AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

OF

SP 10 PREFERRED EQUITY, LLC

A DELAWARE LIMITED LIABILITY COMPANY

FEBRUARY 14, 2024

NEITHER THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE REGULATORY AUTHORITY NOR THE REGULATORY AUTHORITY OF ANY OTHER COUNTRY HAS APPROVED OR DISAPPROVED THIS LIMITED LIABILITY COMPANY AGREEMENT OR THE LIMITED LIABILITY COMPANY UNITS ("UNITS") PROVIDED FOR HEREIN. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

THE UNITS HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), NOR UNDER THE SECURITIES LAWS OF ANY OTHER COUNTRY, AND THE COMPANY IS UNDER NO OBLIGATION TO REGISTER THE UNITS UNDER THE SECURITIES ACT OR ANY OTHER SUCH LAWS IN THE FUTURE.

UNITS MAY NOT BE SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED WITHIN THE UNITED STATES OR TO A "U.S. PERSON," WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, IN THE ABSENCE OF AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGER THAT SUCH REGISTRATION IS NOT REQUIRED. HEDGING TRANSACTIONS INVOLVING UNITS MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE SECURITIES ACT. ADDITIONAL RESTRICTIONS ON THE TRANSFER OF UNITS ARE CONTAINED IN SECTION 9 OF THIS AGREEMENT. BASED UPON THE FOREGOING, EACH ACQUIROR OF UNITS MUST BE PREPARED TO BEAR THE ECONOMIC RISK OF INVESTMENT THEREIN FOR AN INDEFINITE PERIOD OF TIME.

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AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF SP 10 PREFERRED EQUITY, LLC

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF SP 10 PREFERRED EQUITY, LLC (this "Agreement"), is entered into to be effective as of the 14th day of February, 2024, by and among Elliot & 51st Street Manager LLC, an Arizona limited liability company, as the "Manager," and those Persons executing this Agreement as "Members" and any other Person executing this Agreement as an Investor Member (as defined below).

SECTION 1
DEFINITIONS

1.1 Defined Terms. Unless otherwise stated, the terms used in this Agreement shall have the usual and customary meanings associated with their use, and shall be interpreted in the context of this Agreement. The following terms, when used in this Agreement and capitalized, shall have the meanings stated below:

1.1.1 "Act" means the Delaware Limited Liability Company Act, Delaware Code, Title 6, Section 18-101, et seq., as amended from time to time, (or any corresponding provisions of succeeding Applicable Law), and all references to specific sections thereof shall include any amended or successor provisions thereto.

1.1.2 "Advisory Board" shall have the meaning set forth in Section 5.6.1.

1.1.3 "Advisory Board Member" shall have the meaning set forth in Section 5.6.1.

1.1.4 "Affiliate" means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person, or is a director or officer of such Person, or of an Affiliate of such Person.

1.1.5 "Agreement" has the meaning set forth in the preamble.

1.1.6 "Bankruptcy" means, with respect to any Person: (i) if such Person (A) makes an assignment for the benefit of creditors, (B) files a voluntary petition in bankruptcy, (C) is adjudged as bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (D) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (E) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, or (F) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties; or (ii) if (x) 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, the proceeding has not been dismissed, (A) without such Person's consent or acquiescence, within 90 days after the appointment of a trustee, receiver or liquidator of such Person or of all or any substantial

part of its properties, the appointment is not vacated or stayed, or (B) within 90 days after the expiration of any such stay, the appointment is not vacated.

1.1.7 "Breach Amount" means as set forth in Section 10.3.

1.1.8 "Breach Payments" means as set forth in Section 10.3.

1.1.9 "Breaching Member" means as set forth in Section 10.2.

1.1.10 "Business Day" means any day except Saturday, Sunday or any other day on which commercial banks located in Arizona are authorized or required by Law to be closed for business.

1.1.11 "Capital Accounts" means the Capital Account established and maintained pursuant to the Tax Matters Schedule of this Agreement.

1.1.12 "Cash Available for Distribution" means the Company's Net Cash Flow From Operations and/or Net Cash Flow From Sale or Refinance.

1.1.13 "Cause" means as set forth in Section 5.3.

1.1.14 "Certificate" means the Certificate of Formation of the Company as filed with the Secretary of State of the State of Delaware.

1.1.15 "Code" means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

1.1.16 "Company" means SP 10 Preferred Equity, LLC.

1.1.17 "Company Documents" means as set forth in Section 6.5.8.

1.1.18 "Company Expenses" means as set forth in Section 5.4.4.

1.1.19 "Company Property" means the Company's ownership of preferred equity interests in Elliot 10 MezzCo, LLC, a Delaware limited liability company.

1.1.20 "Control" means the power to direct the management and policies of an entity, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise. The terms "Controlled" and "Controlling" shall have correlative meanings.

1.1.21 "Covered Person" means the Manager, the Company Representative, each of the Developer Members, an Advisory Board Member or an Affiliate of any of them and, directly or indirectly, the respective officers, directors, shareholders, Members, members, trustees, beneficiaries, employees, representatives or agents of the Manager, the Company Representative, each of the Developer Members, an Advisory Board Member or an Affiliate of any of them.

1.1.22 "12% Current Pay Member" means any Person who (i) executes this Agreement as a 12% Current Pay Member or who has been admitted as an additional or Substitute Member pursuant to the terms of this Agreement and (ii) is the owner of a 12% Current Pay Investor Unit. "12% Current Pay Members" means all such Persons.

1.1.23 "12% Current Pay Investor Units" means all of the 12% Current Pay Investor Units of a 12% Current Pay Member in the Company at any particular time, including the right of such 12% Current Pay Member to any and all benefits to which such 12% Current Pay Member may be entitled as provided in this Agreement, together with the obligations of such 12% Current Pay Member to comply with all of the terms and provisions of this Agreement.

1.1.24 "12% Current Pay Member Capital Contribution" means, with respect to each 12% Current Pay Member, the amount of money and the fair market value (as agreed by the Company and the contributing 12% Current Pay Member) of any property contributed to the Company with respect to the 12% Current Pay Investor Unit in the Company held by such 12% Current Pay Member, whether directly or indirectly, provided, however, that unless otherwise approved by the Manager, all 12% Current Pay Member Capital Contributions shall be in cash.

1.1.25 "12% Current Pay Preferred Return" means a cumulative, non-compounded preferred return of 12% on the Unreturned 12% Current Pay Member Capital Contribution of a 12% Current Pay Member, determined on the basis of a year of 365 or 366 days, as the case may be, for the actual number of days occurring in the period for which the 12% Current Pay Preferred Return is being determined, cumulative to the extent not distributed pursuant to Section 4.1.1.1 or Section 4.1.2.1, of the average daily balance of the Unreturned 12% Current Pay Member Capital Contribution of a 12% Current Pay Member, from time to time, during the period continuing until the Maximum 12% Current Pay Preferred Return Threshold has been satisfied.

1.1.26 "Days" means all calendar days exclusive of Saturdays, Sundays, and days that are legal holidays under the laws of the United States or the State of Arizona.

1.1.27 "Defaulting Member" means as set forth in Section 1.7.3 of the Tax Matters Schedule.

1.1.28 "Defaulting Party" means as set forth in Section 12.1.

1.1.29 "Developer Members" has the meaning as set forth in the MezzCo LLC Agreement.

1.1.30 "Disabled" and "Disability" means, with respect to any Member or the Manager:

1.1.30.1 the appointment by a court of competent jurisdiction of a guardian or conservator to act for such party;

1.1.30.2 a party hereto that:

(i) is "disabled," as such term is defined in the disability income policy maintained by the Company or such party at the time in question, and such disability continues for a consecutive period of 360 calendar days or for shorter periods aggregating 360 calendar days (including sick leave days) during any 18-month period; or

(ii) if no disability income policy is maintained by the Company or such party, and such party is an employee of the Company, is found to be unable to fully perform substantially all material aspects of such party's duties as an employee of the Company on a regular and consistent basis for a consecutive period of 360 calendar days or for shorter periods aggregating 360 calendar days (including sick leave days), during any 18-month period; or

1.1.30.3 for a period of six months or more:

(i) is unaccountably absent;

(ii) is being detained under duress; or

(iii) is incarcerated by a government body.

If such party is a trust, this definition shall apply in the event of the death or Disability of the trustor/settlor of the trust who is involved in the day-to-day operation of the Company. If such party is an entity, this definition shall relate to death or Disability of the individual who is involved in the day-to-day operation of the Company.

1.1.31 "Fiscal Year" means as set forth in Section 8.3.

1.1.32 "Investor Member" means, where no differentiation is required, any Preferred Member, 12% Current Pay Member, or any other Member holding a series of Investor Units designated by the Manager as an Investor Unit. "Investor Members" means all such Persons.

1.1.33 "Investor Units" "Investor Units" means the entire Units of a Member in the Company at any particular time, including the right of such Member to any and all benefits to which such Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all of the terms and provisions of this Agreement.

1.1.34 "Law Firm" means as set forth in Section 6.5.8.

1.1.35 "Liquidating Event" means as set forth in Section 11.1.

1.1.36 "Majority in Interest" means any combination of the Investor Members owning more than 50% of the Investor Units held by all Investor Members at that time.

1.1.37 "Manager" means Elliot & 51st Street Manager LLC, an Arizona limited liability company, and includes any Person who becomes an additional or successor

Manager of the Company pursuant to the provisions of this Agreement, each in such Person's capacity as a Manager of the Company.

1.1.38 "Maximum 12% Current Pay Preferred Return Threshold" means, with respect to each 12% Current Pay Member, an amount of accrued (regardless if paid or unpaid) 12% Current Pay Preferred Return equal to one-half (50%) of the 12% Current Pay Member Capital Contribution of such 12% Current Pay Member.

1.1.39 "Member" means, where no differentiation is required, any Preferred Member, 12% Current Pay Member, or any other Member holding a series of Units designated by the Manager as an Investor Unit. "Members" means all such Persons.

1.1.40 "Member Capital Contribution" means with respect to each Member, the Capital Contribution of such Member.

1.1.41 "MezzCo LLC Agreement" means as set forth in Section 3.2.

1.1.42 "Name and Mark" shall mean the "Caliber" names and marks, together with any associated URL, any formatives, and any abbreviated marks thereof.

1.1.43 "Net Cash Flow From Operations" means, for any Fiscal Year or part thereof, (i) the excess, if any, of all proceeds received by the Company in connection with the operation of the Company Properties, excluding Capital Contributions, and including, but not limited to, payments and fees and charges associated with or related to the ownership, operation and management of any Company Property, any distributions, dividends or other similar payments relating to equity positions in the Company Property or any other source, but excluding all Net Cash Flow From Sale or Refinance received by the Company; less (ii) the sum of (A) all cash expenditures of the Company (including capital expenditures and payments with respect to indebtedness and other short and long term obligations), (B) the amount of any funds the Manager, in its reasonable discretion, determines to set aside for contingencies and the establishment of reasonable, prudent reserves; and (C) the amount of any funds the Manager, in its reasonable discretion, determines to set aside for investment.

1.1.44 "Net Cash Flow From Sale or Refinance" means, for any Fiscal Year or part thereof, the excess, if any, of: (i) the sum, at any time, of (A) the repayment by any borrower of amount loaned by the Company, (B) any return of amounts invested in the Company in any Company Property or any other assets, including as a result of any sale or transfer of such assets, (C) any Capital Contributions to the extent not invested by the Company, and (D) all proceeds received by the Company in connection with a Liquidating Event and any other amounts determined by the Manager, in its sole discretion, that should not be included in the calculation of Net Cash Flow From Operations; less (ii) the sum of (A) all cash expenditures of the Company (including capital expenditures and payments with respect to indebtedness and other short and long term obligations), (B) the amount of any funds the Manager, in its reasonable discretion, determines to set aside for contingencies and the establishment of reasonable, prudent reserves; and (C) the amount of any funds the Manager, in its reasonable discretion, determines to set aside for investment.

1.1.45 "Net Equity" means as set forth in Section 10.3.

1.1.46 "Parallel Fund" means as set forth in Section 2.8.1.

1.1.47 "Permitted Transfer" means as set forth in Section 9.2.

1.1.48 "Person" means any individual, corporation, Company, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof, and any fiduciary acting in such capacity on behalf of any of the foregoing.

1.1.49 "Personal Representative" means, with respect to any Member:

1.1.49.1 the person or persons, including any bank or trust company, who shall be the duly appointed, qualified and acting personal representative, executor or administrator of a such party's estate;

1.1.49.2 in the absence of a duly appointed personal representative, executor or administrator, the trustee of such party's *inter vivos* trust which holds title to the Investor Unit; or

1.1.49.3 in case of such party's Disability, the duly appointed, qualified and acting conservator or guardian of such party's estate or the agent of such party acting pursuant to a duly executed durable power of attorney.

1.1.50 "Preferred Member" means any Person who (i) executes this Agreement as a Preferred Member or who has been admitted as an additional or Substitute Member pursuant to the terms of this Agreement and (ii) is the owner of a Preferred Investor Unit. "Preferred Members" means all such Persons.

1.1.51 "Preferred Investor Units" means all of the Preferred Investor Units of a Preferred Member in the Company at any particular time, including the right of such Preferred Member to any and all benefits to which such Preferred Member may be entitled as provided in this Agreement, together with the obligations of such Preferred Member to comply with all of the terms and provisions of this Agreement.

1.1.52 "Preferred Member Capital Contribution" means, with respect to each Preferred Member, the amount of money and the fair market value (as agreed by the Company and the contributing Preferred Member) of any property contributed to the Company with respect to the Preferred Investor Unit in the Company held by such Preferred Member, whether directly or indirectly, provided, however, that unless otherwise approved by the Manager, all Preferred Member Capital Contributions shall be in cash.

1.1.53 "Private Placement Memoranda" means any private placement memoranda pursuant to which Units in the Company are sold to investors, as supplemented from time to time.

1.1.54 "Profits" and "Losses" shall have the meaning set forth in the Tax Matters Schedule attached hereto.

1.1.55 "Project" means the adaptive reuse project and development on the Property of an existing hotel and adjacent three (3) acre parcel into approximately 188 multi-family units.

1.1.56 "Property" means the approximately eight (8) acres located at the southwest corner of Elliot Road and I-10 Freeway in the City of Phoenix, Maricopa County, Arizona.

1.1.57 "Qualified Plans" means any individual retirement account, simplified employee pension qualifying under Section 408 of the Code, KEOGH plans, and retirement plans as described in Title I of the Employee Retirement Income Security Act of 1974, as amended.

1.1.58 "Redemption" means the redemptions of Investor Units in accordance with Section 4.3 hereof.

1.1.59 "Redemption List" shall have the meaning set forth in Section 4.3.1.

1.1.60 "Redemption Request" shall have the meaning set forth in Section 4.3.1.

1.1.61 "Stated Rate of Interest" means such rate as the Manager may determine or successfully negotiate in its reasonable discretion.

1.1.62 "Substitute Member" means, with respect to the transferee of a Investor Unit, any Person admitted to the Company as a "Member" pursuant to Section 9.6 hereof.

1.1.63 "Tax Loan" means as set forth in Section 1.7.3 of the Tax Matters Schedule.

1.1.64 "Tax Member" means each of the Manager.

1.1.65 "Transfer" means as set forth in Section 9.1.

1.1.66 "UCC" means the Uniform Commercial Code.

1.1.67 "Unit" shall mean, with respect to any Member, a Preferred Investor Unit, 12% Current Pay Investor Unit, or any other "Unit" designated as such by the Manager, as applicable. The Units shall be subject to adjustment as provided elsewhere in this Agreement.

1.1.68 "Unit Holder" means a Person who owns Units of the Company but who is not a Member, including, except as otherwise provided herein, a Member who engages in a Withdrawal. A Unit Holder that owns more than one class of Units shall be considered to be a Unit Holder with respect to more than one class of Units for purposes of this Agreement.

1.1.69 "Unit Price" shall mean the dollar amount of Capital Contribution or cash value assigned to a single Unit hereof.

1.1.70 "Unreturned Capital Contributions" means with respect to any Investor Member, the total Capital Contributions made by that Investor Member with respect to that Member's Investor Units, less all amounts actually distributed to that Investor Member pursuant to Section 4.1.1.2 and Section 4.1.2.2.

1.1.71 "Unreturned 12% Current Pay Member Capital Contribution" means with respect to any 12% Current Pay Member, the total 12% Current Pay Member Capital Contributions made by that 12% Current Pay Member with respect to that 12% Current Pay Member's 12% Current Pay Investor Units, less all amounts actually distributed to that Class A Member pursuant to Section 4.1.1.2 and Section 4.1.2.2.

1.1.72 "Withdrawal" means as set forth in Section 10.1.

SECTION 2
FORMATION; PURPOSE

2.1 **Formation**. The Company was formed as a Limited Liability Company upon the filing of the Certificate with the Secretary of State of the State of Delaware.

2.2 **Term**. The term of the Company commenced upon the filing of the Certificate with the Secretary of State of the State of Delaware and shall continue until the dissolution of the Company in accordance with the Act and this Agreement. The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate in accordance with the Act.

2.3 **Name**. The name of the Company is "SP 10 Preferred Equity, LLC."

2.4 **Purpose**. The Company's primary investment objective is to generate returns from its Company Property by deploying the capital of the Company into acquiring preferred equity securities of Elliot 10 MezzCo, LLC, a Delaware limited liability company ("MezzCo"). MezzCo owns or will own at a later date all of the outstanding and issued membership interests of Elliot & 51st Street LLC ("Property Owner"), which holds fee title to the Property and is developing the Project.

2.5 **Place of Business**. The Company's principal place of business shall be 8901 E. Mountain View Road, Suite 150, Scottsdale, Arizona 85258. The Company may have other or additional places of business within or outside of the State of Arizona.

2.6 **Nature of Units**. A Unit shall be personal property for all purposes. All property owned by the Company, whether real or personal, tangible or intangible, shall be owned by the Company as an entity, and no Member shall have any direct ownership of such property or any right to use such property for any purpose other than a purpose of the Company.

2.7 **Name and Mark**.

2.7.1 Notwithstanding any provision of this Agreement to the contrary, the Members acknowledge and agree that: (i) the Name and Mark are the property of the Manager or its Affiliates (other than the Company) and in no respect shall the limited right to use the Name and Mark be deemed an asset of the Company; (ii) the Company's limited right to use the Name and Mark may be withdrawn by the Manager or its Affiliates at any time without compensation to the Company; (iii) the Company has no right to license, sublicense, assign, or

otherwise transfer any right, title or interest in or to the Name and Mark; (iv) no Member other than the Manager shall, by virtue of its ownership of a Unit or interest in the Company, hold any right, title or interest in or to the Name and Mark; (v) all goodwill and similar value associated with the Name and Mark are owned by, and shall accrue solely for the benefit of, the Manager or its Affiliates (other than the Company); and (vi) following the dissolution and liquidation of the Company, the limited right of the Company to use the Name and Mark shall be terminated. Except as specifically authorized by the Manager or its Affiliate in writing, in no event shall any Member use the Name and Mark for its own account.

2.7.2 Subject to Section 2.7.1, the Manager hereby grants to the Company, and the Company hereby accepts, a non-exclusive, non-assignable, non-sublicensable, royalty-free license to use, during the term of the Company, the Name and Mark as part of the legal name of the Company; and otherwise in connection with the conduct by the Company of its activities in accordance with this Agreement.

2.7.3 The Manager and its Affiliates shall be entitled to take all reasonable actions to protect their ownership of the Name and Mark. The Company shall use the Name and Mark only in a manner and format approved in writing by the Manager, and only in connection with goods or services adhering to such standards, specifications, and instructions as are developed by the Manager and its Affiliates (other than the Company). If the Manager or such Affiliates determine that the Company is not using, or cannot use, the Name and Mark in accordance with such format, manner, standards, specifications, and instructions, the Company shall cure the cause of such failure or, if the Manager determines that the Company cannot or should not cure such failure, discontinue such non-conforming use. The Manager shall have the right to present to its Affiliates all information concerning the Company's use of the Name and Mark as shall be reasonably necessary for such Affiliates to determine whether such format, manner, standards, specifications, and instructions have been, and are likely to be, satisfied.

2.7.4 If the name, mark or URL of the Company are changed, the foregoing provisions of this Section 2.7 shall apply equally to the new name, mark or URL.

SECTION 3
CONTRIBUTIONS; CAPITAL ACCOUNTS

3.1 **Capital Accounts**. A separate Capital Account shall be maintained for each Member in accordance with the Tax Matters Schedule attached hereto and incorporated herein by reference.

3.2 **Restrictions on Deployment of Capital Contributions**. The Company and Manager hereby agree and acknowledge that (i) the Capital Contributions of the Investor Members may only be used to make a preferred equity financing into MezzCo (consistent with the Amended and Restated Limited Liability Company Agreement of MezzCo, as amended (the "MezzCo LLC Agreement"), a copy of which is attached to the Private Placement Memorandum delivered to the Investor Members); (ii) the Property Owner or its Affiliate shall have entered into a purchase agreement for the purchase of the Second Property (as defined in the Private Placement Memorandum) pursuant to which the Property Owner will acquire in fee simple the Second Property; and (iii) the Property Owner or its Affiliate shall have received a term sheet from a lender pursuant to which such lender would lend, on

a first position basis, amounts sufficient to retire the First Property Existing Secured Debt and Second Property Existing Secured Debt (as such terms are defined in the Private Placement Memorandum).

3.3 Member Loans. Subject to the terms of this Agreement, any Member may, with the approval of the Manager, lend or advance money to the Company; provided, however, no Member shall be obligated to make any loans to the Company. If any Member makes any loan or loans to the Company or advances money on its behalf, the amount of any such loan or advance shall not be treated as a Capital Contribution to the Company, but shall be an indebtedness of the Company payable to such Member. The amount of any such loan or advance by a lending Member shall be repayable out of the Company's cash and shall bear interest at the Stated Rate of Interest during the period such loan is outstanding.

3.4 Manager Loans. Subject to the terms of this Agreement, the Manager may lend or advance money to the Company; provided, however, the Manager shall not be obligated to make any loans to the Company. If the Manager makes any loan or loans to the Company or advances money on its behalf, the amount of any such loan or advance shall not be treated as a Capital Contribution to the Company, but shall be an indebtedness of the Company payable to the Manager. The amount of any such loan or advance by the Manager shall be repayable out of the Company's cash and shall bear interest at the Stated Rate of Interest.

3.5 Other Matters.

3.5.1 Except as specifically provided in this Agreement, or as otherwise approved by the Manager, no Member shall receive any interest, salary or draw with respect to its Member Capital Contributions. Subject to the terms of this Agreement, Members may, however, at the Manager's discretion, be entitled to receive a salary for services rendered on behalf of the Company or otherwise in their respective capacities as Members.

3.5.2 Except as otherwise provided by this Agreement or by a separate agreement or with third-party creditors or in the Act or otherwise at law, no Member shall be liable for the debts, liabilities, contracts or any other obligations of the Company beyond its respective Member Capital Contribution and no Manager shall be liable for the debts, liabilities, contracts or any other obligations of the Company beyond the Manager Capital Contribution.

3.5.3 None of the provisions of this Agreement, whether in regard to contributions or otherwise, is intended for the benefit of, nor shall such provisions be enforceable by, creditors of the Company beyond the Capital Contributions.

SECTION 4
DISTRIBUTIONS; ALLOCATIONS

4.1 Distributions.

4.1.1 Distributions of Net Cash Flow From Operations. Except as otherwise provided in Section 4.1.3 and Section 11 hereof, Net Cash Flow From Operations, if available for distribution under this Section 4.1.1, as determined by the Manager in its sole discretion, shall be distributed to the Members in the following order and priority:

4.1.1.1 First, 100% to the holders of 12% Current Pay Investor Units *pro rata* based on the 12% Current Pay Preferred Return payable to the holders of the 12% Current Pay Investor Units, until each such Person has received any accrued and unpaid 12% Current Pay Preferred Return from aggregate distributions made under this Section 4.1.1.1 and Section 4.1.2.1;

4.1.1.2 Second, 100% to the holders of Investor Units *pro rata* based on the respective Capital Contributions of such Persons until the Unreturned Capital Contributions of each such holder of Investor Units has been reduced to zero ($0);

4.1.1.3 Third, 100% to the holders of Preferred Investor Units *pro rata* based on the respective number of Preferred Investor Units held by such Persons until such holders of Preferred Investor Units have received an amount equal to one (1) times the initial Capital Contributions made by such holder of Preferred Investor Units from aggregate distributions made under this Section 4.1.1.3 and Section 4.1.2.3; and

4.1.1.4 Thereafter, 100% to the Manager (or its designee).

4.1.2 Distribution of Net Cash Flow From Sale or Refinance. Except as otherwise provided in Section 4.1.3 and Section 11 hereof, Net Cash Flow From Sale or Refinance, if any, shall be distributed to the Members in the following order and priority:

4.1.2.1 First, 100% to the holders of 12% Current Pay Investor Units *pro rata* based on the 12% Current Pay Preferred Return payable to the holders of the 12% Current Pay Investor Units, until each such Person has received any accrued and unpaid 12% Current Pay Preferred Return from aggregate distributions made under this Section 4.1.2.1 and Section 4.1.1.1;

4.1.2.2 Second, 100% to the holders of Investor Units *pro rata* based on the respective Capital Contributions of such Persons until the Unreturned Capital Contributions of each such holder of Investor Units has been reduced to zero ($0);

4.1.2.3 Third, 100% to the holders of Preferred Investor Units *pro rata* based on the respective number of Preferred Investor Units held by such Persons until such holders of Preferred Investor Units have received an amount equal to one (1) times the initial Capital Contributions made by such holder of Preferred Investor Units from aggregate distributions made under this Section 4.1.2.3 and Section 4.1.1.3; and

4.1.2.4 Thereafter, 100% to the Manager (or its designee).

4.1.3 Distributions, Generally.

4.1.3.1 Notwithstanding any other provision of this Agreement, the (i) Company shall not be required to make a distribution to the Members or the Manager in violation of the Act and other applicable law; and (ii) it is the intent of the Company that the total amount of distributions that each Investor Member is entitled to receive under Section 4 is equal to (a) with respect to the Preferred Members, an amount equal to two (2) times their respective Capital Contributions, and (b) with respect to the 12% Current Pay Members (inclusive of any 12% Current Pay Preferred Return that is paid hereunder), an amount equal to one and one-half (1.5) times their respective Capital Contributions. Further, the Manager shall have the sole and absolute discretion to invest or reinvest any Cash Available for Distribution consistent with the purpose of the Company,

rather than making a distribution pursuant to Section 4.1.1 through Section 4.1.2 or Section 4.1.4.3, provided, however, that the Manager shall (i) to the extent Net Cash Flow From Operations is available, make the monthly distributions required under Section 4.1.1(i), and (ii) make a good faith effort to set aside cash available to the Company to make a timely distribution pursuant to Section 4.1.4.3.

4.1.3.2 In the event the Company makes one or more distributions to any Investor Member and the result of such distributions, whether pursuant to a Redemption (as such term is defined below), a distribution of Net Cash Flow From Operations, a distribution of Net Cash Flow From Sale or Refinance or otherwise, is the payment in full of such Investor Member's Investor Member Capital Contribution, such owner's Investor Units shall be deemed fully redeemed by the Company and from and after the date of such final payment, said Investor Member shall no longer have any right, title or interest in, to or under the Investor Units and/or the Company.

4.1.3.3 Notwithstanding Section 4.1.1 through Section 4.1.2, within 75 days of the end of each taxable Fiscal Year, the Manager may distribute to each Tax Member, to the extent cash is available to the Company, as determined by the Manager, an amount which, when combined with the other amounts distributed to such Tax Member pursuant to Section 4.1.1 through Section 4.1.2 and this Section 4.1.4.3 in that Fiscal Year and all prior Fiscal Years, equals the cumulative net taxable income allocated to the Tax Member under the Tax Matters Schedule for that Fiscal Year and all prior Fiscal Years (taking into account losses allocated to that Tax Member in prior Fiscal Years to the extent not previously accounted for) multiplied by the highest applicable federal and Arizona state marginal tax rates in effect for individuals or corporations that Fiscal Year (taking into account the Medicare tax under Code Section 1411 and the deductibility of state income taxes for purposes of determining the federal income tax rate and, if the income or gain is taxed as long term capital gain or Code Section 1231 gain, the highest applicable federal and state marginal tax rates applicable to such gains). Distributions, if any, made pursuant to this Section 4.1.4.3 will be treated as a distribution to such Tax Member under Section 4.1.1 through Section 4.1.2 (based on the source of taxable income resulting in the distribution under this Section 4.1.4.3 as reasonably determined by the Manager) and taken into account in determining subsequent distributions pursuant to Section 4.1.1 through Section 4.1.2 so that, in the aggregate, all distributions are divided among the Members in the manner they would be divided without regard to this Subsection. For the sake of clarification, the Investor Members are not entitled to any distributions pursuant to this Section 4.1.3.3.

4.2 Allocation of Profits and Losses. Profits and Losses shall be allocated to the Tax Members in accordance with the Tax Matters Schedule attached hereto and incorporated herein by reference.

4.3 Redemption of Investor Units.

4.3.1 No Investor Member shall have any right to require a Redemption of all or a portion of its Investor Units, however, any Investor Member may request that the Company redeem 100% of its Investor Units by submitting a written request (a "Redemption Request") to the Manager. The Manager shall maintain a list (the "Redemption List") of all such requests and may elect to grant Redemption Requests and carry out Redemptions with or without regard to the Redemption List. If the Manager elects to redeem any Investor Member's Investor Units, whether unilaterally or pursuant to a Redemption Request, such Redemption shall be conducted at such time, in such manner and by such methodology as the Manager may

determine in its sole absolute discretion. The purchase price to be paid to any holder of Investor Units that requests a Redemption shall be equal to the full amount of such Investor Member's Capital Contribution, after taking into account all amounts distributed to such Investor Member pursuant to Section 4.1 of this Agreement.

4.3.2 As a general matter, and without limiting the generality of the foregoing paragraph, the Manager may elect to redeem Investor Units incrementally over time or by making a single Redemption payment to the applicable Investor Members. In the event the Manager elects to redeem an Investor Member's Investor Units incrementally over time, Redemption payments shall continue until such time as each Redemption has been satisfied in full (i.e., the Investor Member has received payment in full of such Investor Member's Capital Contribution (after taking into account all amounts distributed to such Investor Member pursuant to Section 4.1 of this Agreement). Until all such required payments have been made (i.e., the Investor Member has received payment in full of such Investor Member's Capital Contribution), such Investor Member shall remain as an Investor Member of the Company, entitled to receive all the benefits of an Investor Member based upon its rights set forth herein, which may be reduced with each Redemption payment. The Manager may utilize any source of proceeds to effectuate a Redemption, including, but not limited to, the use of Capital Contributions for purposes of making Redemptions.

4.3.3 Any payments made to an Investor Member in connection with the redemption of such Investor Member's Investor Units shall be subject to all applicable withholdings with regard to the collection of taxes, interest, and penalties attributable to such Investor Member. If the Manager deems it necessary, the Manager may set up an escrow account or otherwise set aside any amounts as reasonably determined by the Manager pending the determination of whether any withholding is required. Any such amounts withheld by the Company with regard to the collection of taxes, interest, and penalties attributable to such Investor Member in connection with a redemption and paid to any taxing jurisdiction shall be treated as a payment under this Section 4.3.

4.3.4 Following the Redemption of any Investor Unit, the Investor Member shall continue to be subject to the provisions of Section 1.7.5 of the Tax Matters Schedule.

4.3.5 Notwithstanding anything to the contrary in this Agreement, the Manager does not intend to cause the Company to redeem any Investor Units if the Redemption could cause the Company to become a "publicly traded Company" within the meaning of Code Section 7704(b).

SECTION 5
MANAGER

5.1 **Management Powers**. The Manager shall have control of and shall be responsible for the management of the Company business, with all rights and powers generally conferred by this Agreement and by the Act, subject only to any the limitations set forth in this Agreement, including Section 5.2 below. Without limiting the generality of the foregoing, and subject to Section 5.2 below, the Manager shall have full power and authority to do the following:

5.1.1 Perform administrative and ministerial functions in connection with the day-to-day operation of the Company;

5.1.2 Perform sales and accounting management functions for the Company;

5.1.3 Maintain the Company's books and records;

5.1.4 Negotiate and enter into any and all contracts by and on behalf of the Company deemed appropriate by the Manager, in its sole discretion, in connection with the operation of the Company's business;

5.1.5 Borrow money on behalf of the Company, including, but not limited to, establishing lines of credit in the name of the Company, and, in connection therewith, to execute and deliver for, on behalf of and in the name of the Company, bonds, notes, pledges, security agreements, financing statements, profits interest agreements, assignments and other agreements and documents creating liens on, or granting security interests in or otherwise affecting, the assets and properties of the Company (any of which loan documents may contain confessions of judgment and powers of attorney) including, without limitation, any extensions, renewals and modifications thereof, and to prepay in whole or in part, refinance, recast, increase, modify or extend any indebtedness of the Company.

5.1.6 Hold, operate, manage, and otherwise deal with Company Property;

5.1.7 Purchase, sell, convey, assign, lease, rent, exchange, and otherwise dispose of, in whole or in part, any Company Property;

5.1.8 Loan Company funds and in connection therewith acquire Company Property;

5.1.9 Sell all or substantially all Company Property in a single transaction or plan;

5.1.10 Engage, on behalf of the Company, all employees, agents, contractors, property managers, attorneys, accountants, securities broker-dealers, consultants or any other Persons (including Affiliates of the Manager), as the Manager, in its sole discretion, deems appropriate for the performance of services in connection with the conduct, operation and management of the Company's business and affairs, all on such terms and for such compensation as the Manager, in its sole discretion, deems proper and to replace any such employees, agents, contractors, property managers, attorneys, accountants, securities broker-dealers, consultants, or any other Persons, in the sole discretion of the Manager;

5.1.11 Establish and maintain working capital reserves for operating expenses, capital expenditures, normal repairs, replacements, contingencies, and other anticipated costs relating to the assets of the Company by retaining a portion of Company proceeds as determined from time to time by the Manager to be reasonable under the then-existing circumstances;

5.1.12 Subject to the limitations and obligations set forth herein, determine the amounts of Cash Available for Distribution, Net Cash Flow From Operations and/or Net Cash Flow From Sale or Refinance, and when and in what amounts such funds shall be distributed;

5.1.13 Pay the expenses of the Company from the funds of the Company, provided that all of the Company's expenses shall, to the extent feasible, be billed directly to and paid by the Company;

5.1.14 File, on behalf of the Company, all required local, state and federal tax returns relating to the Company or its assets and properties, and to make or determine not to make any and all elections with respect thereto;

5.1.15 Invest and reinvest the funds of the Company and to establish bank, money market and other accounts for the deposit of the Company's funds and permit withdrawals therefrom upon such signatures as the Manager designates;

5.1.16 Execute and deliver any and all instruments and documents, and to do any and all other things necessary or appropriate, in the Manager's sole discretion, for the accomplishment of the business and purposes of the Company or necessary or incidental to the protection and benefit of the Company;

5.1.17 Prosecute, defend, settle or compromise, at the Company's expense, any suits, actions or claims at law or in equity to which the Company is a party or by which it is affected as may be necessary or proper in the Manager's sole discretion, to enforce or protect the Company's interests, and to satisfy out of Company funds any judgment, decree or decision of any court, board, agency or authority having jurisdiction or any settlement of any suit, action or claim prior to judgment or final decision thereon;

5.1.18 Issue additional Units or other forms of interest in the Company, admit additional Members, and amend the Company Agreement in connection with the creation of such additional Units or other forms of interest in the Company to incorporate the rights and obligations relating to such additional Units or other forms of interest in the Company, as the Manager may determine in its sole and absolute discretion;

5.1.19 Intentionally deleted;

5.1.20 Create and issue additional Limited Liability Company interests and/or units and classes and groups of Members and admit such Members as the Manager may determine in its sole and absolute discretion;

5.1.21 Subject to the terms of Section 4.3 above, redeem Members' Units in the Company and determine the methodology for carrying out any Redemptions;

5.1.22 Negotiate the terms of and cause the Company to enter into joint ventures or other legal structures with one or more third parties, including with Affiliates of the Manager, as the Manager may determine in its sole discretion, in connection with the operation of the Company's business;

5.1.23 Subject to Section 4.1.3.1, reinvest any Cash Available for Distribution;

5.1.24 Enter into any transactions with an Affiliate of the Manager or any Member at arm's length terms;

5.1.25 Amend this Agreement to comply with the provisions of the Bipartisan Budget Act of 2015 and any U.S. Treasury Regulations or other administrative pronouncements promulgated thereunder, and to administer the effects of such provisions in an equitable manner, with each Member hereby agreeing to be bound by the provisions of any such amendment;

5.1.26 Amend this Agreement to comply with a final determination of the IRS or state, local, or non-U.S. taxing authority, a court, or an agreement of the IRS or state, local, or non-U.S. taxing authority with the Company Representative, that a Unit shall be treated as equity rather than debt for federal, state, local, or non-U.S. tax purposes;

5.1.27 To issue Investor Units and such other Limited Liability Company interests in the Company, and to create such additional classes or groups of Members, and to amend this Agreement in connection therewith, as the Manager may determine in its sole discretion;

5.1.28 Amend this Agreement to address or reconcile any inconsistencies between the terms hereof and the terms set forth in the Private Placement Memorandum;

5.1.29 Amend this Agreement to the extent such amendments and/or modifications are required by any lender providing first lien financing on the Company Property, to satisfy any requirements of a lender in connection with the making of any loan to the Company or any Company Property, or the requirements of any subsequent lender providing first lien financing on the Company Property, but only to the extent such requested changes and the corresponding amendment(s) do not materially and adversely affect the economic interests of the Members;

5.1.30 Require any and all Members to execute an amended and restated Limited Liability Company Agreement for the Company, which will replace and supersede this Agreement, but only to the extent such agreement is amended per the terms of this Agreement and Manager provides each Member hereof with a written statement verifying that the agreement is being amended per the terms of this Agreement;

5.1.31 To the extent each and every requirement of Section 5.1.29 immediately above has been satisfied and any Member fails to timely execute such an amended and restated Limited Liability Company Agreement for the Company, to execute said agreement on behalf of such party, in such party's name and as its attorney-in-fact; and

5.1.32 Adjust the Unit Price as more specifically provided for herein.

5.2 Limitations. Without the consent of a Majority in Interest of the Investor Members and the Manager, the Manager shall not have authority to:

5.2.1 Amend this Agreement, other than: (a) with respect to those items specifically set forth in Section 5.1, Section 13.20, or elsewhere in this Agreement, or (b) to effect a ministerial change which does not materially and adversely affect the rights of Members;

5.2.2 Change the purpose of the Company to engage in activities inconsistent with or in addition to the stated purpose of the Company;

5.2.3 Do any act in contravention of this Agreement;

5.2.4 Do any act which would make it impossible to carry on the ordinary business of the Company, except as otherwise provided in this Agreement; or

5.2.5 Possess Company Property, or assign rights in specific Company Property, for other than a Company purpose.

5.3 Selection of the Manager. The Manager shall consist of one Person. The initial Manager shall be Elliot & 51st Street Manager LLC, an Arizona limited liability company. Any Manager can be removed for Cause upon the approval of the Investor Members holding 75% of the Investor Units in the Company. "Cause" shall mean the determination of a court of competent jurisdiction that one of the following events occurred: (i) the Manager willfully or intentionally violated, or recklessly disregarded, the Manager's duties to the Company; or (ii) the Manager committed any act involving fraud, bad faith, gross negligence, dishonesty, or moral turpitude in its duties and responsibilities to the Company. The Manager may also withdraw as Manager by providing written notice to the Members. In either event, a new Manager shall be elected by the approval of a Majority in Interest, and the Majority in Interest shall vote to continue the business of the Company. The Members hereby specifically authorize the Manager to execute documents and sign agreements on behalf of the Company in lieu of requiring execution by the Members, and third parties shall be entitled to rely upon the signature of the Manager as having authority to bind the Company.

5.4 Duties and Obligations of the Manager and Expense Reimbursement.

5.4.1 The Manager shall take all actions which may be necessary or appropriate for: (i) the continuation of the Company's valid existence and qualification as a Limited Liability Company under the laws of the State of Delaware; and (ii) the accomplishment of the Company's purposes, including the maintenance, preservation, and operation of the Company Property in accordance with the provisions of this Agreement and applicable laws and regulations.

5.4.2 The Manager shall devote to the Company such time as may be necessary for the proper performance of all duties hereunder, but the Manager shall not be required to devote full time to the performance of such duties.

5.4.3 The Company shall pay or reimburse the Manager and its Affiliates, as applicable, for certain expenses incurred or paid on behalf of the Company or the subsidiary prior to or after the formation of the Company and the subsidiary. Expenses that may be reimbursed by the Company include, but are not limited to (i) legal fees for preparing Company and subsidiary organizational documents and related agreements and resolutions, (ii)

organizational expenses of the Company (i.e., fees, costs and expenses of and incidental to the formation, qualifications to do business and fund raising of the Company (iii) due diligence expenses (including travel and marketing expenses of the Manager, its affiliates and agents); (iv) technology processing platforms; (v) filing fees; and (vi) marketing due diligence fees including third party due diligence reports.

5.4.4 Each Investor Member hereby acknowledges and agrees that certain reasonable fees and other compensation will be paid to the Managing Member or its Affiliates, and that any such reasonable fees and other compensation are acknowledged and agreed to by each Investor Member. Each Investor Member further acknowledges and agrees that the Private Placement Memorandum contains a description of some of the fees and compensation that will be paid to the Manager or its Affiliates, including an annual asset management fee equal to two percent (2%) of the aggregate Capital Contributions of the Investor Members, which may be paid in such manager as determined reasonable by the Managing Member, including in advance on a monthly basis.

5.5 <u>Exculpation/Indemnification of the Manager</u>.

5.5.1 To the maximum extent permitted under the Act in effect from time to time, no Covered Person shall be liable to the Company or to any Member for (i) any act or omission performed or failed to be performed by it, or for any losses, claims, costs, damages, or liabilities arising from any such act or omission, except to the extent such loss, claim, cost damage, or liability results from such Person's gross negligence, willful misconduct or fraud; (ii) any tax liability imposed on the Company; or (iii) any losses due to the misconduct, negligence (gross or ordinary), dishonesty or bad faith of any agents of the Company.

5.5.2 The Company, its receiver, or its trustee (in the case of its receiver or trustee, to the extent of the Company Properties) shall indemnify, save harmless, and pay all judgments and claims against the Covered Person relating to any liability or damage incurred by reason of any act performed or omitted to be performed by the Covered Person solely in connection with the business of the Company, including attorneys' fees incurred in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred.

5.5.3 In the event of any action by a Member against a Covered Person relating to any liability or damage incurred by reason of any act performed or omitted to be performed by the Covered Person solely in connection with the business of the Company, including a derivative suit, the Company shall indemnify, save harmless, and pay all expenses of such Member, including attorneys' fees incurred in the defense of such action, if such Member is successful in such action.

5.5.4 The Manager shall have authority to cause the Company to acquire and maintain the equivalent of directors' and officers' insurance coverage insuring the actions of the Covered Persons in such amounts as it may determine appropriate and customary for a business of the type conducted by the Company.

5.5.5 Notwithstanding the provisions of Sections 5.5.1 and 5.5.2 above, a Covered Person shall not be indemnified from any liability for fraud, bad faith, gross negligence, or willful misconduct in its duties and responsibilities to the Company.

5.5.6 Notwithstanding anything to the contrary above, in the event that any provision in this Section 5.5 is determined to be invalid in whole or in part, the remainder of such Section shall be enforced to the maximum extent permitted by law.

5.6 Advisory Board.

5.6.1 The Company may, at the election of the Manager, have an "Advisory Board" consisting of at least three (3) members (the "Advisory Board Members") appointed by the Manager; provided, however, that all of the of the Advisory Board Members shall be Members or their designated representatives (or equity holders of any Parallel Funds or their designated representatives). Subject to the foregoing, the Manager may, in its sole and absolute discretion, increase the size of the Advisory Board. Any Advisory Board Member may, at any time, resign from the Advisory Board or be removed, with or without cause, by the Manager. All such appointments, designations, resignations, and removals shall be effective upon notice to the Company.

5.6.2 The Manager may consult with the Advisory Board with respect to such matters as determined by the Manager in its sole and absolute discretion, but the Advisory Board shall have no other power to participate in the management of the Company. Without limiting the Manager's ability to demonstrate that it has acted in good faith, the Manager shall be deemed to have acted in good faith when acting in accordance with the approval of the Advisory Board, provided that the Manager made a good faith effort to inform the Advisory Board of all the facts pertinent to such approval.

5.6.3 A Person's status as an Advisory Board Member shall not constitute such Person as an agent of the Company, and, except as specifically provided in this Agreement, the Advisory Board shall have no power or authority to manage, direct or act for the Company.

5.6.4 If a Parallel Fund is formed, the Advisory Board shall function as a joint committee in respect of the Company and such Parallel Fund in the same manner as if the Company and the Parallel Fund were a single Company and all the equity holders of the Company and the Parallel Fund were constituent Members thereof.

5.6.5 Any Advisory Board Member may, at its sole and absolute discretion, decline to participate in any specific deliberation or vote of the Advisory Board.

5.6.6 Any recommendation, determination, approval, or other action of the Advisory Board shall require the approval of a majority of its members. No such action shall require an actual meeting of the Advisory Board, but meetings may be held at the request of the Manager or any Advisory Board Member. The Manager intends to, but shall not be required to, hold quarterly meetings of the Advisory Board. With respect to any meeting of the Advisory Board held at the request of the Manager, the costs of such meeting (including the reasonable out-of-pocket costs incurred by the Manager and the Advisory Board members in attending such meeting) shall be a Company Expense, reimbursable to the Manager and Advisory Board

Members. The costs of any other meeting of the Advisory Board shall not be a Company Expense and shall not be reimbursed by the Company.

5.7 Competition. Nothing contained in this Agreement shall be construed to prohibit the Manager or any Affiliate of the Manager from conducting or possessing an interest in any other business or activity whatsoever, independently or with others, including, without limitation, the ownership, financing, leasing, operation, sale, management, syndication, and development of real property even if such business or activity competes with the business of the Company, without any accountability to the Company or to any other Member, and no other Member shall have any rights by virtue of this Agreement in and to such independent business or activity or to the income or profits derived by the Manager therefrom.

SECTION 6
RIGHTS AND OBLIGATIONS OF MEMBERS

6.1 Limitation of Liability. Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and no Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member of the Company.

6.2 Priority and Return of Capital – Members. No Member shall have priority over any other Member(s), either as to the return of Capital Contributions or as to Profits, Losses or distributions, except as set forth in Section 4 of this Agreement; provided that this Section 6.2 shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

6.3 Services Provided by Members. Members and/or their Affiliates may provide services to the Company and be compensated therefor, so long as such compensation arrangements are affirmatively approved by the Manager and the party providing such services, and the fees paid are no greater than the Company would incur to third parties providing such services in either (i) Maricopa County, Arizona, for services provided to the Company as a whole, or (ii) the county and state where any Company Property is located, for services provided in connection with a specific Company Property.

6.4 No Management by Members. No Member, in its capacity as such, except as otherwise provided herein, shall take part in the day-to-day management, operation or Control of the business and affairs at the Company. The Members, in their capacity as such, shall not have any right, power, or authority to transact any business in the name of the Company or to act for or on behalf of or to bind the Company. A Member shall have no rights other than those specifically provided herein or granted by law.

6.5 Representations, Warranties and Acknowledgments of the Members. Each Member, as a condition to its admission as a Member, as the case may be, does hereby represent, warrant and acknowledge to the Company, the other Members and the Manager that such party:

6.5.1 Authority to Act. Has full power and authority to execute and agree to this Agreement and to perform its obligations hereunder and all necessary actions and

approvals by the board of directors, shareholders, managers, Members, or such other Persons necessary for the due authorization, execution, delivery and performance of this Agreement have been taken;

6.5.2 Review of Documents. Has carefully read this Agreement and each of the Exhibits attached hereto, as well as all other documents relevant to the investment contemplated hereby; has adequate familiarity with investments and businesses of the type contemplated by the Company to appreciate and understand each of such documents; has been afforded an adequate opportunity to retain legal and/or financial advisors of such party's choice to advise such party with respect to the investment contemplated hereby;

6.5.3 Risks of Investment. Understands that the Company is recently organized and has minimal financial or operating history and that there are risks incident to the investment contemplated hereby which are applicable to such party's investment in the Company; and has adequate experience and background in investing in investments of this type such that such party is able to adequately assess the risks of an investment herein;

6.5.4 Illiquidity. Understands that such party's investment in the Company will be illiquid; that such party must bear the economic risk of such investment for an indefinite period of time, because the Units (as applicable) hereunder are not registered under the Securities Act of 1933 or any applicable state securities laws, to the extent applicable, and therefore cannot be sold unless they are subsequently registered under the Securities Act of 1933 and/or any applicable state securities laws, or an exemption from such registration is available; and that such party's right to assign any Unit in the Company is further restricted by the other provisions of this Agreement;

6.5.5 Independent Analysis. Has independently conducted such party's due diligence and evaluation with regard to the investment contemplated hereby; has been encouraged by the Company and the Manager to engage such party's own legal, financial and tax advisors and has done so to the extent such party deemed appropriate; and has had access to all information such party considers necessary or appropriate to complete such party's due diligence and evaluation;

6.5.6 Access to Information. Has been afforded the opportunity to obtain any additional information such party deems necessary to verify any of the information set forth in this Agreement and the Exhibits attached hereto, and any other information such party deems appropriate concerning the proposed investment; has received answers from the Manager on all inquiries such party has asked of the Manager concerning the Company;

6.5.7 Reliance by Company and Manager. Understands that the Company and the Manager are permitting such party to acquire a Unit in reliance upon such party's representations and warranties as set forth in this Section 6.5; and such party is acquiring said Unit for such party's own account, as a principal, for investment, and not with a view to the resale or distribution of all or any part of such Unit, as the case may be, and not on behalf of any other Person; and

6.5.8 Representation. Acknowledges that this Agreement, and certain documents related to the organization of the Company (collectively, the "Company

Documents"), were prepared by Snell & Wilmer, L.L.P. ("Law Firm"). With respect to Law Firm's participation (including rendering of advice) in the preparation of the Company Documents, such party agrees with the Company, the Manager and the Members as follows:

6.5.8.1 Notwithstanding any prior, present and/or continuing representation by Law Firm of any Person comprising the Manager or any Member, or any of their respective Affiliates or principals, with respect to other matters, Law Firm is only representing the Company and the Manager and neither any Member (other than the Manager) nor any of their respective principals in connection with the preparation of the Company Documents or thereafter;

6.5.8.2 Law Firm has expressly recommended to each Member that it obtain appropriate independent legal, tax and other professional consultation and advice with respect to the Company Documents and all aspects of the effect and enforceability thereof, and by executing this Agreement, each respective party to this Agreement confirms said recommendation by Law Firm; and

6.5.8.3 Law Firm has no obligation to render or provide any advice to any Member, or any of their respective Affiliates or principals, with respect to any of the Company Documents, or the effect or enforceability thereof.

6.6 Confidentiality.

6.6.1 The Members hereby acknowledge that the Company will be in possession of confidential information the improper use or disclosure of which could have a material adverse effect upon the Company or upon one or more Members or Company Property.

6.6.2 The Members acknowledge and agree that all information provided to them by or on behalf of the Company or the Manager concerning the Company, a Member or Company Property (including all information contained in any private placement memorandum or other materials provided in connection with the formation of the Company or the placement of interests therein) shall be deemed strictly confidential and shall not, without the prior consent of the Manager, be (i) disclosed to any Person (other than a Member) or (ii) used by a Member other than for a Company purpose or a purpose reasonably related to protecting such Member's Units and interest in the Company. The Manager hereby consents to the disclosure by each Member of the Company information to such Member's accountants, attorneys and similar advisors bound by a duty of confidentiality. The Manager consents to the use by any Member of the Company information solely for such Member's internal purposes to assess investment and other similar opportunities and circumstances, so long as such use causes no material harm to the Company, any other Member, or Company Property and so long as, in any event, such use conforms to the requirements of all applicable laws (including laws relating to "insider trading"). The foregoing requirements of this Section 6.6 shall not apply to a Member with regard to any information that is currently or becomes: (i) required to be disclosed pursuant to applicable law or a domestic national securities exchange rule (but in each case only to the extent of such requirement); (ii) required to be disclosed in order to protect such Member's Units and interest in the Company (but only to the extent of such requirement and only after consultation with the Manager); (iii) publicly known or available in the absence of any improper or unlawful action on the part of such Member; or (iv) known or available to such Member via legitimate means other than through or on behalf of the Company or the Manager. For purposes

of this Section 6.6, Company information (including information relating to Company Property or another Member) provided by one Member to another shall be deemed to have been provided on behalf of the Company.

6.6.3 Provided that the Company and the Manager may disclose any information to the extent necessary or convenient for the formation, operation, dissolution, winding-up, or termination of the Company (as determined by the Manager in its reasonable discretion), the Company and the Manager shall similarly refrain from disclosing any confidential information furnished by a Member pursuant to Section 6.6.

6.6.4 To the extent permitted by applicable law, the Manager may, in its reasonable discretion, keep confidential from any Member information to the extent the Manager reasonably determines that: (i) disclosure of such information to such Member likely would have a material adverse effect upon the Company, a Member or Company Property due to an actual or likely conflict of business interests between such Member and one or more other parties or an actual or likely imposition of additional statutory or regulatory constraints upon the Company, a Member or Company Property; or (ii) in the case of a Member that the Manager reasonably determines cannot or will not adequately protect against the disclosure of confidential information, the disclosure of such information to a non-Member likely would have a material adverse effect upon the Company, a Member, or Company Property.

6.7 Disclosures. Each Member shall furnish to the Company upon request any information with respect to such Member reasonably determined by the Manager to be necessary or convenient for the formation, operation, dissolution, winding-up, or termination of the Company.

6.8 Possible Carried Interest Legislation. In the event of changes to United States Federal income tax law adversely affecting the taxation of the Manager's Units and interest in the Company, the Members will negotiate in good faith to amend the Company Agreement in such a manner as to minimize the adverse consequences for the Manager and its members without a material increase to the after-tax consequences for the Members.

6.9 Acknowledgment of Liability for Taxes. To the extent that the laws of any taxing jurisdiction require, each Member and Unit Holder requested to do so by the Manager shall submit an agreement indicating that such person shall make timely income tax payments to the taxing jurisdiction and that such person accepts personal jurisdiction of the taxing jurisdiction with regard to the collection of taxes, interest, and penalties attributable to such person's income.

6.10 Withholding.

6.10.1 The Company shall withhold taxes from distributions to, and allocations among, the Members to the extent required by law (as determined by the Manager in its reasonable discretion). Except as otherwise provided in this Section 6.10, any amount so withheld by the Company with regard to a Member shall be treated for purposes of this Agreement as an amount actually distributed to such Member pursuant to Section 4. An amount shall be considered withheld by the Company if, and at the time, remitted to a taxing jurisdiction without regard to whether such remittance occurs at the same time as the distribution or allocation to which it relates.

6.10.2 If, pursuant to Section 6.10.1, an amount withheld with regard to a Member is treated for purposes of this Agreement as an amount distributed to such Member pursuant to Section 4, subsequent actual distributions to such Member pursuant to Section 4 shall be reduced as necessary to, as quickly as possible, cause the aggregate distributions to such Member over the term of the Company (including actual distributions and distributions deemed to have occurred pursuant to Section 6.10.1) to equal the actual distributions that would have been made to such Member if Section 6.10.1 were not part of this Agreement.

6.10.3 Each Member shall reimburse the Company and the Manager for any liability they may incur for failure to properly withhold taxes in respect of such Member. Each Member hereby agrees that neither the Company nor the Manager shall be liable for any excess taxes withheld in respect of such Member's Units and interest in the Company and that, in the event of over-withholding a Member's sole recourse shall be to apply for a refund from the appropriate taxing jurisdiction.

SECTION 7
MEETINGS; VOTING

7.1 **Meetings of the Members**. Meetings of the Investor Members, or a vote of the Investor Members without a meeting, may be called by the Manager upon the written request of any one or more of the Investor Members holding ten percent (10%) or more of the Investor Units. The call shall state the nature of the business to be transacted or, if no meeting is to be held, the matter to be voted on and the day that the votes shall be counted. Notice of any such meeting shall be given to the Manager and all Investor Members not less than ten (10) Business Days or more than thirty (30) days prior to the date of such meeting unless waived in writing. Whenever the vote or consent of Investor Members is permitted or required under this Agreement, such vote or consent may be given at a meeting of Investor Members or may be given in accordance with the procedure prescribed in Section 7.3.

7.2 **Record Date**. For the purpose of determining the Investor Members entitled to vote on a matter, or to vote at any meeting of the Investor Members or any adjournment thereof, the Investor Member requesting such meeting may fix, in advance, a date as the record date for any such determination. Such date shall not be more than 30 days nor less than 10 Business Days before any such meeting.

7.3 **Method of Voting**. Each Investor Member may cast the number of votes equal to such Investor Member's Percentage Interest. A Investor Member may vote in person at a meeting, by written proxy or by a signed writing directing the manner in which such Investor Member desires its vote to be cast, which writing must be received by the other Investor Member(s) prior to the date on which votes are to be counted. The proxy of a Investor Member may authorize any Person or Persons to act for it on all matters in which a Investor Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Investor Member or its attorney-in-fact. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Investor Member executing it.

7.4 **Meetings**. Each meeting of Investor Members shall be conducted by the Manager.

7.5 **Action Without a Meeting; Telephone Meetings**. Any action required by the Act or this Agreement to be taken at any annual or special meeting of the Members, or any action which may be taken at any annual or special meeting of Members, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the Investor Members holding not less than the minimum Percentage Interest that would be necessary to authorize or take such action at a meeting at which all of the Members were present. Any electronic communication, including, but not limited to, electronic mail, photographic, photostatic, facsimile or similar reproduction of a writing signed by a Member shall be regarded as signed by such Member for purposes of this Section 7.5. Subject to the provisions of applicable law and this Agreement regarding notice of meetings, Members may participate in and hold a meeting by using a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a telephone meeting pursuant to this Section 7.5 shall constitute presence in person at such meeting, except when a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

SECTION 8
BOOKS AND RECORDS

8.1 **Books and Records**. The Company shall keep adequate books and records at its principal place of business, setting forth a true and accurate account of all business transactions arising out of and in connection with the conduct of the Company. Subject to Section 6.6.4, any Member or its respective designated representative shall have the right, at any reasonable time, to have access to and inspect and copy the contents of such books and records provided, however, that confidential communications between the Company and its legal counsel may be withheld from a Member in the Manager's reasonable discretion.

8.2 **Tax Information**. Necessary tax information shall be delivered to each Investor Member after the end of each Fiscal Year of the Company.

8.3 **Fiscal Year**. The "Fiscal Year" for the Company shall begin on January 1st of each year (provided that the Fiscal Year for the first year of the Company shall begin on the date of the formation of the Company) and end on December 31st of each year (provided that the Fiscal Year for the last year of the Company shall end on the date of the liquidation of the Company).

SECTION 9
TRANSFER OF UNITS

9.1 **Transfer of a Unit**. Except as otherwise expressly provided in this Section 9, no Member may voluntarily withdraw from the Company and no Unit in the Company may be transferred without the consent of the Manager. As used in this Section, "Transfer" means to transfer, sell, assign, pledge, hypothecate, or otherwise dispose of any Unit in the Company, including any transfer by death, Disability or involuntarily by operation of law.

9.2 **Permitted Transfers**. Notwithstanding any of the other requirements of this Section 9, except subject to the conditions and restrictions set forth in Sections 9.3 and 9.7 hereof, a Member may at any time Transfer all or any portion of its Units in the Company to (i) the other Members; (ii) any Affiliate of the transferor but only so long as the only party with authority to bind such Affiliate

is the Member making such Transfer; (iii) to a trust for estate planning purposes, but only so long as the only party with authority to bind such trust is the Member making such Transfer; or (iv) its Personal Representative or heirs or beneficiaries upon the Disability or death of a Member (any such Transfer referred to in (i) through (iv) above shall be referred to in this Agreement as a "Permitted Transfer").

9.3 Conditions to Permitted Transfers. A Transfer shall not be treated as a Permitted Transfer under Section 9.2 hereof unless and until the following conditions are satisfied, provided that the Manager may in its sole and absolute discretion waive any of the following conditions:

9.3.1 The transferor and transferee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Company to effect such Transfer and to confirm the agreement of the transferee to be bound by the provisions of this Section 9. In any case not described in the preceding sentence, the Transfer shall be confirmed by presentation to the Company of legal evidence of such Transfer, in form and substance satisfactory to counsel to the Company. In all cases, the Company shall be reimbursed by the transferor and/or transferee for all costs and expenses that it reasonably incurs in connection with such Transfer.

9.3.2 The Units which are the subject of the Transfer are registered under the Securities Act of 1933, as amended, and any applicable state securities laws, or alternatively, the Member or the proposed transferee of the Units obtains an opinion of counsel satisfactory to the Company's legal counsel to the effect that such Transfer is exempt from all applicable registration requirements or that such Transfer will not violate any applicable securities laws.

9.3.3 The Transfer does not cause the Company to become a "publicly traded Company" within the meaning of Code Section 7704(b). The transferor may be required to furnish the Company an opinion of counsel, which counsel and opinion shall be satisfactory to the Company, that the Transfer will not cause the Company to become a "publicly traded Company" within the meaning of Code Section 7704(b).

9.3.4 The Transfer does not result in 25% or more of the Units (as determined by the Manager) being owned by Qualified Plans. The transferor may be required to furnish the Company an opinion of counsel, which counsel and opinion shall be satisfactory to the Company, that the Transfer will not cause 25% or more of the Units (as determined by the Manager) being owned by Qualified Plans.

9.3.5 The Transfer does not cause the Company to terminate for federal income tax purposes. The transferor may be required to furnish the Company an opinion of counsel, which counsel and opinion shall be satisfactory to the Company, that the Transfer will not cause the Company to terminate for federal income tax purposes.

9.3.6 The transferor and transferee shall furnish the transferee's taxpayer identification number, sufficient information to determine the transferee's initial tax basis in the Units transferred, and any other information reasonably necessary to permit the Company to file all required federal and state tax returns and other legally required information statements or returns.

9.3.7 The Manager shall have consented in writing to such Transfer.

9.4 Prohibited Transfers.

9.4.1 Void. Any purported Transfer of a Unit that is not a Permitted Transfer shall, to the fullest extent permitted by law, be null and void and of no effect whatsoever; provided that, if the Company is required by law to recognize a Transfer that is not a Permitted Transfer (or if the Company, in its sole discretion, elects to recognize a Transfer that is not a Permitted Transfer), the Unit transferred shall be strictly limited to the transferor's rights to allocations and distributions as provided by this Agreement with respect to the transferred Unit, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities for damages that the transferor or transferee of such Unit may have to the Company.

9.4.2 Indemnification. In the case of a Transfer or attempted Transfer of a Unit that is not a Permitted Transfer, the parties engaging or attempting to engage in such Transfer shall be liable to indemnify and hold harmless the Company, the Manager and the other Members from all cost, liability, and damage that any of such indemnified Persons may incur (including, without limitation, incremental tax liability and attorneys' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

9.5 Rights of Unadmitted Assignees. A Person who acquires a Investor Unit but who is not admitted as a Substitute Member pursuant to Section 9 hereof shall be entitled only to allocations and distributions with respect to such Investor Unit in accordance with this Agreement, but shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, shall not have the voting rights as a Member, and shall not have any of the rights of a Member under the Act or this Agreement.

9.6 Admission of Transferees as Substitute Members. Subject to the other provisions of this Section 9, a transferee of a Unit may be admitted to the Company as a Substitute Member only if each of the following conditions is satisfied:

9.6.1 The Manager consents to such admission;

9.6.2 The Unit with respect to which the transferee is being admitted was acquired by means of a Permitted Transfer;

9.6.3 The transferee becomes a party to this Agreement and executes such documents and instruments as the Company may reasonably request to confirm such transferee as a Member and such transferee's agreement to be bound by the terms and conditions hereof;

9.6.4 The transferee pays or reimburses the Company for all reasonable legal, filing, and publication costs that the Company incurs in connection with the admission of the transferee as a Member with respect to the transferred Unit; and

9.6.5 The transferee executes a statement that it is acquiring such Unit for investment and not for resale.

9.7 Distributions and Allocations in Respect to Transferred Units. If any Unit of the Company is transferred during any accounting period in compliance with the provisions of this Section 9, all Profits, Losses, each item thereof, and all other items attributable to the transferred Unit for such period shall be divided and allocated between the transferor and the transferee in the manner set forth in Section 1.6 of the Tax Matters Schedule. All distributions on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee.

9.8 Units and Issuance of Additional Units.

9.8.1 The Manager is hereby authorized to cause the Company to issue Investor Units as the Manager may determine in its sole discretion:

9.8.1.1 There shall be a class of Investor Units that shall be designated as "Preferred Investor Units" that shall have the rights and be subject to the obligations set forth in this Agreement. The Manager may issue the Preferred Investor Units to existing Members, any Affiliates of the Members, or any third parties at such times and in exchange for such Capital Contributions are determined by the Manager.

9.8.1.2 There shall be a class of Investor Units that shall be designated as "12% Current Pay Investor Units" that shall have the rights and be subject to the obligations set forth in this Agreement. The Manager may issue the 12% Current Pay Investor Units to existing Members, any Affiliates of the Members, or any third parties at such times and in exchange for such Capital Contributions are determined by the Manager.

9.8.2 In addition, notwithstanding anything to the contrary contained in this Agreement, the Manager is hereby authorized to cause the Company to issue Investor Units and such other Units in the Company, and to create such additional classes or groups of Members, and to amend this Agreement in connection therewith, as the Manager may determine in its sole discretion. Additional Units in the Company and additional classes or groups of Members may have such relative rights, power and duties as the Manager may determine to be in the best interests of the Company in its sole discretion, including, without limitation, rights, powers and duties senior to the Investor Units, the Members and any other existing classes or groups of Members, providing for priority returns on capital contributed, providing for ownership which is not proportionate to the Percentage Interest of the existing Investor Members, and/or providing for such other rights, powers and duties as the Manager may determine in its sole discretion.

SECTION 10
WITHDRAWAL OF MEMBER

10.1 Covenant Not to Withdraw or Dissolve. Notwithstanding any provision of the Act, each Member recognizes that the Members have entered into this Agreement based on their mutual expectation that all Members will continue as Members and carry out the duties and obligations undertaken by them hereunder and that, except as otherwise expressly required or permitted hereby, each Member hereby covenants and agrees not to (i) take any action to dissolve or to file a certificate of dissolution or its equivalent with respect to itself, (ii) take any action that would cause a Bankruptcy of such Member, (iii) voluntarily withdraw or attempt to withdraw from the Company, (iv) to the fullest extent permitted by law, exercise any power under the Act to dissolve the Company, (v) to the

fullest extent permitted by law, petition for judicial dissolution of the Company, or (vi) demand a return of such Member's contributions or profits without the unanimous consent of the Members (collectively, (i)-(vi) above shall be referred to as "Withdrawal").

10.2 Consequences of Withdrawal. If a Member attempts to take any action in breach of Section 10.1 hereof, such Member (the "Breaching Member") shall immediately cease to be a Member, shall only have the rights of a Unit Holder in Section 10.5 below, and the Breaching Member shall be liable in damages, without requirement of a prior accounting, to the Company for all costs and liabilities that the Company or any Member may incur as a result of such breach. In addition:

10.2.1 The Company shall have no obligation to pay to the Breaching Member its contributions, capital, or Profits, but may, by notice to the Breaching Member within 30 days of its Withdrawal, elect to make Breach Payments (as defined below) in complete satisfaction of the Breaching Member's Units in the Company;

10.2.2 If the Company does not elect to make Breach Payments, the Company shall treat the Breaching Member as if it were an unadmitted assignee of the Units of the Breaching Member and shall make distributions to the Breaching Member only of those amounts otherwise payable with respect to such Units hereunder;

10.2.3 The Company may apply any distributions otherwise payable with respect to such Units (including Breach Payments) to satisfy any claims it may have against the Breaching Member;

10.2.4 The Breaching Member shall continue to be liable to the Company for any unpaid Capital Contributions required hereunder with respect to such Units; and

10.2.5 Notwithstanding anything to the contrary hereinabove provided, unless the Company has elected to make Breach Payments to the Breaching Member in satisfaction of its Units, the Company may offer and sell (on any terms that are not manifestly unreasonable) the Units of the Breaching Member to any other Members or other Persons on the Breaching Member's behalf, provided that any Person acquiring such Units becomes a Member with respect to such Units and agrees to perform the duties and obligations imposed by this Agreement on the Breaching Member.

10.3 Breach Payments. For purposes hereof, "Breach Payments" shall be made in five equal installments, without any interest thereon. Each payment shall be equal to one-fifth of the Breach Amount (as defined below) and shall be paid on the next five consecutive anniversaries of the breach by the Breaching Member. The "Breach Amount" shall be an amount equal to the greater of $1 or one-half the Net Equity of the Breaching Member's Units on the day of such breach. The "Net Equity" of a Member's Units in the Company shall be the amount that would be distributed to such Member in liquidation if the Company sold all of its assets for their net fair market value. Net Equity shall be determined, without audit or certification, from the books and records of the Company by the accountants regularly employed by the Company. The Net Equity determination of such accountants shall be final and binding in the absence of a showing of gross negligence or willful misconduct. The Company may, at its sole election, prepay all or any portion of the Breach Payments at any time without penalty.

10.4 **No Bonding**. Notwithstanding anything to the contrary in the Act, the Company shall not be obligated to secure the value of the Breaching Member's Units by bond or otherwise; provided, however, that if a court of competent jurisdiction determines that, in order to continue the business of the Company such value must be so secured, the Company may provide such security. If the Company provides such security, the Breaching Member shall not have any right to participate in Company profits or distributions during the term of the breach, or to receive any interest on the value of such Units.

10.5 **Unit Holder Rights**. Unit Holders shall not have any rights of a Member, except the right to receive distributions and allocations of Profits and Losses occurring at the times and equal in amounts to those that relate to Member's owning the class of Units the Unit Holder holds. For purposes of clarification and illustration only, such Person shall not have a right to vote or consent (to the extent previously granted under this Agreement), a right to inspect the books and records of the Company and all other rights afforded Members (as opposed to Unit Holders) under this Agreement. References in this Agreement to Members (of any class) shall include Unit Holders (of any class) except with respect to the rights enumerated in this Section that do not apply to Unit Holders.

SECTION 11
DISSOLUTION OF COMPANY

11.1 **Liquidating Events**. The Company shall dissolve and commence winding up upon the first to occur of any of the following (each a "Liquidating Event"):

11.1.1 The determination of the Manager, in its sole and absolute discretion, to dissolve, wind up, and liquidate the Company;

11.1.2 The happening of any event that makes it unlawful or impossible to carry on the business of the Company;

11.1.3 The termination of the legal existence of the last remaining Member of the Company or the occurrence of any other event that causes the last remaining Member of the Company to cease to be a Member of the Company, unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act;

11.1.4 An event of Withdrawal or the removal of a Manager, unless at the time there is at least one other Manager who shall carry on the business of the Company, or unless the Company is continued in a manner permitted by this Agreement or the Act; or

11.1.5 The entry of a decree of judicial dissolution under Section 17-802 of the Act.

Upon the occurrence of an event of Withdrawal or the removal of the Manager (unless at the time there is at least one other Manager, who shall carry on the business of the Company), to the fullest extent permitted by law, the Members are hereby authorized to, and shall, within 90 days after the occurrence of the event of Withdrawal or the removal of the Manager, agree in writing (i) to continue the business of the Company and (ii) to appoint, effective as of the date of Withdrawal or removal, one or more additional Managers pursuant to Section 5.3.

Upon the occurrence of any event that causes the last remaining Member of the Company to cease to be a Member of the Company, to the fullest extent permitted by law, the Manager and the Personal Representative of such Member are hereby authorized to, and shall, within 90 days after the occurrence of the event that causes the last remaining Member to cease to be a Member of the Company, agree in writing (i) to continue the Company, and (ii) to the admission of the Personal Representative or its nominee or designee, as the case may be, as a Substitute Member of the Company, effective as of the occurrence of the event that caused the last remaining Member of the Company to cease to be a Member of the Company.

Notwithstanding any other provision of this Agreement, the Bankruptcy of a Member or Manager shall not cause said Member or Manager to cease to be, or to withdraw as a Member or Manager of the Company, and upon the occurrence of such an event, the Company shall continue without dissolution.

Notwithstanding any other provision of this Agreement, each of the Members, and the Manager waives any right it might have to agree in writing to dissolve the Company upon the Bankruptcy of a Member or Manager or the occurrence of an event that causes such party to cease to be, or to withdraw as, a Member of the Company.

In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 17-804 of the Act.

11.2 Winding Up. Upon the occurrence of a Liquidating Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors, the Manager and the Members. No Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. The Manager shall be responsible for overseeing the winding up and liquidation of the Company and shall take full account of the Company's liabilities and the Company Properties shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom, to the extent sufficient therefor, shall be applied and distributed in the following order:

11.2.1 First, to the payment and discharge of all of the Company's debts and liabilities to creditors other than Members or the Manager;

11.2.2 Second, to the payment and discharge of all of the Company's debts and liabilities to Members and/or the Manager; then

11.2.3 The balance, if any, to the Members in accordance with Section 4.1.2, above.

Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Regulations §1.704-1(b)(2)(ii)(*g*), if any Member has a deficit balance in its Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Members shall have no obligation to make any contribution to the capital of the Company with respect

to such deficit, and the negative balance of such party's Capital Account shall not be considered a debt owed by such Member to the Company or to any other person for any purpose whatsoever.

11.3 Distributions Held in Trust Reserves. At the discretion of the Manager, a pro rata share of the distributions that would otherwise be made to the Members pursuant to this Section 11 may be:

11.3.1 Distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent, conditional or unmatured liabilities or obligations of the Company or of the Members arising out of or in connection with the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Manager, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to this Agreement; or

11.3.2 Withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld amounts shall be distributed to the Members as soon as practicable.

11.4 Certificate of Cancellation. The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed to the Members in the manner provided for in this Agreement, and (ii) the Certificate shall have been canceled in the manner required by the Act.

11.5 Return of Contribution Nonrecourse to Members. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contributions. If the Company Properties remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contributions of one or more Members, such party or parties shall have no recourse against any Member, the Manager or any other party.

SECTION 12
REMEDIES

12.1 Default. In the event any Member (the "Defaulting Party") fails to timely perform any duty or obligation required under the terms of this Agreement, the Company shall have the right to pursue such legal remedies as are available under the Act and the laws of the State of Delaware in such manner and to such extent deemed to be in the best interest of the Company under the prevailing facts and circumstances, including, but not limited to, the institution of legal proceedings to specifically enforce the obligation of the Defaulting Party in accordance with this Agreement; provided, however, before pursuing such remedies the Defaulting Party shall be given written notice of the default and a period of 10 days after such notice is given in which to cure the default.

12.2 Suspension of Rights. Without limiting the rights of the Company, the Manager, any Member under this Section 12, and without being deemed an election of remedies, subsequent to the default by the Defaulting Party and until such time as the default has been cured, the Defaulting Party shall have no right to receive any distribution from the Company nor to vote or otherwise participate

in the management of Company affairs (as applicable) or any other rights as a Member under this Agreement or under the Act.

12.3 Security Interest. Without limiting the rights of the Company, the Manager, any Member under this Section 12, and without the exercise of any rights under this Section 12.3 being deemed an election of remedies, each Member hereby grants a security interest in its Units to the Company to secure the performance of its obligations as a Member under this Agreement, including, without limitation, its obligation to make Capital Contributions pursuant to Section 3 hereof. This Section 12.3 is a Security Agreement for purposes of the UCC. Each Member hereby warrants, covenants and agrees with respect to its Units that:

12.3.1 Except for the security interests granted hereby, such party is the legal owner and holder of all rights, title and interest in its Investor Units, free from any claim, security interest or encumbrance, and has the full power and lawful authority to sell and assign the same in accordance with the terms and provisions hereof. Such party agrees not to Transfer any right, title or interest in all or any part of such Investor Units in violation of this Agreement;

12.3.2 Such party authorizes the Company to file a UCC Financing Statement covering the Investor Units;

12.3.3 If an event of default by such party has occurred, then the Company shall be entitled to all the rights and remedies of a secured party under UCC, as enacted in the State of Delaware, including, without limitation, the right and power to sell, at public or private sale or sales, or otherwise dispose of, or utilize the Investor Units in any manner authorized or permitted under the UCC after default by a debtor, and to apply the proceeds toward the payment of any amounts owed to the Company and any costs and expenses and attorneys' fees and other legal expenses thereby incurred by the Company. The Security Agreement described in this Section 12.3 shall not be construed as relieving such party from any personal liability on any loan, or for any deficiency thereon. All expenses (including, without limitation, attorneys' fees and other legal expenses) actually incurred or paid by the Company in connection with or incident to any action to protect or enforce the Security Agreement shall be borne by such party. No delay or omission on the part of the Company in exercising any right hereunder shall operate as a waiver of any such right or any other right. A waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy on any future occasion; and

12.3.4 The Company shall, at its option, be entitled to bring suit against such party for any default (plus interest thereon at a default rate of 20% per annum) without exhausting or pursuing any other remedies provided herein.

SECTION 13
MISCELLANEOUS

13.1 Addresses and Notices.

13.1.1 Any notice, demand, request, report, document, or proxy materials required or permitted to be given or made to a Member under this Agreement shall be in writing and shall be deemed delivered and received by the intended recipient: (i) on the Business Day that such notice is sent by electronic mail or facsimile or hand delivered to the intended

recipient, provided that such notice is also sent by United States Mail, by certified mail, return receipt requested and postage paid thereon; (ii) the third Business Day after the date placed in United States Mail, certified mail, return receipt requested and postage paid thereon; and (iii) the first Business Day after notice is sent by express mail or other overnight mail service.

13.1.2 All notices shall be delivered to the address of the name of such Person on the subscription agreement completed by such Person for its acquisition of the Units or to such other address as such Person may from time to time specify by written notice to the Company. If a notice is sent to the Company, it shall be sent to the Company's principal place of business. The Manager may rely and shall be protected in relying on any notice or other document from a Member or other Person if believed by it to be genuine.

13.1.3 Any payment, distribution, or other matter to be given or made to a Member hereunder shall be deemed conclusively to have been given or made, and the obligation to give such notice or report or to make such payment shall be deemed conclusively to have been fully satisfied, when delivered in person or upon sending of such payment, distribution, or other matter to the record holder of the Units as the address indicated on the records of the Company, regardless of any claim of any Person who may have an interest in such Units by reason of assignment or otherwise.

13.1.4 An affidavit or certificate of making of any notice, demand, request, report, document, proxy material, payment, distribution, or other matter in accordance with the provisions of this Section 13.1 executed by the Manager or its agents or the mailing organization shall be prima facie evidence of the giving or making of such notice, demand, request report, document, proxy material, payment, distribution, or other matter. If any notice, demand, request, report, document, proxy material, payment, distribution, or other matter given or made in accordance with the provisions of this Section 13.1 is returned marked to indicate that it was unable to be delivered, such notice, demand, request, report, documents, proxy materials, payment, distribution, or other matter and, if returned by the United States Postal Service (or other physical mail delivery mail service outside the United States of America), any subsequent notices, demands, requests, reports, documents, proxy materials, payments, distributions, or other matters shall be deemed to have been duly given or made without further mailing (until such time as such record Member or another Person notifies the Company of a change in his, her, or its address) or other delivery if they are available for the Member at the principal office of the Company for a period of one year from the date of the giving or making of such notice, demand, request, report, document, proxy material, payment, distribution, or other matter to the other Members.

13.2 Creditors. None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Company.

13.3 Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement or condition. The due performance or observance by a party of any of its obligations under this Agreement may be waived only by a writing signed by the party against whom enforcement of such waiver is sought, and any such waiver shall be effective only to the extent specifically set forth in such writing.

13.4 **Severability**. Every provision of this Agreement is intended to be severable. If any portion of this Agreement is determined to be illegal or invalid for any reason, it is the intent of the parties that such determination shall not affect the validity or legality of the remainder of this Agreement.

13.5 **Governing Law; Parties in Interest**. This Agreement will be governed by and construed according to the laws of the State of Delaware, without regard to the principles of conflict of laws, and will bind and inure to the benefit of the Members and the Manager, and their respective heirs, executors, administrators, successors, legal representatives, permitted assigns and Personal Representatives. The Covered Persons and their heirs, executors, administrators and successors shall be entitled to receive the benefits of this Agreement.

13.6 **Exclusive Jurisdiction**. Each of the Members and the Manager and each Person holding any Unit or beneficial interest in the Company (whether through a broker, dealer, bank, trust company, or clearing corporation or an agent of any of the foregoing or otherwise), to the fullest extent permitted by law, (i) irrevocably agrees that any claims, suits, actions, or proceedings arising out of our relating in any way to this Agreement (including any claims, suits, actions to interpret, apply, or enforce (A) the provisions of this Agreement, (B) the duties, obligations, or liabilities of the Company to the Members or the Manager, or of Members or the Manager of the Company, or among Members, (C) the rights or powers of, or restrictions on, the Company, the Members or the Manager, (D) any provision of the Delaware Limited Liability Company Act, or (E) any other instrument, document, agreement or certificate contemplated by any provision of the Delaware Limited Liability Company Act relating to the Company (regardless of whether such claims, suits, actions or proceedings (x) sound in contract, tort, fraud or otherwise, (y) are based on common law, statutory, equitable, legal or other grounds, or (z) are derivative or direct claims)), shall be exclusively brought in the Superior Court located in the City of Phoenix of the State of Arizona or, if such court does not have subject matter jurisdiction thereof, any other court in the State of Arizona with subject matter jurisdiction; (ii) irrevocably submits to the exclusive jurisdiction of such courts in connection with any such claim, suit, action or proceeding; (iii) irrevocably agrees not to, and waives any right to, assert in any such claim, suit, action or proceeding that (A) it is not personally subject to the jurisdiction of such courts or any other court to which proceedings in such courts may be appealed, (B) such claim, suit, action or proceeding is brought in an inconvenient forum, or (C) the venue of such claim, suit, action or proceeding is improper; (iv) expressly waives any requirement for the posting of a bond by a party bringing such claim, suit, action or proceeding; (v) consents to process being served in any such claim, suit, action or proceeding by mailing, certified mail, return receipt requested, a copy thereof to such party at the address in effect for notices hereunder, and agrees that such service shall constitute good and sufficient service of process and notice thereof; *provided*, that nothing in clause (v) hereof shall affect or limit any right to serve process in any other manner permitted by law; and (vi) irrevocably waives any and all right to trial by jury in any such claim, suit, action or proceeding.

13.7 **Waiver of Lis Pendens and Partition**. The Members recognize that no such party has any direct right in the Company Properties but only an interest in the Company which is deemed to be personal property. Nevertheless, because the Company may suffer irreparable financial injury if a lis pendens or an action for partition were filed with respect to the Company Properties in connection with a Company dispute, each Member hereby waives, to the fullest extent permitted by law, any such right to file a lis pendens against the Company Properties or an action for partition thereof.

13.8 Execution in Counterparts. This Agreement may be executed in counterparts, all of which taken together shall be deemed one original.

13.9 Incorporation by Reference. Every exhibit, schedule and other appendix attached to this Agreement is deemed incorporated herein by this reference.

13.10 Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act, date of notice, event or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday or legal holiday in the State of Arizona, in which event the period shall run until the end of the next day that is not a Saturday, Sunday or legal holiday.

13.11 Titles and Captions. All article, section or paragraph titles or captions contained in this Agreement are for convenience only and are not deemed part of the context hereof.

13.12 Pronouns and Plurals. All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or Persons may require.

13.13 Construction. Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Member.

13.14 Entire Agreement. Subject to any Side Letters entered into by the Manager and any Member, this Agreement and the documents referenced herein contain the entire understanding amongst the Company, the Manager and the Members, and supersedes any prior understandings and agreements amongst them representing the subject matter contained herein.

13.15 Limitation on Benefits of this Agreement. No Person or entity other than the Members and the Company (or the Covered Persons) is or shall be entitled to bring any action to enforce any provision of this Agreement against any Member or the Company. All covenants, undertakings, and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the Members (or their respective successors and assigns as permitted hereunder) and the Company.

13.16 Additional Actions and Documents. Each Member shall take or cause to be taken such further actions and shall execute, acknowledge, deliver, and file such further documents and instruments, and use reasonable efforts to obtain such consents, and provide all information and take or refrain from taking action, as may be necessary or as may be reasonably requested to achieve the purposes of this Agreement.

13.17 Leveraging. No Member or Unit Holder is permitted to leverage such Member's or Unit Holder's Units for any purpose unless otherwise approved by the Manager.

13.18 Spousal Consent. Any married individual who becomes a Member or Unit Holder must have his or her non-Member or non-Unit Holder spouse execute the Spousal Consent in the form attached hereto (as such may be amended from time to time, the "Spousal Consent"), and the execution of such Spousal Consent shall be a condition precedent to becoming a Member or Unit Holder. If an individual becomes married after such individual is already a Member or Unit Holder,

then such individual shall cause his or her non-Member or non-Unit Holder spouse to execute the Spousal Consent as soon as practicable after the individual becomes married.

13.19 Side Letters. Notwithstanding any provisions of this Agreement (including Section 13.14 hereof) to the contrary, it is hereby acknowledged and agreed that the Company, and the Manager on its own behalf or on behalf of the Company, may, without the approval of any other Member, enter into a side letter or similar agreement (each, a "Side Letter") to or with a Member which has the effect of establishing rights under, or altering or supplementing the terms of, this Agreement or of any subscription agreements between such Member and the Company. The parties hereto agree that any terms contained in a Side Letter shall govern with respect to such Member notwithstanding the provisions of this Agreement or of any subscription agreement or Private Placement Memoranda. Except as required by law, the Manager and the Company shall not be required to deliver the Side Letter or disclose the existence of any Side Letter or the terms and agreements contained therein to any Member. Notwithstanding the above, a Side Letter may not modify, terminate, amend, or change the rights of the Manager without the express written consent of the Manager.

13.20 Amendment. The Manager shall have the right to amend this Agreement as specifically set forth herein, including:

13.20.1 with respect to those items specifically set forth in Section 5.1 above, elsewhere in this Agreement or to effect a ministerial change which does not materially and adversely affect the rights of Members; and

13.20.2 in connection with the creation of such additional Units or other forms of interest in the Company to incorporate the rights and obligations relating to such additional Units or other forms of interest in the Company.

If the Manager amends this Agreement per the terms of this Agreement without the necessity of the affirmative vote of a Majority in Interest, the Manager may require any and all Members to execute an amended and restated Limited Liability Company Agreement for the Company, which will replace and supersede this Agreement. Prior to requiring execution by the Members, the Manager shall provide each Member with a written statement verifying and representing that the agreement is being amended per the terms of this Agreement and does not require the affirmative vote of a Majority in Interest. To the extent such requirement has been satisfied and any Member fails to timely execute such an amended and restated Limited Liability Company Agreement for the Company, the Manager shall have the power to execute such amended agreement on behalf of such Member, in such party's name and as its attorney-in-fact. Any other proposed amendment to this Agreement shall be adopted and effective as an amendment if it receives the affirmative vote of a Majority in Interest and the written consent of the Manager.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Persons comprising Manager and the Members have executed this Agreement as of the date first set forth above.

MANAGER:

ELLIOT & 51ST STREET MANAGER LLC,
an Arizona limited liability company

DocuSigned by:
By: Jennifer Schrader
55B0A4B4BA0A4A5...
Name: Jennifer Schrader
Its: Authorized Signatory

MEMBERS' SIGNATURE PAGES

TO BE SEPARATELY ATTACHED HERE

TAX MATTERS SCHEDULE

1.1 Definitions. The capitalized words and phrases used in this Tax Matters Schedule shall have the following meanings:

1.1.1 "Adjusted Agreed Value" means, with respect to any Company Property, the Company Property's Initial Agreed Value with the adjustments required under this Agreement.

1.1.2 "Adjusted Capital Account Balance" means, with respect to any Tax Member, the Tax Member's Capital Account as of the end of the relevant Fiscal Year, after increasing the Capital Account by the amounts which the Tax Member is obligated to restore under this Agreement or is deemed obligated to restore pursuant to Regulation Sections 1.704-2(g) and (i)(5) (i.e., the Tax Member's share of Minimum Gain and Member Minimum Gain).

1.1.3 "Adjusted Capital Account Deficit" means, with respect to any Tax Member, the deficit balance, if any, in the Tax Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

1.1.3.1 The Capital Account shall be increased by the amounts which the Tax Member is obligated to restore under this Agreement or is deemed obligated to restore pursuant to Regulation Sections 1.704-2(g) and (i)(5) (i.e., the Tax Member's share of Minimum Gain and Member Minimum Gain); and

1.1.3.2 The Capital Account shall be decreased by the items described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

This definition of Adjusted Capital Account Deficit is intended to comply with Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted and applied in a manner consistent with that Regulation.

1.1.4 "Capital Account" means, with respect to each Tax Member, the capital account maintained in the Company's books and records in the following manner:

1.1.4.1 Each Tax Member's Capital Account shall be credited by:

1.1.4.1.1 the amount of money contributed by the Tax Member to the Company;

1.1.4.1.2 the fair market value of any property contributed by the Tax Member to the Company (net of liabilities secured by such property that the Company is considered to assume or take subject to under Section 752 of the Code);

1.1.4.1.3 the amount of Profits or items of income and gain allocated to the Tax Member pursuant to Subsections 1.2, 1.3 or 1.5, but not items of income and gain allocated to the Tax Member pursuant to Subsection 1.4; and

1.1.4.1.4 the amount of Company liabilities that are assumed by the Tax Member under Regulation Section 1.704-1(b)(2)(iv)(c).

1.1.4.2 Each Tax Member's Capital Account shall be debited by

1.1.4.2.1 the amount of money distributed to the Tax Member;

1.1.4.2.2 the fair market value of any property distributed to the Tax Member (net of liabilities secured by such property that the Tax Member is considered to assume or take subject to under Section 752 of the Code);

1.1.4.2.3 the amount of Losses and items of deduction and loss allocated to the Tax Member pursuant to Subsections 1.2, 1.3 or 1.5, but not items of income and gain allocated to the Tax Member pursuant to Subsection 1.4; and

1.1.4.2.4 the amount of the Tax Member's liabilities that are assumed by the Company under Regulation Section 1.704-1(b)(2)(iv)(c).

1.1.4.3 If Company Property is distributed to an Tax Member, the Capital Accounts of all Tax Members shall be adjusted in the same manner as if the distributed Company Property were sold in a taxable transaction for an amount equal to the gross fair market value of such Company Property on the date of distribution (taking into account Section 7701(g) of the Code) and the Profit or Loss from such disposition were allocated among the Tax Members pursuant to this Agreement.

1.1.4.4 If money or other property (other than a de minimis amount) is

1.1.4.4.1 contributed to the Company by a new or existing Tax Member in exchange for Units, or

1.1.4.4.2 distributed by the Company to a retiring or continuing Tax Member as consideration for Units in the Company, or

1.1.4.4.3 Units are granted to a new or existing Tax Member in exchange for services rendered to the Company and the Unrecovered Capital Contributions of the Tax Members are adjusted as provided in this Agreement at the time of such issuance, then, if the Manager deems such an adjustment necessary to reflect the economic interests of the Tax Members, the Agreed Value of the Company Property shall be adjusted to equal its gross fair market value on such date (taking into account Section 7701(g) of the Code) and the Capital Accounts of all Tax Members shall be adjusted in the same manner as if all the Company Property had been sold in a taxable transaction for such amount on such date and the Profits or Losses allocated to the Tax Members pursuant to this Agreement.

1.1.4.5 To the extent that Regulation Section 1.704-1(b)(2)(iv)(m) requires an adjustment to the tax basis of any Company Property pursuant to Code Section 734(b) or Code Section 743(b) to be taken into account in determining Capital Accounts, the Agreed Value of the Company Property and the Capital Accounts of the Tax Members shall be adjusted in the manner required under that Section of the Regulations.

1.1.4.6 The transferee of any Units transferred pursuant to this Agreement shall succeed to the Capital Account of the transferor that is attributable to the transferred Units. The parties intend that the Capital Accounts of all Tax Members be maintained in accordance with Regulation Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted in a manner consistent with that Section of the Regulations.

1.1.5 "Code" means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

1.1.6 "Initial Agreed Value" means, with respect to Company Property contributed to the Company, the Company Property's fair market value upon contribution (as determined by mutual agreement of the contributing Tax Member and the Company) and, with respect to all other Company Property, the Company Property's adjusted basis for federal income tax purposes at the time it is acquired.

1.1.7 "Nonrecourse Deductions" has the meaning set forth in Regulation Section 1.704-2(b)(1). The amount of Nonrecourse Deductions shall be determined according to the provisions of Regulation Section 1.704-2(c).

1.1.8 "Nonrecourse Liability" has the meaning set forth in Regulation Section 1.704-2(b)(3).

1.1.9 "Member Nonrecourse Debt" has the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations for "Member nonrecourse debt."

1.1.10 "Member Nonrecourse Debt Minimum Gain" has the meaning set forth in Regulation Section 1.704-2(i) for "Member nonrecourse debt minimum gain."

1.1.11 "Member Nonrecourse Deductions" has the meaning set forth in Regulation Section 1.704-2(i) for "Member nonrecourse deductions."

1.1.12 "Company Minimum Gain" has the meaning set forth in Regulation Section 1.704-2(b)(2) for "Company minimum gain."

1.1.13 "Profits and Losses" means, for each Fiscal Year or other period for which Profits and Losses must be computed, the Company's taxable income or loss determined in accordance with Code Section 703(a), adjusted as follows:

1.1.13.1 Taxable income or loss shall include all items of income, gain, loss, or deduction which Code Section 703(a)(1) requires to be stated separately;

1.1.13.2 Profits or Losses shall include any tax-exempt income of the Company not otherwise taken into account in computing Profits or Losses;

1.1.13.3 Profits or Losses shall include Company expenditures which are described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(i)) and which are not otherwise taken into account in computing Profits or Losses;

1.1.13.4 gain or loss resulting from any taxable disposition of Company Property shall be computed by reference to the Company Property's Adjusted Agreed Value, rather than by reference to the Company Property's adjusted basis for federal income tax purposes;

1.1.13.5 in computing Profits and Losses, if the Adjusted Agreed Value of Company Property differs from the Company Property's adjusted basis for federal income tax purposes, then the amount of depreciation, depletion, or amortization for a period with respect to the

Company Property shall be the amount that bears the same relationship to the Adjusted Agreed Value of such Company Property as the depreciation (or cost recovery deduction), depletion, or amortization computed for tax purposes with respect to such Company Property for such period bears to the adjusted tax basis of such Company Property or, if the Company Property has a zero basis for tax purposes, the amount determined under any reasonable method selected by the Manager;

1.1.13.6 Profits and Losses shall not include any items which are specially allocated pursuant to Subsection 1.5 or 1.6 hereof.

1.1.14 "Treasury Regulations" or "Regulations" means the income tax regulations, including any temporary regulations, promulgated pursuant to the Code as such regulations may be amended or superseded from time to time.

1.2 General Allocations of Profits and Losses. After making any special allocations contained in Section 1.5, Profits and Losses for any Fiscal Year shall be allocated in a manner that causes the Adjusted Capital Account Balances of each Tax Member to equal the amount that would be distributed to such Tax Member pursuant to Section IV of this Agreement if all the Company's assets were sold for their respective Adjusted Agreed Values (with payments to any holder of a nonrecourse debt being limited to the Adjusted Agreed Value of the assets securing repayment of such debt), and the proceeds of such hypothetical sale (net of debt repayments) were applied and distributed in accordance with Section IV of this Agreement.

1.2.1 Special Loss Allocation. If the *Company* incurs Losses at any time when the Tax Members' Adjusted Capital Account Balances have been reduced to or below zero, such Losses shall be allocated to the Manager.

1.2.2 Special Profits Allocation. If the Company incurs Profits at any time when the Tax Members' Adjusted Capital Account Balances are less than zero and the hypothetical liquidation described in this Section 1.2 would not result in any distributions to the Tax Members, Profits shall be allocated to the Tax Member in proportion to their negative Adjusted Capital Account Balances, until such negative balances have been eliminated.

1.3 Loss Limitations.

1.3.1 No Losses shall be allocated to any Tax Member pursuant to Section 1.2 if the allocation would create or increase an Adjusted Capital Account Deficit for that Tax Member. All Losses subject to the limitation set forth in this Subsection 1.3.1 shall be allocated among the remaining Tax Members in the ratio of their Percentage Interest. If all Tax Members are subject to the limitation of this Subsection 1.3.1, Losses shall be allocated among the Tax Members in the ratio of their Percentage Interests or in such other ratio that is in accordance with the Tax Members' Units and interest in the Company, as determined by the Manager. Any other provision of this Agreement to the contrary notwithstanding, if any Losses are allocated pursuant to this Subsection 1.3.1, those Losses shall be recovered, on a pari passu basis, from the next available Profits of the Company.

1.4 Section 704(c) Allocations.

1.4.1 Contributed Company Property. In accordance with Code Section 704(c) and the Regulations thereunder, as well as Regulation Section 1.704-1(b)(2)(iv)(d)(3), income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall be allocated among the Tax Members, solely for tax purposes, so as to take into account any variation between the adjusted basis of the property to the Company for federal income tax purposes and its fair market value at the date of contribution (or deemed contribution) using any method available to the Company under Regulation Section 1.704-3 as determined by the Manager in its sole and absolute discretion.

1.4.2 Adjustments to Agreed Value. If the Adjusted Agreed Value of any Company Property is adjusted as provided in Subsection 1.1.3.4, subsequent allocations of income, gain, loss, and deduction with respect to the Company Property shall, solely for tax purposes, take account of any variation between the adjusted basis of the Company Property for federal income tax purposes and its Adjusted Agreed Value in the manner as provided under Code Section 704(c) and the Regulations thereunder using any method available to the Company under Regulation Section 1.704-3 as determined by the Manager in its sole and absolute discretion.

1.5 Regulatory Allocations. The following allocations shall be made in the following order:

1.5.1 Company Minimum Gain Chargeback. Except as set forth in Regulation Section 1.704-2(f)(2), (3), (4), and (5), if, during any Fiscal Year, there is a net decrease in Company Minimum Gain, each Tax Member, prior to any other allocation pursuant to this Tax Matters Schedule, shall be specially allocated items of gross income and gain for such Fiscal Year (and, if necessary, succeeding Fiscal Years) in an amount equal to that Tax Member's share of the net decrease of Company Minimum Gain, computed in accordance with Regulation Section 1.704-2(g)(2). Allocations of gross income and gain pursuant to this Section 1.5.1 shall be made first from gain recognized from the disposition of Company Property subject to Nonrecourse Liabilities to the extent of the Minimum Gain attributable to that Company Property, and thereafter, from a pro rata portion of the Company's other items of income and gain for the Fiscal Year. It is the intent of the parties hereto that any allocation pursuant to this Section 1.5.1 shall constitute a "minimum gain chargeback" under Regulation Section 1.704-2(f).

1.5.2 Member Nonrecourse Debt Minimum Gain Chargeback. Except as set forth in Regulation Section 1.704-2(i)(4), if, during any Fiscal Year, there is a net decrease in Member Nonrecourse Debt Minimum Gain, each Tax Member with a share of that Member Nonrecourse Debt Minimum Gain (determined under Regulation Section 1.704-2(i)(5)) as of the beginning of the Fiscal Year, shall be specially allocated items of income and gain for such Fiscal Year (and, if necessary, succeeding Fiscal Years) in an amount equal to that Tax Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain, computed in accordance with Regulation Section 1.704-2(i)(4). Allocations of gross income and gain pursuant to this Section 1.5.2 shall be made first from gain recognized from the disposition of Company Property subject to Member Nonrecourse Debt to the extent of the Member Minimum Gain attributable to that Company Property, and thereafter, from a pro rata portion of the Company's other items of income and gain for the Fiscal Year. It is the intent of the parties hereto that any allocation pursuant to this Section 1.5.2 shall constitute a "Member nonrecourse debt minimum gain chargeback" under Regulation Section 1.704-2(i)(4).

1.5.3 Qualified Income Offset. If a Tax Member unexpectedly receives an adjustment, allocation, or distribution described in Regulation Section 1.704-1(b)(2)(ii)(d)(4),(5), or (6), then, to the extent required under Regulations Section 1.704-1(b)(2)(d), such Tax Member shall be allocated items of income and gain of the Company (consisting of a pro rata portion of each item of Company income, including gross income and gain for that Fiscal Year) before any other allocation is made of Company items for that Fiscal Year, in the amount and in proportions required to eliminate the Tax Member's Adjusted Capital Account Deficit as quickly as possible. This Section 1.5.3 is intended to comply with, and shall be interpreted consistently with, the "qualified income offset" provisions of the Regulations promulgated under Code Section 704(b).

1.5.4 Nonrecourse Deductions. Nonrecourse Deductions for a Fiscal Year or other period shall be allocated among the Tax Members in the ratio that they share Profits and Losses for that period, as reasonably determined by the Company's tax advisors under the direction of the Manager.

1.5.5 Member Nonrecourse Deductions. Any Member Nonrecourse Deduction for any Fiscal Year or other period attributable to a Member Nonrecourse Debt shall be allocated to the Tax Member who bears the risk of loss for the Member Nonrecourse Debt in accordance with Regulation Section 1.704-2(i).

1.5.6 Regulatory Allocations. The allocations included in Section 1.5 are included to comply with the Regulations under Section 704(b) of the Code. In allocating other items of income, gain, loss and deduction, the allocations included in Section 1.5 shall be taken into account so that to the maximum extent possible the net amount of income, gain, loss and deduction allocated to each Tax Member will be equal to the amount that would have been allocated to each Tax Member if the allocations contained in Section 1.5 had not been made.

1.6 Varying Interests; Allocations in Respect to Transferred Units. Profits, Losses, and other items shall be calculated on a monthly, daily, or other basis permitted under Code Section 706 and the Regulations, using any conventions permitted by law and selected by the Manager. If any Unit is sold, assigned, or transferred during any Fiscal Year in compliance with the provisions of this Agreement, Profits, Losses, each item thereof, and all other items attributable to such Unit for such Fiscal Year shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the Fiscal Year in accordance with Code Section 706(d), using any conventions permitted by law and selected by the Manager.

1.7 Company Representative.

1.7.1 The Manager shall designate the Company's "Company Representative", as defined under Code Section 6223. The Manager initially designates John C. Loeffler to serve as the Company Representative. The Company Representative (including any individuals required to be designated in connection with the designation of the Company Representative) may only be removed and replaced by the Manager in its sole and absolute discretion. All material decisions made by, or action taken by, the Company's Company Representative shall be made at the direction of the Manager, in the Manager's sole and absolute discretion.

1.7.2 Reserved.

1.7.3 The Company Representative shall represent the Company in any disputes, controversies or proceedings with the IRS or with any state, local, or non-U.S. taxing authority. The Company Representative shall, at the direction of the Manager in the Manager's sole and absolute discretion, have the power to take such actions on behalf of the Company in any and all proceedings with the IRS and any other such taxing authority as the Manager determines to be appropriate and any decision made by the Company Representative at the direction of the Manager shall be binding on all Members. The Members acknowledge and agree that, if directed by the Manager, the Company Representative shall have the power to cause the Company to elect out of the Company-level audit procedures to the extent allowed under Code Section 6221(b) or to elect out of Company-level tax assessments under Code Section 6226, in each instance, as directed by the Manager in the Manager's sole and absolute discretion. Further, to the extent requested to do so by the Company Representative at the direction of the Manager, the Members shall timely file amended returns and pay tax liabilities (including interest and penalties) under Code Section 6225(c)(2), it being understood that no distributions shall be made to the Members to pay such tax liability under Section 4.1.3.3, except as determined by the Manager in its sole and absolute discretion. The Members agree to cooperate in good faith, including, without limitation, by timely providing information requested by the Company Representative and making elections and filing amended returns requested by the Company Representative, to give effect to the preceding sentence. Subject to the foregoing, to the extent required to do so under the Subchapter C of Subtitle A, Chapter 63 of the Code, as amended by P.L. 114-74, the Bipartisan Budget Act of 2015 (together with any subsequent amendments thereto, Treasury Regulations promulgated thereunder, and published administrative interpretations thereof) (the "BBA Audit Procedure"), the Company shall make any payments of assessed amounts under Code Section 6221 of the BBA Audit Procedure and shall allocate any such assessment among the current or former Members of the Company for the "reviewed year" to which the assessment relates in a manner that reflects the current or former Members' respective Units and interests in the Company for that reviewed year based on such Member's share of such assessment as would have occurred if the Company had amended the tax returns for such reviewed year and such Member incurred the assessment directly (using the tax rates applicable to the Company pursuant to Code Section 6225(b)). To the extent that the Company is assessed amounts under Code Section 6221(a), the current or former Member(s) to which this assessment relates shall pay to the Company such Member's share of the assessed amounts including such Member's share of any additional accrued penalties and interest assessed against the Company relating to such Member's share of the assessment (together, the "Member Assessment"), upon thirty (30) days of written notice from the Company Representative requesting the payment. If a Member does not timely pay to the Company the full amount of the Member Assessment (the "Defaulting Member"), then the shortfall shall be treated as a loan (the "Tax Loan") by the Company to the Defaulting Member, with the following results:

1.7.3.1 the unpaid balance of the Tax Loan bears interest at the rate of 7%, compounded quarterly, from the day that the advance is deemed made until the date that the Tax Loan, together with all accrued interest, is repaid to the Company;

1.7.3.2 all amounts otherwise distributable or payable by the Company to the Defaulting Member shall be withheld until the loan and all accrued interest have been paid in full;

1.7.3.3 the payment of the Tax Loan and accrued interest is secured by a security interest in the Defaulting Member's Units; and

1.7.4 in addition to the other rights and remedies granted to it under this Agreement, the Company has the right to take any action available at law or in equity, at the cost and expense of the Defaulting Member, to obtain payment from the Defaulting Member of the unpaid balance of the Tax Loan and all accrued and unpaid interest. On any default in the payment of any Member Assessment, the Company is entitled to all the rights and remedies of a secured party under the Uniform Commercial Code of the State of Delaware with respect to the security interest granted. Each Defaulting Member hereby authorizes the Company, as applicable, to prepare and file financing statements and other instruments that the Manager may deem necessary to effectuate and carry out the preceding provisions of this Section. Each Member agrees that the aforesaid liquidated damages provisions constitute reasonable compensation to the Company and its non-defaulting Members for the additional risks and damages sustained by each of them, when and if any Defaulting Member shall default on an obligation to pay any Assessed Amount.

1.7.5 At the sole and absolute discretion of the Manager, with respect to current Members, the Company may alternatively allow some or all of a Member's obligation pursuant to this Section 1.7 to be applied to, and reduce, the next distribution(s) or payments otherwise payable to such Member under this Agreement. Notwithstanding anything to the contrary in this Agreement, the provisions contained in this Section 1.7 shall survive (w) the dissolution of the Company, (y) the Withdrawal or Redemption of any Member, or (z) the Transfer of any Member's Units.

1.7.6 Any Person designated as the Company Representative shall receive no compensation (other than compensation, if any, otherwise specified in this Agreement) from the Company or its Members for its services in that capacity.

1.7.7 The Manager may, with respect to the Company, make the election provided under Code Sections 754 and 1400Z of the Code and any corresponding provision of applicable state law in its sole and absolute discretion.

1.7.8 Each Member covenants (i) to timely file all tax returns required to be filed by such Person pursuant to the laws of each applicable taxing jurisdiction, (ii) to timely provide any information requested by the Manager, the Company Representative or the Company to comply with any tax law or in connection with the Company's obligation relating to any taxing jurisdiction, including, without limitation, to timely provide information requested by the Company Representative as needed to comply with the provisions of the BBA Audit Procedure, and (iii) with respect to each such filing, to report all Company items on such Person's income tax return in a manner consistent with the tax return of the Company. However, if a Member reports a Company item on such Person's income tax return in a manner inconsistent with the tax return of the Company, then such Person shall notify the Manager of such treatment before filing such Person's income tax return. If a Member fails to comply with any provision of this Section 1.7.8, then such Person shall be liable to the Company for any expenses, including professionals' fees, tax, interest, penalties, or litigation costs, that may arise as a consequence of such inconsistent reporting or breach, including those arising as a result of an audit by a taxing jurisdiction. The obligations of any Member set forth in this Section 1.7.8 shall apply on a flow through basis and apply to the ultimate beneficial owners of Units.

1.8 <u>Miscellaneous</u>.

1.8.1 Returns and Other Elections. The Manager shall cause the preparation and timely filing of all tax returns required pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. All elections permitted to be made by the Company under federal or state laws shall be made by the Manager in his sole discretion.

1.8.2 Knowledge. Each Member acknowledges that he understands the economic and income tax consequences of the allocations under this Agreement and agrees to be bound by the provisions of this Tax Matters Schedule in reporting the Member's taxable income and loss from the Company, if any.

1.8.3 Amendment. The Manager may amend this Tax Matters Schedule, as the Manager deems necessary in the Manager's sole discretion, to (i) comply with the Code and the Regulations promulgated under Code Section 704(b); (ii) comply with the provisions of the Bipartisan Budget Act of 2015 and any U.S. Treasury Regulations or other administrative pronouncements promulgated thereunder and administer the effects of such provisions in an equitable manner; and (iii) comply with a final determination of the IRS or state, local, or non-U.S. taxing authority, a court, or an agreement of the IRS or state, local, or non-U.S. taxing authority with the Company Representative, that a Unit shall be treated as equity rather than debt for federal, state, local, or non-U.S. tax purposes, and each Member agrees to be bound by the provisions of any such amendment.

1.8.4 FATCA. Each Member shall deliver to the Company such other tax forms or other documents as shall be prescribed by applicable law, to the extent applicable, (i) to demonstrate that payments to such Member under this Agreement are exempt from any United States withholding tax imposed pursuant to FATCA or (ii) to allow the Company to determine the amount to deduct or withhold under FATCA from a payment hereunder. Each Member further agrees to complete and to deliver to the Company from time to time, so long as it is eligible to do so, any successor or additional form required by the Internal Revenue Service or reasonably requested by the Company in order to secure an exemption from, or reduction in the rate of, United States withholding tax. "FATCA" shall mean Sections 1471 through 1474 of the Code and any applicable Treasury regulation promulgated thereunder or published administrative guidance implementing such Sections whether in existence on the date hereof or promulgated or published hereafter.

SPOUSAL CONSENT
TO
AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

dated and effective as of _____ ____, 20__

The undersigned is the spouse of a Member and acknowledges that the undersigned has read the foregoing Amended and Restated Limited Liability Company Agreement dated and effective as of February __, 2024 (the "Agreement"), by and among the Members and the Manager of SP 10 Preferred Equity, LLC, a Delaware Limited Liability Company (the "Company") and understands its provisions. The undersigned hereby expressly approves of and agrees to be bound by the provisions of the Agreement in its entirety, including, but not limited to, those provisions relating to the sales and transfers of Units and the restrictions thereon. If the undersigned predeceases the undersigned's spouse when the undersigned's spouse owns any Units in the Company, the undersigned agrees not to devise or bequeath whatever community property interest or quasi-community property interest the undersigned may have in the Company in contravention of the Agreement.

Dated: _____ By: _____

Print name: _____