OPEN WORLD ENTERTAINMENT LLC

LIMITED LIABILITY COMPANY AGREEMENT

July 12, 2018

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This Limited Liability Company Agreement (the "**Agreement**") of Open World Entertainment LLC (the "**LLC**" or the "**Company**") is entered into pursuant to the Delaware Limited Liability Company Act, Delaware Code Ann. Title 6, §§18-101, et seq. (the "**Act**"), effective as of July 12, 2018 (the "**Effective Date**"), by and among the members set forth on the schedules hereto, having duly executed this Agreement or a counterpart to this Agreement intending to be legally bound by the following terms and conditions, and such other Persons who may hereafter be admitted from time to time as members in accordance with the provisions hereof (collectively, the "**Members**").

RECITALS

WHEREAS, the LLC was formed in accordance with the Act on July 3, 2018;

WHEREAS, on or about the date hereof, the Company and certain of the Members are entering into that certain Series A Preferred Unit Purchase Agreement (the "**Purchase Agreement**") pursuant to which the Company shall sell and issue Series A Preferred Units (as defined below) to such Members; and

WHEREAS, in connection with the transactions contemplated by the Purchase Agreement, the Company and the Members desire to enter into this Agreement to set forth the rights, preferences and privileges of the Members in the Company.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. The following terms shall have the meanings set forth for purposes of this Agreement:

"**Accounting Period**" shall mean for each Fiscal Year the period beginning on the 1st of January and ending on the 31st of December; *provided, however*, that the first Accounting Period shall commence on the date of formation of the LLC and shall end on December 31, 2018; and *provided, further*, that a new Accounting Period shall commence on any date on which an Additional or Substitute Member is admitted to the LLC or a Member ceases to be a Member for any reason.

"**Act**" shall have the meaning ascribed to it in the Preamble.

"**Additional Common Units**" shall have the meaning ascribed to it in Section 3.11(d)(ii).

"**Additional Interest**" shall have the meaning ascribed to it in Section 3.5(a).

"**Additional Member**" shall have the meaning ascribed to it in Section 3.5(b).

"**Additional Transfer Notice**" shall have the meaning ascribed to it in Section 11.7(c).

"**Affiliates**" shall mean, with respect to any specified Person, a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the Person specified, including, without limitation, any investment vehicle now or hereafter existing which is controlled by or under common control with such Person or which shares the same management company with such Person.

"**Agreement**" shall mean this Limited Liability Company Agreement, as the same shall be amended from time to time.

"**Assignee**" shall mean a transferee of an Interest or Units who has not been admitted as a Substitute Member.

"**Board of Managers**" **or** "**Board**" shall mean the LLC's Board of Managers, as constituted from time to time, as described more fully in Article V.

"**Business Day**" shall mean any day on which banks located in Boston, Massachusetts are not required or authorized by law to remain closed.

"**Capital Account**" shall mean, with respect to any Member, the account maintained for such Member in accordance with the provisions of Section 9.1(a) hereof.

"**Capital Contribution**" shall mean, with respect to any Member, any contribution to the LLC by such Member of cash, securities, debt or other property. Any reference in this Agreement to the Capital Contribution of a Member shall include the Capital Contribution made by any predecessor holder of the Interest of that Member.

"**Carrying Value**" shall mean:

(a) with respect to any LLC asset, the asset's adjusted basis for U.S. federal income tax purposes, except that, in accordance with the rules set forth in Treasury Regulations Section 1.704-1(b)(iv)(f):

(i) the Carrying Value of any asset contributed or deemed contributed by a Member to the LLC shall be the fair market value of such asset at the time of contribution as determined by agreement of the Members;

(ii) the Carrying Value of any asset distributed or deemed distributed by the LLC to any Member shall be adjusted immediately prior to such distribution to equal its fair market value at such time;

(iii) the Carrying Values of all LLC assets shall be adjusted to equal their respective fair market values except as otherwise provided herein:

(1) immediately prior to the date of the acquisition of any additional Interest (including any Common Units issued as Profits Interests) by any new or existing Member, other than in exchange for a de minimis Capital Contribution; or

(2) immediately prior to the date of the distribution of more than a de minimis amount of LLC property (other than a pro rata distribution) to a Member.

In the case of any asset that has a Carrying Value determined pursuant to clauses (1), (2) or (3) above, depreciation or deductions shall be computed based on the asset's Carrying Value as so determined, and not on the asset's adjusted tax basis, as more fully described under the definition of Net Income and Net Loss below.

(b) with respect to any liability, at a given time, the amount of such liability to the extent:

(i) reflected in the basis of any asset;

(ii) previously or currently deductible in computing Net Income or Net Loss or otherwise for Capital Account maintenance purposes; or

(iii) otherwise previously taken into account for Capital Account maintenance purposes.

"**Certificate**" shall have the meaning ascribed to it in Section 2.1.

"**Class**" shall mean the group of Members owning all of the outstanding Units of a particular class of Units as set forth in Section 3.2 hereof.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended.

"**Series FF Managers**" shall have the meaning ascribed to it in Section 5.1(c)(ii).

"**Common Members**" shall mean the Members holding Common Units and their permitted successors and assigns.

"**Common Units**" shall have the meaning ascribed to it in Section 3.2(a)(i).

"**Common Units Equivalents**" shall have the meaning ascribed to it in Section 3.11(e).

"**Common Units Outstanding**" shall have the meaning ascribed to it in Section 3.11(d)(i)(A).

"**Convertible Securities**" means convertible Units or other securities convertible into or exchangeable for (i) Units or (ii) any other securities evidencing an ownership interest in the LLC, including, without limitation warrants and options.

"**Conversion Price**" shall have the meaning ascribed to it in Section 3.11(a).

"Conversion Rate" shall have the meaning ascribed to it in Section 3.11(a).

"**Corporation**" shall have the meaning ascribed to it in Section 13.5(a).

"**Co-Selling Member**" shall have the meaning ascribed to it in Section 11.8(a).

"**Cumulative Preferred Return**" means, with respect to each Series A Preferred Unit, an amount accrued on such Series A Preferred Unit's Unpaid Preference Amount, from the date of the applicable Capital Contributions, at the rate of six percent (6%) per annum.

"**Delivery**" (including derivations thereof, such as "**Deliver**" or "**Delivered**") shall mean the occurrence of an event specified in Section 6.1(i) through (iv).

"**Designated Jurisdiction**" shall have the meaning ascribed to it in Section 10.2.

"**Effective Date**" shall have the meaning ascribed to it in the Preamble.

"**Equity Incentive Plan**" shall have the meaning ascribed to it in Section 3.2(c).

"**Estimated Trailing Twelve Month Adjusted Operating Unit EBITDA**" shall mean the sum of the trailing 12-month adjusted earnings before interests, taxes, depreciation and amortization ("**EBITDA**") of each Operating Unit of the Company (the "**Per Operating Unit Twelve Month EBITDA**"), except as provided in clause (b) below. For the purposes of determining such sum, the following rules shall apply:

(a) EBITDA shall be calculated on an Operating Unit-by-Operating Unit basis and shall exclude all corporate general and administrative costs;

(b) With respect to any Recently Opened Operating Unit (as hereinafter defined), the Per Operating Unit Twelve Month EBITDA for the purposes hereof shall be the estimated projection of such Operating Unit's EBITDA for the twelve-month operating period commencing with the first anniversary of the opening of such Operating Unit; and

(c) Such per Operating Unit Twelve Month EBITDA calculations, and the sum thereof, shall be determined in good faith by the Company with reference to Company financial statements prepared in accordance with the Accounting Principles, and shall be reasonably acceptable to the Series A Members.

"**Estimated Tax Distribution**" shall have the meaning ascribed to it in Section 10.2(a).

"**Estimated Tax Period**" shall mean, for each Fiscal Year, the periods of January 1 through March 31, April 1 through May 31, June 1 through August 31, and September 1 through December 31.

"**Excepted Units**" shall have the meaning ascribed to it in Section 3.11(d)(ii).

"**Fiscal Year**" shall mean the period from January 1 to December 31 of each year, or as otherwise required by law or as determined by the Board of Managers in their sole discretion.

"**Founder**" shall mean Matthew DuPlessie.

"**Fully-Diluted Capitalization**" as of any particular point in time shall mean the sum of: (i) all then-outstanding Units (calculated on an as-converted to Common Unit basis), (ii) the number of Units issuable upon the exercise and/or conversion of exercisable and/or convertible securities then outstanding and (iii) the number of Reserved Incentive Common Units then available for issuance.

"**Fully-Participating Series A Member**" shall have the meaning ascribed to it in Section 11.7(d)(ii).

"**GAAP**" shall mean United States generally accepted accounting principles.

"**Incorporation**" shall have the meaning ascribed to it in Section 13.5(a).

"**Indebtedness**" shall mean as to any Person: (a) all obligations, whether or not contingent, of such Person for borrowed money (including, without limitation, reimbursement and all other obligations with respect to surety bonds, letters of credit and bankers' acceptances, whether or not matured); (b) all obligations of such Person evidenced by notes, bonds, debentures or similar instruments; (c) all obligations of such Person under leases which have been or should be, in accordance with GAAP, recorded as capital leases; (d) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is non-recourse to the credit of that Person; and (e) all Indebtedness of any other Person referred to in clauses (a) through (e) above, guaranteed, directly or indirectly, by that Person; but excluding all obligations of such Person for deferred rent.

"**Initial Public Offering**" shall mean a firm commitment underwritten public offering of the equity of the LLC (or its successor entity).

"**Interest**" shall mean the Units of a Member in the LLC and includes all of the respective rights and responsibilities appurtenant thereto including the right, if any, to vote, the Capital Account maintained for such Member and the right to receive allocations of profits and losses pursuant to Article IX, and the right to receive distributions of cash or property of the LLC.

"**Investor Manager**" shall have the meaning ascribed to it in Section 5.1(c)(i).

"**LLC**" shall have the meaning ascribed to it in the Preamble.

"**Lien**" shall mean any mortgage, deed of trust, pledge, hypothecation, assignment, encumbrance, lien (statutory or other) or other security interest of any kind or nature whatsoever, including, without limitation, those created by, arising under or evidenced by any conditional sale or other title retention contract, the interest of a lessor under a lease which in accordance with GAAP should be recorded as a capital lease, or any financing lease having substantially the same economic effect as any of the foregoing.

"**Liquidation Event**" shall mean, in one transaction or series of related transactions (a) the closing of the sale, transfer, exclusive license, or other disposition (whether by merger, consolidation or otherwise) of all or substantially all of (1) the assets of the LLC or (2) the assets or equity securities of one or more direct or indirect subsidiaries of the LLC constituting all or substantially all of the assets of the LLC (determined on a consolidated basis with all of the LLC's direct and indirect subsidiaries); (b) the consummation of the merger or consolidation of the LLC with or into another entity (except a merger or consolidation of the LLC in which the holders of equity securities of the LLC immediately prior to such merger or consolidation continue to hold (1) at least fifty percent (50%) of the voting power of the equity securities of the surviving entity of such merger or consolidation in substantially the same proportions (relative to all such holders) as immediately prior to the merger or consolidation and (2) securities with rights, preferences and powers that are substantially identical to the rights, preferences and powers of the securities they held immediately prior to such merger or consolidation); (c) the closing of the transfer (whether by merger, consolidation, equity sale or otherwise) in one transaction or series of related transactions to a Person or group of affiliated Persons (other than an underwriter of the LLC's securities) of the LLC's securities if, after such closing, such Person or group of affiliated Persons would hold fifty percent (50%) or more of the outstanding voting securities of the LLC (or the surviving or acquiring entity); or (d) the liquidation, dissolution or winding up of the LLC. The treatment of any particular transaction or series of related transactions as a Liquidation Event may be waived by the vote or written consent of the Requisite Interest of the Series A Members.

"**Majority in Interest of the Members**" shall mean, unless otherwise expressly set forth herein, the Members who are entitled to vote at least a majority of the outstanding Voting Units (voting on an as converted basis with the Common Units, Series FF Preferred Units and Series A Preferred Units treated as a single Class); *provided* that Common Units that are issued as Profits Interest shall not vote and shall have no voting rights.

"**Manager**" shall have the meaning ascribed to it in Section 5.1(a).

"**Members**" shall have the meaning set forth in the Preamble.

"**Misallocated Item**" shall have the meaning ascribed to it in Section 9.4.

"**Net Income**" and "**Net Loss**" shall mean, for each Accounting Period, an amount equal to the LLC's taxable income or loss for such Accounting Period, determined in accordance with Code Section 703(a) (it being understood that for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of

the Code shall be included in such taxable income or loss) and determined in accordance with the accounting method used by the LLC for U.S. Federal income tax purposes with the following adjustments:

(a) all items of income, gain, loss or deduction allocated pursuant to Section 9.3 shall not be taken into account in computing such taxable income or loss;

(b) any income of the LLC that is exempt from U.S. Federal income taxation and not otherwise taken into account in computing Net Income and Net Loss shall be added to such taxable income or loss;

(c) if the Carrying Value of any asset differs from its adjusted tax basis for U.S. Federal income tax purposes, any gain or loss resulting from a disposition of such asset shall be calculated with reference to such Carrying Value;

(d) upon an adjustment to the Carrying Value of any asset pursuant to the definition of Carrying Value (other than an adjustment in respect of depreciation), the amount of the adjustment shall be included as gain or loss in computing such taxable income or loss;

(e) if the Carrying Value of any asset differs from its adjusted tax basis for U.S. Federal income tax purposes the amount of depreciation, amortization or cost recovery deductions with respect to such asset for purposes of determining Net Income and Net Loss shall be an amount which bears the same ratio to such Carrying Value as the U.S. Federal income tax depreciation, amortization or other cost recovery deductions bears to such adjusted tax basis (*provided* that if the U.S. Federal income tax depreciation, amortization or other cost recovery deduction is zero, the Board of Managers may use any reasonable method for purposes of determining depreciation, amortization or other cost recovery deductions in calculating Net Income and Net Loss, *provided further* that with respect to any asset to which the remedial allocation is applicable, depreciation, amortization or other cost recovery shall be determined under Treasury Regulations Section 1.704-3(d)(2)); and

(f) except for items in (i) above, any expenditures of the LLC not deductible in computing taxable income or loss, not properly capitalizable and not otherwise taken into account in computing Net Income and Net Loss pursuant to this definition shall be treated as deductible items.

"**Nonrecourse Deductions**" shall be as defined in U.S. Treasury Regulations Section 1.704-2(b). The amount of Partner Nonrecourse Deductions for a Fiscal Year equals the net increase, if any, in the amount of Partnership Minimum Gain during that Fiscal Year, determined according to the provisions of U.S. Treasury Regulations Section 1.704-2(c).

"**Offered Units**" shall have the meaning ascribed to it in Section 11.7(a).

"**Officer**" shall have the meaning ascribed to it in Section 7.1.

"**Original Issue Price**" in respect of each of the Series A Preferred Units shall initially be $0.20 per Unit, as adjusted for Unit dividends, Unit splits, combinations, recapitalizations or the like occurring after the Effective Date; provided, however, that effective

as of each Additional Capital Contribution, the Original Issue Price shall be increased as described in Section 4.1(b)(ii).

"**Overallotment Notice**" shall have the meaning ascribed to it in Section 7.11(d)(i).

"**Participating Series A Member**" shall have the meaning ascribed to it in Section 7.11(d)(i).

"**Participating Series A Member Notice**" shall have the meaning ascribed to it in Section 7.11(d)(i).

"**Participating Series A Member Overallotment Notice**" shall have the meaning ascribed to it in Section 7.11(d)(i).

"**Partner Nonrecourse Debt Minimum Gain**" shall mean an amount with respect to each partner nonrecourse debt (as defined in Treasury Regulations Section 1.704-2(b)(4)) equal to the Partnership Minimum Gain that would result if such partner nonrecourse debt were treated as a nonrecourse liability (as defined in Treasury Regulations Section 1.752-1(a)(2)) determined in accordance with Treasury Regulations Section 1.704-2(i)(3).

"**Partnership Minimum Gain**" shall be as defined in Treasury Regulations Section 1.704-2(b)(2) and 1.704-2(d).

"**Person**" shall mean a natural person, partnership (whether general or limited and whether domestic or foreign), LLC, foreign limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or representative capacity.

"**Plan**" shall have the meaning ascribed to it in Section 3.2(c).

"**Preferred Units**" shall have the meaning ascribed to it in Section 3.3(a)(iii).

"**Profits Interest**" shall mean a Common Unit that is issued with a Profits Interest Threshold Amount fixed on the date of issuance and is designated as a Profits Interest by the Board of Managers and identified as such on Exhibit A of this Agreement. A Common Unit with a Profits Interest Threshold Amount that is designated as a "Profits Interest" is intended to meet the definition of a "profits interest" in I.R.S. Revenue Procedures 93-27 and 2001-43. A Profits Interest Unit shall be treated as a Common Unit for all purposes of this Agreement except (i) for adjustments of amounts distributable with respect to such Profits Interest as provided in Article X, and (ii) an unvested Common Unit designated as a "Profits Interest" shall not vote and shall have no voting rights, and holders of such Profits Interest, as such, shall have no right or authority to act for the LLC or vote upon or approve any matters submitted to the Members for approval.

"**Profits Interest Threshold Amount**" for a Common Unit issued as a Profits Interest shall mean, unless otherwise determined by the Board of Managers, an amount equal to

the amount that would be distributed in respect of a Common Unit that has no Profits Interest Threshold Amount, if, immediately before the Profits Interest is issued, the LLC were to liquidate completely and in connection with such liquidation (i) sell all of its assets at their fair market values, (ii) settle all of its liabilities to the extent of the available assets of the LLC (but limited, in the case of nonrecourse liabilities as to which the creditors' rights to repayment are limited solely to one or more assets of the LLC, to the value of such assets), and (iii) each Member were to pay to the LLC at that time the amount of any obligation then unconditionally due to the LLC, and then the LLC were to distribute any remaining cash and other proceeds to the Members in accordance with the distribution provisions of Section 10.1(b); *provided, however*, the Profits Interest Threshold Amount shall not be less than zero dollars ($0). The Board of Managers shall have the discretion to set any Common Unit's Profits Interest Threshold Amount to equal an amount that is greater than the amount determined in the prior sentence. The Profits Interest Threshold Amount of a Common Unit issued as a Profits Interest shall be reduced (but not below zero dollars ($0)) dollar-for-dollar by the amount by which distributions with respect to such Common Unit were previously reduced by reason of the existence of the Profits Interest Threshold Amount. The Board of Managers shall have the discretion to reduce the Profits Interest Threshold Amount with respect to any Common Unit if, subsequent to the grant of such Common Unit, the fair market value (as determined by the Board in its sole discretion) of the LLC declines.

"**Prohibited Transfer**" shall have the meaning ascribed to it in Section 11.11(b).

"**Proposed Revenue Procedure**" shall mean the proposed Treasury Regulations on compensatory partnership equity dated May 24, 2005 (REG-105346-03) and the proposed IRS Revenue Procedure published in IRS Notice 2005-43.

"**Proposed Sale**" shall have the meaning ascribed to it in Section 11.13(b).

"**Remaining Units**" shall have the meaning ascribed to it in Section 11.7(c).

"**Requisite Interest of the Series A Members**" shall mean the Series A Members who are entitled to vote a majority of the then-outstanding Series A Preferred Units.

"**Reserved Incentive Common Units**" shall have the meaning ascribed to it in Section 3.2(b)(i).

"**Safe Harbor**" shall have the meaning ascribed to it in Section 9.6.

"**Sale of the Company**" shall have the meaning ascribed to it in Section 11.13.

"**Schedules**" shall have the meaning ascribed to it in Section 3.3.

"**SEC**" shall mean the Securities and Exchange Commission.

"**Selling Member**" shall have the meaning ascribed to it in Section 11.7(a).

"**Securities Act**" shall mean the Securities Act of 1933, as amended from time to time, and the rules and regulations thereunder.

"**Series A Members**" shall mean the Members holding Series A Preferred Units and their permitted successors and assigns.

"**Series A Preferred Units**" shall have the meaning ascribed to it in Section 3.2(a)(ii).

"**Substitute Member**" shall mean an Assignee who has been admitted as a Member of the LLC with all the rights of membership pursuant to this Agreement.

"**Tax Distributions**" shall have the meaning ascribed to it in Section 10.2(b).

"**Tax Matters Partner**" shall have the meaning ascribed to it in Section 8.5.

"**Transfer**" shall have the meaning ascribed to it in Section 11.1.

"**Transfer Notice**" shall have the meaning ascribed to it in Section 11.7(a).

"**Treasury Regulations**" shall mean regulations issued pursuant to the Code.

"**Unallocated Item**" shall have the meaning ascribed to it in Section 9.4.

"Unpaid Preferred Return" shall mean, with respect to a Series A Preferred Unit at a particular time of determination, the excess, if any, of (a) the amount of such Unit's Cumulative Preferred Return over (b) the aggregate amount of distributions made with respect to such Series A Preferred Unit pursuant to Section 10.1(b)(i).

"**Unreturned Preference Amount"** shall mean, with respect to a Series A Preferred Unit at a particular time of determination, an amount equal to the Original Issue Price of such Series A Preferred Unit, reduced, but not below zero, by the aggregate amount of distributions made with respect to such Series A Preferred Unit pursuant to Section 10.1(b)(ii).

"**Units**" shall have the meaning ascribed to it in Section 3.1.

"**Voting Common Units**" shall have the meaning ascribed to it in Section 3.2(a)(iii).

ARTICLE II

FORMATION OF LIMITED LIABILITY COMPANY

2.1 **Formation**. The Members caused the LLC to be formed pursuant to the Act by causing a Certificate of Formation conforming to the requirements of the Act to be filed with the office of the Secretary of State of the State of Delaware on July 3, 2018 (the "**Certificate**").

2.2 **Name and Principal Place of Business**. Unless and until amended in accordance with this Agreement and the Act, the name of the LLC will be "Open World Entertainment LLC." The principal place of business of the LLC shall initially be located at 375 Vanderbilt Avenue, Norwood, MA 02062, or such other location as the Board of Managers may, from time

to time, designate. The address of the LLC's registered office in the State of Delaware, and the name of the registered agent for service of process, shall be The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, or such other place or person in the State of Delaware as the Board of Managers shall designate.

2.3 Agreement. For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members executing this Agreement hereby agree to the terms and conditions of this Agreement, as it may from time to time be amended. It is the express intention of the parties hereto that this Agreement shall be the sole statement of agreement among them, and, except to the extent a provision of this Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Treasury Regulations or is expressly prohibited or ineffective under the Act, this Agreement shall govern even when inconsistent with or different from the provisions of the Act or any other law or rule. To the extent any provision of this Agreement is prohibited or ineffective under the Act, this Agreement shall be considered amended to the smallest degree possible in order to make this Agreement effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to make valid any provision of this Agreement that was formerly invalid, such provision shall be considered to be a part of this Agreement from and after the date of such interpretation or amendment.

2.4 Business. The purpose of the LLC is to engage in any lawful act or activity for which a limited liability company may be formed in accordance with the Act, including the formation and operation of immersive adventure centers (each, an "**Operating Unit**").

2.5 Definitions. Terms not otherwise defined in this Agreement shall have the meanings set forth in Article I.

2.6 Term. The term of the LLC commenced on the date the Certificate was filed with the Secretary of State of the State of Delaware in accordance with the Act and shall continue unless the LLC's existence is terminated pursuant to Article XIII of this Agreement.

ARTICLE III

MEMBERS AND INTERESTS

3.1 Units Generally. The Interest of each of the Members in the LLC shall consist of a number of "**Units**." Units may be issued in one or more classes or series of classes, as approved by the Board of Managers. The Units shall be uncertificated. Except as otherwise provided in this Agreement, each Member holding a Unit or Units shall have (a) the right to share in the Net Income and Net Loss of the LLC as provided in this Agreement, (b) a right to the Capital Account maintained for such Member according to Article IX hereof, (c) the right to receive distributions from the LLC as provided in this Agreement, and (d) the right, if any, to vote as provided in this Agreement.

3.2 Classes of Units.

(a) Initially, there shall be 3 classes of Units, designated as follows, with the rights, powers and duties as are set forth in this Agreement:

(i) "Common Units" (the "**Common Units**");

(ii) "Series A Preferred Units" (the "**Series A Preferred Units**"); and

(iii) "Series FF Preferred Units" (the "**Series FF Preferred Units**").

For the purposes of this Agreement, (i) the Common Units, excluding Common Units issued as Profits Interests, shall be referred to as the "**Voting Common Units**" and (ii) the Series A Preferred Units and Series FF Preferred Units, together with the Voting Common Units, shall be referred to as the "**Voting Units**".

(b) Subject to the terms and conditions of Articles III and IV hereof, the LLC is authorized to issue up to 42,222,222 Units in the aggregate, divided as follows:

(i) 22,222,222 Common Units, of which (A) 2,222,222 Common Units (the "**Reserved Incentive Common Units**") shall initially be reserved for issuance pursuant to the Equity Incentive Plan, and (B) 20,000,000 Common Units shall be reserved for issuance upon the conversion of Series A Preferred Units and Series FF Preferred Units pursuant to Section 3.11 hereof);

(ii) 10,000,000 Series A Preferred Units; and

(iii) 10,000,000 Series FF Preferred Units.

(c) Incentive Plans. Following the Effective Date, the Board of Managers may adopt an Equity Incentive Plan (the "**Equity Incentive Plan**" or the "**Plan**") in a form reasonably acceptable to the Board of Managers and without the requirement that such Plan be approved by the Members or, in the event that the LLC determines not to adopt a Plan, the provisions of this Section 3.2(c) shall be deemed to constitute such a "Plan" for the purposes of this Agreement. The Members hereby agree that the Board of Managers shall have the authority to adopt and administer the Plan, or appoint an administrator thereof, in accordance with the terms of the Plan and this Agreement. The Board of Managers shall be permitted to issue up to the number of Reserved Incentive Common Units pursuant to the Plan. Any such Reserved Incentive Common Units may be issued with a Profits Interest Threshold Amount. Subject to Section 3.10, the number of Common Units that shall be designated Reserved Incentive Common Units may be increased with the approval of the Board of Managers. Unless otherwise provided in the Equity Incentive Plan or pursuant to a separate written instrument and agreement of the LLC referring to this Agreement, the Units issued under the Equity Incentive Plan shall represent solely an economic interest in the LLC. Holders of such Common Units issued as Profits Interests shall be entitled to the allocations and distributions attributable to such Common Units, but shall otherwise have no rights or powers (including, without limitation, voting power) to participate in the management of the LLC with respect to such Profits Interests. With respect to any Common Unit issued that is intended to be a Profits Interest, both the LLC and all Members will (i) treat such Common Units as outstanding for U.S. federal income tax purposes, (ii) treat such Member as a partner for U.S. federal income tax purposes with respect to such Common Units and (iii) file all tax returns and reports consistently with the foregoing, and neither the LLC nor any of its Members will deduct any amount (as wages, compensation or otherwise) for the fair market value of such Common Units for U.S. federal income tax purposes.

To the extent that the LLC determines not to adopt a "Plan", any Common Units issued as Profits Interests shall be deemed to have been issued as Reserved Incentive Common Units.

3.3 Members. The Members of the LLC, and the respective number and class of Units held thereby (along with such additional information as contemplated herein), are set forth on the applicable schedules hereto (collectively and as amended, including any additional schedules subsequently appended thereto, the "**Schedules**"), and each such Member is admitted to the LLC as a Member as of the date this Agreement becomes effective. In addition, as of the effectiveness of this Agreement, certain parties hold Convertible Securities exercisable for and/or convertible into certain Units as set forth on the Schedules. Each Member shall be entitled to review such Member's Schedule. No Member, other than a Series A Member, shall be entitled to receive a copy of, review or inspect any other Member's Schedules. Each Member hereby waives any rights such Member may otherwise have pursuant to the Act to receive, review or inspect, directly or indirectly, any other Member's Schedules or any other books, records or documents containing substantially equivalent information.

3.4 Representations and Warranties. Each Member hereby represents and warrants to the LLC and each other Member as follows:

(a) Good Standing; Due Organization. If such Member is a Person who is not an individual, such Member is duly organized, validly existing, and in good standing under the law of its state of organization and has full organizational power to execute and deliver this Agreement and to perform its obligations hereunder.

(b) Accredited Investor. (i) Except with respect to Members issued Common Units as Profits Interests, such Member is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D of the Securities Act, or (ii) such Member is acquiring the respective Interest in compliance with Federal, state, local or foreign laws.

(c) Purchase Entirely for Own Account. The Member is acquiring its Interest in the LLC for the Member's own account for investment purposes only and not with a view to or for the resale, distribution, subdivision or fractionalization thereof, and has no contract, understanding, undertaking, agreement or arrangement of any kind with any Person to Transfer to any Person its Interest or any part thereof, nor does such Member have any plans to enter into any such agreement.

(d) Investment Experience. By reason of the Member's business or financial experience, the Member has the capacity to protect its own interests in connection with the transactions contemplated hereunder, is able to bear the risks of an investment in the LLC, and at the present time could afford a complete loss of such investment.

(e) Federal and State Securities Laws. Assuming federal and state securities laws apply to the interests described herein, the Member acknowledges that the Units have not been registered under the Securities Act or any state securities laws, inasmuch as they are being acquired in a transaction not involving a public offering, and, under such laws, may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements. In this connection, the Member represents that it is familiar with SEC

Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

3.5 Additional Members.

(a) Additional Interests. The Board of Managers shall have the right to cause the LLC to issue or sell to any Persons (including Members and Affiliates of Members) any of the following (which for purposes of this Agreement shall be "**Additional Interests**"): (i) Units in the LLC, (ii) obligations, evidences of Indebtedness or Convertible Securities and (iii) Profits Interests or other rights to purchase or otherwise acquire Units issued pursuant to the Equity Incentive Plan, in each case and in the aggregate up to the number of authorized Units set forth in Section 3.2 hereof. Notwithstanding the foregoing, the Board of Managers shall not have the right to cause the LLC to issue any such Additional Interests if such Units are not currently authorized under Section 3.2 of this Agreement.

(b) Additional Members. In order for a Person, other than an existing Member, to be admitted as a Member of the LLC with respect to an Additional Interest as defined in Section 3.5(a) above: (i) such Person shall have delivered to the LLC a counterpart signature page to this Agreement and shall have delivered such other documents and instruments as the Board of Managers determine to be necessary or appropriate and as are consistent with the terms of this Agreement in connection with the issuance or sale of such Additional Interest to such Person or to effect such Person's admission as a Member; and (ii) the Board of Managers shall amend the Schedules, without the further vote, act or consent of any other Person to reflect such new Person as a Member and its Interests. Upon the amendment of such schedules, such Person shall be admitted as an additional Member (an "**Additional Member**") and deemed listed as such on the books and records of the LLC and thereupon shall be issued its Additional Interest.

3.6 Resignation or Withdrawal of a Member. Except as specifically provided herein, and subject to the provisions for Transfers contained in Article XI, no Member shall have the right to resign or withdraw from membership in the LLC or withdraw its Interest in the LLC.

3.7 Meetings of the Members.

(a) Special Meetings. Special meetings of the Members, for any purpose or purposes, may be called by the Board of Managers, and shall be called by the LLC at the request of any Member holding at least 25% of the then-outstanding Voting Units (on an as converted basis with the Voting Units treated as a single Class). Business transacted at any special meeting of Members shall be limited to the purposes stated in the notice.

(b) Place of Meeting. All meetings of Members shall be held at such place within or without the State of Delaware as the Board of Managers shall designate, including but not limited to by means of remote communication as herein provided.

(c) Notice of Meetings. Notice of all meetings of Members, stating the time, place and purpose of the meeting, shall be Delivered at least 24 hours before the meeting. Any adjourned meeting may be held as adjourned without further notice, *provided* that any adjourned session or sessions are held within 90 days after the date set for the original meeting. No notice

need be given (i) to any Member if a written waiver of notice, executed before or after the meeting by such Member or his or her attorney thereunto duly authorized, is filed with the records of the meeting, or (ii) to any Member who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him or her. A waiver of notice need not specify the purposes of the meeting.

(d) Quorum. A quorum shall be present at any meeting of the Members if a Majority in Interest of the Members are represented at the meeting in person or by proxy, except as otherwise provided by law. Once a quorum is present at the meeting of the Members, the Members represented in person or by proxy and entitled to vote at the meeting may conduct such business as may be properly brought before the meeting until it is adjourned, and the subsequent withdrawal from the meeting of any Member prior to adjournment or the refusal of any Member to vote shall not affect the presence of a quorum at the meeting. If, however, such quorum shall not be present at any meeting of the Members, the Members represented in person or by proxy and entitled to vote at such meeting shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the holders of the requisite amount of Units shall be present or represented.

(e) Proxies. Interests of Members may be voted in person or by an agent or agents authorized by a written proxy executed by such Member or his or her duly authorized agent, which shall be filed with the Secretary of the LLC at or before the meeting at which it is to be used. A proxy purporting to be executed by or on behalf of a Member shall be deemed valid unless challenged at or prior to its exercise and the burden of proving invalidity shall rest on the challenger, *provided* that no proxy shall be voted on or after three years from its date unless the proxy provides for a longer period. Unless and until voted, every proxy shall be revocable at the pleasure of the person who executed it or of his or her legal representatives or assigns, except in those cases where an irrevocable proxy permitted by statute has been given.

(f) Electronic Communications. Members may participate in any meeting of Members by means of telephone conference or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

(g) Voting on Matters. For purposes of voting on matters (other than a matter for which the affirmative vote of a specified portion of the Members or a Class of Members is required by the Act or this Agreement, in which case the act of the Members shall be such specified portion of the Members or Class of Members) at any meeting of the Members at which a quorum is present, the act of the Members shall be the affirmative vote of Members holding a majority of the Voting Units (on an as converted basis with the Voting Units treated as a single Class) represented at such meeting (unless the Act requires a greater percentage to approve such matters, in which case the Act shall govern and control). For any vote taken by written consent in lieu of a meeting (other than with respect to a matter for which the affirmative vote of a specified portion of the Members or a Class of Members is required by the Act or this Agreement, in which case the act of the Members shall be such specified portion of the Members or Class of Members), the act of the Members shall be the affirmative written consent of Majority in Interest of the Members (unless the Act requires a greater percentage to approve such matters, in which case the Act shall govern and control).

3.8 Action by Written Consent. Any action required to be taken at any annual or special meeting of Members or otherwise, or any action which may be taken at any annual or special meeting of Members or otherwise (including without limitation any consent, approval, vote or other action of the Members required or contemplated under or by this Agreement, the Act or otherwise), may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the Members required to approve such action as set forth in the last sentence of Section 3.7(g) above.

3.9 Limited Liability of Members.

(a) General. No Member or any of its Affiliates shall have any liability for the debts, obligations or liabilities of the LLC. The debts, obligations and liabilities of the LLC, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the LLC, and no Member, former Member or Assignee shall be obligated personally for any such debt, obligation or liability of the LLC solely by reason of being a Member, former Member or Assignee. No Member or any of its Affiliates shall have any liability for the debts, obligations or liabilities of any other Member or their respective Affiliates.

(b) No Fiduciary Duties Owed by the Members. To the fullest extent permitted by applicable Law (including Section 18-1101 of the Act), no Member acting under this Agreement in its capacity as a Member shall have any fiduciary or similar duty, at law or in equity, or any liability relating thereto, to the LLC or any other Member or Affiliate of a Member, with respect to or in connection with the LLC or the LLC's business or affairs; and, without limitation, each Member when approving or disapproving any action, shall be entitled to consider only such interests and factors as such Member desires and may consider such Member's own interests or the interests of the other Members and shall have no other duty or obligation, fiduciary or otherwise, to give any consideration to any interest of or factors affecting the LLC or any other Member or Affiliate of any other Member. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Member otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Member.

(c) No Restriction on Actions of Members. Except to the extent, if any, expressly set forth in this Agreement or otherwise expressly agreed to in writing by a Member: (i) no Member shall have any obligation to disclose, offer or account to the LLC or any other Member with respect to any business opportunity whether or not the opportunity may be competitive with or within the business purposes of the LLC as set forth in Section 2.4 hereof; (ii) each Member shall be free to engage in any lawful business activity whether or not that activity competes with or may potentially compete with, or conflicts with or may potentially conflict with, the business of the LLC; and (iii) none of the Members, the LLC, the creditors of the LLC or any other Person shall have any claim against any Member by reason of any direct or indirect, passive or active, investment or participation in any such other business activity (including with respect to any income or profits therefrom). As used in this Section 3.9, Member includes any Affiliate of a Member. Notwithstanding the foregoing, no Member shall use any proprietary or confidential information owned by the LLC other than for the benefit of the LLC, whether or not such Person remains a Member of the LLC.

3.10 General Voting Rights.

(a) Whether by person or by proxy, (i) each Member shall have the right to one (1) vote for each Voting Common Unit held by it, *provided* that Common Units issued as Profits Interests shall not vote and shall have no voting rights and (ii) each Member shall have the right to one (1) vote for each Common Unit into which its Series A Preferred Units and Series FF Preferred Units are convertible on the record date of the vote, and with respect to any vote other than any vote with respect to which the holders of Common Units have the right to vote as a separate Class pursuant to the Act or this Agreement, such Member shall have full voting rights and powers equal to the voting rights and powers of the Members holding Common Units. No Member who has assigned all of his or her Units shall have any right to vote on any matter. A Member who has assigned some, but not all, of his or her Units shall be treated as a Member and entitled to a vote on all matters to the extent of his or her retained Units. Irrespective of any provision of Section 18-209 of the Act, no merger, consolidation or other transaction consummated by the LLC shall require approval by any separate class or group of Members.

(b) The LLC shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by the Act and this Agreement) of either (i) the Requisite Interest of the Series A Members or (ii) each of the Investor Managers:

(i) amend, waive or nullify any provision of this Agreement or the Certificate;

(ii) effect or agree to effect any Liquidation Event;

(iii) effect or agree to effect any sale, transfer, license, pledge or encumbrance of any technology or intellectual property that is material to the Company's business (excluding, for avoidance of any doubt, non-exclusive licenses entered into in the ordinary course of business);

(iv) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any Units, other than the repurchase of Common Units from employees, officers, directors, consultants or other persons performing services for the LLC or any subsidiary pursuant to agreements under which this corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment or service, or pursuant to a right of first refusal;

(v) make any distribution or pay any dividend with respect to any Units (other than Tax Distributions (as defined in Section 10.2));

(vi) increase the number of Units of any class or series, including Units reserved for issuance pursuant to the Equity Incentive Plan or adopt any new equity incentive plan;

(vii) change the principal business of the Company or enter into new lines of business;

(viii) effect or agree to effect (A) any acquisition of any business or entity, (B) any acquisition of a material business unit of any business or entity or (C) any other strategic transaction involving the payment or contribution by the Company of money or assets in excess of $100,000;

(ix) adopt the Company's quarterly and annual operating budgets;

(x) take any action form or open a new Operating Unit, including real estate site selection for any such new Operating Unit or entering into any new commercial lease;

(xi) form, or allow to exist, any subsidiary other than a wholly-owned subsidiary or permit any subsidiary of the LLC to sell or issue stock or other equity interests to any party other than the LLC (or another wholly-owned subsidiary of the LLC), or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose any materials assets of such subsidiary (other than to a directly or indirectly wholly-owned subsidiary of the LLC);

(xii) create, or authorize the creation of, or issue, or authorize the issuance of any debt security or create or incur other Indebtedness;

(xiii) make, or permit any subsidiary to make, any loan or advance to any person, other than intercompany loans to any wholly-owned subsidiaries of the Company;

(xiv) hire, terminate, or change the compensation of any executive officer of the Company (including, without limitation, the Founder), including approving any option grants or stock awards to executive officers;

(xv) enter into any transaction with any Manager or officer of the LLC (or any affiliate of such person), including, without limitation, the Founder, or with any affiliate or family member thereof;

(xvi) increase or decrease the authorized number of members of the Board of Managers;

(xvii) effect a reclassification, reorganization or recapitalization of the outstanding Units of any class or series; or

(xviii) authorize, permit or allow any subsidiary of the LLC to do any of the foregoing.

3.11 Conversion. The holders of the Series A Preferred Units and Series FF Preferred Units shall have certain conversion rights as follows:

(a) Right to Convert.

(i) Series A Preferred Units. Each Series A Preferred Unit shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such Unit, into such number of fully paid and nonassessable Common Units as is determined by

dividing the Original Issue Price for the Series A Preferred Units by the Conversion Price for the Series A Preferred Units (the conversion rate at which Series A Preferred Units convert into Common Units is referred to herein as the "**Conversion Rate**" in respect thereof), determined as hereafter provided, in effect on the date of conversion. The initial "**Conversion Price**" for each Series A Preferred Unit shall be $0.20 per Series A Preferred Unit; *provided, however*, that the Conversion Price for the Series A Preferred Units shall be subject to increase pursuant to Section 4.1(b) and adjustment as set forth in this Section 3.11. Upon the conversion of all Series A Preferred Units into Common Units pursuant to Section 3.11(b), all rights and privileges in respect of such Series A Preferred Units shall be deemed cancelled and each Series A Member shall become a Common Member.

(ii) Series FF Preferred Units. Each Series FF Preferred Unit shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such Unit, into one fully paid and nonassessable Common Unit (subject to adjustment from time to time pursuant to subsections 3.11 (e), (f), (g) and (h)). The number of Common Units into which each Series FF Preferred Unit may be converted is hereinafter referred to as the "**FF Conversion Rate**". Any sale or other transfer of Series FF Preferred Units that is not (A) made in connection with an Equity Financing (as defined below) and (B) approved by the Board of Managers shall be deemed an election to convert such Units into Common Units and each such transferred Series FF Preferred Unit shall automatically convert into such number of fully-paid, nonassessable Common Units as determined above (an "**Automatic FF Conversion**").

(b) Conversion of Series FF Preferred Units into Preferred Units. Each Series FF Preferred Unit shall be convertible automatically into shares of a subsequent series of preferred units issued on an Equity Financing (as defined below) of the Company (the "**Subsequent Series Preferred Units**") at the FF Conversion Rate in effect immediately prior to the purchase by an investor of Series FF Preferred Units from the holder thereof in connection with an Equity Financing. For purposes of this Section 4, "**Equity Financing**" shall mean a bona fide equity financing of the Company in which the Company sells at least $2,500,000 worth of the Subsequent Series Preferred Units. Any conversion of Series FF Preferred Units pursuant to this Section 3.11(b) shall be referred to as an "**Equity Financing FF Conversion**".

(c) Mechanics of Conversion.

(i) Before any holder of Series A Preferred Units or Series FF Preferred Units shall be entitled to voluntarily convert the same into Common Units, such Member shall give written notice to the LLC at its principal office of the election to convert the same and shall state therein the name or names in which the Common Units issuable upon such conversion are to be issued. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the Series A Preferred Units or Series FF Preferred Units to be converted, and the person or persons entitled to receive the Common Units issuable upon such conversion shall be treated for all purposes as the holder or holders of such Common Units as of such date.

(ii) Upon the occurrence of an Equity Financing Conversion or Automatic FF Conversion, the applicable Series FF Preferred Units shall be converted into

Common Units or Subsequent Series Preferred Units, as applicable, without any further action by the holder thereof.

(d) Conversion Price Adjustments of Series A Preferred Units for Certain Dilutive Issuances.

(i) The Conversion Price of the Series A Preferred Units shall be subject to adjustment from time to time as follows:

(A) If the LLC shall issue, on or after the Effective Date, any Additional Common Units (as defined below) without consideration or for a consideration per Unit less than the Conversion Price of the Series A Preferred Units in effect immediately prior to the issuance of such Additional Common Units, the Conversion Price for the Series A Preferred Units in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of Common Units Outstanding (as defined below) immediately prior to such issuance plus the number of Common Units that the aggregate consideration received by the LLC for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of Common Units Outstanding immediately prior to such issuance plus the number of Additional Common Units. For purposes of this Section 3.11(d)(i)(A), the term "**Common Units Outstanding**" shall mean and include the following: (1) outstanding Common Units (including Common Units issued as Profits Interests), (2) Common Units issuable upon conversion of outstanding Series A Preferred Units, (3) Common Units issuable upon exercise of outstanding options and (4) Common Units issuable upon exercise or conversion of any other then outstanding exercisable or convertible securities. Units described in (1) through (4) above shall be included whether vested or unvested, whether contingent or non-contingent and whether exercisable or not yet exercisable.

(B) No adjustment of the Conversion Price for the Series A Preferred Units shall be made in an amount less than one tenth of one cent per Unit. Except to the limited extent provided for in subsections (E)(3) and (E)(4), no adjustment of such Conversion Price pursuant to this subsection 3.11(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Additional Common Units for cash, the consideration shall be deemed to be the aggregate amount of cash received by the LLC.

(D) In the case of the issuance of the Additional Common Units for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined by the Board of Managers irrespective of any accounting treatment.

(E) In the case of the issuance of options to purchase or rights to subscribe for Common Units, securities by their terms convertible into or exchangeable for Common Units or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for purposes of determining the number of Additional Common Units issued and the consideration paid therefor:

(1) The aggregate maximum number of Common Units deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Units shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the minimum consideration set forth in the instrument relating thereto, if any, payable to the LLC upon the exchange or conversion of such options or rights.

(2) The aggregate maximum number of Common Units deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the minimum consideration set forth in the instrument relating thereto, if any, payable to the LLC upon the conversion or exchange of such securities or the exercise of any related options or rights.

(3) In the event of any change in the number of Common Units deliverable or in the consideration payable to the LLC upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, the Conversion Price of the Series A Preferred Units, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Units or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series A Preferred Units, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of Common Units (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of Additional Common Units deemed issued and the consideration deemed paid therefor pursuant to subsections 3.11(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 3.11(d)(i)(E)(3) or (4).

(ii) "**Additional Common Units**" shall mean any Common Units issued (or deemed to have been issued pursuant to subsection 3.11(d)(i)(E)) by the LLC after the Effective Date other than:

(A) Common Units issued pursuant to a transaction described in subsection 3.11(e) hereof;

(B) Reserved Incentive Common Units (including Common Units issued as Profits Interests) issued to employees, directors, consultants and other service providers of or to the LLC or any subsidiary primarily in consideration for their services pursuant to plans or agreements approved by the LLC's Board of Managers;

(C) Common Units issued pursuant to a bona fide, firmly underwritten public offering of shares of Common Units registered under applicable securities laws;

(D) Common Units issued or deemed issued pursuant to subsection 3.11(d)(i)(E) as a result of a decrease in the Conversion Price of any Series A Preferred Unit resulting from the operation of Section 3.11(d); and

(E) Common Units issued upon the conversion to the Series A Preferred Units or Series FF Preferred Units.

The Common Units contemplated by subsection (A) through (E) above shall be collectively referred to as the "**Excepted Units**".

(e) Splits. In the event the LLC should at any time or from time to time after the Effective Date fix a date for the effectuation of a split or subdivision of the outstanding Common Units or the determination of holders of Common Units entitled to receive a distribution payable in additional Common Units or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional Common Units (hereinafter referred to as "**Common Units Equivalents**") without payment of any consideration by such holder for the additional Common Units or the Common Units Equivalents (including the additional Common Units issuable upon conversion or exercise thereof), then, as of such date the Conversion Price of the Series A Preferred Units and the FF Conversion Rate of the Series FF Preferred Units shall be appropriately decreased so that the number of Common Units issuable on conversion of each Series A Preferred Unit and Series FF Preferred Unit, as applicable, shall be increased in proportion to such increase of the aggregate of Common Units outstanding and those issuable with respect to such Common Units Equivalents with the number of Units issuable with respect to Common Units Equivalents determined from time to time in the manner provided for deemed issuances in subsection 3.11(d)(i)(E).

(f) Combinations. If the number of Common Units outstanding at any time after the Effective Date is decreased by a combination of the outstanding Common Units, then, following the date of such combination, the Conversion Price of the Series A Preferred Units and the FF Conversion Rate of the Series FF Preferred Units shall be appropriately increased so that the number of Common Units issuable on conversion of each Series A Preferred Unit and Series FF Preferred Unit, as applicable, shall be decreased in proportion to such decrease in outstanding Units.

(g) Other Distributions. In the event the LLC shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the LLC or other

persons, assets (excluding cash distributions) or options or rights not referred to in subsection 3.11(e), then, in each such case for the purpose of this subsection 3.11(g), the holders of the Series A Preferred Units and Series FF Preferred Units shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of Common Units of the LLC into which their Series A Preferred Units or Series FF Preferred Units, as applicable, are convertible as of the date of such distribution.

(h) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Units, provision shall be made so that the holders of the Series A Preferred Units and Series FF Preferred Units shall thereafter be entitled to receive upon conversion of the Series A Preferred Units and Series FF Preferred Units the number of Units or other securities or property of the LLC or otherwise, to which a holder of Common Units deliverable upon conversion would have been entitled on such recapitalization.

(i) No Fractional Units and Certificate as to Adjustments.

(i) No fractional Units shall be issued upon the conversion of any Series A Preferred Unit or Series FF Preferred Unit and the aggregate number of Common Units to be issued to particular Members shall be rounded down to the nearest whole Common Unit and the LLC shall pay in cash the fair market value of any fractional Common Units as of the time when entitlement to receive such fractions is determined. Whether or not fractional Common Units would be issuable upon such conversion shall be determined on the basis of the total number of Series A Preferred Units and Series FF Preferred Units the holder is at the time converting into Common Units and the number of Common Units issuable upon such conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of the Series A Preferred Units or of the FF Conversion Rate of the Series FF Preferred Units pursuant to this Section 3.11, the LLC, at its expense, shall reasonably promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Units and Series FF Preferred Units a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The LLC shall, upon the written request at any time of any holder of Series A Preferred Units or Series FF Preferred Units, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for the Series A Preferred Units or FF Conversion Rate for the Series FF Preferred Units, as applicable, at the time in effect, and (C) the number of Common Units and the amount, if any, of other property that at the time would be received upon the conversion of a single Series A Preferred Unit or Series FF Preferred Unit, as applicable.

(j) No Tax Effect on Conversion. The parties hereto agree and acknowledge that, absent a change in relevant law from and after the date hereof, the tax consequences of the conversion of Series A Preferred Units to Common Units shall be governed by Internal Revenue Service Revenue Ruling 84-52.

(k) Reservation of Units Issuable Upon Conversion. The LLC shall at all times reserve and keep available out of its authorized but unissued Common Units, solely for the

purpose of effecting the conversion of Series A Preferred Units and Series FF Preferred Units, such number of its Common Units as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Units and Series FF Preferred Units; and if at any time the number of authorized but unissued Common Units shall not be sufficient to effect the conversion of all then outstanding Series A Preferred Units and Series FF Preferred Units, in addition to such other remedies as shall be available to the holder of such Series A Preferred Units or Series FF Preferred Units, as applicable, the LLC will take such action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued Common Units to such number of Units as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite Member approval of any necessary amendment to this Agreement.

3.12 No Reissuance of Preferred Units. No Series A Preferred Units or Series FF Preferred Units acquired by the LLC by reason of conversion (or otherwise) shall be reissued, and all such Units shall be canceled, retired and eliminated from the Units which the LLC shall be authorized to issue.

ARTICLE IV

CONTRIBUTIONS TO CAPITAL; WITHDRAWALS; ADVANCES

4.1 Capital Contributions.

(a) Initial Capital Contribution. Each Series A Member shall, on or about the date hereof, make a Capital Contribution to the LLC as provided for pursuant to the terms of the Purchase Agreement. The Capital Contributions of the Members holding Common Units or Series FF Preferred Units as of the date of this Agreement shall be as set forth in the books and records of the Company. No Member shall be entitled to any interest or compensation with respect to such Member's Capital Contribution or share of the capital of the LLC, except as expressly provided herein. No Member shall have any liability for the repayment of the Capital Contribution of any other Member and each Member shall look only to the assets of the LLC for return of such Member's Capital Contributions to the extent permitted.

(b) Subsequent Series A Contributions.

(i) The Series A Members shall, pursuant to the terms of the Purchase Agreement, have certain options and/or obligations following the Initial Closing (as defined in the Purchase Agreement) to make Capital Contributions pursuant to this Section 4.1(b) to the Company in an aggregate amount not to exceed $8,000,000 (each, an "**Additional Capital Contribution**"). Any such Additional Capital Contributions (whether Mandatory Additional Capital Contributions or Optional Additional Capital Contributions, each as defined in the Purchase Agreement) shall be made pursuant to this Section 4.1(b), and on and subject to the terms and conditions of, an Additional Closing under the Purchase Agreement.

(ii) Upon the payment by the Series A Members of an Additional Capital Contribution, the Original Issue Price and the Conversion Price applicable to the Series A Preferred Units shall each be increased by an amount per Series A Preferred Unit equal to (A)

the aggregate amount of such Additional Capital Contribution, divided by (B) 10,000,000, rounded to the nearest two decimal places. For the avoidance of doubt, in the event that the maximum amount of $8,000,000 in Additional Capital Contributions is made by the Series A Members pursuant to this Section 4.1(b), the Original Issue Price or Conversion Price shall (absent any adjustments contemplated by the definition of Original Issue Price in Section 1.1 or the terms and conditions of Section 3.11) each be increased to $1.00.

(c) Additional Capital Contributions. Except for Section 4.1(b) above and as otherwise provided herein, no Member shall be permitted or required to make any additional Capital Contribution without the approval of the Board of Managers. Upon any change in the number of Units held by a Member, the Schedules shall be appropriately and timely amended to reflect (and shall be deemed to have been so amended automatically upon any) such change.

4.2 No Right of Withdrawal. No Member shall have the right to withdraw or receive any return of, or interest on, any portion of such Member's contributions to capital of, or to receive any distributions from, the LLC, except as provided in Articles X and XIII.

4.3 Advances. If any Member shall advance any funds to the LLC in excess of its Capital Contributions, the amount of such advance shall neither increase its Capital Account nor entitle it to any increase in its share of the distributions of the LLC. The amount of any such advance shall be a debt obligation of the LLC to such Member and shall be repaid to it by the LLC with interest at a rate and upon such other terms and conditions which the Board of Managers determines in good faith are, taken as a whole, not materially less favorable to the LLC than would be available to the LLC from an unrelated commercial lender, as shall be agreed by the LLC and such Member. Any such advance shall be payable and collectible only out of LLC assets, and the other Members shall not be personally obligated to repay any part thereof. No Person who makes any loan to the LLC shall have or acquire, as a result of making such loan, any direct or indirect interest in the profits, capital or property of the LLC, other than as a creditor.

4.4 Additional Investment Right.

(a) Investment Right. Subject to the terms and conditions of this Section 4.4, the Series A Members shall have the right, but not the obligation, to make additional investments in the Company, in increments of not less than $2,500,000, in exchange for the issuance by the Company of additional Units (each such investment, an "**Additional Investment**" and such additional Units, the "**Additional Investment Preferred Units**"). The Additional Investment Preferred Units issued hereunder shall have substantially identical terms as the Series A Preferred Units (other than price, which shall be determined in accordance with Section 4.4(b) below), shall initially convert to Common Units on a one-to-one basis (subject to the adjustment terms of Section 3.11), shall vote collectively with the Series A Preferred Units for all purposes and shall be *pari passu* to the Series A Preferred Units with respect to dividends and distributions of the Company made in accordance with Section 10 of this Agreement.

(b) Pricing. The price per Unit of the Additional Investment Preferred Units to be issued in any Additional Investment shall be equal to (i) four and a half times (4.5X) the Estimated Trailing Twelve Month Adjusted Operating Unit EBITDA calculated as of the date of

the Additional Investment Notice (as defined below), divided by (ii) the Company's Fully-Diluted Capitalization as of the date of the Additional Investment Notice (such price per Unit, the "**Additional Investment Purchase Price**").

(c) Mechanics.

(i) Notice. The Series A Member(s) shall have the right to make an Additional Investment by providing written notice to the Company (an "**Additional Investment Notice**" and such Series A Member(s), the "**Additional Investment Participants**"). The Company shall, within five (5) Business Days of the receipt of an Additional Investment Notice, provide the Additional Investment Participants written notice of the calculation of the Additional Investment Purchase Price and the number of Additional Investment Preferred Units to be issued, which calculations shall be approved by the Board.

(ii) Closing. The closing of issuance of the Additional Investment Preferred Units shall occur within ten (10) Business Days thereafter, on terms substantially the same as those set forth in the Purchase Agreement. At such closing, the Company and the Members hereby agree to take such actions as are necessary or appropriate to authorize the Additional Investment Preferred Units and effect their issuance to the Additional Investment Participants (including, without limitation, approving an amendment and restatement of this Agreement to authorized the Additional Investment Preferred Units and give effect to their rights, preferences and privileges and executing and delivering the applicable purchase agreement).

(d) Post-Issuance Conversion Rate Adjustment.

(i) With respect to any Additional Investment in which the Additional Investment Purchase Price was calculated based upon Estimated Trailing Twelve Month Adjusted Operating Unit EBITDA in respect of one or more Operating Units with an operating history of less than twenty-four months at the time of such calculation (the "**Recently Opened Operating Units**"), a special adjustment of the Conversion Rate of such Additional Investment Preferred Units shall occur promptly after such date that all Recent Opened Operating Units have at least twenty-four months of operating history.

(ii) The "**Adjusted Additional Investment Price**" shall be calculated based on the Estimated Trailing Twelve Month Adjusted Operating Unit EBITDA as of the date of the Additional Investment Notice, recomputed as follows: (i) with respect to each Operating Unit that is not a Recently Opened Operating Unit, the EBITDA shall be the EBITDA used in the original calculation of the Additional Investment Price and (ii) with respect to each Recently Opened Operating Unit, the EBITDA shall be the EBITDA for the twelve-month operating period commencing with the first anniversary of the opening of such Recently Opened Operating Unit in lieu of the EBITDA used in the original calculation of the Additional Investment Price. Such recomputed amount shall be divided by the Company's Fully-Diluted Capitalization as of the date of the Additional Investment Notice to produce the Adjusted Additional Investment Price.

(iii) The Conversion Price of the Additional Investment Preferred Units shall be adjusted to equal the Conversion Price immediate prior to effectiveness of such adjustment, multiplied by a fraction, the numerator of which is the Adjusted Additional Investment Price in respect of such Additional Investment, and the denominator of which is the Additional Investment Price in respect of such Additional Investment.

(iv) The Company shall provide notice to the Members holding Additional Investment Preferred Units of any such Conversion Rate adjustment, with supporting calculations in reasonable detail.

ARTICLE V

MANAGEMENT AND RESTRICTIONS

5.1 Management by Board of Managers; Board of Managers.

(a) Management by Board of Managers. Subject to the limitations set forth in this Agreement, the Certificate or the Act, the powers of the LLC, including, without limitation, the right to manage the day-to-day operations of the LLC, shall be exercised by and under the authority of, and the business and affairs of the LLC shall be managed and controlled by, the Board of Managers. No Member shall act, or have the authority to act, unilaterally in its capacity as a Member on behalf of the LLC. The members of the Board of Managers shall be "**Managers**" within the meaning of Section 18-402 of the Act. The Board of Managers shall have full, exclusive and complete discretion to take all such actions as they deem necessary or appropriate to accomplish the purposes of the LLC as set forth herein. Each Manager shall have the authority to take action on behalf of the Managers only with the approval of the other Managers.

(b) Size of the Board of Managers. The Board of Managers shall initially be comprised of five (5) Managers, which number may be increased or decreased by amendment to this Agreement pursuant to Section 14.1. The Managers shall be appointed in accordance with Section 5.1(c).

(c) Composition of the Board of Managers.

(i) The Board of Managers shall include two (2) Managers designated by the Requisite Interest of Series A Members (the "**Investor Managers**") who shall initially be Ron Shaich and Keith Pascal.

(ii) The Board of Managers shall include two (2) Managers designated by the holders of a majority of the outstanding Series FF Preferred Units and Voting Common Units issued upon conversion of Series FF Preferred Units (voting together as a single class, on an as-converted basis) (the "**Series FF Managers**"), who shall initially be the Founder and one vacant seat.

(iii) The Board of Managers shall include one (1) Manager not otherwise affiliated with either the Founder, the Company or the Series A Members, who is

designated by the Requisite Interest of Series A Members and reasonably acceptable to the Founder (the "**Independent Manager**"), which seat shall initially be vacant.

(iv) The Investor Managers designated in accordance with Section 5.1(c)(i) shall be removed only with the written consent of the Requisite Interest of Series A Members. The Series FF Managers designated in accordance with Section 5.1(c)(ii) shall be removed only with the written consent of the holders of a majority of the then outstanding Voting Common Units issued upon conversion of the Series FF Preferred Units and Series FF Preferred Units (voting together as a single class, on an as-converted basis). The Independent Manager designated in accordance with Section 5.1(c)(iii) shall be removed only with the written consent of the Requisite Interest of Series A Members. In the event of a vacancy in the Board of Managers resulting or proposed to result from the removal of a Manager, such vacancy shall be filled by vote of the applicable Members in accordance with this Section 5.1(c), and the LLC shall take such reasonable actions as are necessary to facilitate such removals or appointments, including, without limitation, calling a special meeting for the election of Managers and soliciting the votes of the appropriate Members.

(v) Notwithstanding the foregoing, in the event that the relative ownership of the Founders and the Series A Members changes such that either (x) the Founder or (y) the Series A Members in the aggregate hold seventy percent (70%) or more of the aggregate Units held by the Founder and all Series A Members (determined on an as-converted basis) (the "**Board Change Ownership Threshold**"), then the composition of the Board of Managers pursuant to Sections 5.1(c)(i) and 5.1(c)(ii) above shall automatically be amended such that the Series A Members or the Founder holding Units representing the Board Change Ownership Threshold, as applicable, shall be entitled to designate three (3) Managers, and the other party (or parties, in the case of the Series A Members) shall be entitled to designate one (1) Manager. Such modified composition of the Board of Managers shall remain in effect for so long as the Founder or the Series A Members, as applicable, hold Units representing the Board Change Ownership Threshold, and at all other times the provisions of Sections 5.1(c)(i) and 5.1(c)(ii) shall remain in effect. A change in the composition of the Board of Managers in accordance with this Section 5.1(c)(iii) shall be referred to herein as a "**Board Composition Change**".

(vi) During the term of this Agreement, each of the Members agrees to vote all Voting Units now or hereafter owned by such Member, whether beneficially or otherwise, or as to which such Member has voting power at a regular or special meeting of the Members (or by written consent) in accordance with the provisions of this Section 5.1, including in order to give effect to the provisions of Section 5.1(c)(v) above. Upon the failure of any Member to vote their Voting Units in accordance with the terms of this Section 5.1, such Member hereby grants to the LLC a proxy coupled with an interest in all Voting Units owned by such Member, which proxy shall be irrevocable until this Agreement terminates pursuant to its terms or this Section 5.1 is amended to remove such grant of proxy in accordance with Section 14.1 hereof, to vote all such Voting Units in the manner provided in Sections 5.1 hereof. It is agreed and understood that monetary damages would not adequately compensate an injured Member for the breach of this Section 5.1 by any other Member, that this Section 5.1 shall be specifically enforceable, and that any breach or threatened breach of this Section 5.1 shall be the proper subject of a temporary or permanent injunction or restraining order. Further, each

Member waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach.

(d) Meetings of the Board of Managers. The Board of Managers may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Managers may, unless otherwise required by the Board of Managers, be held on not less than three (3) Business Days' written notice from any Managers to the other Managers delivered either personally, by telephone, by mail, by facsimile or by any other reasonable means of communication, at such time and place as shall from time to time be specified in such notice. Special meetings of the Board of Managers may be called by any Manager on 24 hours notice to each Manager, either personally, by telephone, by mail, by facsimile or by any other reasonable means of communication. Notice of a meeting need not be given to any Manager if a written waiver of notice, executed by such Manager before or after the meeting, is filed with the records of the meeting, or to any Manager who attends the meeting without protesting prior thereto or at its commencement, the lack of notice. A waiver of notice need not specify the purposes of the meeting.

(e) Quorum and Acts of the Board of Managers. At all meetings of the Board of Managers, the attendance of a majority of the Managers then seated shall constitute a quorum for the transaction of business; provided, that, at all times prior to the occurrence of a Board Composition Change, a quorum of the Board of Managers shall additionally require the presence of at least one Investor Manager and at least one Series FF Manager (the "**Additional Quorum Requirement**"); provided, further, that upon a failure to accomplish a quorum for a period of more 10 days on account of the failure to satisfy the Additional Quorum Requirement, then such requirement shall be disregarded with respect to the next proposed meeting. If a quorum shall not be present at any meeting of the Board of Managers, the Managers present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Except as otherwise provided herein, the act of a majority of the Managers present at any meeting at which there is a quorum shall be the act of the Board of Managers. Any action required or permitted to be taken at any meeting of the Board of Managers or of any committee thereof may be taken without a meeting, if all members of the Board of Managers or committee, as the case may be, consent thereto in writing, and the writing, writings, electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Managers or committee.

(f) Electronic Communications. Managers, or members of any committee designated by the Board of Managers, may participate in a meeting of the Board of Managers, or any committee, by means of conference telephone, video conference or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

(g) Compensation of Managers. The LLC shall pay all non-employee Managers their reasonable out-of-pocket expenses, if any, of attendance at meetings of the Board of Managers or any committee thereof or in connection with the performance of his or her service as a Manager. No such payment shall preclude any Manager from serving the LLC in any other capacity.

(h) Committees, General. The Board of Managers may, by resolution passed by the Board of Managers, designate one or more committees. Any such committee, to the extent provided in the resolution of the Board of Managers, shall have and may exercise all the powers and authority of the Board of Managers, but, unless the resolutions expressly so provide, no such committee shall have the power or authority to authorize the issuance of Units. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Managers. Each committee shall keep regular minutes of its meetings and report the same to the Board of Managers when required. The Investor Managers shall be entitled to become members of any committee so designated by the Board of Managers.

5.2 Amendment of Certificate or Agreement. The Board of Managers shall have the duty and authority to amend the Certificate or this Agreement consistent with Section 14.1(a) and Section 14.1(b), respectively, but subject to any additional vote required pursuant to Section 3.10 above.

5.3 Fiduciary Duties. Subject to the terms of any written agreement by any Manager to the contrary (including any director agreement, employment agreement, consultant agreement, non-competition agreement, purchase agreement or other similar agreements with the Company or any of its subsidiaries), (i) a Manager may have business interests and engage in business activities in addition to those relating to the Company, and (ii) no Manager or group of Manager (unless such Manager is an employee of the Company or one of its subsidiaries) shall have any fiduciary or other duty to the Company, its subsidiaries or any Member with respect to the business and affairs of the Company and its subsidiaries or otherwise, including any duty or obligation to bring any "corporate opportunity" to the Company. Subject to the terms of any written agreement by any Manager to the contrary, none of the Company, its Affiliates or any Member shall have any rights by virtue of this Agreement in any business interests or activities of such Manager or any Affiliate of such Manager.

5.4 Related Party Transactions. Without limiting the applicability of Section 3.10(b), no transaction or contract to which the LLC is or may be a party shall be void for the reason that any Member (including any Member that is a Manager), or any affiliate of any such Member, is a party thereto, and such Member or its affiliates may receive fees, compensation and remuneration from the LLC for services rendered relating to the LLC's business (including, without limitation, guaranteed payments (i.e., a payment in the nature of salary or bonus) within the meaning of Code Section 707(c)) from the LLC; provided, however, that in each case, the Board of Managers (with the approval of each Investor Manager) reasonably believe that the terms of any such arrangements are in or not opposed to the best interests of the LLC.

ARTICLE VI

NOTICES

6.1 Notices. Any notice, payment, demand or other communication required or permitted to be given by any provision of this Agreement shall be deemed to have been delivered

and given for all purposes (i) if delivered personally to the party or to an officer of the party to whom the same is directed, when received by such party, (ii) if delivered by confirmed telecopy transmission, when received if received on a Business Day during normal business hours of the recipient, and if not, on the next Business Day, (iii) by a nationally recognized overnight courier services or (iv) whether or not the same is actually received, if sent by registered or certified mail, return receipt requested, postage and charges prepaid, addressed as follows: If to the LLC, at its principal place of business the address of which is set forth in Section 2.2; if to a Member or Assignee, at such Member's or Assignee's address set forth on the Schedules, or to such other address as such Member or Assignee may from time to time specify by written notice to the Members and the LLC; such notice shall be deemed to be given five (5) days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid. Any party may by written notice to the other parties specify a different address or telefacsimile number for notice purposes by sending notice thereof in the foregoing manner.

6.2 Waiver of Notice. Whenever any notice is required to be given under the provisions of the Act, the Certificate or this Agreement, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE VII

OFFICERS

7.1 Officers.

(a) Subject to Section 3.10 above, the Board of Managers may from time to time, but shall not be required to, designate one or more persons to be officers of the LLC (each such person an "**Officer**"). Any Officers designated by the Board of Managers shall have such authority and perform such duties as the Board of Managers may, from time to time, delegate to them. The Board of Managers may assign titles to particular Officers and, unless the Board of Managers decides otherwise, if the title is one commonly used for officers of a business corporation formed under the General Corporation Law of the State of Delaware, the assignment of such title shall constitute the delegation to such Officer of the authority and duties that are normally associated with that office, subject to any restrictions on such authority imposed by the Board of Managers. Any number of offices may be held by the same person. No Officer need be a resident of the State of Delaware or of the United States of America.

(b) Subject to Section 3.10 above, each Officer shall hold office until his or her successor shall be duly designated and qualified or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided.

(c) Any Officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Board of Managers. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

(d) The Officers, in the performance of their duties as such, shall owe to the Members duties of loyalty and due care of the type owed under the laws of the State of Delaware by officers to the common stockholders of a corporation incorporated under the laws of the State of Delaware.

(e) Subject to Section 3.10 above, any Officer may be removed as such, either with or without cause, by the Board of Managers whenever in their judgment the best interests of the LLC will be served thereby. Any vacancy occurring in any office of the LLC may be filled by the Board of Managers.

7.2 Reliance by Third Parties. In dealing with the LLC and its duly appointed agents, no Person shall be required to inquire as to the LLC's or such agents' authority to bind the LLC.

7.3 Actions and Determinations of the LLC. Except as otherwise expressly provided herein, whenever this Agreement provides that a determination shall be made or an action shall be taken by the LLC, such determination or act shall be made or taken by the Board of Managers or, pursuant to this Agreement or with the authorization of the Board of Managers (which may be a general authorization and need not be specific as to any named person, Officer or particular transaction), by any Officer.

ARTICLE VIII

ACCOUNTING AND RECORDS

8.1 Financial and Tax Reporting. The LLC shall prepare its financial statements and its income tax information returns using such methods of accounting and tax year as the Board of Managers deems necessary or appropriate as permitted by the Code and Treasury Regulations.

8.2 Delivery of Financial Statements. The LLC shall deliver to each Series A Member (or transferee of a Series A Member):

(a) as soon as practicable, but in any event within ninety (90) days after the end of each fiscal year of the LLC, an income statement for such fiscal year, a balance sheet of the LLC and statement of stockholders' equity as of the end of such year, and a statement of cash flows for such year (the "**Annual Financial Statements**"), such year-end financial reports to be in reasonable detail, prepared in accordance with accounting principles mutually aggregable to the Board of Managers and the Requisite Interest of Series A Members ("**Accounting Principles**");

(b) within forty-five (45) days of the end of each fiscal quarter, an unaudited income statement and statement of cash flows for such fiscal quarter, and an unaudited balance sheet and statement of stockholders' equity as of the end of such fiscal quarter, all prepared in accordance with the Accounting Principles (except that such financial statements may be subject to normal year-end audit adjustments);

(c) within thirty (30) days prior to the end of each fiscal year, an operating budget forecasting the Company's revenues, expenses and cash position on a quarterly basis for the upcoming fiscal year, which budget shall have been approved in accordance with Section 3.10(b);

(d) within fifteen (15) days prior to the end of each fiscal quarter, an operating budget forecasting the Company's revenues, expenses and cash position for the ensuing fiscal quarter, which budget shall have been approved in accordance with Section 3.10(b); and

(e) such other information relating to the financial condition, business, prospects, or corporate affairs of the Company as any Series A Member may from time to time reasonably request; provided, however, that the Company shall not be obligated under this subsection (f) to provide information the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

(f) If, for any period, the LLC has any subsidiary whose accounts are consolidated with those of the LLC, then in respect of such period the financial statements delivered pursuant to the foregoing sections shall be the consolidated and consolidating financial statements of the LLC and all such consolidated subsidiaries. Notwithstanding anything else in this Section 8.2 to the contrary, the LLC may cease providing the information set forth in this Section 8.2 during the period starting with the date thirty (30) days before the LLC's good-faith estimate of the date of filing of a registration statement if it reasonably concludes it must do so to comply with the SEC rules applicable to such registration statement and related offering; *provided* that the LLC's covenants under this Section 8.2 shall be reinstated at such time as the LLC is no longer actively employing its commercially reasonable efforts to cause such registration statement to become effective.

In addition, for so long as Founder holds any Units, the LLC shall deliver to the Founder copies of the Annual Financial Statements upon request; provided, that, if at any time the Founder is not providing services to the Company as an officer, employee or consultant, such Annual Financial Statements may be in summary form or otherwise edited by the Company to redact any Company confidential information therein.

8.3 Supervision; Inspection of Books. Proper and complete books of account and records of the business of the LLC (including those books and records identified in the Act) shall be kept at the LLC's principal office and at any other place as designated by the Board of Managers. The LLC shall permit each Series A Member, at such Member's expense and with reasonable prior notice, to visit and inspect the LLC's properties, to examine its books of account and records and to discuss the LLC's affairs, finances and accounts with its officers, all at such reasonable times during normal business hours as may be requested by the Series A Member; provided, however, that the LLC shall not be obligated pursuant to this Section 8.3 to provide access to any information that it reasonably considers to be a trade secret or similar confidential information.

8.4 Tax Returns. The LLC shall cause appropriate tax reports and returns (including an IRS Form 1065, Schedule K-1) to be prepared and delivered in a timely manner to each of the Members and to any relevant tax authority within one hundred eighty (180) days after the close

of each Fiscal Year (subject to reasonable delays in the event of the late receipt of any financial information necessary to prepare tax returns of the LLC).

8.5 Tax Matters Partner. The Founder is hereby designated as the LLC's "**Tax Matters Partner**" for purposes of the Code, to serve until his resignation or removal from the Board of Managers. If the then serving Tax Matters Partner ceases to be a Manager, the Board of Managers shall appoint a new Tax Matters Partner.

8.6 Assistance. The LLC shall at the Series A Members' expense assist the holders of Series A Preferred Units (and the Affiliates, direct or indirect partners, members or other equity owners of such holders) in preparing and filing any tax returns or statements that they may be obligated to prepare or file due to their direct or indirect ownership of a membership interest in the LLC, provided, that the LLC may, with the consent of a Requisite Interest of the Series A Members, at the LLC's own expense prepare and file, where available, composite and combined state and local returns on such holders' behalf.

ARTICLE IX

CAPITAL ACCOUNTS AND ALLOCATIONS OF NET INCOME AND NET LOSS

9.1 Capital Accounts.

(a) A separate capital account (the "**Capital Account**") shall be established and maintained for each Member. The Capital Account of each Member shall be credited with such Member's Capital Contributions (net of any liabilities secured by any contributed property that the LLC is considered to assume or take subject to), all Net Income and items of gross income allocated to such Member pursuant to Section 9.2 and any items of income or gain which are specially allocated pursuant to Section 9.3; and shall be debited with all Net Losses and items of deduction or expense allocated to such Member pursuant to Section 9.2, any items of loss or deduction of the LLC specially allocated to such Member pursuant to Section 9.3, and all cash and the Carrying Value of any property (net of liabilities assumed by such Member and the liabilities to which such property is subject) distributed by the LLC to such Member. To the extent not provided for in the preceding sentence, the Capital Accounts of the Members shall be adjusted and maintained in accordance with the rules of U.S. Treasury Regulations Section 1.704-1(b)(2)(iv), as the same may be amended or revised. Any references in any section of this Agreement to the Capital Account of a Member shall be deemed to refer to such Capital Account as the same may be credited or debited from time to time as set forth above. In the event of any Transfer of any Interest in the LLC in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest. Whenever the LLC would be permitted to adjust the Capital Accounts of the Members pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(f) to reflect revaluations of LLC property, the Board of Managers shall adjust the Capital Accounts of the Members if it determines that doing so would be appropriate, and shall do so in connection with any issuance of any Profits Interests. If Code Section 704(c) applies to LLC property, the Capital Accounts of the Members shall be adjusted in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g) for allocations of depreciation, depletion, amortization and gain and loss, as

computed for book purposes, with respect to such property. The Capital Accounts shall be maintained for the sole purpose of allocating items of income, gain, loss and deduction among the Members for tax purposes and shall have no effect on the amount of any distributions to any Members in liquidation or otherwise.

(b) No Member shall be required to pay to the LLC or to any other Member the amount of any negative balance which may exist from time to time in such Member's Capital Account.

9.2 Allocations of Net Income and Net Loss. Net Income, Net Loss and items thereof of the LLC for each Fiscal Year (or other Accounting Period) shall be allocated to the Members in such manner that if the LLC were to liquidate completely after the end of such Fiscal Year (or other Accounting Period) and in connection with such liquidation (i) sell all of its assets at their Carrying Values, (ii) settle all of its liabilities to the extent of the available assets of the LLC (limited, in the case of nonrecourse liabilities, to the collateral securing such liability), and (iii) each Member were to pay to the LLC at that time the amount of any obligation then unconditionally due to the LLC, then:

(a) the distribution by the LLC of any remaining cash to the Members in accordance with their respective Capital Account balances (after crediting or debiting the Capital Accounts for any Net Income, Net Loss, items thereof and allocations pursuant to Section 9.3 for such Fiscal Year or other Accounting Period, including any Partner Nonrecourse Debt Minimum Gain and Partnership Minimum Gain resulting from the hypothetical liquidation and crediting Capital Accounts for all contributions required to be made in connection with the liquidation) would correspond as closely as possible to the liquidating distributions that would result if the liquidating distributions had instead been made in accordance with Section 10.1; and

(b) any resulting deficit Capital Account balance (after crediting or debiting Capital Accounts for Net Income, Net Loss, items thereof, and allocations pursuant to Section 9.3 for such Fiscal Year or other Accounting Period, including any Partner Nonrecourse Debt Minimum Gain and Partnership Minimum Gain resulting from the hypothetical liquidation and crediting Capital Accounts for all contributions required to be made in connection with the liquidation) would correspond as closely as possible to the manner in which economic responsibility for LLC deficit balances, if any, would be borne by the Members under the terms of this Agreement or any collateral agreement.

9.3 Special Allocation Provisions. Notwithstanding any other provision in this Agreement:

(a) Minimum Gain Chargeback. If there is a net decrease in Partnership Minimum Gain or Partner Nonrecourse Debt Minimum Gain (determined in accordance with the principles of U.S. Treasury Regulations Sections 1.704-2(d) and 1.704-2(i)) during any LLC taxable year, the Members shall be specially allocated items of LLC income and gain for such year (and, if necessary, subsequent years) in an amount equal to their respective shares of such net decrease during such year, determined pursuant to U.S. Treasury Regulations Sections 1.704-2(g) and 1.704-2(i)(5). The items to be so allocated shall be determined in accordance with U.S. Treasury Regulations Section 1.704-2(f). This Section 9.3(a) is intended to comply

with the minimum gain chargeback requirements in such U.S. Treasury Regulations Sections and shall be interpreted consistently therewith; including that no chargeback shall be required to the extent of the exceptions provided in U.S. Treasury Regulations Sections 1.704-2(f) and 1.704-2(i)(4).

(b) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in U.S. Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of LLC income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate the deficit balance in its Capital Account (in excess of the amounts described in clauses (i) and (ii) of Section 9.3(c) below) created by such adjustments, allocations or distributions as promptly as possible. This Section 9.3(b) is intended to constitute a "qualified income offset" when the meaning of Treasury Regulation Section 1.704-1(b)(ii)(d).

(c) Limitation on Net Losses. If any allocation of Net Loss or an item of deduction, expenditure or loss to be made pursuant to Section 9.2 or this Section 9.3 for any Fiscal Year or other Accounting Period would cause a deficit in any Member's Capital Account (or would increase the amount of any such deficit) in excess of the sum of (i) the amount such Member is obligated to restore, if any, pursuant to any provision of this Agreement, and (ii) the amount that such Member is deemed to be obligated to restore pursuant to the penultimate sentences of U.S. Treasury Regulations Section 1.704-2(g)(1) and 1.704-2(i)(5), then such Net Loss or item of deduction, expenditure or loss shall be allocated to the Members that have positive Capital Account balances (in excess of the amounts described in clauses (i) and (ii) of this section for such Member) in proportion to the respective amounts of such positive balances until all such positive balances have been reduced to zero.

(d) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount such Member is obligated to restore, if any, pursuant to any provision of this Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of U.S. Treasury Regulations Section 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of LLC income and gain in the amount of such excess as quickly as possible; *provided* that an allocation pursuant to this Section 9.3(d) shall be made only if and to the extent that a Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article IX have been tentatively made as if Section 9.3(c) and this Section 9.3(d) were not in this Agreement.

(e) Nonrecourse Deductions. Nonrecourse Deductions shall be allocated in accordance with each Member's LLC Percentage and in the same manner as if such nonrecourse deductions were taken into account in determining Net Income and Net Loss for such Accounting Period or fiscal year.

(f) Partner Nonrecourse Deductions. Partner Nonrecourse Deductions for any taxable period shall be allocated to the Member who bears the economic risk of loss with respect to the liability to which such Partner Nonrecourse Deductions are attributable in accordance with U.S. Treasury Regulations Section 1.704-2(j).

(g) Change in Interests. If there is a change in any Member's Interest in the LLC during any Fiscal Year, the principles of Section 706(d) of the Code shall apply in allocating Net Income and Net Loss and items thereof for such Fiscal Year to account for the variation. For purposes of applying Section 706(d), the Board of Managers may adopt any method or convention permitted under applicable Treasury Regulations. If there is a change in the Interest of any Member, then for purposes of applying Section 9.2(a) with respect to the Fiscal Period ending on the date of change, the hypothetical liquidating distributions under Section 9.2(a) shall be made on the basis of the Interests of each Member as applied before giving effect to such change.

(h) Imputed Income. To the extent the LLC has taxable interest income or expense imputed with respect to any promissory note or other obligation between any Member and the LLC, as maker and holder respectively, pursuant to Section 483, Sections 1271 through 1288, or Section 7872 of the Code, such imputed interest income or expense shall be specially allocated to the Member to whom such promissory note relates, and such Member's Capital Account shall be adjusted as appropriate to reflect the recharacterization as interest of a portion of the principal amount of such promissory note and to reflect any deemed contribution or distribution of such interest income. The foregoing provisions of this subsection 9.3(h) shall not apply to any interest or original issue discount expressly provided for in any such promissory note or other obligation.

9.4 Curative Allocations. If the Board of Managers determines, after consultation with counsel experienced in income tax matters, that the allocation of any item of LLC income, gain, loss, deduction or credit is not specified in this Article IX (an "U**nallocated Item**"), or that the allocation of any item of LLC income, gain, loss, deduction or credit hereunder is clearly inconsistent with the Members' economic interests in the LLC (determined by reference to the general principles of Treasury Regulation Section 1.704-1(b) and the factors set forth in Treasury Regulation Section 1.704-1(b)(3)(ii)) (a "**Misallocated Item**"), then the Board of Managers may allocate such Unallocated Items, or reallocate such Misallocated Items, to reflect such economic interests; *provided* that no such allocation shall have any effect on the amounts distributable to any Member (other than tax distributions), including the amounts to be distributed upon the complete liquidation of the LLC.

9.5 Tax Allocations. For income tax purposes only, each item of income, gain, loss and deduction of the LLC shall be allocated in the same manner as the corresponding items of Net Income and Net Loss and specially allocated items are allocated for Capital Account purposes; *provided* that in the case of any LLC asset the Carrying Value of which differs from its adjusted tax basis for U.S. federal income tax purposes, income, gain, loss and deduction with respect to such asset shall be allocated solely for income tax purposes in accordance with the principles of Section 704(c) of the Code so as to take account of the difference between the Carrying Value and adjusted tax basis of such asset. Unless otherwise agreed by the Board of Managers, for purposes of applying the principles of Section 704(c), the LLC shall use the "traditional method" of Treasury Regulation Section 1.704-3(b).

9.6 Safe Harbor Election. The Board of Managers is hereby authorized and directed to elect the safe harbor described in section 4 of the Proposed Revenue Procedure (or any substantially similar safe harbor provided for in other IRS guidance), if and when such Revenue

Procedure (or other IRS guidance) is finalized (the "**Safe Harbor**"). The LLC and each Member (including any Persons to whom a Profits Interest is Transferred or issued in connection with the provision of services, and any Person to whom an Interest is Transferred by another Member) agree to comply with all requirements of the Safe Harbor while such election remains in effect, including making tax filings (if any) consistent with the applicable requirements of such Safe Harbor and any relevant Treasury Regulations. In addition, the Members agree to amend this Agreement as and if required by the finalized Revenue Procedure (or substantially similar other IRS guidance) in order to ensure that the Transfer or issuance of an Interest in connection with the provision of services to, or on behalf of, the LLC is eligible for the benefits of the Safe Harbor. Notwithstanding the preceding sentences, no election or amendment shall be made pursuant to this Section 9.6 if the Safe Harbor, when finalized, is substantially different from the Proposed Revenue Procedure and the application of the Safe Harbor would result in materially adverse consequences to the LLC.

ARTICLE X

DISTRIBUTIONS

10.1 Distributions Generally.

(a) Except as provided in Sections 10.2 and subject to Section 3.10, distributions of the LLC's cash or other assets to the Members shall be made in accordance with Section 10.1(b) at such times and in such amounts as determined by the Board of Managers; *provided* that the LLC shall retain sufficient working capital reserves as measured immediately after any proposed distribution. No Member shall be entitled to any distribution or payment with respect to such Member's Interest in the LLC except as set forth in this Agreement.

(b) Other than distributions pursuant to Section 10.2, if the Board of Managers determines to make any distribution of cash or other assets to the Members, all such distributions shall be distributed as follows:

(i) First, to the holders of Series A Preferred Units, on a *pari passu* basis based on the aggregate amounts payable under this clause (i), until the Unpaid Preferred Return has been reduced to zero with respect to all Series A Preferred Units;

(ii) Second, to the holders of Series A Preferred Units, on a *pari passu* basis based on the aggregate amounts payable under this clause (ii), until the Unreturned Preference Amount has been reduced to zero with respect to all Series A Preferred Units;

(iii) Third, to the holders of Series FF Preferred Units, on a *pari passu* basis based on the aggregate amounts payable under this clause (iii), until an amount equal to $0.0001 per Series FF Preferred Unit has been distributed thereon;

(iv) Fourth, to the holders of Series A Preferred Units, Series FF Preferred Units and Common Units, pro rata in proportion to the number of Common Units held by each (assuming full conversion of all such Series A Preferred Units and Series FF Preferred Units at the applicable Conversion Rate then in effect), until the aggregate amount distributed with respect to each Series A Preferred Unit pursuant to this Section 10(b)(iv) is equal to the

Original Issue Price of such Series A Preferred Unit; provided, that for purposes of determining the amount distributable pursuant to this Section 10(b)(iv) with respect to Series FF Preferred Units or Common Units received upon conversion of Series FF Preferred Units, amounts previously distributed with respect to such Series FF Preferred Units pursuant to clause (iii) above shall be considered as advances against (and shall reduce) amounts otherwise distributable with respect to such Series FF Preferred Units or Common Units received upon conversion of such Series FF Preferred Units; and

(v) Thereafter, to the holders of Series A Preferred Units, Series FF Preferred Units and Common Units, pro rata in proportion to the number of Common Units held by each (assuming full conversion of all such Series A Preferred Units and Series FF Preferred Units at the applicable Conversion Rate then in effect), provided, that for purposes of determining the amount distributable pursuant to this Section 10(b)(v) with respect to Series A Preferred Units or Common Units received upon conversion of Series A Preferred Units, amounts previously distributed with respect to such Series A Preferred Units pursuant to clauses (i), (ii) and (iv) above shall be considered as advances against (and shall reduce) amounts otherwise distributable with respect to such Series A Preferred Units or Common Units received upon conversion of such Series A Preferred Units.

Notwithstanding the foregoing provisions of this Section 10.1(b), amounts that would otherwise be distributed to any Common Unit that was issued as a Profits Interest shall be reduced by an amount equal to its remaining Profits Interest Threshold Amount for such Common Unit and the amount by which the distribution to such Profits Interest is reduced shall instead be distributed (subject again to the application of this sentence with respect to Common Units that have a Profits Interest Threshold Amount) to the holders of Units as provided in the foregoing provisions of this Section 10.1(b).

(c) Except as otherwise provided by law, no Member shall be required to restore or repay to the LLC any funds properly distributed to it pursuant to Sections 10.1.

(d) For the avoidance of doubt, in the event of any Liquidation Event, any proceeds payable directly to the holders of Units shall be distributed among such holders as though such proceeds were distributed from the LLC to the Members in accordance with this Section 10.1. Each Member (including any Persons to whom a Common Unit was issued as a Profits Interest in connection with the provision of services, and any Person to whom an Interest is Transferred by another Member) agrees to take such actions as may be required, necessary or advisable to effect the intent of this Section 10.1(d).

(e) If the consideration received by the LLC, or payable to the Members, in connection with a Liquidation Even is other than cash, its value shall be deemed to be the fair market value as mutually determined in good faith by the Board of Managers and the Requisite Interest of the Preferred Members.

(f) In the event of any Liquidation Event, if any portion of the consideration payable to the holders of Units is placed into escrow and/or is payable to such holders subject to contingencies, the definitive agreement with respect to such Liquidation Event shall provide that (a) the portion of such consideration that is not placed in escrow and not subject to any

contingencies (the "**Initial Consideration**") shall be allocated among the Members in accordance with this Section 10.1 as if the Initial Consideration were the only consideration payable in connection with such deemed Liquidation Event and (b) any additional consideration that becomes payable to the Members upon release from escrow or satisfaction of contingencies shall be allocated among the Members in accordance with this Section 10.1 after taking into account the previous payment of the Initial Consideration as part of the same transaction.

(g) Other than with respect to an actual Liquidity Event (and in such event only the to the minimum extent necessary), the parties hereto agree that no amounts distributable with respect to the holders of Series A Preferred Units shall be treated as resulting in an allocation of gross income, a guaranteed payment or a taxable capital shift for U.S. federal or state income tax purposes and the parties shall execute and file all federal, state and local income tax returns in a manner consistent with the foregoing and shall not take any position before any governmental authority or in any judicial proceeding that is inconsistent with the foregoing except pursuant to a change in law or a final "determination" (as defined in Section 1313(a) of the Code).

10.2 **Tax Distributions**.

(a) Notwithstanding Section 10.1, within ninety (90) days of the end of each Fiscal Year, the LLC shall make a distribution to each holder of Units out of any available cash of the LLC (as determined by the Board of Managers) of an amount equal to the excess of (A) the sum of (i) the product of (x) the amount of net income and gain taxable at ordinary tax rates allocated with respect to such Unit (as shown on Schedule K-1 to the LLC's IRS Form 1065) for such Fiscal Year and all prior Fiscal Years and (y) the maximum marginal rate of federal, state and local income tax applicable to an individual subject to tax in Boston, Massachusetts (the "**Designated Jurisdiction**") with respect to such income or gain, (ii) the product of (x) the amount of net income and gain taxable at long-term capital gains rates allocated with respect to such Unit (as shown on Schedule K-1 to the LLC's IRS Form 1065) for such Fiscal Year and all prior Fiscal Years and (y) the maximum marginal rate of federal, state and local income tax applicable to an individual subject to tax in the Designated Jurisdiction with respect to such income or gain and, (iii) in the event of allocation by the LLC of net income or gain taxable at a rate other than the ordinary or long-term capital gains rates contemplated in clauses (i) and (ii) above, the product of (x) the amount of such net income and gain taxable at such other rate allocated with respect to such Unit (as shown on Schedule K-1 to the LLC's IRS Form 1065) for such Fiscal Year and all prior Fiscal Years and (y) the maximum marginal rate of federal, state and local income tax applicable to an individual subject to tax in the Designated Jurisdiction with respect to such income or gain, over (B) the cumulative cash distributions previously made with respect to such Unit pursuant to this Section 10.2 and Section 10.1(b) during such Fiscal Year and all prior Fiscal Years. The determination of the tax rates to be used for purposes of the preceding sentence shall be made by the Board of Managers in their good faith discretion after consulting with the LLC's tax advisors, taking into account among other things changes in applicable tax rates over the relevant period, the deductibility of state and local taxes and any limitations on the ability of an individual to deduct any items of expense or loss under United States federal income tax principles. For the avoidance of doubt, the references to "net income and gain" in clauses (A)(i)(x), (A)(ii)(x), and (A)(iii)(x) above shall mean that amount of such gross income and gain of the LLC allocated with respect to such Unit for all such Fiscal Years

reduced by the gross amount of loss and deduction allocated with respect to such Unit for all such Fiscal Years that is available as an offset to such income and gain. Without prejudice to the foregoing, the LLC shall make a distribution out of any available cash of the LLC (as determined by the Board of Managers) to each holder of Units as soon as practicable following the close of each Estimated Tax Period (each an "**Estimated Tax Distribution**") of each Fiscal Year in amounts equal to the estimated tax liability of each Unit holder relating to such Estimated Tax Period (as estimated by the Board of Managers in their good faith discretion after consulting with the LLC's tax advisors, based on the results of such quarter and assuming the maximum marginal rate of federal, state and local income tax applicable to an individual subject to tax in the Designated Jurisdiction). Estimated Tax Distributions made during a Fiscal Year shall be treated as advances and shall reduce the distributions otherwise distributable in accordance with the first sentence of this Section 10.2 for such Fiscal Year, and upon written notice, if the amount of Estimated Tax Distributions for a Fiscal Year exceeds the amount otherwise distributable in accordance with the first sentence of this Section 10.2, the excess distributed to such Member shall be credited against and reduce distributions that would otherwise be made to such Member pursuant to this Section 10.2 with respect to subsequent Fiscal Years and if the amount of Estimated Tax Distributions for a Fiscal Year is less than the amount otherwise distributable in accordance with the first sentence of this Section 10.2, the LLC shall promptly distribute the shortfall to the Members within sixty (60) days of the end of such Fiscal Year. Notwithstanding the foregoing, distributions pursuant to this Section 10.2 shall not be available to a Member with respect to any guaranteed payment under Code Section 707(c) or any payment to a Member not in his, her or its capacity as a Member under Code Section 707(a).

(b) After taking into account distributions made pursuant to clause (a) of this Section 10.2 ("**Tax Distributions**"), subsequent distributions to the Members pursuant to Section 10.1 shall be adjusted as necessary to ensure that, over the period of time since the date of this Agreement, the aggregate cash distributed to a Member under this Agreement shall be equal to the amount to which such Member would have been entitled had there been no Tax Distributions. Notwithstanding the foregoing, distributions effected pursuant to this Section 10.2 shall not be treated as an advance against or as reducing distributions under Section 10.1(b)(i) or (ii).

10.3 No Other Withdrawals. Except as expressly provided in this Agreement, no withdrawals or distributions shall be required or permitted.

10.4 Distribution Limitations. Notwithstanding any provision to the contrary contained in this Agreement, the LLC shall not make a distribution to any Member on account of its Interest in the LLC if such distribution would violate the Act or other applicable law or breach any contract or agreement to which the LLC is a party.

ARTICLE XI

TRANSFER OF MEMBERSHIP

11.1 Transfer. No Member may transfer, sell, encumber, mortgage, pledge, assign or otherwise dispose of, either directly or indirectly, by operation of law or otherwise (herein collectively called a "**Transfer**") any portion of its Interest in the LLC without the prior written

consent of the Board of Managers. Any such Transfer approved by the Board of Managers shall thereafter be expressly subject to the other provisions of this Article XI. Notwithstanding the foregoing, each Member shall be entitled to Transfer their interest to an Affiliate without the requirement of consent of the Board of Managers or compliance with the other provisions of Article XI; provided that as a condition to such Transfer, such Affiliate delivers to the LLC a duly executed counterpart signature page to this Agreement, agreeing to be bound by the terms of this Agreement in all respects.

11.2 Transfer Void. Any Transfer or attempted Transfer of an Interest in violation of this Agreement shall be absolutely null and void ab initio, of no force or effect on or against the LLC, any Member, any creditor of the LLC or any claimant against the LLC and may be enjoined, and shall not be recorded on the books and records of the LLC. No distributions of cash or property of the LLC shall be made to any transferee of any Interest Transferred in violation hereof, nor shall any such Transfer be registered on the books of the LLC. The Transfer or attempted Transfer of any Interest in violation hereof shall not affect the beneficial ownership of such Interest, and, notwithstanding such Transfer or attempted Transfer, the Member making such prohibited Transfer or attempted Transfer shall retain the right to vote, if any, and the right to receive liquidation proceeds with respect to such Interest.

11.3 Effect of Assignment. Following a Transfer of an Interest that is permitted under this Article XI, the transferee of such Interest shall be treated as having made all of the Capital Contributions in respect of, and received all of the distributions received in respect of, such Interest, shall succeed to the Capital Account associated with such Interest and shall receive allocations and distributions under Articles IX and X in respect of such Interest as if such transferee were a Member.

11.4 Legends. To the extent the Units are certificated, they shall bear such legends regarding the provisions of this Agreement and, in the opinion of the LLC (with advice from counsel to the LLC, as the LLC may deem appropriate), the restrictions imposed under the Securities Act or state securities laws on the Transfer of such Units.

11.5 Publicly Traded Partnership Limitations. Notwithstanding any other provision of this Agreement, no Transfer shall be permitted if (i) the Board of Managers determines in its sole discretion that such transaction will either cause the LLC to be characterized as a "publicly traded partnership" or will materially increase the risk that the LLC will be so characterized or (ii) such Transfer would occur in a transaction registered or required to be registered under the Securities Act. For purposes of this Section 11.6, the phrase "publicly traded partnership" shall have the meanings set forth in Section 7704(b) and 469(k) of the Code. In particular and without limiting the foregoing, no Transfer shall be permitted, given effect or otherwise recognized, and such Transfer (or purported Transfer) shall be void ab initio, if at the time of such Transfer (or as a result of such Transfer) Units are (or would become) traded on an "established securities market" (within the meaning of Treasury Regulation Section 1.7704-1(b)) or are (or would become) "readily tradable on a secondary market or the equivalent thereof" (within the meaning of Treasury Regulation Section 1.7704-1(c)).

11.6 Transfer Effectiveness Date. Any Transfer in compliance with this Article XI shall be deemed effective on the first date as of which with the relevant requirements of this Agreement have been satisfied.

11.7 Rights of Refusal.

(a) Transfer Notice. If at any time a Member proposes to Transfer any Units (a "**Selling Member**"), and such Transfer has been approved in accordance with Section 11.1, then the Selling Member shall promptly give the LLC and each Series A Member (excluding the Selling Member) written notice of the Selling Member's intention to make the Transfer (the "**Transfer Notice**"). The Transfer Notice shall include (i) a description of the securities to be transferred ("**Offered Units**"), (ii) the name(s) and address(es) of the prospective transferee(s), (iii) the consideration and (iv) the material terms and conditions upon which the proposed Transfer is to be made. The Transfer Notice shall also include a copy of any written proposal, term sheet or letter of intent or other agreement relating to the proposed Transfer.

(b) LLC's Right of First Refusal. The LLC shall have an option for a period of twenty (20) days from Delivery of the Transfer Notice to elect to purchase the Offered Units at the same price and subject to the same material terms and conditions as described in the Transfer Notice. The LLC may exercise such purchase option and purchase all or any portion of the Offered Units by notifying the Selling Member in writing before expiration of such twenty (20) day period as to the number of such Units that it wishes to purchase. If the LLC gives the Selling Member notice that it desires to purchase such Units, then payment for the Offered Units shall be by check or wire transfer, against delivery of the Offered Units to be purchased at a place agreed upon between the parties and at the time of the scheduled closing therefor, which shall be no later than forty-five (45) days after Delivery to the LLC of the Transfer Notice, unless the Transfer Notice contemplated a later closing with the prospective third-party transferee(s) or unless the value of the purchase price has not yet been established pursuant to Section 11.7(c). If the LLC fails to purchase any or all of the Offered Units by exercising the option granted in this Section 11.7(b) within the period provided, the remaining Offered Units shall be subject to the option granted to the Series A Members pursuant to subsection 11.7(d).

(c) Additional Transfer Notice. Subject to the LLC's option set forth in Section 11.7(b), if at any time the Selling Member proposes a Transfer, then, within five (5) days after the LLC has declined to purchase all, or a portion, of the Offered Units or the LLC's option to so purchase the Offered Units has expired, the Selling Member shall give each Series A Member an "**Additional Transfer Notice**" that shall include all of the information and certifications required in a Transfer Notice and shall additionally identify the Offered Units that the LLC has declined to purchase (the "**Remaining Units**") and briefly describe the Series A Members' rights of first refusal with respect to the proposed Transfer and the co-sale rights with respect to the proposed Transfer. A copy of such Additional Transfer Notice shall be delivered to the Founder for purposes of Section 11.8.

(d) Series A Members' Right of First Refusal.

(i) Each Series A Member shall have an option for a period of fifteen (15) days from the Delivery of the Additional Transfer Notice from the Selling Member set forth

in Section 11.7(c) to elect to purchase its respective pro rata share of the Remaining Units at the same price and subject to the same material terms and conditions as described in the Additional Transfer Notice. Each Series A Member may exercise such purchase option and purchase all or any portion of his, her or its pro rata share of the Remaining Units (a "**Participating Series A Member**" for the purposes of Sections 11.7(d) and 11.7(c)), by notifying the Selling Member and the LLC in writing, before expiration of the fifteen (15) day period as to the number of such Units that he, she or it wishes to purchase (the "**Participating Series A Member Notice**"). Each Series A Member's pro rata share of the Remaining Units shall be a fraction of the Remaining Units rounded to the nearest Unit, the numerator of which shall be the number of Common Units (including Common Units issuable upon conversion of Series A Preferred Units) owned by such Series A Member on the date of the Transfer Notice and denominator of which shall be the total number of Common Units (including Common Units issuable upon conversion of Series A Preferred Units) held by all Series A Members on the date of the Transfer Notice.

(ii) In the event any Series A Member elects not to purchase its pro rata share of the Remaining Units available pursuant to its option under subsection 11.7(d)(i) within the time period set forth therein, then the Selling Member shall promptly give written notice (the "**Overallotment Notice**") to each Participating Series A Member that has elected to purchase all of its pro rata share of the Remaining Units (each a "**Fully-Participating Series A Member**"), which notice shall set forth the number of Remaining Units not purchased by the other Series A Members, and shall offer the Fully-Participating Series A Members the right to acquire the unsubscribed Units. Each Fully-Participating Series A Member shall have five (5) days after Delivery of the Overallotment Notice to deliver a written notice to the Selling Member (the "**Participating Series A Member Overallotment Notice**") of its election to purchase its pro rata share of the unsubscribed Units on the same terms and conditions as set forth in the Additional Transfer Notice and indicating the maximum number of the unsubscribed Units that it will purchase in the event that any other Fully-Participating Series A Member elects not to purchase its pro rata share of the unsubscribed Units. For purposes of this Section 11.7(d)(ii), each Fully-Participating Series A Member's pro rata share shall be determined by applying a fraction, the numerator of which shall be the same as that used in Section 11.7(d)(i) above and the denominator of which shall be the total number of Common Units (including Common Units issuable upon conversion of Series A Preferred Units) owned by all Fully-Participating Series A Members on the date of the Transfer Notice. Each Fully-Participating Series A Member shall be entitled to apportion Remaining Units to be purchased among its partners and Affiliates; *provided*, *however* that such Participating Series A Member notifies the Selling Member of such allocation.

(e) Payment.

(i) The Participating Series A Members shall effect the purchase of the Remaining Units with payment by check or wire transfer, against delivery of the Remaining Units to be purchased at a place agreed upon between the parties and at the time of the scheduled closing therefor, which shall be no later than forty-five (45) days after Delivery to the LLC of the Transfer Notice, unless the Transfer Notice contemplated a later closing with the prospective third-party transferee(s) or unless the value of the purchase price has not yet been established pursuant to Section 11.7(c)(ii).

(ii) Should the purchase price specified in the Transfer Notice or Additional Transfer Notice be payable in property other than cash or evidences of indebtedness, the LLC (and the Participating Series A Members) shall have the right to pay the purchase price in the form of cash equal in amount to the fair market value of such property. If the Selling Member and the LLC (or the Participating Series A Members) cannot agree on such cash value within ten (10) days after Delivery to the LLC of the Transfer Notice (or the Delivery of the Additional Transfer Notice to the Series A Members), the valuation shall be made by an appraiser of recognized standing selected by the Selling Member and the LLC (or the Participating Series A Members) or, if they cannot agree on an appraiser within twenty (20) days after Delivery to the LLC of the Transfer Notice (or the Delivery of the Additional Transfer Notice to the Series A Members), each shall select an appraiser of recognized standing and those appraisers shall designate a third appraiser of recognized standing, whose appraisal shall be determinative of such value. The cost of such appraisal shall be shared equally by the Selling Member and the LLC (and the Participating Series A Members), with half of the cost borne by the LLC and the Participating Series A Members pro rata by each, based on the number of Units such parties have expressed an interest in purchasing pursuant to this Section 11.7. If the time for the closing of the LLC's purchase or the Participating Series A Members' purchase has expired but the determination of the value of the purchase price offered by the prospective transferee(s) has not been finalized, then such closing shall be held on or prior to the fifth Business Day after such valuation shall have been made pursuant to this subsection.

11.8 Right of Co-Sale.

(a) To the extent the LLC and the Series A Members do not exercise their respective rights of refusal as to all of the Offered Units pursuant to Section 11.7 in respect of a Selling Member, then each Series A Member and the Founder (a "**Co-Selling Member**" for purposes of this Section 11.8) that notifies the Selling Member in writing within twenty (20) days after Delivery of the Additional Transfer Notice referred to in Section 11.7(c), shall have the right to participate in such sale of Units on the same terms and conditions as specified in the Transfer Notice (a "**Co-Sale**"). Such Co-Selling Member's notice to the Selling Member shall indicate the number and Class of Units of the LLC that the Co-Selling Member wishes to sell under his, her or its right to participate. To the extent one or more of the Co-Selling Members exercise such right of participation in accordance with the terms and conditions set forth below, the number of Units that the Selling Member may sell in the Transfer shall be correspondingly reduced.

(b) Each Co-Selling Member may sell all or any part of that number of Units of the LLC convertible in a number of Common Units equal to the product obtained by multiplying (i) the aggregate number of Common Units issuable upon conversion of the Units covered by the Transfer Notice that have not been subscribed for pursuant to Section 11.7 by (ii) a fraction, the numerator of which is the number of Common Units (including Common Units issuable upon conversion of Series A Preferred Units and Series FF Preferred Units) owned by the Co-Selling Member on the date of the Transfer Notice and the denominator of which is the total number of Common Units (including Common Units issuable upon conversion of Series A Preferred Units and Series FF Preferred Units) owned by the Selling Member and all of the Co-Selling Members on the date of the Transfer Notice.

(c) If the Units are certificated, each Co-Selling Member shall effect its participation in the sale by promptly delivering to the Selling Member for transfer to the prospective purchaser one or more certificates, properly endorsed for transfer, which represent:

(i) the number of Common Units of the LLC that such Co-Selling Member elects to sell; or

(ii) that number of Series A Preferred Units or Series FF Preferred Units of the LLC that are at such time convertible into the number of Common Units that such Co-Selling Member elects to sell; *provided, however*, that if the prospective third-party purchaser objects to the delivery of Series A Preferred Units or Series FF Preferred Units in lieu of Common Units, such Co-Selling Member shall convert such Units into Common Units and deliver Common Units as provided in this Section 11.8. The LLC agrees to make any such conversion concurrent with the actual transfer of such Units to the purchaser and contingent on such transfer.

(d) The certificate or certificates, if any, that the Co-Selling Member delivers to the Selling Member pursuant to Section 11.8(c) shall be transferred to the prospective purchaser in consummation of the sale of the Units pursuant to the terms and conditions specified in the Transfer Notice, and the Selling Member shall remit to such Co-Selling Member that portion of the sale proceeds to which such Co-Selling Member is entitled by reason of its participation in such sale upon consummation of the sale of the Units, in accordance with Section 11.8(e) below. To the extent that any prospective purchaser or purchasers prohibits such assignment or otherwise refuses to purchase Units or other securities from a Co-Selling Member exercising its rights of co-sale hereunder, the Selling Member shall not sell to such prospective purchaser or purchasers any Units unless and until, simultaneously with such sale, the Selling Member shall purchase such Units or other securities from such Co-Selling Member for the same consideration and on the same terms and conditions as the proposed Transfer described in the Transfer Notice.

(e) The terms of the purchase and sale agreement governing any Co-Sale shall provide that the aggregate consideration from such Co-Sale shall be allocated amongst the Members in accordance with Section 10.1, as if the Units participating in such Co-Sale were the only Units of the Company then outstanding.

11.9 Non-Exercise of Rights. To the extent that the LLC and the Series A Members have not exercised their rights to purchase the Offered Units or the Remaining Units within the time periods specified in Section 11.7 and the Series A Members and the Founder have not exercised their rights to participate in the sale of the Remaining Units within the time periods specified in Section 11.8, the Selling Member shall have a period of thirty (30) days from the expiration of such rights in which to sell the Offered Units or the Remaining Units, as the case may be, upon terms and conditions (including the purchase price) no more favorable than those specified in the Transfer Notice, to the third-party transferee(s) identified in the Transfer Notice. The third party transferee(s) shall acquire the Offered Units and the Remaining Units free and clear of subsequent rights of first refusal and co-sale rights under this Agreement. In the event the Selling Member does not consummate the sale or disposition of the Offered Units and Remaining Units within the sixty (60) day period from the expiration of these rights, the first

refusal rights and co-sale rights set forth in Sections 11.7 and 11.8 above shall continue to be applicable to any subsequent disposition of the Offered Units or the Remaining Units by the Selling Member until such right lapses in accordance with the terms of this Agreement. Furthermore, the exercise or non exercise of the rights of the LLC, the Founder and the Series A Members under Sections 11.7 and 11.8 to purchase Units from the Selling Member or participate in sales of Units by the Selling Member shall not adversely affect their rights to make subsequent purchases from the Selling Member of Units or subsequently participate in sales of Units by the Selling Member.

11.10 Termination of Transfer Restriction. Any permissible Transfer of Units in accordance with this Section 11 shall remain, once held by the transferee, subject to the terms and restrictions of this Section 11. The right of first refusal set forth in Section 11.7(d) and co-sale right set forth in Section 11.8 shall terminate and be of no further force and effect upon the earlier of (i) a Liquidation Event or (ii) an Initial Public Offering.

11.11 Transfer Requirements; Prohibited Transfers.

(a) Notwithstanding any other provisions of this Agreement, no Transfer of all or any fraction of a Member's Interest may be made unless:

(i) such Transfer would not result in a violation of applicable law, including the Securities Act and any state securities or "Blue Sky" laws applicable to the LLC or the Interest to be Transferred;

(ii) such Transfer would not result in the LLC being required to register under Section 12(g) of the 1934 Act;

(iii) if requested by the Board, the Member shall have provided an opinion of counsel satisfactory to the Board as to the matters set forth in this Section 11.11(a)(i) and Section 11.11(a)(ii) and such other matters as the Board may reasonably request; and

(iv) the transferee agrees to be bound by and comply with the provisions of this Agreement, makes the representations, warranties and covenants applicable to a Member herein, including without limitation those contained in Section 3.4, and delivers to the LLC a counterpart signature page to this Agreement and such other documents and instruments as the Board of Managers determine to be necessary or appropriate and as are consistent with the terms of this Agreement in connection with the Transfer to effect such Person's admission as a Member of the LLC.

(b) In the event a Selling Member should sell any of his, her or its Units in contravention of the co-sale rights of the Founder and Series A Members under Section 11.8 (a "**Prohibited Transfer**"), the Series A Members and Founder may, either, exercise any remedies as may be available at law, in equity or hereunder, or exercise the put option provided below under subsection (c).

(c) In the event of a Prohibited Transfer, a Series A Members and Founder may require the Selling Member to acquire the type and number of Units equal to the number of Units each Series A Member or Founder would have been entitled to Transfer to the third-party

transferee(s) under Section 11.8 hereof had the Prohibited Transfer been effected pursuant to and in compliance with the terms hereof at the same price per Common Unit sold to a transferee pursuant to a Prohibit Transfer. The Selling Member shall, upon exercising the option created hereby, pay the aggregate purchase price for the Units to be sold by a Series A Member or Founder pursuant to this Section 11.11(c), in cash or by other means acceptable to the Series A Member or Founder, as applicable.

11.12 "Market Stand-Off" Agreement. Each holder of Common Units, Series FF Preferred Units, Series A Preferred Units or other securities issued by the LLC, including securities convertible into or exercisable or exchangeable for any such Units (a "**Holder**"), hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the LLC's Initial Public Offering and ending on the date specified by the LLC and the managing underwriter (such period not to exceed one hundred eighty (180) days plus such additional period as may reasonably be requested by the LLC or such underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports or (ii) analyst recommendations and opinions, including (without limitation) the restrictions set forth in FINRA Rule 2241, as amended, or any similar successor rules) (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Common Units or Preferred Units, or any securities convertible into or exercisable or exchangeable for any such Units or shares held immediately prior to the effectiveness of the Registration Statement for such offering, or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any such Units or shares, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of such Units or shares or other securities, in cash or otherwise. The foregoing provisions of this Section 11.12 shall apply only to the LLC's Initial Public Offering, shall not apply to the sale of any Units or shares to an underwriter pursuant to an underwriting agreement and shall only be applicable to the Holders if all officers, managers, directors and holders of greater than one percent (1%) of the LLC's outstanding securities (determined on an as converted basis with the Voting Common Units and Preferred Units treated as a single Class) enter into similar agreements. The underwriters in connection with the LLC's Initial Public Offering are intended third-party beneficiaries of this Section 11.12 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in the LLC's Initial Public Offering that are consistent with this Section 11.12 or that are necessary to give further effect thereto. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the LLC or the underwriters shall apply to all Holders subject to such agreements pro rata based on the number of Units or shares subject to such agreements.

(a) In order to enforce the foregoing covenant, the LLC may impose stop-transfer instructions with respect to the above described securities of each Holder (and the units, shares or securities (as applicable) of every other person subject to the foregoing restriction) until the end of such period.

(b) Each Holder agrees that a legend reading substantially as follows shall be placed on all certificates representing the all of above described securities of each Holder (and

the Units, shares or securities (as applicable) of every other person subject to the restriction contained in this Section 11.12):

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A LOCK-UP PERIOD OF UP TO 180 DAYS AFTER THE EFFECTIVE DATE OF THE ISSUER'S INITIAL REGISTRATION STATEMENT FILED UNDER THE ACT, AS AMENDED, AS SET FORTH IN AN AGREEMENT BETWEEN THE LLC AND THE ORIGINAL HOLDER OF THESE SECURITIES, A COPY OF WHICH MAY BE OBTAINED AT THE ISSUER'S PRINCIPAL OFFICE. SUCH LOCK-UP PERIOD IS BINDING ON TRANSFEREES OF THESE UNITS.

11.13 Required Sale. Notwithstanding anything contained herein to the contrary, but subject to Section 3.10, in the event that that the Board approves a transaction or series of related transactions that qualifies as a Liquidation Event (any such transaction or series of related transactions are referred to herein as a "**Sale of the Company**"), then:

(a) Subject to Section 11.14(b) below, each Member hereby agrees with respect to all Units which it own(s) or over which it otherwise exercises voting or dispositive authority:

(i) in the event such transaction is to be brought to a vote at a meeting of the Members, after receiving proper notice of any such meeting, to vote on the approval of a Sale of the Company, to be present, in person or by proxy, as a holder of shares of voting securities, at all such meetings and be counted for the purposes of determining the presence of a quorum at such meetings;

(ii) to vote (in person, by proxy or by action by written consent, as applicable) all Units in favor of such Sale of the Company and in opposition to any and all other proposals that could reasonably be expected to delay or impair the ability of the LLC to consummate such Sale of the Company;

(iii) to refrain from exercising any dissenters' rights or rights of appraisal under applicable law at any time with respect to such Sale of the Company;

(iv) to execute and deliver all related documentation and take such other action in support of the Sale of the Company as shall reasonably be requested by the LLC; and

(v) if the Sale of the Company is structured as a sale of Units, each Member shall agree to sell his, her or its Units on the terms and conditions approved by the Board.

(b) Exceptions. Notwithstanding the foregoing, a Member will not be required to comply with Section 11.14(a) above in connection with any proposed Sale of the Company (the "**Proposed Sale**") unless:

(i) any representations and warranties to be made by such Member in connection with the Proposed Sale are limited to representations and warranties related to authority, ownership and the ability to convey title to such Member's Units;

(ii) the Member is not required to agree (unless such Member is an officer or employee of the Company) to any restrictive covenant in connection with the Proposed Sale (including, without limitation, any covenant not to compete or covenant not to solicit customers, employees or suppliers of any part to the Proposed Sale);

(iii) the Member shall not be liable for the inaccuracy of any representation or warranty made by any other person in connection with the Proposed Sale, other than the LLC;

(iv) the liability for indemnification, if any, of such Member in the Proposed Sale and for the inaccuracy of any representations and warranties made by the LLC in connection with such Proposed Sale, is several and not joint with any other person, and is pro rata in proportion to the amount of consideration paid to such Member in connection with such Proposed Sale (in accordance with the provisions of this Agreement); and

(v) the proceeds of such Proposed Sale will be distributed in accordance with the provisions of Section 10.1.

During the term of this Agreement, each of the Members agrees to vote all Units now or hereafter owned by such Member, whether beneficially or otherwise, or as to which such Member has voting power at a regular or special meeting of the Members (or by written consent) in accordance with the provisions of this Section 11.13. Upon the failure of any Member to vote their Units in accordance with the terms of this Section 11.13, such Member hereby grants to the LLC a proxy coupled with an interest in all Units owned by such Member, which proxy shall be irrevocable until this Agreement terminates pursuant to its terms or this Section 11.13 is amended to remove such grant of proxy in accordance with Section 14.1 hereof, to vote all such Units at a regular or special meeting of the Members (or by written consent) as necessary or required to effect the transactions contemplated by this Section 11.13. It is agreed and understood that monetary damages would not adequately compensate an injured Member for the breach of this Section 11.13 by any other Member, that this Section 11.13 shall be specifically enforceable, and that any breach or threatened breach of this Section 11.13 shall be the proper subject of a temporary or permanent injunction or restraining order. Further, each Member waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach.

ARTICLE XII

INDEMNIFICATION AND LIMITATION OF LIABILITY

12.1 <u>Indemnification</u>.

(a) For purposes of this subsection (a), (i) "agent" means each Manager, former Manager, Officer, former Officer, Member and former Member; (ii) "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal,

administrative, legislative or investigative; and (iii) "expenses" include, without limitation, reasonable attorneys' fees and other expenses of establishing a right of indemnification under this subsection (a). The LLC shall, to the fullest and broadest extent permitted by law, indemnify and hold harmless each agent (and his heirs and legal and personal representatives) against losses and damages arising out of liabilities or expenses incurred by him while acting on behalf of the LLC, regardless of whether the agent is or continues to be a Member, Manager or Officer at the time any such liability or expense is paid. Without limiting the generality of the foregoing, the LLC hereby agrees to indemnify each agent (and his heirs and legal and personal representatives), and to save and hold it or him harmless, from and in respect of all (1) fees, costs and expenses incurred in connection with or resulting from any demand, claim, action or proceeding against such agent (and his heirs and legal and personal representatives) or the LLC that arises out of or in any way relates to the LLC, the LLC assets, or the business or affairs of the LLC, and (2) such demands, claims, actions and proceedings and any losses or damages resulting therefrom, including judgments, fines and amounts paid in settlement or compromise (if such settlement or compromise is approved in advance by the LLC, which approval shall not be unreasonably withheld) of any such demand, claim, action or proceeding. Notwithstanding the foregoing, this right of indemnification shall not extend to (i) conduct by an agent if it is determined by a final judgment of a court of competent jurisdiction or by arbitration that such agent's conduct was undertaken in bad faith or that the agent's conduct or its acts or omissions constituted fraud or intentional wrongdoing, or (ii) any liability arising by reason of any act or omission of an agent subsequent to his ceasing to be a Member, Manager or Officer or subsequent to the termination of the LLC. The termination of any proceeding by a judgment, order, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not, of itself, create a presumption that the agent failed to meet the applicable standard of conduct. The LLC shall be required to pay the expenses incurred by any agent indemnified hereunder in connection with any proceeding in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such agent to repay such payment if there shall be an adjudication or determination that such agent is not entitled to indemnification as provided herein.

(b) The indemnification accorded to an agent under subsection (a) of this Section 12.1 shall be made solely out of the assets of the LLC, and no Member, Manager or Officer shall have any personal liability or other obligation therefor. Nothing in subsection (a) of this Section 12.1 shall be deemed to require any Member to make any additional Capital Contribution.

(c) If such agent wishes to make a claim under subsection (a) of this Section 13.1, the agent shall notify the LLC in writing within thirty (30) days after receiving notice of the commencement of any action that may result in a right to be indemnified under subsection (a) of this Section 13.1; *provided however* that the failure to notify the LLC will not relieve the LLC of any liability for indemnification pursuant to subsection (a) of this Section 12.1 (except to the extent that the failure to give notice will have been materially prejudicial to the LLC).

12.2 <u>Exculpation by Members</u>. For purposes of this Section 12.2, the term "agent" shall have the meaning assigned to such term in subsection (a) of Section 12.1. No agent shall be liable to the LLC or any Member or any person who acquires any interest in the LLC for (a) honest mistakes in judgment, or for action or inaction, taken reasonably and in good faith and for

a purpose that was reasonably believed to be in the best interests of the LLC or (b) losses sustained or liabilities incurred as a result of any act or omission of such agent if such act or omission did not constitute bad faith, recklessness, fraud or intentional wrongdoing on the part of the agent. Each agent may consult with counsel, accountants and other professionals in respect of LLC affairs and shall be fully protected and justified in acting, or failing to act, if such action or failure to act is in accordance with the reasonable advice or opinion of such counsel, accountant or other professional and if such counsel, accountant or other professional shall have been selected with reasonable care. Notwithstanding the foregoing, the provisions of this Section 12.2 shall not relieve any person of liability arising by reason of acting in bad faith, or if such person's conduct in the performance of its duties hereunder, or its acts or omissions, constitute fraud or intentional wrongdoing. This Agreement shall be construed to give effect to the provisions of this Section 12.2 to the fullest extent permitted by law.

12.3 Limitation of Liability. Notwithstanding anything to the contrary herein contained, the debts, obligations and liabilities of the LLC shall be solely the debts, obligations and liabilities of the LLC and no Member, Manager or Officer shall be obligated personally for any such debt, obligation or liability of the LLC solely by reason of being a Member, Manager or Officer of the LLC.

12.4 Counsel to the LLC. Counsel to the LLC may also be counsel to a Member or Assignee with respect to matters related to or unrelated to the LLC. Each Member and Assignee acknowledges that counsel to the LLC does not represent any Member or Assignee in its capacity as a Member or Assignee in the absence of a clear and explicit written agreement to such effect between the Member and LLC Counsel (and then only to the extent specifically set forth in such agreement), and that in the absence of any such agreement counsel to the LLC shall owe no duties directly to a Member or Assignee.

12.5 Insurance. The LLC shall obtain, within 90 days of the date of this agreement, from financially sound and reputable insurers, director and officer liability insurance with coverage in the amount of at least $2,000,000. The LLC shall consult with the Investor Managers prior to making any change to the coverage of its director and officer liability insurance policy or the provider of such insurance policy.

ARTICLE XIII

DISSOLUTION AND TERMINATION; CONVERSION

13.1 Dissolution. The LLC shall be dissolved, its assets disposed of and its affairs wound up upon the first to occur of the following:

(a) the expiration of its stated term;

(b) the affirmative vote of the Board of Managers (including each Investor Manager); or

(c) the entry of a decree of judicial dissolution under the Act.

Except as otherwise provided herein, the death, bankruptcy, incompetency, retirement, resignation, expulsion or dissolution of a Member, or the occurrence of any other event that terminates the continued membership of a Member in the LLC, shall not dissolve or terminate the LLC. Notwithstanding any other provision of this Agreement, the bankruptcy (as defined in Sections 18-101(1) and 18-304 of the Act) of a Member will not cause that Member to cease to be a member of the LLC, and upon the occurrence of such an event, the business of the LLC shall continue without dissolution. Notwithstanding any other provision of this Agreement, each Member waives any right it might have under Section 18-801(b) of the Act to agree in writing to dissolve the LLC upon the occurrence of the bankruptcy (as defined in Sections 18-101(1) and 18-304 of the Act) of a Member or the occurrence of any other event that causes a Member to cease to be a member of the LLC.

13.2 Authority to Wind Up. Upon the dissolution of the LLC as set forth in Section 13.1, the Board of Managers shall have all necessary power and authority required to marshal the assets of the LLC, to pay the LLC's creditors, to distribute assets and otherwise wind up the business and affairs of the LLC. In particular, the Board of Managers shall have the authority to continue to conduct the business and affairs of the LLC insofar as such continued operation remains consistent, in the judgment of the Board of Managers, with the orderly winding up of the LLC.

13.3 Winding Up and Certificate of Cancellation. The winding up of the LLC shall be completed when all debts, liabilities and obligations of the LLC have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the LLC have been distributed to the Members.

13.4 Distribution of Assets. Upon dissolution and winding up of the LLC, the affairs of the LLC shall be wound up and the LLC liquidated by the Board of Managers. The assets of the LLC shall be distributed as follows in accordance with the Act:

(i) to the payment of the expenses of the winding-up, liquidation and dissolution of the LLC;

(ii) to creditors of the LLC, including, in accordance with the terms agreed among them and otherwise on a pro rata basis (based on amounts owed to them), Members who are creditors (other than in respect of distributions owing to them or to former Members hereunder), either by the payment thereof or the making of reasonable provision therefor; and

(iii) to establish reserves, in amounts established by the Board of Managers or such liquidator, to meet other liabilities of the LLC other than to the Members or former Members in respect of distributions owing to them hereunder.

The remaining assets of the LLC shall be applied and distributed among the Members as provided in Section 10.1.

The distribution of cash, securities and other property to a Member in accordance with the provisions of this Section 13.4 shall constitute a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its Interest and all the LLC's

property, and shall constitute a compromise to which all Members have consented within the meaning of the Act. If such cash, securities and other property are insufficient to return such Member's Capital Contributions or returns thereon, the Member shall have no recourse against the Board of Managers, other Members or Officers.

13.5 Conversion to a Corporation.

(a) If the Board (including each Investor Manager) determines, in its good faith discretion, that it would be desirable to create a public market for securities representing an interest in the LLC's business, the Board may cause, without the consent of the Members, the conversion (the "**Incorporation**") of the LLC into a Corporation (as hereinafter defined) in the manner described below. The Incorporation of the LLC to corporate status under the Code (the "**Corporation**") pursuant to this Section 13.5(a) shall, to the extent reasonably practicable, be accomplished in a tax-free manner by merger or consolidation, the filing of a certificate of conversion compliance with Section 265 of the Delaware General Corporation Law, becoming a directly or indirectly wholly-owned subsidiary of a newly formed corporation or by such other means as the Board reasonably determines. In the event of an Incorporation each Member's Units shall be converted into securities of the Corporation that to the maximum extent possible, preserve such Member's relative economic interest in the profits, losses, distributions and liquidation proceeds (determined by reference to the relative economic interests of the Members in the LLC immediately prior to the Incorporation) and each Member's relative voting and management rights under this Agreement.

(b) By becoming parties to this Agreement, all Members consent to the conversion of their Units into shares of stock in the Corporation in accordance with the terms set forth herein. Consequently, subject to the requirements described in Section 13.5(a), each Member agrees to reasonably cooperate, and cause its Affiliates to reasonably cooperate, to take such actions and execute such documents as the Board may reasonably request, in order to consummate any proposed reorganization in the most tax efficient and organizationally efficient manner as is practicable under the circumstances; *provided, however*, that no Member shall be required to assume any liability or obligation as a result of such reorganization that is disproportionate to its relative economic interest in the Corporation.

13.6 **Confidentiality; Non-Disclosure**. The Members agree that the contents of this Agreement and any confidential information of the Company provided to the Members pursuant to this Agreement ("**Confidential Information**") is strictly confidential and further agree that, except as required by law, any regulatory authority or agency, as approved by the Board of Managers or as may be required to carry out any action permitted under this Agreement, no Member shall disclose to any non-Member any Confidential Information without the prior written consent of the LLC, except for any disclosure to or in respect of (a) a permitted transfer of Units, (b) current or prospective lenders, equity holders, partners, members and/or investors of any Member, (c) any Member's employees, officers, directors, representatives, legal counsel, auditors and other agents which shall be instructed by the disclosing Member to keep all such information in strict confidence or (d) legal requirements to disclose such Confidential Information.

ARTICLE XIV

MISCELLANEOUS

14.1 Amendment.

(a) Except as expressly set forth herein, this Agreement may be amended and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively), including any amendment or waiver by merger, consolidation or otherwise, only with the consent of (i) the approval of a majority of the then serving Managers, (ii) a Majority in Interest of the Members and (iii) the Requisite Interest of the Series A Members. Any amendment or waiver so effected shall be binding upon all the Parties hereto. Notwithstanding the foregoing, (i) this Agreement may not be amended or waived in such a manner as to adversely affect any individual Member without the written consent of such individual Member, unless, such amendment or waiver, by its express terms, applies in similar fashion to the Members consenting to such proposed amendment or waiver and (ii) any amendment to the express rights, preferences or privileges specific to the Series FF Preferred Units (including, without limitation, Section 5.1(c)(ii)) shall require the approval of the holders of a majority of the Series FF Preferred Units then outstanding.

(b) Notwithstanding the foregoing provisions, the Board of Managers may amend this Agreement, without the consent of the Members, (i) to make a change that is necessary or desirable to cure any ambiguity or inconsistency and to make changes to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling, regulation or statute of any governmental body which will not be inconsistent with this Agreement, in both cases, subject to the requirement that any Member not be materially and adversely affected; or (ii) to prevent any material and adverse effect to the LLC or any Member arising from the application of legal restrictions to any Member, subject to the requirement that no Member be adversely affected without its consent; (iii) to reflect changes made in the composition of the Members in accordance with the provisions of this Agreement or (iv) to effect the authorization and issuance of Additional Investment Preferred Units in accordance with Section 4.4(c). Promptly after entering into any amendment pursuant to this subsection 14.1(b), the Board of Managers shall provide the Members a copy of such amendment.

14.2 Withholding. The LLC shall at all times be entitled to make payments with respect to any Member or Assignee in amounts required to discharge any obligation of the LLC to withhold or make payments to any governmental authority with respect to any federal, state, local, or other jurisdictional tax liability of such Member or Assignee arising as a result of such Member's or Assignee's Interest in the LLC. To the extent each such payment satisfies an obligation of the LLC to withhold, with respect to any distribution to a Member on which the LLC did not withhold or with respect to any Member's or Assignee's allocable share of the income of the LLC, each such payment shall be deemed to be a loan by the LLC to such Member or Assignee (which loan shall be deemed to be immediately due and payable) and shall not be deemed a distribution to such Member or Assignee. The amount of such payments made with respect to such Member or Assignee, plus interest, on each such amount from the date of each such payment until such amount is repaid to the LLC at an interest rate per annum equal to the prime rate published in the *Wall Street Journal* on the date of such payment by the LLC with

respect to such Member or Assignee, shall be repaid to the LLC by (a) deduction from any cash distributions made to such Member or Assignee pursuant to this Agreement, or (b) earlier payment by such Member or Assignee to the LLC, in each case as determined by the LLC in its discretion. The LLC may, in its discretion, defer making distributions to any Member or Assignee owing amounts to the LLC pursuant to this Section 14.3 until such amounts are paid to the LLC and shall in addition exercise any other rights of a creditor with respect to such amounts. Each Member and Assignee agrees to indemnify and hold harmless the LLC and each of the Members and Assignees, from and against liability for taxes, interest, or penalties which may be asserted by reason of the failure to deduct and withhold tax on amounts distributable or allocable to said Member or Assignee. Any amount payable as indemnity hereunder by a Member or Assignee shall be paid promptly to the LLC upon request for such payment from the LLC, and if not so paid, the LLC shall be entitled to claim against and deduct from the Capital Account of, or from any distribution due to, the affected Member or Assignee for all such amounts.

14.3 Notice to and Consent of Members. By executing this Agreement, each Member acknowledges that it has actual notice of and consents to (a) all of the provisions hereof (including the restrictions on Transfer), and (b) all of the provisions of the Certificate.

14.4 Further Assurances. The parties agree to execute and deliver any further instruments or documents and perform any additional acts which are or may become necessary to effectuate and carry on the LLC created by this Agreement.

14.5 Binding Effect. Subject to the restrictions on Transfer set forth in this Agreement, this Agreement shall be binding on and inure to the benefit of the Members and their respective transferees, successors, assigns and legal representatives.

14.6 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware as applied to agreements among Delaware residents entered into and to be performed entirely within Delaware.

14.7 Title to LLC Property. Legal title to all property of the LLC will be held and conveyed in the name of the LLC.

14.8 Entire Agreement. This Agreement and the Exhibits hereto constitute the entire agreement among the parties with respect to the subject matter herein. This Agreement and the Exhibits hereto replace and supersede all prior agreements by and among the Members or any of them in respect of the LLC. This Agreement and the Exhibits hereto supersede all prior written and oral statements; and no representation, statement, condition or warranty not contained in this Agreement or the Exhibits hereto will be binding on the Members or the LLC or have any force or effect whatsoever.

14.9 Counterparts. This Agreement may be executed in one or more counterparts with the same force and effect as if each of the signatories had executed the same instrument. Facsimile signatures shall be deemed an original.

14.10 No State-law Partnership. The Members intend that the LLC not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or

joint venture of any other Member by virtue of this Agreement, for any purposes other than for U.S. federal income tax purposes as set forth in Section 14.11, and neither this Agreement nor any other document entered into by the LLC or any Member relating to the subject matter hereof shall be construed to suggest otherwise.

14.11 Tax Classification. It is the intent of the Members that the LLC shall always be operated in a manner consistent with its treatment as a "partnership" for federal, state and local income and franchise tax purposes at all times that it has two (2) or more Members. In accordance therewith, (a) no Member shall file any election with any taxing authority to have the LLC treated otherwise, and (b) each Member hereby represents, covenants, and warrants that it shall not maintain a position inconsistent with such treatment. The Members agree that, except as otherwise required by applicable law, they (i) will not cause or permit the LLC to elect (A) to be excluded from the provisions of Subchapter K of the Code, or (B) to be treated as a corporation or an association taxable as a corporation for any tax purposes; (ii) will cause the LLC to make any election reasonably determined by the Tax Matters Partner to be necessary or appropriate in order to ensure the treatment of the LLC as a partnership for all tax purposes; (iii) will cause the LLC to file any required tax returns in a manner consistent with its treatment as a partnership for tax purposes; and (iv) have not taken, and will not take, any action that would be inconsistent with the treatment of the LLC as a partnership for such purposes.

14.12 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future laws applicable to the LLC effective during the term of this Agreement, such provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.

14.13 No Third Party Beneficiary. This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and permitted assigns, and no other Person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise; provided, however, that each Manager and former Manager shall have independent rights to enforce the provisions of Article XII.

14.14 Interpretation. The titles and section headings set forth in this Agreement are for convenience only and shall not be considered as part of agreement of the parties. When the context requires, the plural shall include the singular and the singular the plural, and any gender shall include all other genders. No provision of this Agreement shall be interpreted or construed against any party because such party or its counsel was the drafter thereof.

14.15 Aggregation of Units. All Units held or acquired by Affiliates of Members shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first indicated above.

MEMBERS:

ACT III OPEN WORLD LLC

By: Ron Shaich
Name: Ronald M. Shaich
Title: Manager

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first indicated above.

MEMBERS:

Matthew DuPlessie