is in such Covered Person's "discretion" or under a grant of similar authority or latitude), the Covered Person shall be entitled to consider only such interests and factors as such Covered Person in its discretion determines to be appropriate, and shall have no duty or obligation to give any weight or consideration to any specific interest of or factors affecting the Company, the Members, or any other Person.

### **7.4 Indemnification: Advancement of Expenses.**

(a) Indemnification. To the fullest extent permitted by the Delaware Act, as the same now exists or may be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement, only to the extent that such amendment, substitution or replacement permits the Company to provide broader indemnification rights than the Delaware Act permitted the Company to provide prior to such amendment, substitution or replacement), the Company shall indemnify, hold harmless, defend, pay and reimburse each Covered Person against any and all losses, claims, damages, judgments, fines or liabilities, including reasonable legal fees or other expenses incurred in investigating or defending against such losses, claims, damages, judgments, fines or liabilities, and any amounts expended in settlement of any claims (collectively, "**Indemnified Losses**") to which such Covered Person may become subject by reason of:

(i) any act or omission or alleged act or omission performed or omitted to be performed on behalf of the Company or any Member in connection with the business of the Company; or

(ii) such Covered Person being or acting in connection with the business of the Company as a member, stockholder, Affiliate, manager, director, officer, employee or agent of the Company, any Member, or

any of their respective Affiliates, or that such Covered Person is or was serving at the request of the Company as a member, manager, director, officer, employee or agent of any Person including the Company;

provided that, (x) such Covered Person acted in good faith and in a manner believed by such Covered Person to be in, or not opposed to, the best interests of the Company and within the scope of such Covered Person's authority conferred on it by the Company and, with respect to any criminal proceeding, had no reasonable cause to believe its conduct was unlawful, and (y) such Covered Person's conduct did not constitute fraud or willful misconduct. In connection with the foregoing, the termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Covered Person did not act in good faith or, with respect to any criminal proceeding, had reasonable cause to believe that such Covered Person's conduct was unlawful, or that the Covered Person's conduct constituted fraud or willful misconduct.

(b) Advancement and Reimbursement of Expenses. The Company shall promptly advance to each Covered Person funds to pay for reasonable legal and other fees, costs and expenses to be incurred, and shall pay and reimburse each Covered Person for reasonable legal and other fees, costs and expenses incurred, in connection with investigating, preparing to defend or defending any claim, lawsuit or other proceeding (or bringing and cross-claim or counter-claim in connection therewith) relating to any Indemnified Losses for which such Covered Person may be indemnified pursuant to this Section; provided, however, that if it is finally judicially determined that such Covered Person is not entitled to the indemnification provided by this Section, then such Covered Person shall promptly reimburse the Company for any reimbursed or advanced expenses.

(c) Entitlement to Indemnity; Source of Payment. The indemnification and advancement and reimbursement of expenses rights provided under this Section shall not be deemed exclusive of any other rights to indemnification and/or advancement or reimbursement of expenses to which those seeking indemnification may be entitled under any agreement or otherwise. The provisions of this Section shall continue to afford protection to each Covered Person regardless of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to indemnification hereunder and shall inure to the benefit of the executors, administrators, legatees and distributees of such Covered Person.

(d) Funding of Indemnification Obligation. Notwithstanding anything contained herein to the contrary, any indemnification and advancement or reimbursement of expenses by the Company relating to the matters covered in this Section shall be provided out of and to the extent of Company assets only (including without limitation the proceeds from any insurance coverage), and no Member (unless such Member otherwise agrees in writing) shall have personal liability on account thereof other than in respect of Capital Contributions as and when called by the Manager in accordance with the terms of this Agreement.

(e) Savings Clause. If this Section or any portion hereof shall be invalidated or held to be void or unenforceable on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Covered Person pursuant to this Section to the fullest extent permitted by any applicable portion of this Section that shall not have been invalidated or held to be void or unenforceable and to the fullest extent permitted by Applicable Law.

(f) Indemnity for Liabilities under Guaranty. The Manager and any of its Affiliates may elect (but in no event shall be obligated or required under this Agreement) to execute one or more guaranty agreements or contribution and indemnification agreements providing for the guaranty of and/or contribution and indemnification with respect to indebtedness of the Company. The Company shall indemnify, defend and hold harmless the Manager and any of its Affiliates to the full extent permitted by Applicable Law against any and all claims, actions, causes of action, losses, damages, settlement payments, judgments, fines, liabilities, obligations, or expenses (including reasonable attorneys' and other professional fees and expenses, and all court costs through

trial and all appeals) incurred at any time in connection with any such guaranty agreement(s).

**7.5 Survival.** The provisions of this Article 7 shall survive the dissolution, liquidation, winding up and termination of the Company.

## **ARTICLE VIII TRANSFERABILITY OF UNITS**

### **8.1 No Transfers Permitted.**

(a) Except as expressly provided in Section 6.3 above with respect to the Manager and as permitted in this Article 8, the Units held by the Members (and the Class A Units represented thereby) shall be non-Transferable, and the Members shall have no right to Transfer any such Units (or interests) or any interest therein without the advance written consent of the Manager, which the Manager may grant or withhold in its discretion.

(b) The provisions of Section 8.1(a) shall not apply to any of the following Transfers by any Member (including the Manager or its Affiliate(s) in such Person's capacity as a Member holding Class A Units) of any of its Class A Units:

- (i) To an Affiliate of such Member;
- (ii) To such Member's spouse and lineal descendants (including adoptive relationships and stepchildren) (collectively, "**Family Members**");
- (iii) To a trust under which the distribution of the income and principal of such trust may be made only to such Member and/or any Family Member of such Member; or
- (iv) by will or by the laws of intestate succession, to such Member's executors, administrators, testamentary trustees, legatees, or beneficiaries;

provided, that, any Transfer permitted under this Section 8.1(b) shall still be subject to the terms and conditions of Section 8.2 below.

**8.2 Validity of Transfers.** In connection with any Transfer proposed and submitted to the Manager for approval under Section 8.1(a) above or permitted under Section 8.1(b), no such Transfer shall be valid or permitted, nor shall any transferee of Units by means of any such Transfer have any rights hereunder, unless and until all of the following conditions are satisfied or waived in writing by the Manager:

- (a) The transferee (if not already a Member prior to such Transfer) shall have executed and delivered to the Manager a joinder to this Agreement in form satisfactory to the Manager;
- (b) The transferor shall deliver to the Manager the fully executed and acknowledged written instrument of assignment or other applicable document setting forth the intention of the transferor to Transfer such transferor's Units to the transferee;
- (c) The transferor and transferee shall execute and acknowledge such other documents as the Manager reasonably deems necessary or desirable to effect such Transfer and admission of the transferee as a Member or to constitute the transferee as an assignee, as applicable;
- (d) If requested by the Manager, counsel reasonably satisfactory to the Manager shall have rendered



an opinion, at the transferor's sole cost and expense, that: (i) such Transfer may be effected without registration under the Securities Act of 1933, as amended (the "**Securities Act**"), or violation of applicable State securities laws, (ii) such Transfer will not result in the termination of the Company's tax treatment as a partnership for Federal or State income tax purposes, the termination of any governmental license or permit of the Company, or the termination of the limited liability of the Members under Applicable Law, (iii) if there is a loan, deed of trust, security agreement or other material contract to which the Company is a party or by which the Company or any of its properties or assets are bound or subject, such Transfer will not entitle the holder of the indebtedness secured thereby or other contractual party to accelerate the indebtedness or terminate or otherwise materially alter the terms of the agreement, and (iv) the Company will not be required to register under the Investment Company Act of 1940, as in effect at the time of rendering such opinion;

(e) The Manager (with advice of counsel) shall have determined that any such Transfer will not have an adverse legal, operational, tax or securities law effect upon the Company, and the Manager otherwise shall have approved the Transfer in its discretion; and

(f) The transferee has paid all reasonable expenses incurred by the Company (including without limitation legal fees) in connection with the determination of the transferee's and transferor's compliance with the foregoing provisions, or otherwise in connection with such Transfer.

**8.3 Unauthorized Transfers.** No Member may Transfer or otherwise mortgage, hypothecate, encumber, or permit or suffer an encumbrance, by operation of law or otherwise, all or any portion of such Member's Units in the Company, or income therefrom or rights attributable thereto, without properly complying with the terms of this Agreement. Any Transfer which does not conform to this Agreement shall be null and void *ab initio*. In the event that the Company is required by law or any court or other Governmental Authority or instrumentality to recognize a Transfer of Units which is not in compliance with the foregoing terms and conditions of this Section, then the transferee of the Transfer shall receive, hold, and be entitled to an assignee's economic interest only; shall not succeed to any voting, consent, or approval rights with respect to the transferred Units; and shall take such assignee's economic interest subject to the covenants and obligations of this Agreement.

#### **8.4 Other Transfers: Redemption.**

(a) Notwithstanding anything in this Agreement to the contrary, the Company shall have the right, but not the obligation, to redeem, repurchase, and liquidate the Class A Units at Fair Market Value of any Member who (i) attempts to Transfer any Class A Units in violation of this Agreement; or (ii) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization, or relief of debtors: (A) seeks or is subject to an order for relief or an order of adjudication as bankrupt or insolvent, or seeks or is subject to reorganization, arrangement, adjustment, or other relief with respect to its debts; (B) seeks or is subject to appointment of a receiver, trustee, custodian, or other similar official for all or any substantial part of its assets; (C) makes a general assignment for the benefit of its creditors; or (D) suffers a pledge, levy, or foreclosure sale to occur with respect to its Units.

If the Company exercises such right of purchase, it shall give written notice thereof to the transferring Member on or before the date that is fifteen (15) days after the later of the date the applicable triggering event occurs or the date the Manager has actual knowledge of the occurrence of such triggering event. The Company and the transferring Member mutually shall determine the Fair Market Value of the Class A Units to be transferred, or, in the absence of agreement, they mutually shall appoint an independent appraiser within thirty (30) days of the Company's written notice of exercise of its right of purchase. In determining Fair Market Value, such independent appraiser shall apply an income capitalization approach with reference to direct capitalization of income expectancies and distribution rights, same to be computed in accordance with generally accepted valuation principles. The independent appraiser's determination of Fair Market Value as aforesaid shall be

conclusive and binding, and the parties shall share the cost of the appraisal equally.

(b) The closing of any redemption under this Section shall take place on a date set by the Manager, which shall be within twenty (20) days of the Company's written notice of exercise of its right of purchase, or, if applicable, of the date of the valuation report delivered by the parties' appointed appraiser. Subject to Section 8.4(c), the purchase price hereunder shall be payable in immediately available funds at the closing. Each Member unconditionally and irrevocably acknowledges, consents, and agrees that, effective immediately upon the Manager's delivery of the purchase price for the redemption and purchase of the Units in question, the transferring Member's Class A Units shall be extinguished on the books and records of the Company, whereupon such Member shall have no further rights as a Member of the Company. The Manager shall amend **Exhibit A**, including the adjustment of Percentage Interests, upon the closing of any redemption hereunder.

(c) Notwithstanding the provisions of Section 8.4(b) to the contrary, the Company shall not be obligated to repurchase any Class A Units if there exists a Delay Condition. In such event, the Company shall notify the applicable Member in writing as soon as practicable of such Delay Condition and the Company may thereafter:

(i) Defer the closing any pay the purchase price at the earliest practicable date on which no Delay Condition exists, in which case the purchase price shall accrue interest at the then applicable federal rate from the latest date that the closing could have taken place pursuant to Section 8.4(b) above (the "**Intended Closing Date**") to the date the purchase price is actually paid; or

(ii) Pay the purchase price with an unsecured promissory note bearing interest at the then applicable federal rate from the Intended Closing Date until paid in full, which shall be fully subordinated in right of payment and exercise of remedies to the lenders' rights under any Financing Document.

(d) In connection with any transfer of Units under this Section 8.4:

(i) at closing, the Transferring Member shall execute and deliver to the Company such original ownership certificates, equity interest powers, and/or statements of assignment, fully endorsed in favor of the Company, as the Company reasonably determines to be necessary or advisable to transfer good right, title, and interest in and to the Units being Transferred; and

(ii) the Transferring Member shall represent and warrant in writing as follows (being the only required representations and warranties): (A) the Transferring Member alone owns and has good title to all legal and beneficial interest in and to the Units being Transferred, has the right, power, and authority to Transfer such Units to the Company without the consent of any other Person, has duly authorized the sale by all necessary action, and the sale is the valid, legal, and binding obligation of the Transferring Member, enforceable in accordance with the terms hereof; (B) such Units are not subject to, and are being transferred to the Company and clear of, any and all claims, liens, encumbrances, charges, mortgages, pledges, other adverse interests of any kind, and options, warrants, or other rights of any other Person; and (C) such Transfer is in accordance with and does not violate or result in a violation of any law, regulation, judgment, writ, agreement, or other arrangement applicable to the Transferring Member.

**8.5 Members and Assignees of Record.** The Manager and the Company shall be entitled to treat the record holder of the Units of a Member as the absolute owner thereof and shall incur no liability by reason of distributions made in good faith to such record holder, unless and until there has been delivered to the Company the assignment or other instrument of Transfer and such other evidence as may be reasonably required by the Company to establish to its satisfaction that an interest has been Transferred in accordance with the terms and conditions of this Agreement.

**8.6 Adjustment of Tax Basis of Company Property upon Certain Transfers.** In the event of a Transfer of Units by sale or exchange approved in accordance with this Section, the Manager may cause the Company to elect, pursuant to Code Section 754, to adjust the tax basis of the Company's assets as provided by Code Section 743.

**8.7 Units Subject to this Agreement.** In the event of any Transfer of Units or any rights therein pursuant to this Agreement, at any time and from time to time, the transferee shall take such Units pursuant and subject to all of the terms and conditions set forth in this Agreement.

## **ARTICLE IX DISSOLUTION; LIQUIDATION AND TERMINATION OF THE COMPANY.**

### **9.1 Dissolution.**

(a) The Company shall be dissolved upon the occurrence of any of the following events: (i) the sale or other disposition of substantially all of the Company's properties and assets; (ii) the withdrawal or dissolution of the Manager without the Manager's contemporaneous appointment of a successor Manager, unless, within ninety (90) days after such withdrawal or dissolution, the principals of the Manager appoint, effective as of the date of such withdrawal or dissolution, one or more additional Persons to serve as the successor Manager(s) of the Company; or (ii) the entry of a decree of judicial dissolution pursuant to the Delaware Act.

(b) 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 its Certificate has been canceled and the business of the Company wound-up and assets of the Company distributed as provided in Section 9.2 below.

### **9.2 Liquidation.**

(a) Upon dissolution of the Company, the Manager, or a liquidating trustee, if one is appointed, shall wind up the affairs of the Company and liquidate all or any part of its assets. The Manager or such liquidating trustee shall determine the time, manner, and terms of any sale or other disposition of such property and assets for the purpose of obtaining, in its opinion, a commercially reasonable value in the circumstances for same.

(b) The Company shall allocate Profits and Losses arising from such sales and distributions upon liquidation to the Member's Capital Accounts as provided in Article 4 above prior to making liquidating distributions to the Members. In settling accounts after dissolution, the assets of the Company shall be paid out first to creditors (including any creditors who are Members of the Company), whether by payment or by establishment of due and adequate reserves, in the order of priority as provided by Applicable Law, and then to the Members in accordance with the terms and conditions of Section 5.3 above.

(c) When the Manager or liquidating trustee has complied with the foregoing liquidation plan, the Members shall execute, acknowledge, and cause to be filed, as required by Applicable Law, an instrument evidencing the cancellation of the Company's Certificate.

## **ARTICLE X NO NON-COMPETITION COVENANTS**

**10.1 Other Business Ventures: Competition Permitted.** The Parties expressly acknowledge and agree that: (a) the Manager and its Affiliates are permitted to have, and presently may have or in the future may have, other business relationships or investments, ventures, agreements, or arrangements with entities engaged in the business

of the Company, other than through the Company (each of the foregoing, an “**Other Business**”); (b) the Manager and its Affiliates have or may develop ownership interests in and/or strategic relationships with businesses and investments which are or may be competitive with the Company; (c) none of the Manager or its Affiliates will be prohibited by virtue of the Manager’s service as the manager of the Company, or by virtue of any investment in the Company, from pursuing and engaging in any such activities; (d) none of the Manager or its Affiliates will be obligated to inform the Company or any Member of any such opportunity, relationship or investment (a “**Company Opportunity**”) or to present a Company Opportunity to the Company or any Member, and the Company hereby renounces any interest in a Company Opportunity and any expectancy that a Company Opportunity will be offered to it; (e) nothing contained herein shall limit, prohibit or restrict any director, manager, officer, or representative of the Manager from serving on the board of directors or other governing body or committee of any Other Business; and (f) the Members will not acquire, be provided with an option or opportunity to acquire, or be entitled to any interest or participation in any Other Business as a result of the participation therein by the Manager or any of its Affiliates. The Parties expressly authorize and consent to the involvement of the Manager and/or its Affiliates in any Other Business; provided, however, that any transactions between the Company and an Other Business will be on terms no less favorable to the Company than would be obtainable in a comparable arms-length transaction. The Parties expressly waive, to the fullest extent permitted by Applicable Law, any rights to assert any claim that such involvement breaches any fiduciary or other duty or obligation owed to the Company or any Member or to assert that such involvement constitutes a conflict of interest by such Persons with respect to the Company or any Member.

For the avoidance of doubt, and without limiting the terms of Section 7.3(a) above and the waivers made thereunder, no Member (including without limitation the Manager) will be deemed to violate any fiduciary duty or other obligation it may have under the Delaware Act, or any other implied duty or obligation arising under any other Applicable Law or this Agreement, if such Member (including without limitation the Manager), or its owners, directors, officers, managers, agents, or Affiliates, engages in or possesses an interest in any other business venture, including business activities that are the same as or similar to those conducted by the Company (even if they may be considered competitive with those of the Company).

**10.2 Affirmation.** The Members acknowledge and agree that the terms and conditions of this **Article X** are fair and reasonable under the circumstances and are a material inducement to the Manager’s agreement to enter into and perform this Agreement.

## **ARTICLE XI CONFIDENTIALITY**

**11.1 Definitions.** As used herein, the term “**Confidential Information**” means any information of a confidential or proprietary nature of the Company, and its business, properties, and assets which is disclosed to any Member, whether before or after the date of execution hereof and irrespective of the format in which the information is provided. Confidential Information includes, without limitation, information relating to due diligence of investment opportunities, pending contracts, business plans, acquisition and other pricing information, investor lists, contact lists, investor and investment leads, marketing plans and information, pricing information for goods and services, personnel data, other information regarding the lenders, investors, vendors, and customers to and of the Company, financial information, plans, records, contracts, agreements, computer programs, manuals, source codes for any software programs, all intellectual property owned or licensed by the Company, and any other confidential information pertaining to the financial condition, business or investment activities, or business or investment prospects of the Company which has material value to the Company and significantly affects the successful conduct of its business and investment activity and goodwill. The term “Confidential Information” also shall be deemed to include all notes, analyses, compilations, summaries, studies, extracts, interpretations, or other documents prepared by any representatives or agents of the Company which contain, reflect, or are based upon, in whole or in part, the information furnished by or on behalf of the Company.

The term Confidential Information does not include information which (a) is or becomes generally available to the public other than as a result of a disclosure by the Member; (b) was within the Member's possession prior to being furnished to the Member by or on behalf of the Company, provided that the source of such information was not known by the Member to be bound by a confidentiality agreement with or other contractual, legal, or fiduciary obligation of confidentiality to the Company or any other party with respect to such information; or (c) becomes available to the Member on a non-confidential basis from a source other than the Company or any of the Company's representatives or agents, provided that such source is not known or reasonably anticipated to be bound by a confidentiality agreement with or other contractual, legal, or fiduciary obligation of confidentiality to the Company any other party with respect to such information.

**11.2 Confidentiality.** Each Member covenants and agrees that, from and after the date of execution of this Agreement, he shall keep all Confidential Information received from the Company confidential, and will not disclose or use any Confidential Information in any manner whatsoever, except as expressly permitted herein. Notwithstanding the foregoing: (a) the receiving Member may make any disclosure of such Confidential Information to which the Manager gives its prior written consent; and (b) the receiving Member may disclose the Confidential Information to its representatives and agents who need to know such information for the sole purpose of giving professional advice to such Member, who agree to keep such Confidential Information confidential, and who are provided with a copy of this Section and agree in writing to be bound by the terms and conditions hereof to the same extent as if they were Parties hereto. In all events, the receiving Member shall be responsible for any breach of this Agreement by any of its representatives or agents, and the receiving Member agrees to take, at its sole expense, all reasonable measures to restrain its representatives and agents from prohibited or unauthorized disclosure or use of the Confidential Information.

**11.3 Legally Required Disclosures.** In the event that the receiving Member is requested or required (by oral questions, interrogatories, subpoena, civil investigative demand, or othersimilar process) to disclose any of the Confidential Information, it shall provide the Manager with prompt written notice of any such request or requirement so that the Company may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by the Company, the receiving Member nonetheless, in the written opinion of counsel, is legally compelled to disclose Confidential Information to any tribunal or else stand liable for contempt or suffer other censure or penalty, then the receiving Member may disclose, without liability hereunder, to such tribunal only that portion of the Confidential Information which such counsel advises is legally required to be disclosed, provided that the receiving Member exercises its best efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the Company to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information by such tribunal.

## **ARTICLE XII SURVIVAL; INDEMNITY**

**12.1 Survival.** The representations, warranties, covenants, and obligations contained in this Agreement, including without limitation all obligations relating to indemnification and advancement of expenses, shall survive the execution and delivery of the Agreement, shall survive the term and the dissolution, liquidation, winding up, and termination of the Company, and shall remain in full force and effect until a claim based thereon is barred by any applicable statute of limitations.

**12.2 Indemnity: In General.** Each Member for itself shall defend, indemnify, and hold the Company, the Manager, their respective Affiliates, each of the Company's and the Manager's officers, employees, and agents, the other Members, and their respective successors and assigns (the "**Indemnitees**") harmless from and against any and all claims, actions, causes of action, losses, damages, settlement payments, judgments, fines, liabilities,

obligations, or expenses (including reasonable attorneys' and other professional fees and expenses, and all court costs through all appeals) incurred in investigating or defending against such items, and any amounts expended in settlement of any such items, which may be imposed upon, incurred by, or asserted against any Indemnitee arising out of, based upon, or resulting from (a) any inaccuracy or breach of any representation or warranty of such Member contained in this Agreement or any document, certificate, or instrument delivered by or on behalf of such Member in connection herewith; and/or (b) any breach or nonfulfillment of any covenant or agreement of such Member contained in this Agreement or any document, certificate, or instrument delivered by or on behalf of such Member in connection herewith.

### **ARTICLE XIII AMENDMENTS**

**13.1 Adoption of Amendments.** Notwithstanding any other provision of this Agreement to the contrary, the Manager shall have the power, right, and authority unilaterally to amend this Agreement without the consent of any Member (and may execute such amendment pursuant to the power of attorney granted to it under Section 13.3 below): (a) to reflect ministerial changes and applicable changes to the information set forth in **Exhibit A**; (b) to cure any ambiguity or mistake, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provision with respect to matters or questions arising under this Agreement which will not be inconsistent with the provisions of this Agreement; and (c) to comply with Applicable Law and regulations. In connection with the foregoing Clause (a), the Manager shall have the right to amend this Agreement to reflect any authorization, issuance, sale, redemption, repurchase or Transfer of Units effectuated in accordance with the terms and conditions of this Agreement and to reflect any adjustment of Percentage Interests of the Members as a result thereof.

**13.2 Adoption of Amendments by the Manager and Members.** In addition to the foregoing, this Agreement may be amended or modified in a writing agreed to and executed by the Manager and Members acting by a majority of the holders of Class A Units, whereupon any such written amendment or modification will be binding upon the Company and each Member; provided, however, that any amendment or modification which adversely revises the rights or obligations of any Member in a manner disproportionately either (a) to such Member relative to the rights of other Members in respect of Units of the same class or series, or (b) to a class or series of Units relative to the rights of another class or series of Units, in each case shall be effective only with such Member's consent or the consent of the Members holding a majority of the total issued and outstanding Units in such class or series, as applicable.

**13.3 Power of Attorney.** On the adoption of any authorized amendment to this Agreement, the amendment shall be executed and delivered by the Manager and all of the Members and, only if necessary under Applicable Law, be recorded in the proper records of each jurisdiction in which recordation is necessary for the Company to conduct business or to preserve the limited liability of the Members. Each Member hereby irrevocably appoints and constitutes the Manager as such Member's agent and attorney-in-fact to execute, swear to, and record any and all such authorized amendments. The power of attorney given herewith, together with all other powers of attorney granted in this Agreement, are irrevocable, are coupled with an interest, and shall survive any withdrawal (if and as permitted under this Agreement) of a Member granting it.

**13.4 Amendments and Waiver.** This Agreement may be amended only in accordance with the terms and conditions of this Article. Each Member expressly waives any claim that this Agreement may be modified now or at any time in the future by the Members by any of the following means: (a) orally; (b) by implication or any course of dealing; (c) in a record (including, without limitation, electronic mail) which is not signed by the Parties whose consent is required under this Article to effectuate such amendment; or (d) any combination of the foregoing.

## ARTICLE XIV RECORDS AND ACCOUNTING; REPORTS; TAX MATTERS

**14.1 Records and Accounting.** The books and records of the Company shall be kept on such basis of accounting as may be determined by the Manager. Proper and complete records and books of account of the business of the Company, including a list of the names and addresses and the number and class of Units of all Members, shall be maintained by the Manager at the Company's principal place of business, and each Member or such Member's duly authorized representative shall have access to them, upon reasonable notice and for a proper purpose, at all reasonable times during business hours. Any Member, or such Member's duly authorized representatives, upon paying the costs of collection, duplication and mailing, shall be entitled for any proper purpose to a copy of the list names and addresses and of the Members and number and class of Units owned by the Members and other records or books specified in Applicable Law. Such information shall be used by the Members for Company purposes only.

**14.2 Financial Statements; Reports.** Beginning with the year ending December 31, 2023, and as soon as available and in any event within 120 days after the end of each Fiscal Year of the Company, the Company shall provide each Member financial statements of the Company (including a balance sheet, income statement, and statement of cash flows), which may be, in the Manager's discretion, but shall not be required to be, compiled, audited, or reviewed, as well as any other information which the Manager deems to be necessary or appropriate, together with a statement of each Member's Capital Account.

**14.3 Tax Information.** For each Fiscal Year of the Company, the Manager shall use commercially reasonable efforts to prepare and deliver to each Person who was a Member at any time during such Fiscal Year, within one hundred and eighty (180) days after the last day of such Fiscal Year, all information necessary for the preparation of such Member's U.S. Federal and any State income tax returns, including without limitation a schedule or statement showing each Member's share of Profits or Losses, and the amount of any distributions made to or for the account of such Member pursuant to this Agreement.

**14.4 Partnership Representative.**

(a) **Appointment.** The Members hereby appoint the Manager as the "partnership representative" (the "**Partnership Representative**") as provided in Code Section 6223(a) (as amended by the Bipartisan Budget Act of 2015 ("**BBA**")). The Partnership Representative may resign at any time. Upon any such resignation, the Manager shall appoint a new Partnership Representative.

(b) **Tax Examinations and Audits.** The Partnership Representative is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by Taxing Authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. Each Member agrees that such Member will not independently act with respect to tax audits or tax litigation of the Company, unless previously authorized to do so in writing by the Partnership Representative, which authorization may be withheld by the Partnership Representative in its sole and absolute discretion. The Partnership Representative shall have sole discretion to determine whether the Company (either on its own behalf or on behalf of the Members) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by any applicable taxing authority. The Company and its Members shall be bound by the actions taken by the Partnership Representative.

(c) **BBA Elections.** In the event of an audit of the Company that is subject to the partnership audit procedures enacted under Section 1101 of the BBA (the "**BBA Procedures**"), the Partnership Representative, in its sole discretion, shall have the right to make any and all elections and to take any actions that are available to be made or taken by the Partnership Representative or the Company under the BBA Procedures (including any

election under Code Section 6226 as amended by the BBA). If an election under Code Section 6226(a) (as amended by the BBA) is made, the Company shall furnish to each Member for the year under audit a statement of the Member's share of any adjustment set forth in the notice of final partnership adjustment, and each Member shall take such adjustment into account as required under Code Section 6226(b) (as amended by the BBA).

(d) Tax Returns and Tax Deficiencies. Each Member agrees that such Member shall not treat any Company item inconsistently on such Member's Federal, State, foreign or other income tax return with the treatment of the item on the Company's return. Any deficiency for taxes imposed on any Member (including penalties, additions to tax or interest imposed with respect to such taxes and taxes imposed pursuant to Code Section 6226 as amended by the BBA) will be paid by such Member and if required to be paid (and actually paid) by the Company, such Member shall indemnify and hold harmless the Company for all amounts so paid. The provisions of this paragraph shall survive termination of this Agreement and/or a Member ceasing to be a member of the Company.

(e) Income Tax Elections. Subject to the terms and conditions of this Agreement, the Partnership Representative shall have sole discretion to make any determination regarding income tax elections it deems advisable on behalf of the Company; provided, that the Partnership Representative will make an election under Code Section 754, if requested in writing by another Member.

(f) Indemnification. The Company shall defend, indemnify, and hold harmless the Partnership Representative against any and all liabilities sustained as a result of any act or decision concerning Company tax matters and within the scope of the Partnership Representative's responsibilities, so long as such act or decision was done or made in good faith and does not constitute gross negligence or willful misconduct.

## ARTICLE XV REPRESENTATIONS OF MEMBERS

**15.1 Investor and Investment.** Each of the Member represents and warrants as to itself as follows:

(a) Such Member either alone or together with its representatives possesses such expertise, knowledge, and sophistication in financial and business matters generally, and in the type of business in which the Company will engage in particular, that the Member is capable of evaluating the merits and economic risks of acquiring and holding the membership interests and is able to bear all such economic risks of such ownership now and in the future.

(b) Such Member is acquiring the Units for its own account (and not as a nominee or agent for another person or entity), for investment purposes and not with a view to distribute or sell the Units or any part thereof, and has no present intention of selling or otherwise distributing the Units or any part thereof.

(c) Such Member has such knowledge and experience in financial, business and private, illiquid investment matters that he is capable of evaluating the merits and risks of an investment in the Company and the Units. The Member is familiar with and understands the proposed business, operations, and investment activities of the Company.

(d) Such Member acknowledges and understands that: (i) the Units have not been registered for sale under the Securities Act or the securities laws of any State or other jurisdiction in reliance upon exemptions therefrom, which exemptions depend upon, among other things, the bona fide nature of the investment intent of such Member and accuracy of certain of its statements, representations and warranties as expressed herein; (ii) the Units must be held and not sold until such Units are registered under the Securities Act and any applicable securities laws of any State or other jurisdiction, unless an exemption from such registration is proven (to the



Manager's satisfaction) to be available, and otherwise may be sold or transferred only in compliance with this Agreement; (iii) the Company is under no obligation to so register the Units, has no plan or intention to register the Units, and the Member may be required to hold the Units indefinitely; and (iv) there is not now any public or other market for the Units.

**15.2 Conflict of Interest.** Each Member has been advised that a conflict of interest may exist between its interests and those of the Company and/or those of the other Members and/or Manager, and has been advised to seek the advice of independent legal counsel in the course of preparing and executing this Agreement. Said Member has had the opportunity to obtain the advice of independent legal counsel and, in executing this Agreement, explicitly acknowledges that Bryn Law Group has represented only the Company and the Manager in the course of preparing this Agreement and has not represented any Member individually. By execution of this Agreement, the Members acknowledge that they either have retained separate legal counsel for this purpose or have chosen not to do so.

**15.3 Tax Matters.** Each Member has been advised that this Agreement may raise U.S. Federal, State, local, and/or foreign income tax issues and other tax implications, and has been advised to seek the advice of independent tax counsel. Said Member has had the opportunity to obtain the advice of independent tax advisors. By execution of this Agreement, the Members acknowledge that they either have retained separate tax advisors for this purpose or have chosen not to do so.

## ARTICLE XVI ADDITIONAL PROVISIONS

**16.1 Waiver of Partition.** Each Member hereby waives any right to seek a court decree of dissolution or partition or to seek the appointment by a court of a liquidator for the Company. No Member will make, either directly or indirectly, any application for dissolution, or take any action to require partition or appraisal of the Company or of any of its properties or assets, and, notwithstanding any provisions of Applicable Law to the contrary, each Member (for himself and his legal representative, heirs, successors, and assigns) hereby irrevocably waives any and all right to maintain any action for partition or to compel any sale with respect to his or her interest in the Company.

**16.2 Equitable Remedies.** Each Party hereto acknowledges that a breach or threatened breach by such Party of any of its covenants and obligations under this Agreement would give rise to irreparable harm to the other Parties, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by such Party of any such covenants or obligations, each of the other Parties hereto shall be entitled, in addition to any and all other rights and remedies which may be available to them in respect of such breach, to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that which be available from a court of competent jurisdiction (without, to the extent provided by Applicable Law, any requirement to post bond).

**16.3 Remedies.** The rights and remedies of the Parties under this Agreement are cumulative; each Party shall have all rights, remedies, and relief provided by law or equity; and nothing in this Agreement shall be construed to prevent any Party from seeking and recovering monetary or other damages sustained by such Party as a result of any breach or violation of the covenants or agreements set forth in this Agreement.

**16.4 Third-Party Beneficiaries.** Except for the covenants and obligations provided in Section 7.2 (Exculpation of Covered Persons), Section 7.3 (Liabilities and Duties of Covered Persons), and Section 7.4 (Indemnification; Advancement of Expenses), which shall be for the benefit of and enforceable by Covered Persons as described therein, and Section 12.2 (Indemnity), which shall be for the benefit of and enforceable by the Indemnitees as described therein, this Agreement is for the sole benefit of the Parties (and their respective successors and permitted

assigns), and nothing herein, express or implied, is intended to or shall confer upon any other Person, including any creditor of the Company, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**16.5 Further Assurances.** In connection with this Agreement and the transactions contemplated hereby, the Company and each Member hereby agrees, at the request of the Manager, to execute and deliver such additional documents, instruments, conveyances, and assurances and to take such further actions as may be required to carry out the provisions hereof and give effect to the transactions contemplated hereby. Without limiting the foregoing, each Member agrees that it will execute and deliver to the Manager, promptly upon demand, any additional affirmations and signatures to this Agreement in such form (including witnessed and notarized form) as the Manager in its sole discretion determines to be necessary or advisable.

**16.6 Notices.** Any notice or other communication required to be given hereunder to any Member shall be at the address of such Member provided to the Company by the Member in writing. Any notice or other communication required to be given hereunder to the Company shall be at the principal office of the Company as stated in Section 1.2 above. The Manager may change the location of the Company's principal office upon notice thereof to the Members. All notices, elections, offers, acceptances, and other communications hereunder shall be in writing and shall be delivered in person with written acknowledgment by the recipient of such delivery; by facsimile/telecopy with confirmation, with a copy also sent by United States Mail; by national courier service with receipt and tracking number; by United States Mail by way of certified or registered mail, return receipt requested, to the address provided by each Member to the Manager, or to the Company at its principal business address; or by electronic mail (at email addresses provided in writing to the Manager), with a copy also sent by United States Mail. A notice, election, offer, acceptance, or other communication shall be deemed to be received: (a) if by personal delivery, on the date delivered with written acknowledgment by the recipient of such delivery; (b) if by facsimile/telecopy or electronic mail (in each case, with a copy also sent by United States Mail), on the date confirmed as sent (to the proper facsimile number or electronic mail address) by receipt / statement of the transmitting machine or computer; (c) if by national courier service, on the date delivered per the courier's receipt; and (d) if by United States Mail by way of certified or registered mail, return receipt requested, on the date delivered with written acknowledgment on the return receipt.

**16.7 Time of the Essence.** Time shall be of the essence with respect to any and all deadlines, dates and periods stated in this Agreement for a notice, payment, redemption or other action (including, without limitation, with respect to all capital contribution and capital call funding obligations provided hereunder).

**16.8 Entire Agreement; Headings; Gender References.** This Agreement, together with the Subscription Documents, and all exhibits and schedules referenced herein or therein, constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by any Party other than those set forth expressly in this Agreement. In the event of an inconsistency or conflict between the provisions of this Agreement and any provision of the Subscription Documents, this Agreement shall control. Headings in this contract are for convenience and reference only and shall not be used to interpret or construe provisions hereunder. All references in this Agreement shall be gender neutral, such that the masculine shall include the feminine and vice versa, and neutral references shall encompass both. Where applicable, the singular shall include the plural and *vice versa*.

**16.9 Severability.** Should any provision of this Agreement be held by a court of competent jurisdiction to be enforceable only if modified, or if any portion of this Agreement shall be held as unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the Parties with any such modification to become a part hereof and treated as though originally set forth in this Agreement. The Parties further agree that any such court is expressly authorized to modify any

such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement or by making such other modifications as it deems warranted to carry out the intent and agreement of the Parties as embodied herein to the maximum extent permitted by Applicable Law. Additionally, the Parties expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.

**16.10 Non-Waiver.** No failure to exercise, and no delay in exercising, any right, power or privilege under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege hereunder preclude the exercise of any other right, power or privilege. No waiver of any breach of any provision shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision, nor shall any waiver be implied from any course of dealing between the Parties hereto. No extension of time for performance of any obligations or other acts hereunder or under any other agreement shall be deemed to be an extension of the time for performance of any other obligations or any other acts.

**16.11 Binding Effect; Assignment.** The rights and obligations of this Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Each Member covenants and agrees that it will not make or assert any claim in any matter, action, or legal proceeding which challenges the validity, effectiveness, and enforceability of any of the terms and conditions of this Agreement. Except as expressly provided herein, the rights and obligations under this Agreement of any Party hereto may not be Transferred, assigned, or delegated by any such Party.

**16.12 No Presumptions.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. The Parties hereto intend that each covenant and agreement contained herein shall have independent significance. If any Party has breached any covenant or obligation contained herein in any respect, the fact that there exists another covenant or obligation relating to the same subject matter (regardless of the relative levels of specificity) which such Party has not breached shall not detract from or mitigate the fact that such Party is in breach of the first covenant or obligation.

**16.13 Governing Law.** All issues and questions concerning the application, construction, validity, interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) which would cause the application of laws of any jurisdiction other than those of the State of Delaware.

**16.14 Submission to Jurisdiction.** The Parties hereby agree that any suit, action or proceeding seeking to enforce, interpret, or challenge the enforceability of any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort or otherwise, shall be brought exclusively in the federal or state courts located in Polk County, Florida, so long as one of such courts shall have subject-matter jurisdiction over such suit, action or proceeding, and the Parties further agree that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Florida. Each of the Parties hereby unconditionally and irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and unconditionally and irrevocably waives, to the fullest extent permitted by Applicable Law, any

objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient form

**16.15 Waiver of Jury Trial.** WITH RESPECT TO ANY SUIT FOR THE ENFORCEMENT, INTERPRETATION, OR CHALLENGE TO THE ENFORCEABILITY OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, EACH PARTY HEREBY AGREES TO THE FULLEST EXTENT PERMITTED BY LAW NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY CLAIM, COUNTERCLAIM, OR OTHER ACTION ARISING IN CONNECTION HERewith. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY OTHERWISE WOULD ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

**16.16 Attorneys' Fees.** In any suit, action, or proceeding to enforce, interpret, or challenge the enforceability of this Agreement, the prevailing Party in such suit, action, or proceeding shall be entitled, in addition to all other damages to which it may be entitled, to its reasonable attorneys' fees, court costs, and all other costs of litigation or other action, through all appeals.

**16.17 Compliance with Laws.** Notwithstanding anything to the contrary set forth in this Agreement, in the case of the Transfer of any Units, the existing or new Members, as applicable, must provide documentation, at their cost, reasonably acceptable to the Manager to demonstrate compliance with all laws, statutes, orders, rules and regulations applicable to the Company and/or the Company's lenders, including without limitation the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001), as amended, and any other laws, statutes, orders, rules and regulations of the United States government and its various executive departments, agencies and offices, related to the subject matter of the Patriot Act, and/or of the U.S. Department of the Treasury's Office of Foreign Assets Control.

**16.18 Counterparts; Effectiveness; Electronic Execution.**

(a) This Agreement may be executed in several counterparts and by each Party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the Party against whom enforcement is sought. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) The words "execution," "signed," "signature," and words of like import shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law. An electronic signature for this purpose means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a Party with the intent to sign such record, including facsimile or e-mail electronic signature.

*[Balance of page intentionally left blank; signatures follow on next page]*

IN WITNESS WHEREOF, the Parties have executed this Operating Agreement effective as of the Effective Date written above.

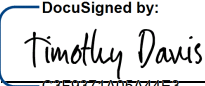
COMPANY:

**Thousand Roses Fund, LLC,**  
a Delaware limited liability company

By: **Thousand Roses Managers, LLC,**  
a Delaware limited liability company, its Manager

By: **TAGER Thousand Roses, LLC,**  
a Delaware limited liability company, its Manager

By: **TAGER Capital Management, LLC,**  
a Delaware limited liability company, its Manager

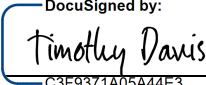
DocuSigned by:  
By:   
Name: Timothy Davis  
Title: Manager

MANAGER:

**Thousand Roses Managers, LLC,**  
a Delaware limited liability company

By: **TAGER Thousand Roses, LLC,**  
a Delaware limited liability company, its Manager

By: **TAGER Capital Management, LLC,**  
a Delaware limited liability company, its Manager

DocuSigned by:  
By:   
Name: Timothy Davis  
Title: Manager

**EXHIBIT A****Members, Capital Contributions, and Units**

**Class A Members:** See attached.

**Class B Member**

<b>Member Name / Address</b>	<b>Units (Class B)</b>	<b>Percentage Interest (Class B)</b>	<b>Initial Capital Contribution</b>
Thousand Roses Managers, LLC 255 S Ingraham Avenue, Suite 4 Lakeland, FL 33801	1	100%	\$0.00
<b>TOTALS:</b>	<b>1</b>	<b>100%</b>	<b>\$0.00</b>