

**OPERATING AGREEMENT
OF
AXIS GROWTH LLC
A DELAWARE LIMITED LIABILITY COMPANY**

OPERATING AGREEMENT

OF

AXIS GROWTH LLC

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OPERATING AGREEMENT

OF

AXIS GROWTH LLC

This Operating Agreement (*Agreement*) of Axis Growth LLC, a Delaware limited liability company (*Company*), is made by the Members to provide for the governance and operations of the Company and the rights and obligations of each Member regarding the Company. This Agreement is effective on the date of the last signature of any party to this Agreement (including any Managers) and will apply to any Additional Members admitted in accordance with its terms. In consideration of the mutual promises in this Agreement, the parties to this Agreement agree to be legally bound by its terms.

ARTICLE 1 **ORGANIZATIONAL MATTERS**

Section 1.01 Company Formation

The Company became a limited liability company under the laws of the State of Delaware, and specifically under the Delaware Limited Liability Company Act, upon filing the Articles of Organization as required by the Delaware Limited Liability Company Act.

Section 1.02 Company's Name

The Company's name is Axis Growth LLC. The Manager may change the name of the Company, subject to the terms of this Agreement and Applicable Law.

Section 1.03 Company's Purpose

The Company's purpose is to engage in any lawful act or activity for which limited liability companies may be formed under the Act and all activities necessary or incidental to that purpose. Specifically, the Company, at the Manager's sole discretion, aims to invest primarily in secured notes backed by real estate properties and businesses. The Company may also invest in actual real estate properties as a secondary priority. The Company has all the powers necessary or convenient to carry out its purposes, including the powers granted by the Act.

Section 1.04 Company's Principal Office and Location of Records

The street address of the principal office in the United States where the Company maintains its records is 13337 South St #351, Cerritos, CA 90703.

Section 1.05 Agent for Service of Process and Registered Office

The Company's initial Agent for Service of Process is Northwest Registered Agent Service, Inc., and the Company's initial registered office is located at 8 The Green STE B, Dover, DE 19901.

Section 1.06 Company's Term

The Company's duration is perpetual. The Company began on the date the Articles of Organization were filed with the Delaware Secretary of State and will continue until terminated or dissolved as provided in this Agreement.

Section 1.07 No Partnership Intended for Non-Tax Purposes

The Members have formed the Company as a limited liability company under the Act and do not intend to form a partnership under any partnership or limited partnership act. The Members do not intend to be partners with each other or with any Third Party other than for federal and state income tax purposes. If any Member represents to another person that the Member or any other Member is a partner or that the Company is a partnership, the Member making the wrongful representation will be liable to any other Member who incurs personal liability because of the erroneous representation.

ARTICLE 2

TAX MATTERS

Section 2.01 Taxation as a Partnership

The Members intend to establish an entity that is subject to federal and state income taxation as a partnership. Unless the Voting Members elect not to be treated as a partnership for federal income tax purposes, the federal income tax basis of a Member's Interest and all other matters relating to the distributive share and taxation of items of income, gain, loss, deduction, depreciation, and credit will be as established by Code Subchapter K.

Section 2.02 Company Representative

The Company must designate a Member with a substantial presence in the United States to serve as the Company representative within the meaning of Code Section 6223 (*Company Representative*). The Company Representative must be a Member. The Company Representative has the sole authority to act on behalf of the Company in connection with Internal Revenue Service audits and adjustments. Crest Value Management LLC is designated to serve as the Company Representative. If Crest Value Management LLC is or becomes unwilling or unable to serve for any reason, the Manager shall promptly appoint a Voting Member to serve as Company Representative in accordance with Code requirements.

(a) Obligations and Discretion as to Tax Matters

The Company Representative shall notify all of the Members upon receipt of any notice regarding any examination by any federal, state, or local authority about the Company's tax compliance. The Company Representative must obtain the approval of a Majority Vote of the Members before taking any binding action in connection with any Internal Revenue Service proceeding. Upon obtaining this approval, the Company Representative may:

- determine whether to contest any proceedings, how to pursue any proceedings, and whether and on what terms to settle any dispute with the Internal Revenue Service;
- select the forum for any tax disputes involving the Company; and
- extend the statute of limitations for assessing tax deficiencies against the Members with respect to adjustments to the Company's federal, state, local, or foreign tax returns.

(b) Company Representative to Preserve Tax Classification

Unless the Voting Members elect not to be treated as a partnership for federal income tax purposes, the Company Representative shall take all reasonable steps necessary to classify the Company as a partnership for tax purposes under the Code and Treasury Regulations. The Company Representative shall prepare and file any forms necessary or appropriate to classify the Company as a partnership for tax purposes under the laws of any jurisdiction in which the Company transacts business.

Section 2.03 Election under Code Section 6221(b)

The Company may elect for Code Section 6221(b) to apply for any taxable year that the Company meets the requirements to elect out of Company-level treatment under Code Section 6221(b). The election must be made with a timely filed return for that taxable year. The election must include the name and taxpayer identification number of each Member. The Company must notify each Member of the election in the manner prescribed by the Secretary of Treasury.

Section 2.04 Consistent Treatment

Each Member shall, on the Member's income tax return, treat each item of income, gain, loss, deduction, or credit attributable to the Company in a manner consistent with the treatment of the income, gain, loss, deduction, or credit on the Company income tax return.

Section 2.05 Adjustment in Future Tax Years

If any tax proceeding results in adjustment in the amount of any item of income, gain, loss, deduction, or credit of the Company—or any Member's distributive share thereof—for a prior year, the Company may take corrective action. If the Company elects to apply Code Section 6226 within 45 days from the date of the notice of final partnership adjustment, the Company may issue the statement described in Code Section 6226(a)(2) to the Internal Revenue Service and to each Member that held an interest in the year in question. The statement must describe the Member's share of any adjustment to income, gain, loss, deduction, or credit (as determined in the notice of final partnership adjustment issued by the Internal Revenue Service). Upon receipt of the statement, each Member must take the adjustments described on the statement into account as provided in Code Section 6226(b).

Alternatively, the Company may require each Member that held an interest in the Company during the prior year to file an amended tax return reporting the Member's distributive share of the tax adjustments and to pay any taxes resulting from the adjustments in accordance with Code Section 6225(c). Each Member must submit the amended returns and pay all related taxes not later than 270 days from the date on which the notice of a proposed partnership adjustment is mailed to the Company.

This Section and the Member's obligations under Section 2.04 survive the Company's termination, dissolution, liquidation, and winding up and the Member's withdrawal from the Company or transfer of its Interest.

Section 2.06 Tax Elections

The Voting Members have the authority to make all Company elections for federal, state, and local income tax matters permitted under the Code as provided in Section 10.04. Each Member

consents to any election and shall sign any documentation necessary to give effect to any elections.

Section 2.07 Changing Tax Classification

Any decision to change the tax classification of the Company from partnership to a corporation requires approval in accordance with Section 10.04.

Section 2.08 Legal and Accounting Costs for Tax Matters

The Company shall pay all legal and accounting costs associated with any Internal Revenue Service proceeding regarding the Company's tax returns.

ARTICLE 3 MEMBERS' INTERESTS

Section 3.01 Members' Interests in the Company

The Members' interests in the Company are represented by Interests, which may be divided into Voting and Non-Voting Interests. Members may own Class A Interests (Non-Voting), Class B Interests (Voting), or any combination thereof. Except as otherwise provided in this Agreement, Class A and Class B have the same rights and obligations concerning ownership rights, but different rights and obligations concerning voting rights, liquidation, and distribution rights.

Section 3.02 Schedule of Members

The Manager shall maintain a schedule of all Members and the percentage and type of Interests held by them (*Schedule of Members*). The Manager shall update the Schedule of Members upon the issuance or transfer of any Interests to any new or existing Member. The Schedule of Members as of the execution of this Agreement is attached as Schedule A. Should a Class A Member wish a copy of an updated Schedule of Members, in the interest of Member privacy, any identifying information and amounts shall be redacted by Manager except for the requesting Member.

Section 3.03 Interests Certification

The Company may issue certificates to the Members representing the Interest held by each Member. If the Company issues certificates representing a Member's Interest in accordance with this Section, then in addition to any other disclosure, legend, or information required by Applicable Law, all certificates representing issued and outstanding Interests must include a Securities Law Disclosure substantially in the following form:

THE INTEREST REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE OPERATING AGREEMENT AMONG THE COMPANY AND ITS MEMBERS, A COPY OF WHICH IS ON FILE AT THE COMPANY'S PRINCIPAL OFFICE. NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION, OR OTHER DISPOSITION OF THE INTEREST REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF THE OPERATING AGREEMENT.

THE INTEREST REPRESENTED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED, OR OTHERWISE DISPOSED OF EXCEPT UNDER A REGISTRATION STATEMENT EFFECTIVE UNDER SUCH ACT AND LAWS OR UNDER AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT.

Section 3.04 Valuing Company and Interests

For all purposes of this Agreement, the value of the Company as an entity and of Interests will be their respective Fair Market Values.

Section 3.05 Adjustment for *Non-Pro Rata* Contributions and Distributions

Interests will be adjusted from time to time to account for *non pro rata* additional Capital Contributions by the Members. If *non pro rata* Capital Contributions are made, the adjustment to each Member's Interest will be determined by dividing the Capital Account of each Member by the aggregate of the then existing Capital Accounts, after adjusting the Members' Capital Accounts as provided in Article Five.

To determine the respective voting rights of the Voting Members, adjustments to Voting Interests of the Voting Members resulting from *non pro rata* Capital Contributions will be effective the first day of the month immediately following the date of the Capital Contribution.

Section 3.06 Admitting New Members

Subject to the requirements of Article Fourteen, Additional Members may be admitted when the Company issues new Interests or a Member transfers its Interest. Upon compliance with Article Fourteen, a person will be admitted as an Additional Member, listed as such on the Company's books, and issued the Interest. The Manager shall adjust the Capital Accounts of the Members as necessary under Article Five.

The Manager may adopt and revise rules, conventions, and procedures as the Manager determines appropriate regarding the admission of Additional Members to reflect the Interests at the end of the calendar year in accordance with the Members' intentions.

Section 3.07 Transferability of Interest

The transferability of each Member's Interest is restricted by Article Fourteen.

ARTICLE 4 CAPITALIZATION

Section 4.01 Initial Capital Contributions

As their initial Capital Contributions to the Company, the Members will contribute all of their rights, title, and interest in and to the property described in each Member's executed Subscription Agreement and on the Schedule of Members. The Members agree that the property described on the Schedule of Members has the Fair Market Value (net of liabilities assumed or taken subject to or by the Company) listed opposite the described property.

Section 4.02 Documenting Additional Capital Contributions

After any Member makes a Capital Contribution other than those described in Section 4.01, the Company shall promptly file one or more documents in its records showing that the Member has made the Capital Contribution. These documents may include photocopies of cancelled checks, documentary evidence of bank transfers, or photocopies of executed bills of assignment.

Section 4.03 Valuation of Contributions

The Fair Market Value of any property other than cash or publicly traded securities to be contributed as a Capital Contribution will be as determined by the Manager at the time of the Capital Contribution. If the contributing Member and a Majority Vote of the Voting Members fail to agree, a disinterested Qualified Appraiser selected by the Manager may determine the Fair Market Value of any contributed property.

Section 4.04 Voluntary Additional Capital Contributions

The Members may make voluntary Capital Contributions to the Company. Any voluntary Capital Contribution must be *pro rata*, based upon the respective Interests of the Voting Members, unless otherwise agreed by a Majority Vote of the Voting Members. Consent to a *non pro rata* Capital Contribution must be in writing.

Section 4.05 Reserved

Section 4.06 Reserved

ARTICLE 5

CAPITAL ACCOUNTS

Section 5.01 Establishing and Maintaining Capital Accounts

A Capital Account will be established for each Member and will be maintained at all times during the Company's existence in compliance with the Code and Treasury Regulations. Each Member's Capital Account will be created with an initial credit equal to the Fair Market Value of the property contributed by the Member in exchange for the Member's interest in the amount described on the Schedule of Members. Each Capital Account will be maintained according to the following provisions.

(a) Credits to Member's Interest

Each Member's Interest will be credited with the Fair Market Value of the Member's Capital Contribution, the Member's distributive share of profits, and the amount of any Company liabilities that are assumed by the Member.

(b) Debits to Member's Interest

Each Member's Capital Account will be debited the amount of cash and the Fair Market Value of any property distributed to the Member under this Agreement, the Member's share of losses, and the amount of any liabilities of the Member that are secured by any property contributed by the Member to the Company.

(c) Assumption of Liability

As provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(c): Any unsecured liability the Company assumes will be treated as a distribution of money to the Member, and the Manager shall adjust the Member's Capital Account accordingly. Any unsecured liability of the Company a Member assumes will be treated as a cash Capital Contribution to the Company. The amount of any liability assumed under this provision will be determined according to Code Section 752(c).

(d) Non-Cash Distribution Adjustments

If noncash assets are distributed to a Member, the Manager shall adjust the Capital Accounts of the Members to reflect the hypothetical book gain or loss that would have been realized by the Company if the distributed assets had been sold at Fair Market Value in a cash sale.

(e) Adjusting the Fair Market Value on Transfer of Interest

If an existing or new Member acquires an Interest from the Company, the Manager shall adjust the Capital Accounts of the Members to reflect Fair Market Value of all properties held by the Company.

Section 5.02 Adjustment for Company's Constructive Termination

If the Company is constructively terminated under Code Section 708, the Manager shall adjust the Members' Capital Accounts to reflect Fair Market Value of all properties held by the Company as required by Treasury Regulation Section 1.704-1(b)(2)(iv)(b).

Section 5.03 Revaluation Adjustment

The Manager shall adjust the Members' Capital Accounts to reflect any revaluation of Company property (including intangible assets such as goodwill) under this Section.

(a) Adjustment Based on Fair Market Value

Any revaluation adjustment to a Member's Capital Account is based on the Fair Market Value of Company property on the date of the adjustment (taking into account Code Section 7701(g)).

(b) Adjustment for Unrealized Items

The Manager shall adjust the Members' Capital Accounts to reflect the manner in which any unrealized income, gain, loss, or deduction inherent in the Company's property (to the extent that it has not been previously reflected in the Members' Capital Accounts) would be allocated among all the Members if there were a taxable disposition of this property for Fair Market Value on the adjustment date.

(c) Events Triggering Revaluation Adjustment

Without limiting the events that trigger the application of this Section, this Section will be triggered by the Company's liquidation, an in-kind distribution Company property, a Capital Contribution (other than a *de minimis* amount) as consideration for an Interest, a distribution (other than a *de minimis* amount) by the Company to a retiring or continuing Member as consideration for an Interest, or the termination of the Company for federal income tax purposes within the meaning of Code Section 708(b)(1)(B).

Section 5.04 No Interest or Return of Capital

Despite any other provision of this Agreement, no Member is entitled to any interest on its Capital Account or Interest or on the Member's Capital Contribution. No Member may demand or receive the return of all or any portion of the Member's Capital Account, Interest, or Capital Contribution.

Section 5.05 Power to Modify Capital Account Provisions

If, in the Manager's reasonable judgment, the modification is not likely to have a material effect on the amounts distributable to any Member under this Agreement, the Manager may modify the way the Capital Accounts are computed to comply with Treasury Regulation Section 1.704-1(b). The Manager shall make all necessary and appropriate adjustments to maintain equality between the Members' Capital Accounts and the amount of Company Capital reflected on the Company's balance sheet as computed for book purposes under Treasury Regulation Section 1.704-1(b)(2)(iv)(g), relating to adjustments to Book Value.

Section 5.06 Negative Capital Accounts

If the Company or a Member's Interest is liquidated, no Member will be required to restore a deficit in his or her Capital Account.

Section 5.07 Assignment of Capital Account

Except as otherwise required by the Code or Treasury Regulations, if any Interest is assigned or treated as having been assigned under this Agreement, the Assignee will be treated as having made all of the Capital Contributions and as having received all of the distributions of the Assignor. The Assignee will succeed to the Capital Account of the Assignor to the extent that it relates to the assigned Interest. If the assignment of Interest causes a termination of the Company under Code Section 708(b)(1)(B), the Capital Account that carries over to the Assignee will be adjusted according to Treasury Regulation Section 1.704-1(b)(2)(iv)(e).

Section 5.08 Treatment of Loans from Members

Loans by any Member to the Company are not Capital Contributions and do not affect the maintenance of the Member's Capital Account.

ARTICLE 6

ALLOCATIONS

Section 6.01 Allocating Net Profits

After making the allocations set forth in Section 6.03, the Company shall allocate all net profits as follows:

(a) First Allocation of Net Profits

First, to the Members in proportion and to the extent of the net losses previously allocated under Section 6.02(c) until each Member has been allocated net profits under this Section 6.01(a) equal to the amount of net losses previously allocated to each Member under Section 6.02(c).

(b) Second Allocation of Net Profits

Second, to the Members in proportion and to the extent of the net losses previously allocated under Section 6.02(b) until each Member has been allocated net profits under this Section 6.01(b) equal to the amount of net losses previously allocated to each Member under Section 6.02(b).

(c) Third Allocation of Net Profits

Third, to the Members in proportion and to the extent of the net losses previously allocated under Section 6.02(a) until each Member has been allocated net profits under this Subsection Section 6.01(c) equal to the amount of net losses previously allocated to each Member under Section 6.02(a).

(d) Residuary Allocation of Net Profits

Thereafter, to the Members in proportion to their Interests.

Section 6.02 Allocating Net Losses

After making the allocations set forth in Section 6.03, the Company shall allocate all net losses as follows:

(a) First Allocation of Net Losses

First, to the Members in proportion and to the extent that the amount of net profits allocated to the Members under Section 6.01(c) and Section 6.01(d) exceeds the distributions received by the Members under Article Seven plus the net losses previously allocated to the Members under this Section 6.02(a).

(b) Second Allocation of Net Losses

Second, to the Members in accordance with the positive balances in their Capital Accounts until the Capital Account of each Member is reduced to zero.

(c) Residuary Allocation of Net Losses

Thereafter, to the Members in proportion to their Interests.

Section 6.03 Special and Regulatory Allocations

The Manager shall make the following special and regulatory allocations.

(a) Losses

No losses will be allocated to a Member under Section 6.02 that would cause the Member to have an Adjusted Capital Account Deficit at the end of any fiscal year. Any losses not allocated to a Member due to this limitation must be specially allocated to the Members with positive Capital Account balances in proportion to their respective Capital Account balances until all such Capital Account balances have been reduced to zero, and any remainder will be allocated to the Members in proportion to their respective Interests.

(b) Allocations Related to Contributed Property

For any property contributed to the capital of the Company, the Manager shall allocate income, gain, loss, and deductions among the Members under Code Section 704(c) to account for any variation between the adjusted basis of the property to the Company for federal income tax purposes and its Fair Market Value on the date of the Capital Contribution. If the Manager adjusts the Fair Market Value of any Company asset, then in

making subsequent allocations of income, gain, loss, and deductions regarding that asset, the Manager shall account for any variation between the adjusted basis of the asset for federal income tax purposes and the asset's Fair Market Value in the same manner provided under Code Section 704(c).

(c) Member Non-Recourse Deduction Allocations

The Manager shall allocate all Member Non-Recourse Deductions for each Taxable Year to the Member or Members who bear the economic risk of loss regarding the Member Non-Recourse Debt to which any Member Non-Recourse Deductions are attributable. The ratio reflects the Member's economic risk of loss and complies with Treasury Regulation Section 1.704-2(i)(1).

(d) Company Minimum-Gain Chargeback

If the Company Minimum Gain has a net decrease during any Company Taxable Year, the Manager shall allocate items of Company income and gain for the year (and, if necessary, for any subsequent years) in proportion to the respective amounts required to be allocated to each Member under Treasury Regulation Section 1.704-2(f) and (g). This provision is intended to comply with the minimum-gain chargeback requirement of Treasury Regulation Section 1.704-2.

To the extent permitted by Treasury Regulation Section 1.704-2 and for purposes of this provision only, the Manager shall determine any deficit in each Member's Capital Account before any other allocations under this Article with regard to the Taxable Year and without regard to any net decrease in Member Minimum Gain during the Taxable Year.

(e) Member Minimum-Gain Chargeback

If the Member Minimum Gain has a net decrease attributable to Member Non-Recourse Debt during a Taxable Year after the Manager computes and accounts for Company Minimum-Gain Chargeback above, the Manager shall allocate items of income and gain for that year (and, if necessary, for any subsequent years) to any Member who has a share of the Member Minimum Gain attributable to that Member's Non-Recourse Debt at the beginning of the year. The amount and proportions of the allocations must satisfy Treasury Regulation Section 1.704-2(i).

(f) Qualified Income Offset

If any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), the Manager shall allocate items of Company income and gain to the Member to eliminate any deficit in the affected Members' Capital Accounts to the extent required by Treasury Regulations as quickly as possible. The Manager shall make an allocation under this provision only to the extent that an affected Member would have a remaining Capital Account deficit after all other allocations under this Article have been computed.

This provision is intended to comply with the qualified income offset requirement of Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(3).

(g) Gross Income Allocation to Restore Capital Account Deficit

If any Member has a Capital Account deficit at the end of any Company Taxable Year that exceeds the sum of the amount the Member is obligated to restore under this Agreement and the amount the Member is obligated to restore under the Treasury Regulations, then the

Manager shall allocate items of Company income and gain in the amount of the excess as quickly as is practicable. The Manager shall make an allocation under this provision only to the extent that an affected Member would have a remaining Capital Account deficit after all other allocations under this Article have been computed.

(h) Allocation from Disposition of Property Not Revalued

If properties of the Company are not revalued under Treasury Regulation Section 1.704-1(b)(2)(iv)(f) and the Capital Accounts of the Members are not adjusted accordingly upon the admission of a Member or the liquidation of Interest, the Manager shall allocate gain or loss recognized upon the sale or other disposition of Company property among the Members. This allocation must take into account the variation between the adjusted basis of the property and the property's Fair Market Value on the date the Member was admitted, or the Interest was liquidated, as the case may be, under Code Section 704(c).

(i) Allocation Related to Adjustments in Tax Basis

If Code Section 734(b) or 743(b) requires an adjustment to the adjusted tax basis of any Company asset, Treasury Regulation Section 1.704-1(b)(2)(iv)(m) must be taken into account in determining the Capital Accounts. The amount of the adjustment to the Capital Accounts must be treated as an item of gain (if the adjustment increases the asset's basis) or loss (if the adjustment decreases the asset's basis). The Manager shall allocate this gain or loss to the Members consistent with Treasury Regulation Section 1.704-1.

(j) Allocation Related to Capital-Event Adjustments

If the gross Book Value of any asset of the Company is increased or decreased for special events, the Manager shall allocate gain or loss as required for Capital Account purposes. The Manager shall take into account any difference between the asset's adjusted basis for federal income tax purposes and the asset's gross Book Value for any later allocations of income, gain, loss, or deductions regarding any adjusted asset.

(k) Allocation Consistent with Distributions

The Manager shall allocate net profits and net losses in a manner consistent with:

- the requirements for distributions of cash described elsewhere in this Agreement;
- the requirements for distribution of assets upon its dissolution and winding up in accordance with Capital Account balances as specified in the procedures described below; and
- the requirements of applicable Regulations under Code Section 704(b).

(l) Allocations to Comply with Regulations and Intentions of Members

The allocations of net income, gains, net losses, and deductions set forth in this Agreement are intended to comply with Treasury Regulation Section 1.704-1(b), Treasury Regulation Section 1.704-1(b)(4)(iv), and Treasury Regulation Section 1.704-2, and are intended to have *substantial economic effect* within the meaning of those Regulations.

The allocations could be inconsistent with the Members' intentions. Accordingly, the Manager is authorized to allocate net profits, net losses, and other economic items among the Members to prevent the allocations from distorting the manner in which distributions are intended to be divided among the Members under this Article. In general, the Members anticipate that these allocations will be accomplished by specially allocating other net profits, net losses, and items of income, gain, loss, and deductions among the Members so that the

net amount of the allocations and any special allocations to the Member is zero. If, for any reason, the Manager determines that the allocation provisions of this Agreement are unlikely to be recognized for federal income tax purposes, the Manager may amend this Agreement's allocation provisions to the minimum extent necessary to give effect to the plan of allocations and distributions in this Agreement.

Section 6.04 Determining Net Profits and Net Losses

For purposes of this Article, the terms *net profits* and *net losses* mean the amount of the Company's taxable income or loss for any year or period, determined under Code Section 703(a). All items of income, gain, loss, or deduction required to be stated separately under Section 703(a)(1) will be included in taxable income or loss. This determination of net profits and net losses includes the following items:

- any income of the Company that is exempt from federal income tax and is not otherwise taken into account in computing taxable income or loss under this Article;
- any expenditures of the Company described in Code Section 705(a)(2)(B) relating to nondeductible expenses that are not otherwise taken into account in computing taxable income or loss, and
- if any Company asset's value is adjusted, the amount of the adjustment will be taken into account as gain or loss from the disposition of the asset.

Any other items that are specially allocated under this Article will not be taken into account in computing net profits and net losses.

Section 6.05 Allocation of Gain and Loss on Liquidation

Upon liquidation of the Company, the Manager shall allocate the Company's estimated net loss for the year and any loss realized by the Company on liquidation, including any book adjustment loss, and its estimated net gain for the year and any gain realized upon liquidation, including any book adjustment gain, under Article Five and Article Six. If any Company property is distributed to the Members in kind, then, for purposes of reflecting the allocation of gain or loss from liquidation in the Members' Capital Accounts, the Company shall make a book adjustment with respect to the property distributed in kind as provided in the Treasury Regulations under Code Section 704(b).

Section 6.06 Change for Legal Compliance

The Manager may change the allocation provisions of this Section if the Company's legal counsel advises the Company that this change is required under the Code based on the manner in which the Members have agreed to bear losses and to share profits and distributions under this Agreement.

ARTICLE 7 DISTRIBUTIONS

Section 7.01 Distributions to Members

Subject to Section 7.02, the Manager may determine the amounts and timing of distributions to the Members. Distributions will be made on a pro rata basis in accordance with the Members'

Interests. The Company targets an annual internal rate of return (IRR) of 8-10% for its Members but does not guarantee this return. Distributions are intended to be made on a quarterly basis, although this is subject to the availability of distributable cash.

Section 7.02 No Unlawful Distributions

Despite any provision to the contrary in this Agreement, the Company must not make any distribution that would violate any contract or agreement to which the Company is then a party or any law, rule, regulation, order or directive of any Governmental Authority then applicable to the Company.

Section 7.03 In-Kind Distributions

The Manager may make in-kind distributions to the Members in the form of securities or other noncash property held by the Company. In any in-kind distribution, the securities or property will be distributed among the Members in the same proportion and priority as the distribution's Fair Market Value cash equivalent. Before making an in-kind distribution, the Manager must adjust the Members' Interests to account for any difference between the established Fair Market Value and the Book Value of the in-kind property.

Any distribution of securities is subject to the conditions and restrictions the Manager requires to ensure compliance with Applicable Law. The Manager may require the Members to sign and deliver documents the Manager determines are necessary to comply with all federal and state securities laws that apply to the distribution and to any further transfer of the distributed securities. The Manager may appropriately legend the certificates that represent the securities to reflect any restriction on transfer with respect to these laws.

Section 7.04 No Interest or Demand Rights

All distributions will be made under this Article or Section 16.03(c). Except as specifically set forth in this Article, no Member may demand distributions. If a Member does not withdraw all or any portion of the Member's share of any cash distribution, the Member will not receive any interest on the unwithdrawn amount unless all Members agree.

Section 7.05 Proceeds from Capital Transactions

Except as otherwise provided in this Agreement, before making any distribution to Members, proceeds of any capital transaction will be applied to:

- the principal balance at that time of that portion (or any greater portion thereof that the Manager determines should be repaid) of any loans that the Manager determines are attributable to the capital transaction;
- the amount of all costs and expenses paid or to be paid by the Company in connection with the capital transaction; and
- a reasonable reserve for future payments that may need to be made by the Company with respect to the capital transaction.

Section 7.06 Return of Distribution

Any distribution made to the Members will be considered to comply with Applicable Law if the distribution is made from available assets of the Company. If a court of competent jurisdiction finds that a distribution violates Applicable Law and the request for return of the distribution is

approved by a Majority Vote of the Voting Members, the Members must return their respective share of that distribution. The Company's creditors are deemed to have notice of the provisions of this Article and of the fact that Members are not required to return a distribution unless the request for return of the distribution has been approved by a Majority Vote of the Voting Members.

ARTICLE 8 **COMPANY MANAGEMENT**

Section 8.01 Management by Manager

The Company is managed by the Manager appointed under Section 8.02. The Manager shall manage and administer the Company's property and perform all other duties prescribed for a Manager by the Act. The Manager may take all actions necessary, useful, or appropriate for the ordinary management and conduct of the Company's business. The Manager has the exclusive authority to manage the operations and affairs of the Company, subject in all cases to the requirements of Applicable Law.

Section 8.02 Appointing Managers

Any Voting Member may be appointed as Manager. Crest Value Management LLC is appointed as Manager of the Company.

Section 8.03 Manager's Voluntary Resignation

Subject to any contract between the Company and the Manager, any Manager may resign at any time by giving written notice to the Members. A resignation takes effect on the date the notice is received or later if specified in the resignation notice. Unless otherwise specified, the resignation need not be accepted to make the Manager's resignation effective. A Manager's resignation does not prejudice the Company's rights under any contract to which the Manager is a party on behalf of the Company.

Section 8.04 Manager's Removal

A Manager may not be removed as Manager with or without Cause.

Section 8.05 Bankruptcy Not Considered an Act of Withdrawal by Manager

A Manager will not be considered to have resigned and withdrawn as Manager of the Company on the sole basis that the Manager becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding.

Section 8.06 Revocation of Charter Not Considered an Act of Withdrawal

Despite any provision in the Act, the revocation of an entity Manager's charter will not be considered an act of resignation or withdrawal by the entity serving as Manager, regardless of whether the entity Manager is provided with notice or whether the entity Manager's charter is subsequently reinstated.

Section 8.07 Vacancy in the Office of Manager

If the Manager withdraws, is removed, or otherwise cannot serve as Manager for any reason, the Voting Members shall designate a Manager to fill the vacancy by a Majority Vote within 90 days

after the date the last remaining Manager stops serving. The appointed Manager will automatically have the rights, authorities, duties, and obligations of a Manager under this Agreement.

Section 8.08 Bond, Compensation, and Expenses of Manager

Except to the extent required by Applicable Law, no Manager is required to furnish bond or other security in order to serve as Manager. Any Manager is entitled to receive a reasonable salary or other compensation for the services provided. The Manager is entitled to reimbursement for reasonable costs and expenses incurred in conducting the business of the Company.

Section 8.09 Manager's Responsibility to File Necessary Forms

The Manager shall take all action necessary to assure prompt and timely filing of any amendments to the Articles of Organization according to this Agreement and all required state and federal tax returns, reports, and forms.

Section 8.10 No Employment Rights Conferred

Nothing in this Agreement confers upon any Manager any right to employment or continuation of employment with the Company. If a Manager is or becomes an at-will employee of the Company, nothing in this Agreement interferes in any way with the right of the Company to terminate the Manager's at-will employment at any time. Nothing in this Agreement creates any employment agreement with any Manager.

Section 8.11 Extent and Scope of Manager's Services

The Manager shall adequately promote the interest of the Company and the Members and shall commit the necessary time and effort to do so. The Manager is not required to devote full-time hours to Company business.

Section 8.12 Manager's Fiduciary Duties

This Agreement does not create or impose any fiduciary duty on any Manager. Each of the Members and the Company waive all fiduciary duties that, absent this waiver, may be implied by Applicable Law. The provisions of this Agreement that restrict the Manager's duties and liabilities replace any duties and liabilities otherwise existing at law or in equity. The Members and the Company acknowledge and agree that each Manager's duties to the Company are only as expressly set forth in this Agreement.

Section 8.13 No Personal Liability for Capital Contributions

The Manager is not personally liable for the return of any portion of any Member's Capital Contribution. Any return of capital will only be made from available assets of the Company.

Section 8.14 Manager's Power to Amend

The Manager may, without the consent of the Members, amend any provision of this Agreement or the Articles of Organization and prepare and deliver any documents to the extent necessary to reflect:

- a change in the Company's name or its principal office location;
- the admission, substitution, or termination of Members according to this Agreement;

- a change that the Manager determines necessary or advantageous to qualify or to maintain qualification as a limited liability company or a company in which the Members have limited liability under the laws of any jurisdiction, or to ensure that the tax treatment of the Company does not change except as otherwise provided in this Agreement;
- a change that does not adversely affect the Members in any material respect or that is required or contemplated by this Agreement; or
- any other similar amendments.

Any other amendments must be made in accordance with Section 18.17.

Section 8.15 Delegation to Agents and Others

The Manager may employ agents, employees, accountants, attorneys, consultants, and other persons necessary or appropriate to carry out the business and affairs of the Company, whether or not the person or persons are Affiliates or are employed by an Affiliate.

The Manager may direct the Company to pay reasonable expenses such as fees, costs, salaries, wages, and other compensation as the Manager determines to be appropriate as a Company expense. These expenses may include payment or reimbursement for all fees, costs, and expenses incurred in the Company's formation and organization.

The Manager may delegate management functions to any corporation, partnership, limited liability company, or other entity qualified to manage the property and to conduct the business activities of the Company. Delegation of management powers does not relieve a Manager from personal liability for management decisions and operations of the Company. Any delegation of authority is to be considered in compensating a Manager for services to the Company.

Section 8.16 Manager's Agency Authority

The Manager has the authority to bind the Company in contracts and other dealings with Third Parties in the ordinary course of the Company's business and any other matter. Except with the vote of the Members in accordance with Article Ten, no Manager may make any representation about the Company that is likely to have a material impact on the Company's business or reputation.

Section 8.17 Third-Party Reliance

Any Third Party dealing with the Company may rely on a notarized writing signed by a Manager of the Company stating that the Manager has authority to act for the Company. No person relying in good faith upon the authority of a Manager will incur any liability to the Company for acts made in reliance upon the Manager's representations that the Manager's powers are then in effect.

ARTICLE 9

MEMBER RIGHTS AND OBLIGATIONS

Section 9.01 Limited Liability of Members

Except as required by Applicable Law, a Member's status as a Member does not obligate the Member for any debt, obligation, or liability of the Company or of other Members whether arising in contract, tort, or otherwise.

No Member will be required to contribute capital to the Company for the payment of any losses or for any other purposes. No Member will be responsible or obligated to any Third Party for any debts or liabilities of the Company in excess of the amount of:

- that Member's unpaid required Capital Contributions;
- unrecovered Capital Contributions; and
- that Member's share of any undistributed Company profits.

Section 9.02 No Right to Participate in Management

Except as expressly provided in this Agreement, no Member may participate in the management and operation of the Company's business and investment activities or bind the Company to any obligation or liability whatsoever. A Voting Member may exercise any power authorized by the Act that a Voting Member may exercise without being considered to be taking part in the control of the Company's business.

Section 9.03 Members' Fiduciary Duty

A Member does not have any fiduciary duty to the Company or to any other Member solely by reason of being a Member. If this Agreement expressly relieves a Manager of a responsibility that the Manager would otherwise have and imposes the responsibility on one or more Members, those Members will be treated as Manager with respect to that responsibility under Section 8.12.

Section 9.04 Member's Agency Authority

No individual Member has the right or authority to bind the Company in contracts and other dealings with Third Parties—regardless of whether the contracts and other dealings occur in the ordinary course of the Company's business—without a vote of the Members except as provided in Article Ten. No individual Member may make any representation concerning the Company that is likely to have a material impact on the Company's business or reputation.

Section 9.05 Transfer of Company Assets

A Member may not transfer legal or beneficial title to Company property except to the extent permitted by the laws of the State of Delaware relating to the winding up of the Company in the

absence of a qualified Manager. Any Member who acts in that capacity may do so only after first submitting an affidavit of fact stating the conditions under which the Member serves. Any affidavit prepared according to this provision must be kept with the Company records.

Section 9.06 Restrictions on Withdrawal or Dissociation Rights

A person will remain a Member as long as that person holds any Interest in the Company. As long as a Member continues to hold any Interest in the Company, the Member does not have the ability to withdraw, dissociate, or resign as a Member or receive a return of any Capital Contributions before the Company's dissolution and winding up under this Agreement and Applicable Law. A Member does not dissociate, withdraw, or otherwise cease to be a Member because of the Member's bankruptcy or because of any event specified in the Act. A Member's withdrawal, dissociation, resignation, or attempted withdrawal, dissociation, or resignation before the Company's dissolution or winding up is null and void ab initio. After a lock-up period of 2 years from the initial Capital Contribution, a Member may withdraw with a 60-day written notice to the Manager.

Section 9.07 Company Continues after a Member's Death

A Member's death will not cause the Company to dissolve. If a Member dies, the remaining Member or Members will continue the Company and its business.

Section 9.08 No Partition Rights

Title to the Company's assets is vested solely in the Company and not owned by any Member. Each Member, individually and on behalf of the Member's successors and assigns, expressly waives any right to have any Company property partitioned.

Section 9.09 Member Expulsion

The Company may not expel a Member under any circumstances.

ARTICLE 10 MEMBER VOTING AND VOTING RIGHTS

Section 10.01 Voting Members

The Voting Members and Non-Voting Members are designated as such on the Schedule of Members.

Section 10.02 Voting Rights

Each Voting Member holds a Voting Interest and has the right to vote the holder's proportionate Interest in the Company regarding all matters that all Voting Members have a right to vote under this Agreement or by Applicable Law.

Example: A Voting Member that holds 35.5% of all of the Interests entitled to vote on a matter will have a 35.5% Voting Interest in the Company and will have 35.5 votes out of 100 votes that may be cast on that matter.

Section 10.03 Matters on Which Voting Members Must Vote

The Manager may not take any of the following actions without approval by the Manager and a Majority Vote (or greater vote if required by this Agreement or Applicable Law) of the Voting Members:

- removing a Manager, subject to the provisions of Section 8.04;
- electing a successor Manager, subject to the provisions of Section 8.07;
- amending this Agreement; and
- any matter requiring the vote of the Voting Members under any mandatory provision of Applicable Law.

The Voting Members may call or hold any meeting of the Voting Members, provide notice of the meeting, form a quorum for the meeting, or take any action by vote at a meeting or by written consent without a meeting, in all cases to take any action or conduct any business permitted by this Section.

Assignees and Non-Voting Members may not vote.

Section 10.04 Matters on Which Voting Members Have Exclusive Authority

Except as otherwise provided in this Agreement, the Members may take the following actions by a Majority Vote without the consent or approval of the Manager:

- approving and accepting a *non pro rata* Capital Contribution;
- filing or consenting to file a petition for or against the Company under any federal or state bankruptcy, insolvency, or reorganization act;
- ceasing the Company's business before the Company's actual termination or acting in any way that would make it impossible to carry on the Company's business;
- permitting the Company's funds to be commingled with the funds of any other person;
- confessing a judgment against the Company;
- materially altering the Company's business or deviating from any approved business plan of the Company;
- registering any interest in this Company for an offering under any federal or state securities law;
- changing the tax classification of the Company; or
- making elections for federal, state, and local income tax matters, including basis adjustment.

Section 10.05 Approval or Consent of Members

Unless provided otherwise by this Agreement or Applicable Law, any action of the Voting Members requires a Majority Vote of the Voting Members in favor of the action.

Section 10.06 Voting Members Who Are under Court Orders

The vote, consent, or participation of any Voting Member under any kind of court order charging, restraining, prohibiting, or in any way preventing any Voting Member from

participating in Company matters is not required in order to obtain the necessary percentage vote or consent or participation for the Company to act upon any proposed action.

Section 10.07 Voting by Proxy

The Voting Members may appoint a proxy to vote or otherwise act for the Voting Members under a written appointment form signed by the Voting Members or the person's attorney in fact. A proxy appointment is effective when received by the secretary or other officer or agent of the Company authorized to tabulate votes. A fiduciary's general proxy is given the same effect as the general proxy of any other Voting Members. A proxy appointment is valid for 11 months unless otherwise specifically stated in the appointment form, or unless the authorization is revoked by the Voting Member who issued the proxy. Should any Voting Member not cast a vote for which it is entitled to vote, or any Voting Members appointed proxy not cast a vote for which they have been appointed by the Voting Member as proxy, the Voting Member shall automatically appoint the Manager as their proxy.

ARTICLE 11

MEMBER MEETINGS AND NOTICE

Section 11.01 Member Meetings

The Members may designate when and where they meet. Member meetings may be held at the Company's principal office or any other place (either within or outside the State of Delaware) the Members determine from time to time.

Section 11.02 Special Meetings

Special meetings of the Members must be called by Majority Vote of the Voting Members. Special meetings of the Members require notice to be delivered to the Members according to this Agreement. Any shorter notice period must be approved by all the Voting Members. Any Member may waive this notice as to himself or herself.

Section 11.03 Meeting Notice

The Manager shall deliver notice to each Voting Member of record entitled to vote at the meeting at the address in the Company records at least two but no more than 30 days before the meeting date. The notice must state the date, time, and place of any meeting of the Members and a description of the meeting's purpose.

Section 11.04 Waiving Meeting Notice

A Member may waive notice of any meeting before or after the meeting's date and time stated in the notice by delivering a signed waiver to the Company to include in the minutes. If a Member attends any meeting in person or by proxy, the Member waives objection to lack of notice or to defective notice of the meeting unless the Member objects to holding the meeting or transacting business at the meeting. The Member waives objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice unless the Member objects to considering the matter when it is presented.

Section 11.05 Action by Written Consent

Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if the action is taken by all the Voting Members entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken. These consents, in the aggregate, must be signed by all of the Voting Members entitled to vote on the action and delivered to the Company to be included in the minutes. This consent has the same force and effect as a vote at a meeting with a quorum present and may be stated as such in any document or instrument filed with the Delaware Secretary of State.

Section 11.06 Quorum

For any meeting of the Members, a quorum requires the presence of Voting Members holding at least two-thirds of the Voting Interests entitled to vote at the meeting. Any time the Voting Members are conducting business at a meeting of the Voting Members, a quorum of the Voting Members must be present. If a quorum is not present at any meeting of the Voting Members, the Voting Members present at the meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 11.07 Presence

Any Member may participate in any meeting using any means of communication by which all Members participating may simultaneously hear each other during the meeting. Any Member participating in this way is considered present in person at the meeting.

Section 11.08 Conduct of Meetings

At any meeting of the Members, the Voting Members shall appoint a natural person to act as secretary of the meeting. The secretary of the meeting shall prepare minutes of the meeting, to be kept with the Company records.

ARTICLE 12

BOOKS, RECORDS, AND BANK ACCOUNTS

Section 12.01 Books and Records

The Manager shall keep books of account regarding the operation of the Company at the principal office of the Company or at any other place the Manager determines. The Manager shall keep the following records:

- a current list of the full names and last known addresses of each past and present Manager and Member and the status of each Member as a Voting Member or a Non-Voting Member;
- a copy of the Articles of Organization (and any amendments) and copies of any powers of attorney under which any certificate has been signed;
- copies of the Company's federal, state, and local income tax returns and any reports for the three most recent Taxable Years, if required;
- copies of this Agreement (and any amendments);
- copies of any financial statements of the Company for the three most recent Taxable Years; and

- any other documents required by Applicable Law.

Section 12.02 Accounting and Taxable Year

The Manager shall keep books of account consistent with any method authorized or required by the Code and as determined by the Manager. The Manager shall close and balance the books at the end of each Taxable Year. The Members may choose any period authorized or required by the Code for the Company's Taxable Year.

Section 12.03 Reports

Within a reasonable time after each Taxable Year ends, the Manager shall provide the information required to prepare and file individual tax returns to all Members. The Manager shall prepare these financial statements at the Company's expense.

Section 12.04 Manager Inspection Rights

Upon reasonable notice from a Manager, the Company shall—and shall cause its Manager, officers, and employees to—provide reasonable access to a Manager and its Legal Representatives to Company Information during normal business hours. *Company Information* is the information accessible to the Manager and its Legal Representatives by exercising the inspection right to examine and make copies of the corporate, financial, and similar records, reports, and documents of the Company, including all books and records, minutes of proceedings, internal management documents, operations reports, reports of adverse developments, management correspondence, and communications with the Manager.

Section 12.05 Member's Inspection Rights

Upon reasonable notice from a Member, the Company shall—and shall cause its Manager, officers, and employees to—provide reasonable access to each Member and its Legal Representatives to Company Information during normal business hours.

Section 12.06 Other Information

The Company and each Manager shall provide to each other Manager—without demand—any information concerning the Company's activities, financial conditions, or other circumstances that the Company knows is material to the proper exercise of the Manager's rights and duties under the Agreement or the Act. Neither the Company nor any Manager is responsible for failure to provide this information if the Company or Manager reasonably believes that the Manager in question already knows the information.

Whenever the Act or this Agreement requires or allows a Manager to give or withhold consent to a matter, the Company shall, without demand, provide the Member with all information that is known to the Company and is material to the Member's decision before the consent is given or withheld.

Section 12.07 Budget

No later than 30 days before each Taxable Year begins, the Company may, at the Members' election, prepare and submit a Budget. The Company shall use commercially reasonable efforts to operate in all material respects in accordance with any Budget set by the Company.

Section 12.08 Bank Accounts and Company Funds

The Manager shall deposit all cash receipts in the Company's depository accounts. All accounts used by or on behalf of the Company are the Company's property, and will be received, held, and disbursed by the Manager for the purposes specified in this Agreement. The Manager may not commingle Company funds with any other funds.

ARTICLE 13

COVENANTS, REPRESENTATIONS, AND WARRANTIES

Section 13.01 Member Representations, Warranties, and Acknowledgements

By signing and delivering this Agreement or a Member Joinder, each Member, whether admitted as of this date or under Section 14.07, represents and warrants to the Company and acknowledges the following.

(a) No Fraudulent Transfer

The Member is not entering into this Agreement with the actual or constructive intent to hinder, delay, or defraud its present or future creditors and is receiving reasonably equivalent value and fair consideration for the Member's Capital Contribution.

(b) Clear Title to Capital Contribution

The Member's Capital Contribution has been contributed, transferred, assigned, and conveyed to the Company free and clear of any liens or other obligations other than those existing on this date and disclosed in writing to the Members.

(c) No Securities Registration

The Member's Interest has not been registered under the Securities Act or the securities laws of any other jurisdiction, are issued in reliance upon federal and state exemptions for transactions not involving a Public Offering, and cannot be disposed of unless they are subsequently registered or exempted from registration under the Securities Act and the provisions of this Agreement have been complied with.

(d) Limited Transferability

The transferability of the Member's Interest is severely limited.

(e) Adverse Impact on Fair Market Value

Some of the restrictions inherent in this form of business and specifically set forth in this Agreement may have an adverse impact on the Fair Market Value of the Interests if a Member attempts to sell or borrow against the Member's Interest.

(f) No Reporting Requirements

The Company will not be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, and will not file reports, proxy statements, or other information with the Securities and Exchange Commission or with any state securities commission.

(g) Acquisition for Own Use

The Member's Interest is being acquired for its own account solely for investment and not with a view to resell or distribute the Interest.

(h) Independent Review and Analysis

The Member has conducted its own independent review and analysis of the business, operations, assets, liabilities, results of operations, financial condition, and prospects of the Company and the Member acknowledges that it has been provided adequate access to the personnel, properties, premises, and records of the Company for this purpose.

(i) No Reliance on Member Representations

The Member's decision to acquire Interest has been made by the Member independent of any other Member and independent of any statements or opinions as to the advisability of the purchase or as to the business, operations, assets, liabilities, results of operations, financial condition, and prospects of the Company that may have been made or given by any other Member or by any agent or employee of any other Member.

(j) Experience in Financial and Business Matters

The Member has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of an investment in the Company and of making an informed decision.

(k) Economic and Financial Risk

The Member bears the economic risk of investment for an indefinite period as the Interests are not registered under the Securities Act or any state securities laws and cannot be offered or sold unless subsequently registered or unless an exemption from registration is available.

(l) Due Authorization

If this Agreement is executed or joined in on behalf of a partnership, trust, corporation or other entity, the person signing or joining this agreement on behalf of the Member has been duly authorized to sign and deliver this Agreement and all other documents and instruments signed and delivered on behalf of the Member in connection with this Agreement and to consummate the transactions contemplated by this Agreement.

(m) No Legal Violations

The Member's signing, delivery, and performance of this Agreement does not contravene or result in a default in any material respect under any law or regulation applicable to the Member.

(n) No Conflicts

The signing and delivery of this Agreement does not, and the consummation of the transactions contemplated by this Agreement will not, violate any material contractual restriction or commitment of any kind or character to which the Member is a party or by which the Member is bound.

(o) No Required Consents

The signing, delivery, and performance of this Agreement does not require the Member to obtain any consent or approval that has not already been obtained.

(p) Binding Agreement

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

These representations, warranties, and acknowledgments do not replace, diminish, or otherwise adversely affect any Member's representations and warranties made by it in any agreement by any Member to join or otherwise acquire an interest in the Company, as applicable.

Section 13.02 Breach by Members or Assignees

Any Member or Assignee who breaches this Agreement is liable to the Company for damages caused by the breach, including attorney's fees and litigation expenses. The Company may offset damages against any distributions or return of capital to the breaching Member or Assignee.

While holding any Interest in the Company, a Member or Assignee who interferes in the management of the Company's affairs is in breach of this Agreement.

Section 13.03 Modification for Legal Events

If any court of competent jurisdiction determines that any provision or any part of a provision set forth in Article Thirteen is unenforceable because of its duration or geographic scope, the court has the power to modify the unenforceable provision instead of severing it from this Agreement in its entirety. The modification may be by rewriting the offending provision, by deleting all or a portion of the offending provision, by adding additional language to Article Thirteen, or by making other modifications as it determines necessary to carry out the parties' intent to the maximum extent permitted by Applicable Law. The parties expressly agree that this Agreement as modified by the court is binding upon and enforceable against each of them.

ARTICLE 14 **TRANSFER OF INTERESTS**

Section 14.01 Transferability of Interests

No Member may transfer any Interest either voluntarily or involuntarily by any means without the written consent of the Manager, except as expressly permitted by this Agreement. The Manager may approve a voluntary or involuntary transfer of Interest without the consent of the Members. The Members may transfer any Interest without the written consent of the Manager if the transfer is:

- permitted under Article Fifteen;
- permitted under Section 14.02; and
- as otherwise provided in this Article.

Any attempted transfer of an Interest in violation of this Section and Section 14.07 is null and void ab initio. Additionally, Members are subject to a lock-up period of 2 years from the date of their initial Capital Contribution. After the lock-up period, Members wishing to withdraw must provide a 60-day written notice to the Manager.

Section 14.02 Permitted Transfers

Despite the transfer restrictions in Section 14.01, a Member may transfer an Interest without the written consent of the Manager if:

- the transferee is the transferring Member's Immediate Family or

- the transferee is a revocable or irrevocable trust for the sole benefit of the transferor during his or her life or transferor's Immediate Family.
- The transferee is an LLC or other legal entity that is wholly owned by the Member or the Member's Immediate Family.

A transfer to a transferee otherwise permitted by this Section will only be permitted if:

- the transfer does not cause the Company to terminate for federal income tax purposes;
- the transfer does not result in any event of default as to any secured or unsecured obligation of the Company;
- the transfer does not cause a reassessment of any real property owned by the Company; and
- the transfer does not cause any adverse material impact to the Company.

A transfer to a revocable or irrevocable trust for the sole benefit of the transferor's Immediate Family or their descendants will be considered a transfer to Immediate Family for purposes of this Section if the trustee and any successor trustees of the trust are also Immediate Family. For a trust to be considered a Permissible Transferee, the trustee must be specifically and irrevocably prohibited from gifting, selling, or distributing the Interest held by the trust to a person other than Immediate Family.

Section 14.03 Effect of Permitted Transfer

The Permitted Transferee of a transfer of Interest permitted by Section 14.02 will be admitted as an Additional Member only in compliance with Section 14.07. As a condition of admission as Additional Member, the Company may require the transferee to sign a Member Joinder or otherwise accept this Agreement in writing.

Section 14.04 Securities Restriction

Despite the foregoing or anything else in this Agreement, the Company may not approve—and each Member agrees that it will not directly or indirectly make—any transfer or addition of an Additional Member except as permitted under the Securities Act and other applicable federal or state securities or blue sky laws. The Company may condition a transfer of Interest on receipt of an opinion of counsel in form and substance satisfactory to the Company to the effect that the transfer may be made without registration under the Securities Act.

Section 14.05 Transferee Treated as an Assignee until Admitted as an Additional Member

The transferee of an Interest will hold the interest only as an Assignee until the transferee satisfies all the requirements of Section 14.07 to become an Additional Member. As an Assignee, the transferee will have only those rights in Section 14.06.

Section 14.06 Assignee's Rights, Limitations, and Obligations

An Assignee may receive distributions from the Company to the same extent that the transferring Member would receive distributions under this Agreement, but otherwise has substantially fewer rights than a Member. An Assignee only holds a right to receive economic benefits when actually distributed by the Company in respect to the assigned Interest. Other limitations on Assignees' rights include:

- access only to the Company records and information specifically authorized for the Assignees under the Act;
- no right to vote in any Company matters; and
- no other legal or economic rights.

Regardless of whether an Assignee is admitted as a Member, an Assignee is subject to all of the obligations of a Member. If an Assignee fails to fulfill any monetary obligation imposed on Members under this Agreement, then despite any other provisions of this Agreement, any amount that otherwise would be paid or distributed to the Assignee under Article Seven or Article Sixteen will not be paid to the Assignee. Instead, the amount will be paid or otherwise applied on the Assignee's behalf to any monetary obligation of the Assignee that has not been paid or deemed paid.

Section 14.07 Requirements to Become an Additional Member

An Assignee or other prospective Additional Member will not become an Additional Member and will not have any rights as a Member until all of the conditions, consents, and procedures in this Section have been fully satisfied.

(a) Approval by Members

An Additional Member may only be added with the written consent of the Manager.

(b) Certain Legal Assurances

If required by the Manager, the prospective Additional Member must provide evidence satisfactory to the Manager that admission of the prospective Member will not violate any applicable securities law, cause a termination of the Company under applicable provisions of the Code, or alter the status of any tax election made by the Company.

(c) Transfer Instruments

If a prospective Additional Member is acquiring an Interest in connection with a Member's transfer of Interest, the assigning Member and the Assignee shall sign, acknowledge, and deliver instruments of transfer and assignments to the Company, in the form and substance satisfactory to the Company.

(d) Executing All Other Agreements

The prospective Additional Member must sign all other agreements and instruments requested by the Manager. These instruments include a Member Joinder or other written acceptance and adoption by the Assignee of this Agreement.

(e) Reasonable Transfer Fee

An Assignee may be required to pay any professional fees incurred in obtaining opinions or valuations and a reasonable transfer fee to the Company. The Manager may establish the transfer fee amount on a case-by-case basis.

Any attempt to admit a Member that violates this Article will be null and void *ab initio*.

Section 14.08 Additional Member's Effective Admission Date

The effective date of an Additional Member's admission is the date on which the Members and the Manager accept the Assignee as an Additional Member under this Agreement and the requirements of Section 14.07 are satisfied.

Section 14.09 Amending Operating Agreement and Articles of Organization

If required by Applicable Law, upon the admission of an Additional Member, the Manager may amend the Operating Agreement, the Articles of Organization, or both to reflect any substitution or addition of the Additional Member. The Company may assess any associated fees, costs, or other expenses associated with that Additional Member.

Section 14.10 Voting Rights of Transferred Interests

A Voting Member who transfers Voting Interest to an Assignee will continue to hold all voting rights associated with the assigned Interest until the Assignee of the transferred Interest satisfies all of the requirements to become an Additional Member under Section 14.07.

If an Assignee acquires an Interest due to the death of a Voting Member, the voting rights associated with the transferred Interest will be suspended and disregarded for purposes of calculating votes until the Assignee of the transferred Interest satisfies all of the requirements to become an Additional Member under Section 14.07.

Section 14.11 Effect of Improper Transfer

Any attempted transfer of an Interest or the admission of an Additional Member in violation of this Article and Article Fifteen is null and void *ab initio*. No such transfer or admission may be recorded on the Company's books and the purported transferee or Member in any such transfer will not be treated (and, in the case of a transfer, the purported transferor will continue to be treated) as the owner of such Interest for all purposes of this Agreement. If the ownership of Interest is in doubt, or if there is reasonable doubt as to who may receive a distribution attributable to an Interest, the Manager may accumulate the amounts to be distributed until this issue is finally determined and resolved. The Manager shall credit any accumulated amounts to the Capital Account associated with the Interests.

Section 14.12 Creditor Rights; Charging Order Sole and Exclusive Remedy

If a creditor obtains a judgment by a court of competent jurisdiction against any Member or Assignee, the court may charge the Member or Assignee's Interest with payment of the unsatisfied amount of the judgment from distributions attributable to the affected Interest, but only to the extent permitted by the Act. To the extent any Interest is charged with satisfaction of a judgment, the judgment creditor will receive no more than the rights of an Assignee under Section 14.06 and will not be admitted as a Member of the Company.

The charging order is the exclusive remedy by which a judgment creditor of a Member or an Assignee of an Interest may obtain any satisfaction from the Company toward any judgment against the Member or Assignee. This Section does not deprive any Member or Assignee of rights under any exemption laws available to the Member or Assignee.

Section 14.13 Assignee or Charging Order Holder Assumes Tax Liability

The Assignee of an Interest and any person who acquires a charging order against an Interest shall report income, gains, losses, deductions and credits regarding the interest for the period in which the Assignee interest is held or for the period the charging order is outstanding.

ARTICLE 15 **RIGHT OF FIRST REFUSAL**

Section 15.01 Members Right of First Refusal

No Member may transfer any Interest without first offering in writing to sell the Interest to all other Members as provided in this Article.

Section 15.02 Notice of Intent to Transfer

Before transferring an Interest, a Member shall first give notice of the intent to transfer to the Manager and to all other Members. Any notice of intent to transfer must include a copy of any written offer to purchase the Interest that the Member has received. If the Member received only an oral offer, a written explanation of the oral offer must be attached to the notice. The written explanation must completely detail the purchase price and payment terms.

Section 15.03 Members' Right to Purchase

The Members have the first right to purchase any portion of the Interest according to the terms of the offer. If some or all of the purchase price stated in the offer consists of non-cash consideration, a Member may pay the equivalent cash value in lieu of the non-cash consideration. A Member may exercise this right to purchase by giving notice of intent to purchase to the selling Member within 30 days of receiving the written notice of the offer.

Despite the foregoing or anything else in this Agreement, only a Voting Member may purchase the Interests of a Voting Member and only a Non-Voting Member may purchase the Interests of a Non-Voting Member in the Company.

Section 15.04 Payment Terms under Priority Right to Purchase

If a Member exercises the priority right to purchase an Interest as provided above, then a purchasing Member shall pay the purchase price according to the payment terms specified in the written notice of the offer provided by the selling Member.

Section 15.05 Closing on Purchase by the Member

Any purchase of an Interest under this Section will close at the Company's principal office within 30 days from the date that the purchasing Members exercise their priority right to purchase an Interest.

Section 15.06 Transfer to Third Party after Non-Exercise of Priority Right

If no Members exercise their priority right to purchase the Interest, the selling Member may transfer its Interest to the party that made the original offer for the purchase price and on the terms in the original offer.

Any transfer to a Third Party under this Section must close within 30 business days from the earlier of:

- the date on which priority rights of the other Members to purchase expire; and
- the date on which the other Members have provided written notice of their intent not to exercise their priority rights to purchase.

If the Interest is not sold to the prospective purchaser within the specified time, the other Members will again be offered an opportunity to exercise their priority rights to purchase the Interest under Section 15.03.

ARTICLE 16 **DISSOLUTION AND LIQUIDATION**

Section 16.01 Dissolution Events

The Company will be dissolved only if an event described in this Section occurs.

(a) Dissolution by the Members

The Company will be dissolved by the Members, subject to any special vote required by Article Ten.

(b) Judicial Dissolution

The Company will be dissolved upon the entry of a decree of judicial dissolution by a court of competent jurisdiction.

After dissolution, the Company may only conduct activities necessary to wind up its affairs.

Section 16.02 Effect of Dissolution

Dissolution of the Company will be effective on the day on which the event described in Section 16.01 occurs, but the Company will not terminate until the winding up of the Company has been completed, the assets of the Company have been distributed as provided in Section 16.03, and the Company's Articles of Organization has been cancelled as provided in Section 16.06.

Section 16.03 Liquidation

After dissolving the Company, the Members will have full authority to sell, assign, and encumber any or all of the Company's assets and to wind up and liquidate the affairs of the Company's in an orderly and businesslike manner. The Members shall liquidate the Company's assets and apply and distribute proceeds from the liquidation of the assets as follows.

(a) Creditor Payment

The proceeds from the liquidated property will first be applied toward or paid to any non-Member creditor of the Company in the order of payment required by Applicable Law.

(b) Provision for Reserves

After paying liabilities owed to non-Member creditors, the Members shall set up such reserves as the Members determine is reasonably necessary. The Members may, but need not, pay over any reserves for contingent liabilities to a bank to hold in escrow for later payment.

After the Members are reasonably satisfied that any liabilities have been adequately resolved, the Members shall distribute any remaining reserves to the Members or their assigns as provided in Section 16.03(c).

(c) Distributions to Members

After paying liabilities owed to non-Member creditors and establishing reserves, the Members shall satisfy any debts owed to the Members with any remaining net assets of the

Company, and then distribute any remaining assets to the Members in proportion to their positive Capital Account balances.

Section 16.04 In-Kind Distributions in Liquidation

Despite the provisions of Section 16.03 that require the liquidation of the Company's assets but subject to the order of priorities set forth in Section 16.03(c), if upon dissolution of the Company the Manager determines that an immediate sale of part or all of the Company's assets would be impractical or could cause undue loss to the Members, the Members may defer the liquidation of any assets except those necessary to satisfy Company liabilities and reserves. If the Members determine the assets are not suitable for liquidation, the Members may distribute undivided interests in the Company's assets to the Members instead of cash. This in-kind distribution must be made to the Members as tenants in common and in accordance with the provisions of Section 16.03(c). Any in-kind distribution will be subject to any conditions relating to the disposition and management of the properties that the Members determine to be reasonable and equitable and to any agreements governing the operating of such properties at that time. If any in-kind assets of the Company are to be distributed, those assets will be distributed using their Fair Market Value at the distribution date, as determined by the Members.

Section 16.05 Company Property Sole Source

Company property is the sole source for the payment of any debts or liabilities owed by the Company. Any return of Capital Contributions or liquidation amounts to the Members will be satisfied only to the extent that the Company has adequate assets. If the Company does not have adequate assets to return the Capital Contributions, the Members will not have any recourse against the Company or any other Members, except to the extent that other Members may have outstanding debts or obligations owing to the Company.

Section 16.06 Cancellation of Articles of Organization

Upon completing the distribution of the Company's assets as provided in Section 16.03(c), the Company will be terminated and the Members shall cause the cancellation of the Articles of Organization in the State of Delaware and of all qualifications and registrations of the Company as a foreign limited liability company in any other jurisdictions and shall take any other actions necessary to terminate the Company.

Section 16.07 Survival of Indemnity Rights, Duties, and Obligations

For purposes of Article Seventeen, including any Member's right to indemnification under Section 17.04, the Company's dissolution, liquidation, winding up, or termination for any reason will not release any party from any loss that, at the time of the dissolution, liquidation, winding up, or termination, had already accrued to any other party or which may accrue because of any act or omission occurring before the dissolution, liquidation, winding up, or termination.

Section 16.08 Company Asset Sales during Term of the Company

The sale of Company assets during the term of the Company does not constitute liquidation, dissolution, or termination of the Company as defined under this Article. The Manager may reinvest the sale proceeds in other assets consistent with the business purposes for the Company. Further, the Manager may participate in any real property exchange as defined in Code Section 1031 if the exchange fulfills the business purposes of the Company.

ARTICLE 17

EXCULPATION AND INDEMNIFICATION

Section 17.01 Exculpation of Protected Persons

No Protected Person is liable to the Company or any other Protected Person for any loss, damage, or claim incurred because of any action taken or not taken by the Protected Person in good-faith reliance on the provisions of this Agreement. This exculpation is only effective if the action or omission is not an Unprotected Act and does not protect any Voting Member from a court order to purchase the Interest of another Member who successfully contends that the Member committed actionable, oppressive acts against the other Member.

Section 17.02 Good-Faith Reliance

A Protected Person is fully protected if the Protected Person relies in good faith on the Company's records or on information, opinions, reports, or statements of the following Persons or groups:

- another Manager;
- one or more employees of the Company;
- any attorney, independent accountant, appraiser, or other expert or professional employed or engaged by or on behalf of the Company; or
- any other person selected in good faith by or on behalf of the Company, in each case as to matters that the relying person reasonably believes to be within the other person's area of professional expertise.

The information, opinions, reports, or statements referred to above include financial statements; information, opinions, reports, or statements as to the value or amount of the Company's assets, liabilities, income, or losses; and any facts pertinent to the existence and amount of assets from which distributions might properly be paid.

In no way does this provision limit any person's right to rely on information as provided in the Act. Any act, omission, or forbearance by a Protected Person on the advice of the Company's counsel must be conclusively presumed to have been in good faith.

Section 17.03 Decision-Making Standards

When this Agreement permits or requires a Protected Person to make a decision (including discretionary decisions and other grants of similar authority or latitude), the Protected Person is entitled to consider only the interests and factors as the Protected Person chooses, including its own interests, with no obligation to give any consideration to any interest of or factors affecting the Company or any other person. When this Agreement permits or requires a Protected Person to make a good-faith decision, the Protected Person shall act under this express standard and is not subject to any other standard imposed by this Agreement or any Applicable Law.

Section 17.04 Indemnification

The Company shall indemnify, hold harmless, defend, pay, and reimburse any Protected Person against all losses, claims, damages, judgments, fines, or liabilities, including reasonable legal fees or other expenses incurred in their investigation or defense, that arise in connection with any actual or alleged act, omission, or forbearance performed or omitted on behalf of the Company

or any Member in connection with the Company's business. If the act or omission is not an Unprotected Act, the Company shall also reimburse any amounts expended in settling any claims (collectively, *Indemnity Losses*) to which the Protected Person may become subject because:

- of any act or omission or alleged act or omission on behalf of the Company, or any Member;
- the Protected Person is or was acting in connection with the Company's business as a partner, member, stockholder, controlling Affiliate, manager, director, officer, employee, or agent of the Company; any Member; or any of their respective controlling Affiliates; or
- the Protected Person is or was serving at the Company's request as a partner, member, manager, director, officer, employee, or agent of any person including the Company.

A Protected Person's conduct will be determined under a final, nonappealable order of a court of competent jurisdiction. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or a plea of *nolo contendere* or its equivalent, does not, of itself, create a presumption that the Protected Person did not act in good faith or, with respect to any criminal proceeding, had reasonable cause to believe that the conduct was unlawful or constituted fraud or willful misconduct.

The indemnity provided by this Article extends to the full extent permitted by the Act as it now exists or may later be amended, substituted, or replaced, but only if the amendment, substitution, or replacement permits the Company to provide broader indemnification rights than those the Act permits.

Section 17.05 Reimbursement

The Company shall promptly reimburse and may provide advancements to each Protected Person for reasonable legal or other expenses incurred in connection with investigating, preparing to defend, or defending any claim, lawsuit, or other proceeding relating to any Indemnity Losses for which such Protected Person may be indemnified under Section 17.04. If it is finally judicially determined that the Protected Person is not entitled to the indemnification provided by Section 17.04, the Protected Person shall promptly reimburse the Company for any reimbursed or advanced expenses.

Section 17.06 Entitlement to Indemnity

The indemnification provided by Section 17.04 does not exclude any other indemnification rights under any separate agreement or otherwise. Section 17.04 will continue to protect each Protected Person regardless of whether the Protected Person remains in the position or capacity under which the Protected Person became entitled to indemnification under Section 17.04 and will inure to the benefit of the Protected Person's executors, administrators, legatees, and distributees.

Section 17.07 Insurance

To the extent available on commercially reasonable terms, the Manager may purchase, at the Company's expense, insurance to cover Indemnity Losses covered by these indemnification provisions and to cover Indemnity Losses for any Protected Person's breach or alleged breach of the Protected Person's duties. The Manager will determine the coverage amounts and the

deductibles. A decision not to purchase insurance will not affect a Protected Person's right to indemnification (including the right to be reimbursed, advanced expenses, or indemnified for Indemnity Losses under any other provisions of this Agreement) under this Agreement. A Protected Person that recovers any amount for any Indemnity Losses from any insurance coverage shall reimburse the Company for any amount previously received from the Company for those Indemnity Losses.

Section 17.08 Indemnification Obligation Funding

Despite anything in this Agreement to the contrary, any indemnity by the Company relating to Section 17.04 will be provided out of and to the extent of the Company's assets. No Member will have any personal liability or will be required to make Capital Contributions to help satisfy the indemnity unless the Member otherwise agrees in writing.

Section 17.09 Securities Indemnity

Each Member agrees to hold the Company harmless from all expenses, liabilities, and damages (including reasonable attorneys' fees) arising from a disposition of Interest in any manner that violates the Securities Act, any applicable state securities law, or this Agreement. This indemnification includes the Company's Members, Manager, Member principals, organizers, and controlling persons (as defined in the Securities Act), and any persons affiliated with any of them or with the distribution of the Interest.

Section 17.10 Savings Clause

Article Seventeen survives the Company's dissolution, liquidation, winding up, and termination. If Article Seventeen or any portion of it is invalidated on any ground by any court of competent jurisdiction, the Company shall indemnify and hold harmless each Protected Person under any applicable portion of this Article that was not invalidated and to the full extent permitted by Applicable Law. To the extent possible, Article Seventeen supersedes any Delaware law to the contrary.

Section 17.11 Amendment

Article Seventeen is a contract between the Company and, collectively, each Protected Person who serves in that capacity at any time while Article Seventeen is in effect. The Company and each Protected Person intend to be legally bound under this contract. No amendment, modification, or repeal of Article Seventeen that adversely affects a Protected Person's indemnification rights for Indemnity Losses incurred or relating to a state of facts existing before the amendment, modification, or repeal will apply without the Protected Person's prior written consent.

ARTICLE 18

GENERAL MATTERS

Section 18.01 Expenses

Except as otherwise expressly provided in this Agreement, the Company must pay all expenses (including fees and disbursements of counsel, financial advisors, and accountants) incurred in preparing and executing this Agreement, making any amendment or waiver to it, and completing the transactions contemplated by it.

Section 18.02 Binding Effect

Subject to the restrictions on transfer in this Agreement, this Agreement binds and inures to the benefit of the Members and to their respective successors, personal representatives, heirs, and assigns.

Section 18.03 Further Assurances

In connection with this Agreement and the transactions contemplated by it, the Company and each Member agree to provide further assurances if requested by the Company or any other Member. These further assurances include signing and delivering any additional documents, instruments, conveyances, and other assurances or taking any further actions necessary to carry out the provisions of or transactions contemplated by this Agreement.

Section 18.04 No Waiver

Any Member's failure to insist upon strict performance of any provision or obligation of this Agreement for any period is not a waiver of that Member's right to demand strict compliance in the future. An express or implied consent to or waiver of any breach or default in the performance of any obligations under this Agreement is not a consent to or waiver of any other breach or default in the performance of the same or of any other obligation.

Section 18.05 No Duty to Mail Articles of Organization

The Manager does not have an obligation to deliver or mail copies of the Articles of Organization or any amendments to the Members unless required to do so by the Act.

Section 18.06 Governing Law

The affairs of the Company and the conduct of its business are governed by the provisions of this Agreement to the extent such provisions are not in conflict with nonwaivable provisions of Applicable Law or the Articles of Organization. This Agreement is governed, construed, and administered according to the laws of Delaware, as from time to time amended, and any applicable federal law. No effect is given to any choice-of-law or conflict-of-law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the law of any jurisdiction other than those of the State of Delaware.

Section 18.07 Venue; Submission to Jurisdiction

A cause of action arising out of this Agreement includes any cause of action seeking to enforce any provision of or based on any matter arising out of or in connection with this Agreement or the transactions contemplated by it. The parties agree that any suit, action, or proceeding, whether in contract, tort, or otherwise, arising out of this Agreement must be brought in a state or federal court or courts located in State of Delaware and in the county of or nearest to the Company's principal office if one of these courts has subject-matter jurisdiction over the suit, action, or proceeding. Any cause of action arising out of this Agreement is deemed to have arisen from a transaction of business in the State of Delaware.

Each party irrevocably consents to the jurisdiction of these courts (and their respective appellate courts) in any cause of action arising out of this Agreement. To the fullest extent permitted by Applicable Law, each party irrevocably waives any objection that it may have now or later to the venue of any action arising out of this Agreement in any of these courts, including an inconvenient-forum petition.

Service of process, summons, notice, or other document by registered mail to the address set forth in Section 18.12 is effective service of process for any suit, action, or other proceeding brought in any court.

Section 18.08 Waiver of Jury Trial

Each party to this Agreement acknowledges and agrees that any controversy arising out of this Agreement is likely to involve complicated issues. Therefore, each party irrevocably and unconditionally waives any right it may have to a trial by jury for any cause of action arising out of this Agreement.

Section 18.09 Equitable Remedies

Each party to this Agreement acknowledges that its breach or threatened breach of any of its obligations under this Agreement would give rise to irreparable harm to the other parties and monetary damages would not be an adequate remedy. Therefore, each party to this Agreement agrees that if any party breaches or threatens to breach any of its obligations, each of the other parties to this Agreement will be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other equitable relief available from a court of competent jurisdiction (without any requirement to post bond). These equitable remedies are in addition to all other rights and remedies that may be available in respect of the breach.

Section 18.10 Attorneys' Fees

If any party to this Agreement institutes any legal cause of action—including arbitration—against another party arising out of or relating to this Agreement, the prevailing party will be entitled to the costs incurred in conducting the cause of action, including reasonable attorneys' fees and expenses and court costs.

Section 18.11 Remedies Cumulative

Except to the extent this Agreement expressly provides otherwise, the rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law, in equity, or otherwise.

Section 18.12 Notices

Unless otherwise stated, all notices, requests, consents, claims, demands, waivers, and other communications called for under this Agreement must be in writing and will be deemed to have been given:

- when delivered by hand (with written confirmation of receipt);
- when received by the addressee if sent by a nationally recognized overnight courier (receipt requested);
- on the date sent by facsimile or email as a PDF document (with confirmation of transmission) if sent during recipient's normal business hours, and on the next business day if sent after normal business hours of the recipient; or
- on the fifth day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

If notice is required to be given to a minor or incapacitated individual, notice must be given to the minor or incapacitated individual's parent or Legal Representative.

The written notice must be sent to the respective parties at the party's last known address (or at the address a party has specified in a notice given in accordance with this Section). Each Member shall notify the Company in writing within five days of any change to the Member's address.

Section 18.13 Severability

The invalidity or unenforceability of any provision of this Agreement does not affect the validity or enforceability of any other provision of this Agreement. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this Agreement are to be construed as if the invalid provision had never been included in this Agreement.

Subject to Section 13.03, upon a determination that any provision is invalid, illegal, or unenforceable, the parties to this Agreement shall negotiate in good faith to modify this Agreement to give effect to the original intent of the parties as closely as possible in a mutually acceptable manner so that the transactions contemplated by this Agreement can be consummated as originally contemplated to the greatest extent possible.

Section 18.14 Separate Counsel

By signing this Agreement, each party acknowledges that this Agreement is the product of arms-length negotiations between the parties and should be construed as such. Each party acknowledges that he or she has been advised to seek separate counsel and has had adequate opportunity to do so.

Section 18.15 Entire Agreement

This Agreement, together with the Articles of Organization, any agreement by any Member to join or otherwise acquire an interest in the Company, and all related Exhibits, Schedules, and other agreements specifically referred to in this Agreement, constitutes the sole and entire agreement of its parties with respect to the Agreement's subject matter. This Agreement supersedes all prior and contemporaneous understandings, agreements, representations, and warranties with respect to the subject matter. As between or among the parties, oral statements or prior written material not specifically incorporated in this Agreement have no force or effect. The parties specifically acknowledge that, in entering into and executing this Agreement, each is relying solely upon the representations and agreements contained in this Agreement and no others.

Section 18.16 No Third Party Beneficiaries

Except as provided in Article Seventeen, which benefits and is enforceable by the Protected Persons it describes, this Agreement is for the sole benefit of its parties and their respective heirs, executors, administrators, successors, and assigns. Nothing in this Agreement, express or implied, confers any legal or equitable right, benefit, or remedy of any nature whatsoever upon any other person, including any creditor of the Company.

Section 18.17 Amendments

Except as provided in Section 8.14, no provision of this Agreement may be amended or modified except by a written instrument executed by the Manager and the Members. Despite the foregoing, amendments to the Schedule of Members after any new issuance, redemption,

repurchase, or transfer of Interest in accordance with this Agreement may be made by the Manager without the consent of or execution by the Members.

Section 18.18 Multiple Originals; Validity of Copies

This Agreement may be signed in any number of counterparts, each of which will be deemed an original. Any person may rely on a copy of this Agreement that any Manager certifies to be a true copy to the same effect as if it were an original.

Section 18.19 Determination of Fair Market Value

The *Fair Market Value* of any asset is the purchase price that a willing buyer having reasonable knowledge of relevant facts would pay a willing seller for that asset in an arm's length transaction on any date, without time constraints and without being under any compulsion to buy or sell. Fair Market Value is a good-faith determination made by the Manager based on factors the Manager, in its reasonable business judgment, considers relevant.

ARTICLE 19 **DEFINITIONS AND INTERPRETATION**

Section 19.01 Definitions

For purposes of this Agreement, the following terms have the following meanings.

(a) Act

Act means the Delaware Limited Liability Company Act, as amended from time to time.

(b) Additional Member

Additional Member means any person not previously a Member who acquires an Interest and is admitted as a Member according to Section 14.07. An *Additional Member* may be either a Voting Member or Non-Voting Member.

(c) Adjusted Capital Account Deficit

Adjusted Capital Account Deficit means the negative balance in a Member's Capital Account at the end of a Taxable Year after:

- increasing the Capital Account by the amount, if any, of such negative balance the Member is obligated to restore under this Agreement and the amount of such negative balance the Member is deemed to be obligated to restore under Treasury Regulations sections 1.704-2(g)(1) and 1.704-2(i)(5); and
- reducing the Capital Account with the items described in Treasury Regulations sections 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

(d) Affiliate

Affiliate means any of the following persons or any person who controls, is controlled by, or is under common control with any of the following persons:

- a Member;
- a Member's Immediate Family member; or
- a Legal Representative, successor, Assignee, or trust for the benefit of a Member or any Member's Immediate Family members.

For purposes of this definition, *control* means the direct or indirect power to direct or cause the direction of the person's management and policies, whether by owning voting securities, partnership, or other ownership interests; by contract; or otherwise.

(e) Agreement

Agreement means this Operating Agreement, as amended from time to time.

(f) Applicable Law

Applicable Law means the Act, the Code, the Securities Act, all pertinent provisions of any agreements with any Governmental Authority and all pertinent provisions of any Governmental Authority's:

- constitutions, treaties, statutes, laws, common law, rules, regulations, decrees, ordinances, codes, proclamations, declarations, or orders;
- consents or approvals; and
- orders, decisions, advisory opinions, interpretative opinions, injunctions, judgments, awards, and decrees.

(g) Articles of Organization

Articles of Organization means the Articles of Organization filed with the Delaware Secretary of State as required by the Act, or any other similar instrument required to be filed by the laws of any other state in which the Company intends to conduct business.

(h) Assignee

Assignee means the recipient of an Interest by assignment.

(i) Book Value

With respect to any Company property, *Book Value* means the Company's adjusted basis for federal income tax purposes, adjusted from time to time to reflect the adjustments required or permitted by Treasury Regulation Section 1.704-1(b)(2)(iv)(d)-(g). The Book Value of each Company asset must be adjusted as of the date of this Agreement under Treasury Regulation Section 1.704-1(b)(2)(iv)(f) in a manner determined by the Manager so that the aggregate Book Value of the Company's assets (net of the Company's liabilities) as of this date is equal to the aggregate Capital Account balances of the Members as of this date.

(j) Budget

Budget means the monthly and annual operating budgets for the Company for the upcoming Taxable Year. The submission must include capital and operating expense budgets, cash-flow projections, covenant compliance calculations of all outstanding and projected indebtedness, and profit-and-loss projections, all itemized in reasonable detail.

(k) Capital Account

Capital Account means the account established and maintained for each Member under Section 5.01 and under Treasury Regulation Section 1.704-1(b)(2)(iv), as amended from time to time.

(l) Capital Contribution

Capital Contribution means the total cash and other consideration contributed and agreed to be contributed to the Company by each Member. Each initial *Capital Contribution* is shown in the Schedule A, attached and incorporated into this Agreement. Additional *Capital Contribution* means the total cash and other consideration contributed to the Company by

each Member (including any Additional Member) other than the initial Capital Contribution. Any reference in this Agreement to the Capital Contribution of a current Member includes any Capital Contribution previously made by any prior Member regarding that Member's Interest. The value of a Member's Capital Contribution is the amount of cash plus the Fair Market Value of other property contributed to the Company.

(m) Cause

Cause, with respect to any particular Service Provider, has the meaning set forth in any effective employment agreement, or other written contract of engagement entered into between the Company and the Service Provider. If none, *Cause* means any of the following acts by a Service Provider:

- repeatedly failing to substantially perform his or her duties as an employee or other associate of the Company (unless resulting from his or her disability) that, whether committed willfully or negligently, continues unremedied for more than 30 days after the Company has provided written notice of the failure (failing to meet financial performance expectations is not, by itself, a failure by the Service Provider to substantially perform his or her duties);
- committing fraud or embezzling;
- being materially dishonest or breaching a fiduciary duty against the Company;
- committing willful misconduct or gross negligence that injures the Company;
- being convicted of, or pleading guilty or *nolo contendere* to, a felony (or any state-law equivalent) or willfully or materially violating any federal, state, or foreign securities laws;
- being convicted of any other criminal act or act of material dishonesty, disloyalty, or misconduct that has a material adverse effect on the property, operations, business, or reputation of the Company;
- using, being under the influence, or possessing illegal drugs on the premises of the Company while performing any duties or responsibilities with the Company;
- materially violating any rule or policy of the Company; or
- materially breaching any covenant undertaken in Article Thirteen or any employment agreement, or any written nondisclosure, noncompetition, or nonsolicitation agreement with the Company.

If a court of competent jurisdiction (or an arbitrator in binding arbitration conducted by agreement of the Members) conclusively determines the issue of Cause against the Service Provider, any voting attributes of a Service Provider who is also a Voting Member will be disregarded in the vote to remove the Service Provider.

(n) Code

References to the *Code* or to its provisions are to the Internal Revenue Code of 1986, as amended from time to time, and any corresponding Treasury Regulations. References to the *Treasury Regulations* are to the Treasury Regulations under the Code in effect. If a particular provision of the Code is renumbered or a subsequent federal tax law supersedes the Code, any reference is to the renumbered provision or to the corresponding provision of the subsequent law, unless the result would be clearly contrary to the Members' intent as expressed in this Agreement. The same rule applies to Treasury Regulations references.

(o) Company

Company means Axis Growth LLC, a Delaware limited liability company.

(p) Company Minimum Gain

Company Minimum Gain means the minimum amount of gain that would be realized by the Company if the Company disposed of all Company property subject to the liabilities in full satisfaction of those liabilities, computed under Treasury Regulation Section 1.704-2(b) and (d).

(q) Company Representative

Company Representative is defined in Section 2.02.

(r) Fair Market Value

Fair Market Value is defined in Section 18.19.

(s) Governmental Authority

Governmental Authority means any local, state, federal, or foreign government or its political subdivision; any agency or instrumentality of a government or its political subdivision; or any self-regulated organization or other nongovernmental regulatory authority or quasi-Governmental Authority whose rules, regulations, or orders have the force of law. Governmental Authority also means any arbitrator, court, or tribunal of competent jurisdiction.

(t) Immediate Family

Immediate Family means any Member's spouse (but not a spouse who is legally separated from the person under a decree of divorce or separate maintenance), parents, parents-in-law, descendants (including descendants by adoption), spouses of descendants (but not a spouse who is legally separated from the person under a decree of divorce or separate maintenance), brothers, sisters, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law, and grandchildren-in-law.

(u) Indemnity Losses

Indemnity Losses is defined in Section 17.04.

(v) Interest

Interest means the ownership interest and rights of a Member in the Company, including the Member's right to a distributive share of the profits and losses, the distributions, and the property of the Company. All Interests are subject to the restrictions on transfer imposed by this Agreement. Each Member's Interest is personal property and no Member will acquire any interest in any of the assets of the Company. An Interest may be further defined as a *Voting Interest* or a *Non-Voting Interest*. Interests may be adjusted from time to time under Article Three.

(w) Legal Representative

With respect to any individual, *Legal Representative* means a person's guardian, conservator, executor, administrator, trustee, or any other person representing a person or the person's estate. With respect to any person, *Legal Representative* means all directors, officers, employees, consultants, financial advisors, counsel, accountants, and other agents of the person.

(x) Majority Vote

Majority Vote means a ratio of more than 50 votes out of every 100 votes that may be cast will determine the matter subject to the vote.

(y) Manager

Manager means any individual or legal entity designated in this Agreement as a Manager. A Manager conducts the business of the Company and is authorized to exercise the powers and duties of Manager detailed in this Agreement.

(z) Member

Member, without the qualifier *Voting* or *Non-Voting*, means any person designated in this Agreement as a Voting or Non-Voting Member or any person who becomes a Voting or Non-Voting Member under this Agreement.

(aa) Member Joinder

Member Joinder means the joinder agreement in form and substance attached to this Agreement.

(bb) Member Minimum Gain

Regarding a Member Non-Recourse Debt, *Member Minimum Gain* means the least amount of gain that the Company would realize if the Company disposed of the encumbered Company property in full satisfaction of the encumbrance.

(cc) Member Non-Recourse Debt and Member Non-Recourse Deductions

Member Non-Recourse Debt means nonrecourse Company debt for which one or more Members bear economic risk of loss as defined in Treasury Regulation Section 1.704-2(b)(4).

Member Non-Recourse Deductions means for each Taxable Year, the Company deductions that are attributable to Member Non-Recourse Debt and are characterized as Member Non-Recourse Deductions under Treasury Regulation Section 1.704-2(b).

(dd) Permitted Transfer; Permitted Transferee

A *Permitted Transfer* is an Interest transfer made under Article Fourteen. A *Permitted Transferee* is the recipient of a Permitted Transfer.

(ee) Protected Person

Protected Person means:

- each Member;
- each Member's officer, director, shareholder, partner, member, controlling Affiliate, employee, agent, or Legal Representative and each of their controlling Affiliates; and
- each of the Company's Manager, employees, and agents or Legal Representatives.

(ff) Qualified Appraiser and Qualified Appraisal

A *Qualified Appraiser* means an appraiser who is a member of the American Society of Appraisers, Business Valuations Division, and accredited to perform business appraisals or valuations by this organization; or, alternatively, a certified public accountant accredited in business valuation by the American Institute of Certified Public Accountants. A *Qualified Appraisal* means any appraisal performed by a Qualified Appraiser.

(gg) Securities Act

Securities Act refers to the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations under it that are in effect at the time.

(hh) Service Provider

Service Provider means any employee, consultant, or other service provider of the Company.

(ii) Taxable Year

Taxable Year means the calendar year or any other accounting period selected by the Manager. Taxable Year is synonymous with fiscal year for all purposes of this Agreement.

(jj) Third Party

Third Party means any person who:

- is not a Member of the Company;
- does not directly or indirectly own or have the right to acquire any outstanding Interests;
- is not a Permitted Transferee of any person who directly or indirectly owns or has the right to acquire any Interests; and
- is not an Affiliate.

With respect to any controversy concerning the Company, *Third Party* means an individual who is not related to or subordinate to a claimant or respondent and has no personal or financial stake in the resolution of the controversy other than fair and reasonable compensation for services provided to resolve the controversy.

(kk) Unprotected Act

Unprotected Act means any act, omission, or forbearance by a Protected Person that:

- with respect to any criminal proceeding, the Protected Person would have reasonable cause to believe was unlawful or
- constitutes fraud or willful misconduct.

(ll) Voting Interest; Non-Voting Interest

Voting Interest means an Interest that includes the right to consent or approve of certain Company actions. Each Voting Member holds a Voting Interest. *Non-Voting Interest* means an Interest that does not include the right to consent or approve of certain Company actions.

(mm) Voting Member; Non-Voting Member

Voting Member means any Member with a Voting Interest. A *Non-Voting Member* means a Member with a Non-Voting Interest. Except as otherwise specifically permitted by this Agreement or with the prior written consent of all the Voting Members, a Non-Voting Member has no right to vote or participate in the Company's management, or to act on behalf of the Company in any way or for any purpose.

Section 19.02 Interpretation

The following general provisions and rules of construction apply to this Agreement.

(a) Singular and Plural; Gender

Unless the context requires otherwise, words denoting the singular may be construed as plural and words of the plural may be construed as denoting the singular. Words of one

gender may be construed as denoting another gender as is appropriate within the context. The word *or*, when used in a list of more than two items, may function as both a conjunction and a disjunction as the context requires or permits.

(b) Headings of Articles, Sections, and Subsections

The headings of Articles, Sections, and Subsections used within this Agreement are included solely for the reader's convenience and reference. They have no significance in the interpretation or construction of this Agreement.

(c) Days and Business Days

In this Agreement, *days*, without further qualification, means calendar days and *business days* means any day other than a Saturday, Sunday or a day on which national banks are allowed by the Federal Reserve to be closed.

(d) Delivery

Delivery is taken in its ordinary sense and includes:

- personal delivery to a party;
- mailing by certified United States mail to the last known address of the party to whom delivery is made, with return receipt requested to the party making delivery;
- facsimile transmission to a party when receipt is confirmed in writing or by electronic transmission back to the sending party; or
- electronic mail transmission to a party when receipt is confirmed in writing or by electronic mail transmission back to the sending party.

The effective date of delivery is the date of personal delivery or the date of the return receipt, if received by the sending party. If no return receipt is provided, the effective date is the date the transmission would have normally been received by certified mail if there is evidence of mailing.

(e) Include, Includes, and Including

In this Agreement, the words *include*, *includes*, and *including* mean include without limitation, includes without limitation, and including without limitation, respectively. *Include*, *includes*, and *including* are words of illustration and enlargement, not words of limitation or exclusivity.

(f) Words of Obligation and Discretion

Unless otherwise specifically provided in this Agreement or by the context in which used, the word *shall* is used to impose a duty, to command, to direct, or to require. Terms such as *may*, *is authorized to*, *is permitted to*, *is allowed to*, *has the right to*, or any variation or other words of discretion are used to allow, to permit, or to provide the discretion to choose what should be done in a particular situation, without any other requirement. Unless the decision of another party is expressly required by this Agreement, words of permission give the decision-maker the sole and absolute discretion to make the decision required in the context.

(g) Assignment

In this Agreement, *assignment* includes any method—direct or indirect, voluntary or involuntary—by which the legal or beneficial ownership of any interest in the Company is transferred or changed, including:

- any sale, exchange, gift, or any other form of conveyance, assignment, or transfer;
- a change in the beneficial interests of any trust or estate that holds any interest in the Company and a distribution from any trust or estate;
- a change in the ownership of any Member that is a corporation, partnership, limited liability Company, or other legal entity, including the dissolution of the entity;
- a change in legal or beneficial ownership or other form of transfer resulting from the death or divorce of any Member or the death of the spouse of any Member;
- any transfer or charge under a charging order issued by any court; and
- any levy, foreclosure, or similar seizure associated with the exercise of a creditor's rights in connection with a mortgage, pledge, encumbrance, or security interest.

Assignment does not include any mortgage, pledge, or similar voluntary encumbrance or grant of a security interest in any Interests in the Company.

(h) References to Transfer, Transferor, and Transferee

In this Agreement, *transfer* includes any direct or indirect sale, transfer, assignment, pledge, encumbrance, hypothecation, or other disposition or attempted disposition. The term includes any involuntary transfer, such as a transfer that occurs by operation of law. If a person enters into a contract, option, or other arrangement or understanding to make a transfer, that contract, option, or other arrangement or understanding will itself be considered a *transfer*. When used as a verb, *transfer* has a correlative meaning. A person who makes a transfer may be referred to as a *transferor*, and a person who receives a transfer may be referred to as a *transferee*.

(i) References to Property or Assets

Any reference in this Agreement to *property* or *assets*, without further qualification, must be construed broadly to include, as to any person, all property of any kind—real or personal, tangible or intangible, legal or equitable—whether now owned or subsequently acquired. The following items are each considered *assets* or *property* of a person: money, stock, accounts receivable, contract rights, franchises, value as a going concern, causes of action, undivided fractional ownership interests, intellectual property rights, and anything of any value that can be made available for or appropriated to the payment of debts.

(j) References to Individuals and Entities

Unless further qualified in the context, any reference in this Agreement to a *person*, *party*, or *individual*, or the use of indefinite pronouns like *anyone*, *everyone*, *someone*, or *no one* must be construed broadly to include any individual, trust, estate, partnership, association, company, corporation, or other entity or non-entity capable of having legal rights and duties. *Person*, without further qualification, has the same broad meaning as defined in Code Section 7701(a)(1) and includes any individual, trust, estate, partnership, association, company, or corporation. The Company and its successors and assigns and each Member or Assignee and their successors, assigns, heirs, and personal representatives are all considered *persons* for purposes of this Agreement. *Natural person* is used to distinguish a human being from a *juridical person*, such as a trust, estate, partnership, association, company, or corporation.

(k) Internal References

Unless the context otherwise requires:

- reference to Articles, Sections, and Exhibits mean the Articles and Sections of, and Exhibits attached to, this Agreement;
- reference to an agreement, instrument or other document means the agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by its provisions; and
- reference to a statute means the statute as amended from time to time and includes any successor legislation to it and any regulations promulgated under it.

The Exhibits referred to in this Agreement must be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim in this Agreement.

(l) No Presumption against Drafting Party

This Agreement is to be construed without giving force to any presumption or rule requiring construction or interpretation against the drafting party. No party may claim that an ambiguity in this Agreement should be construed against any other party or that there was any coercion, duress (economic or otherwise), negligent misrepresentation, or fraud (including fraud in the inducement) affecting the validity or enforcement of this Agreement.

Signed:

MANAGER:

Crest Value Management LLC



Managing Member

Date: 9/1/24