SP 10 PREFERRED EQUITY, LLC
a Delaware limited liability company

AMENDED AND RESTATED PRIVATE PLACEMENT MEMORANDUM

Offer of Two Classes of Units

(Preferred Investor Units and 12% Current Pay Investor Units)

February 21, 2024

Questions and requests for information may be directed to:

SP 10 PREFERRED EQUITY, LLC
Attention: Investor Services
c/o Caliber Services, LLC.
8901 E. Mountain View Road, Suite 150
Scottsdale, Arizona 85258
Telephone: 480-295-7600

THIS IS NOT AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO BUY THE UNITS DESCRIBED HEREIN IN ANY JURISDICTION TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH AN OFFER OR SALE.

SP 10 PREFERRED EQUITY, LLC
a Delaware limited liability company

THIS OFFERING IS LIMITED TO ACCREDITED INVESTORS

No Minimum Offering Amount
Maximum Offering Amount of $30,200,000 (subject to increase)

Minimum Subscription for Preferred Units: $100,000
Minimum Subscription for 12% Current Pay Units: $100,000

Price Per Preferred Unit: $1,000.00
Price Per 12% Current Pay Unit: $1,000.00

This Amended and Restated Private Placement Memorandum (this "Memorandum") describes the offering (the "Offering") of limited liability company interests in SP 10 Preferred Equity, LLC, a Delaware limited liability company (the "Fund"). The Units (as defined below) will be sold pursuant to and in accordance with the terms set forth in this Memorandum. The Units will be sold exclusively to "*Accredited investors*" (as such term is defined in Rule 501 of Regulation D, as promulgated under Section 4(2) of the Securities Act of 1933 (as amended, the "Securities Act")). The Fund is treated as a partnership for federal income tax purposes.

The Fund is managed by its managing member, Elliot & 51st Street Manager LLC, an Arizona limited liability company (the "Managing Member"), an affiliate of the Fund's sponsor. The sponsor of the Fund is Caliber – The Wealth Development Company, a trade name used to refer to a group of affiliated entities directly or indirectly controlled by CaliberCos, Inc., a Delaware corporation ("Caliber"). The Sponsor is a middle market alternative asset manager who is involved in acquiring, managing, and disposing of alternative assets.

This Memorandum provides important information you should know before investing in the Units (as defined below). Please read it carefully before you invest and keep it for future reference. You should rely only on the information contained in this Memorandum or information to which we have referred to you. We have not authorized anyone to provide you with additional information or information different from that contained in this Memorandum.

This Memorandum amends and restates in its entirety the prior Private Placement Memorandum for the current offering that was dated December 1, 2023 (the "Initial Memorandum"). The following items highlight the major differences between the Initial Memorandum and this Memorandum: (1) the Initial Memorandum contemplated a total capital raise under this offering equal to $17,200,000 (subject to increase), which has been revised in this Memorandum to a total capital raise of $30,200,000 (in the aggregate for all Units sold hereunder); and (2) the Initial Memorandum only contemplated the offer and sale of the Preferred Units, and due to challenges attracting capital the offering has been revised to offer both the Preferred Units and the 12% Current Pay Units under this Memorandum.

Brief Overview of the Fund's Investment Objectives

The Fund's primary investment objective is to generate returns from its capital contributions from the Investor Members by deploying the capital of the Fund into preferred equity securities issued by Elliot 10 MezzCo, LLC, a Delaware limited liability company ("Elliot 10 MezzCo"). Elliot 10 MezzCo, in turn, will own all of the issued and outstanding membership interests of Elliot & 51st Street, LLC (the "Property Owner"), which will own fee simple title in approximately eight (8) acres of real property located on the southwest corner of Elliot Road and the 1-10 Freeway in Phoenix, Arizona (the "Property"). The Property Owner, as an adaptive re-use project involving the current hotel building and other existing features, will be developing the Property into an approximately 188-unit multi-family residential development (the "Project"). Additional details regarding the Project can be requested directly from Caliber. Please note that the above description of the structure is subject to change; provided that the key principles of the structure that are material to an investment into the Fund will be maintained.

The Property Owner (or its affiliates) is currently in negotiations with a lender that will provide the debt financing necessary for the Project on terms and conditions that the Managing Member views as favorable for a development project similar to the Project. A condition to the debt financing includes additional equity investment into the Property Owner. The purpose of the offering by the Fund is to raise the capital necessary for the development of the Project and to satisfy the lender requirements for additional equity. Additional details concerning the current proposed debt financing can be requested directly from Caliber.

The Property will, at the time of the secured debt closing described above, consist of two separate, adjacent property groups, the first being the real property that consists of the hotel building, parking lot and certain other improvements (the "First Property") and the second being a vacant three (3) acre parcel that is currently owned by an Affiliate of Caliber (the "Second Property").

The First Property currently consists of two "tenant in common" interests (the "TIC Interests"), with one of the TIC Interests being held by the Property Owner and the second TIC Interest being held by a third-party investor. As of the date of the Memorandum, (i) the Property Owner is wholly owned by Elliot 10 Fund, LLC, a Delaware limited liability company ("Elliot 10 FundCo"), and (ii) Elliot 10 FundCo is owned by various investors and the Managing Member. The TIC Interests were purchased previously for the purpose of running and operating the hotel that currently sits on the property (operations for the hotel have ceased for the purpose of pursuing the Project). As of the date of this Memorandum, the First Property is subject to a first position deed of trust issued in connection with a permanent debt facility representing amounts owed by the Property Owner (the "First Property Existing Secured Debt"). Certain management and other fees have been paid previously to the Managing Member and its Affiliates relating to the acquisition and management of the First Property (and the assets located thereon).

The Second Property, which is adjacent to the First Property, was acquired by an Affiliate of the Managing Member. The acquisition of the Second Property and any development costs related to the Project have been funded to date (i) by unsecured promissory notes (the "Second Property Unsecured Notes") issued to investors (the notes were issued by the entity that is the sole member of the current holder of the Second Property) and (ii) a loan from a lender that is secured by a first position deed of trust on the Second Property (the "Second Property Existing Secured Debt"). Certain management and other fees have been paid previously to the Managing Member and its Affiliates relating to the acquisition and management of the Second Property (and the assets located thereon). Please note that the holders of the Second Property Unsecured Notes will be approached by Caliber and each holder of a Second Property Unsecured Note may elect to either receive repayment of the outstanding principal and interest owing under, and in accordance with, the Second Property Unsecured Note or elect to roll-over the Second Property Unsecured Note into

Preferred Units being offered by the Fund (with such roll-over portion referred to herein as the "Roll-Over Equity").

There are certain requirements that must be satisfied prior to the funding of any amounts raised under this offering into Elliot 10 MezzCo (and then subsequently into the Property Owner): (i) each of the Fund and Elliot 10 FundCo shall have executed the Amended and Restated Limited Liability Company of Elliot 10 MezzCo (a copy of which is enclosed herein as an appendix to this Memorandum) which contains the specific provisions concerning the preferred equity interests to be held by the Fund in connection with its contribution of capital to Elliot 10 MezzCo); (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 (collectively, the "Release Conditions").

Brief Overview of the Units

Preferred Units

The first class of Units being offered under this Memorandum is referred to herein as the "Preferred Units". The holders of the Preferred Units are referred to herein collectively as the "Preferred Investor Members". For any amounts paid by Elliot 10 MezzCo to the Fund, the Preferred Units are (i) subordinate to the payment of the 12% Current Pay Preferred Return to the 12% Current Pay Members (as such terms are defined below); (ii) following payment of the 12% Current Pay Preferred Return, entitled a total return of two times (2x) the capital contribution of such Preferred Member (the "Preferred Member Total Return Amount"), which will be paid *pari passu* with the 12% Current Pay Investor Members, pro rata based on each parties respective capital contributions; and (iii) will not participate in potential profits above the Preferred Member Total Return Amount. As of the date of this Memorandum, the Fund has raised a total of $520,000 from the sale of Preferred Units.

12% Current Pay Units

The second class of Units being offered under this Memorandum is referred to herein as the "12% Current Pay Units". The holders of the 12% Current Pay Units are referred to herein collectively as the "12% Current Pay Investor Members". For any amounts paid by Elliot 10 MezzCo to the Fund, the Preferred Units are (i) in priority over all other distributions to any other Investor Members, a non-compounding, cumulative 12% preferred return, subject to a maximum accrued preferred return equal to 50% of the capital contribution by such 12% Current Pay Investor Members (the "12% Current Pay Preferred Return"); (ii) entitled to a possible total return of up to one and one-half times (1.5x) the capital contribution of such 12% Current Pay Investor Member (together with the payment of any accrued Preferred Return, the "12% Current Pay Member Total Return Amount" and together with the Preferred Member Total Return Amount, the "Total Return Amount"); and (iii) will not participate in potential profits above the 12% Current Pay Member Total Return Amount.

The Preferred Units and 12% Current Pay Units are collectively referred to herein as the "Investor Units"). The Preferred Investor Members and 12% Current Pay Investor Members are collectively referred to herein as the "Investor Members" and each a "Investor Member".

The Preferred Member Total Return Amount and the 12% Current Pay Member Total Return Amount are collectively referred to herein as the "Total Return Amount".

The Fund will receive distributions from Elliot 10 MezzCo in either operating distributions (which will be distributed 70% to the Fund and 30% to certain developer related parties (including the Managing Member, which will be entitled to one-half of the 30% distribution right) until the Total Return Amount is satisfied in favor of the Fund) or upon liquidation or in a debt cash refinancing that, collectively with all distributions to be paid to the Fund, results in satisfaction of the Total Return Amount requirement. The Investor Members will have very limited voting rights, as set forth in the LLC Agreement. All fees and expenses of the Fund will be covered by Property Owner or Elliot 10 MezzCo.

Brief Overview of the Offering

The Units are being offered on a continuous, best-efforts basis and for a period of time equal to twelve (12) months from the date of this Memorandum. The Units are offered subject to acceptance, prior sale, and withdrawal, cancellation, or modification of the offer at any time without notice.

As noted above, the Units are being offered on a best-efforts basis with no minimum closing requirement and, assuming the Release Conditions have been satisfied, all proceeds from the offering will be immediately released to the Fund for deployment by the Fund consistent with the investment purpose listed in the LLC Agreement.

The Fund will not accept any additional subscriptions under this offering after the Fund accepts an aggregate of thirty million two hundred thousand dollars $30,200,000 in subscriptions for the purchase of Units (the "*Maximum*"), including any Roll-Over Equity issued to the holders of the Second Property Unsecured Notes as well as any amounts already raised under the Initial Memorandum, subject to the Managing Member's right to increase the amount of the offering. Notwithstanding the above, the Fund reserves the right to increase the amount of the offering and, accordingly, the Proceeds that will be received by the Fund.

The individual minimum subscription for Units is One Hundred Thousand Dollars ($100,000.00), unless otherwise waived by the Managing Member. Subscriptions are subject to acceptance or rejection by the Managing Member, in the Managing Member's sole and absolute discretion, subject to the terms and conditions of the Subscription Agreement. Rejected subscriptions and subscription funds will be returned to subscribers without interest within thirty (30) days of rejection.

The Units are offered through Tobin & Company Securities LLC, a registered broker/dealer and member FINRA/SIPC (the "Managing Broker"). Upon receipt of the executed acceptance of the Subscription Agreement (the "Subscription Agreement"), the Investor will deposit, preferably via wire transfer (though checks will be accepted), the subscription amount into the bank accounts of the Fund and available immediately to the Fund assuming all Release Conditions have been satisfied.

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IMPORTANT GENERAL CONSIDERATIONS

This Memorandum does not constitute an offer to sell or a solicitation of an offer to buy by anyone in any state in which the offer or solicitation is not authorized or in which the person making the offer or solicitation is not qualified to do so, to any person to whom it is unlawful to make the offer or solicitation, or to any person other than the offeree to whom this Memorandum has been delivered (each an "Offeree" and collectively, the "Offerees").

No dealer, salesperson, or other person has been authorized in connection with this Offering to give an Offeree any information or make any representation other than those contained in this Memorandum and, if given or made, that information or representations may not be relied upon. Each Offeree is advised to conduct its own thorough investigation of the Fund and the terms of the Offering, including the merits and risks involved, before making an investment in the Units. This Memorandum supersedes in its entirety any preliminary transaction summary or term sheet or any other oral or written information heretofore delivered to each Offeree. Prior to the sale of the securities, the Fund is hereby providing each Offeree the opportunity to ask questions and to obtain any additional information concerning the Fund and the terms and conditions of the Offering that the Offeree wishes to obtain.

The securities offered in connection with this Memorandum are being offered and will be sold in reliance on the exemption from the registration requirements of the Securities Act provided in section 4(a)(2) and Rule 506 of Regulation D to a limited number of investors that are "Accredited investors" within the meaning of Rule 501(a) of Regulation D under the Securities Act.

This investment is suitable only for subscribers of substantial net worth that are willing, and have the financial capability, to bear the economic risk of an investment for an indefinite period of time. There is no public trading market for the securities nor is it contemplated that one will develop in the foreseeable future. Any transfer or resale of the Units or any interest or participation therein will be subject to restrictions under the Securities Act and as provided in the LLC Agreement.

Purchasers of the Units will be required to make (pursuant to the Subscription Agreement) certain acknowledgments, representations, and agreements upon initial issuance, including representations with respect to their net worth or income and their authority to make this investment, as well as representations that they are familiar with and understand the terms, conditions and risks of this offering.

Certain of the terms of the LLC Agreement, Subscription Agreement, and other documents delivered herein are described in this Memorandum. These descriptions do not purport to be complete and each summary description is subject to, and qualified in its entirety by reference to, the actual text of the relevant document. Any purchase of Units should be made only after a complete and thorough review of the provisions of this Memorandum, the LLC Agreement, and the remaining documents delivered hereto. In the event that any of the terms, conditions or other provisions of the LLC Agreement are inconsistent with or contrary to the description of terms in this Memorandum, the LLC Agreement will govern.

An investment in the units involves a high degree of risk. An independent Investigation should be undertaken by each subscriber regarding the suitability of his, her or its investment in the Units.

Offerees are not to construe the contents of this Memorandum or any information made available as described below as legal or tax advice. Each subscriber should consult his, her or its' own counsel,

accountant, business and financial advisors as to legal, tax, and related matters concerning the purchase of the Units.

The market, financial, and other forward-looking information presented in this Memorandum represents the subjective views of the Managing Member and is based on assumptions the Managing Member believes are reasonable but that may or may not prove to be correct. There can be no assurance that the Managing Member's views are accurate or that the Managing Member's estimates will be realized. Nothing in this Memorandum is or should be relied on as a promise as to the future performance or condition of the Fund. Industry experts may disagree with these assumptions and with the Managing Member's view of the market and the prospects for the Fund.

In purchasing the Units, custodians, trustees, and other fiduciaries of an individual retirement account ("IRA") or simplified employee pension ("SEP") qualifying under Section 408 of the Internal Revenue Code of 1986, as amended (the "Code"), KEOGH plans, and retirement plans as described in Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (collectively, "Qualified Plans") should consider the possible application of ERISA and related provisions of the Code, as well as whether an investment by a Qualified Plan in the Fund would be permissible under the governing instruments of the Qualified Plan. The Department of Labor has issued regulations which affect the type of investments in which Qualified Plans may invest, including investments in companies such as the Fund. Less than 25% of the total number of Units sold will be sold to Qualified Plans, and transfer of the Units to Qualified Plans will be restricted so that less than 25% of the Units outstanding at any time will be owned by Qualified Plans.

Offerees whose authority is subject to legal investment restrictions should consult their own legal advisors to determine whether, and if so, to what extent, the Units will constitute legal investments for them.

This Memorandum presents information with respect to the Fund as of the date hereof. The delivery of this Memorandum at a time after the date on the cover does not imply that the information herein is correct as of any time subsequent to that date.

Each Offeree of the Units and its representatives and beneficial owners, if any, are invited to ask questions concerning the terms, conditions, and other aspects of this Memorandum and to obtain any additional information with respect to the Units, the Fund, and the Managing Member that they deem necessary or advisable to supplement or to verify the accuracy of the information contained herein and, in the case of documents referred to herein, to request that such documents be made available.

NASAA UNIFORM DISCLOSURE

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY

MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

FLORIDA RESIDENTS

IF SALES ARE MADE TO FIVE OR MORE PERSONS IN FLORIDA, AND YOU PURCHASE SECURITIES HEREUNDER, THEN YOU MAY VOID SUCH PURCHASE EITHER WITHIN THREE DAYS AFTER THE FIRST TENDER OF CONSIDERATION IS MADE BY YOU TO THE ISSUER, AN AGENT OF THE ISSUER, OR AN ESCROW AGENT OR WITHIN THREE DAYS AFTER THE AVAILABILITY OF THIS PRIVILEGE IS COMMUNICATED TO YOU, WHICHEVER OCCURS LATER.

CONDITIONS TO RECEIVING THIS MEMORANDUM

By accepting delivery of this Memorandum, each Offeree understands and agrees to comply with the following:

- the information contained herein is confidential;
- the Offeree will not make any photocopies of this Memorandum or any related documents;
- the Offeree will not distribute this Memorandum or disclose any of its contents to any persons other than to those persons, if any, that the Offeree retains to advise the Offeree with respect to its contents;
- the Offeree will review this Memorandum, including statistical, financial, and other numerical data, with the Offeree's legal, regulatory, tax, accounting, investment, or other advisors. Neither the Fund nor the Managing Member intends in this Memorandum to furnish legal, regulatory, tax, accounting, investment, or other advice;
- the Managing Member may reject any offer to purchase Units, in whole or in part, for any reason or no reason; and
- if an Offeree does not purchase Units or if the Offering is terminated, on request of the Fund or the Managing Member, the Offeree will return this Memorandum and all attached documents to the Managing Member.

This Memorandum has been prepared for use by a limited group of accredited investors to consider the purchase of Units. The Fund reserves the right to modify or terminate the Offering process at any time.

FORWARD LOOKING STATEMENTS

Information contained in this Memorandum contains "forward-looking statements." Forward-looking statements reflect the Fund's current expectations or forecasts of future events. Forward-looking statements can be identified by words such as "will," "believes," "expects," "may," "should," or "anticipates" or the negative thereof or other variations thereon or comparable terminology, or by discussions of strategy. The matters identified in the "Risk Factors" section constitute cautionary statements identifying important factors with respect to forward-looking statements, including certain risks and uncertainties. Other factors could also cause actual results to vary materially from the future results covered in the forward-looking statements contained herein.

Any projections, estimates, or other forecasts contained in this Memorandum are forward-looking statements that have been prepared by the Fund and are based on assumptions that the Fund believes are reasonable. Projections are necessarily speculative in nature, and it can be expected that some or all of the assumptions underlying the projections will not materialize or will vary significantly from actual results. Accordingly, the projections are only an estimate. Actual results may, and most likely will, vary from the projections, and the variations may be material.

Statements in this Memorandum relate only to events as of the date on which the statements are made. None of the Fund, the Managing Member or any of their respective Affiliates (defined herein) has any obligation to update or otherwise revise any projections, including any revisions to reflect changes in economic conditions or other circumstances arising after the date hereof or to reflect the occurrence of unanticipated events, even if underlying assumptions do not come to fruition.

WHO MAY INVEST; SUITABILITY STANDARDS

The Fund is offering and selling the Units in reliance on an exemption from the registration requirements of the Securities Act and state laws. Accordingly, distribution of the Memorandum has been strictly limited to persons believed meet the requirements set forth below. Participation in the offering is limited to Accredited Investors who make the representation set forth below and furnish supporting documentation as is requested by, and acceptable to, the Fund. The Fund reserves the right, in its sole and absolute discretion, to reject any subscription based on any information that may become known or available to it about the suitability of an Investor or for any other reason, or no reason.

An investment in the Units involves a high degree of risk and is suitable only for persons of substantial financial means who have no need for liquidity in this investment. Only Investors who (i) represent in writing that they meet the Investor suitability requirements set herein and as many be required under federal or state law, and (ii) supply the Fund with acceptable Accredited Investor verification documentation, as requested by the Fund, may acquire the Units. The Fund has the right to and will rely on the written representations an Offeree makes and supporting information supplied by an Offeree. Each Offeree must provide truthful and accurate information.

The Investor suitability requirements stated below represent minimum suitability requirements established by the Fund. However, an Offeree's satisfaction of these requirements will not necessarily mean that the Units are a suitable investment for the Offeree, or that the Fund will accept the Offeree as an investor. Furthermore, the Managing Member may modify those requirements in its sole and absolute discretion, and any modification may change the suitability requirements for investors.

You (as the Offeree) must represent in writing that you meet, among other, all of the following requirements (the "*Investor Suitability Requirements*").

(a) You have received, read and fully understand the Memorandum and are basing your decision to invest on the information contained in the Memorandum. You have relied only on the information contained in the Memorandum and have not relied on any representations made by any other person;

(b) You understand that an investment in the Units is highly speculative and involves substantial risks and you are fully cognizant of and understand all of the risks relating to an investment in the Units, including those risks discussed in the "Risk Factors" section of the Memorandum;

(c) Your overall commitment to investments that are not readily marketable is not disproportionate to your individual net worth, and your investment in the Units, will not cause such overall commitment to become excessive;

(d) You have adequate means of providing for your financial requirements, both current and anticipated, and have no need for liquidity in this investment;

(e) You can bear and are willing to accept the economic risk of losing your entire investment in the Units;

(f) You are acquiring the Units for your own account and for investment purposes only and have no present intention, agreement or arrangement for the distribution, transfer, assignment, resale, or subdivision of the Units;

(g) You have sufficient knowledge and experience in financial and business matters that you are capable of evaluating the merits of investing in the Units and have the ability to protect your own Units in connection with this investment; and

(h) You are an "Accredited Investor" as defined in Rule 501(a) of Regulation D under the Securities Act.

An "*Accredited investor*" is:

i. a natural person whose individual "net worth"[1] or joint net worth with such person's spouse or spousal equivalent[2], exceeds $1,000,000;

ii. a natural person who had an individual income in excess of $200,000 in each of the two most-recent years or joint income with such person's spouse or spousal equivalent in excess of $300,000 in each of those years and has a reasonable expectation of reaching the required income level during the current year;

iii. a director, executive officer[3] or manager of the Company, or a director, executive officers or manager of the Managing Member;

iv. a natural person who is a "knowledgeable employee" (as defined in Rule 3c-5(a)(4) under the Investment Company Act) of the Company where the Company would be an "investment company" (as defined in Section 3 of Investment Company Act), but for the exclusion provided by either Section 3(c)(1) or Section 3(c)(7) of Investment Company Act;

v. a "family client," as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), of a family office as defined in rule 202(a)(11)(G)-1 under the Advisers Act, (i) with assets under management in excess of $5,000,000, (ii) that is not formed for the specific purpose of acquiring the securities offered, and (iii) whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment, and whose prospective investment is directed by such family office pursuant to clause (iii) of this sentence:

[1] "Net worth" means the excess of total assets at fair market value over total liabilities. For the purposes of determining "net worth" the value of the investor's primary residence is excluded as an asset. In addition, any liabilities secured by the investor's primary residence are included in total liabilities for purposes of this calculation only if and to the extent that: (1) such liabilities exceed the fair market value of the residence; or (2) such liabilities were incurred within 60 days before the date hereof (other than as a result of the acquisition of the residence). Joint net worth can be the aggregate net worth of you and your spouse or spousal equivalent, and assets need not be held jointly to be included in the calculation. Reliance on the joint net worth standard does not require that the Units be purchased jointly.

[2] The term "spousal equivalent" means a cohabitant occupying a relationship generally equivalent to that of a spouse.

[3] Executive officer means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions for the Company.

vi. a natural person holding in good standing one or more of the following professional license:

(a) General Securities Representative license (Series 7);

(b) Private Securities Offerings Representative license (Series 82)

(c) Investment Adviser Representative license (Series 65).

vii. a bank (as defined in Section 3(a)(2) of the Securities Act) or a savings and loan association or other institution (as defined in Section 3(a)(5)(A) of the Securities Act), in each case whether acting in its individual or fiduciary capacity;

viii. an insurance company (as defined in Section 2(13) of the Securities Act);

ix. a broker or dealer registered pursuant to Section 15 of the U.S. Securities Exchange Act of 1934, as amended;

x. an investment adviser registered pursuant to Section 203 of the Investment Advisers Act of 1940, as amended (the "Advisers Act") or registered pursuant to the laws of a state;

xi. an investment adviser relying on the exemption from registering with the SEC under Section 203(l) or (m) of the Advisers Act;

xii. an investment company registered under the Investment Company Act of 1940, as amended (the "Investment Company Act"), or a business development company (as defined in Section 2(a)(48) of the Investment Company Act);

xiii. a Small Business Investment Company licensed by the United States Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958, as amended;

xiv. a Rural Business Investment Company as defined in Section 348A of the Consolidated Farm and Rural Development Act of 1961, as amended;

xv. a plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, that has total assets in excess of $5,000,000;

xvi. an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended, whose investment decision is made by a plan fiduciary, as defined in Section 3(21) of the Employee Retirement Income Security Act of 1974, as amended, that is either a bank, savings and loan association, insurance company or registered investment adviser; or an employee benefit plan with total assets in excess of $5,000,000; or a self-directed employee benefit plan whose investment decisions are made solely by persons that are accredited investors;

xvii. a private business development company (as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, as amended);

xviii. an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, a corporation, a Massachusetts or similar business trust, a partnership or a limited liability company, in each case not formed for the specific purpose of purchasing Units and with total assets in excess of $5,000,000;

xix. a trust with total assets in excess of $5,000,000 that was not formed for the specific purpose of purchasing the Units and whose purchase of the Units is directed by a person who has such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of an investment in the Units;

xx. a revocable trust that may be revoked or amended at any time by the grantor(s), each of whom is either an accredited investor as determined (i) under any of the paragraphs above;

xxi. an entity in which all of the equity owners are accredited investors;

xxii. an entity, of a type not listed in the categories above, not formed for the specific purpose of acquiring the Units offered, owning "investments" (as defined in Rule 2a51-1(b) under the Investment Company Act) in excess of $5,000,000;

xxiii. a "family office" (as defined in Rule 202(a)(11)(G)-1 under the Advisers Act):

(a) with assets under management in excess of $5,000,000,

(b) that is not formed for the specific purpose of acquiring the Units; and

(c) whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment; or

xxiv. a "family client" (as defined in Rule 202(a)(11)(G)-1 under the Advisers Act) of a family office meeting the requirements in the category immediately above and whose prospective investment in the Company is directed by such family office pursuant to clause (iii) of the category immediately above.

PRIVACY NOTICE

The Fund and the Managing Member value each Offerees privacy and are providing this Privacy Notice as a courtesy to each of the Offerees.

The Fund and the Managing Member do not disclose nonpublic personal information about Offerees and Investors to third parties other than as described below.

The Fund and the Managing Member collect information about each Offeree (such as name, address, social security number, assets and income) from discussions with the Offerees and Investors, from documents that may deliver to the Fund and the Managing Member (such as the Subscription Agreement) and in the course of providing services to Investors and Offerees. In order to service an Investor's account and effect the transactions described herein, the Fund and the Managing Member may provide an Offeree's personal information to our Affiliates and to firms that assist us in servicing an Investor's account and have a need for such information, such as any fund administrator, investor relations administrator, auditors, or accountants. The Fund and the Managing Member do not otherwise provide information about Offerees and Investors to outside firms, organizations or individuals except as required or permitted by law. Any party that receives this information will use it only for the services required and as allowed by applicable law or regulation and is not permitted to share or use this information for any other purpose. Notwithstanding the above, the Managing Member and the Fund will have no liability to an Offeree or Investor to the extent that the information described above becomes publicly known, except to the extent that the Managing Member's or the Fund's actions constitute gross negligence or willful misconduct.

As of January 1, 2020, California law will require certain data security requirements of Personal Information by covered businesses and will grant residents of California certain rights with respect to obtaining information about their personal data that is maintained by a covered business. The Fund and the Managing Member will comply with these requirements. Among other rights, California law will permit residents of California to opt-out of certain disclosures of Personal Information to third parties. In some circumstances, any person may elect to opt-out of the sharing of his, her or its Personal Information with third parties and may do so by submitting a request in writing or by contacting the Fund by telephone.

SUMMARY OF OFFERING AND FUND TERMS

This summary highlights some of the most significant information contained elsewhere in this Memorandum. Because it is a summary, it does not contain all of the information that may be important to a potential investor. To understand this offering fully, a potential investor should read the entire Memorandum carefully, including, without limitation, the information discussed under the caption "Risk Factors" before making a decision to invest in the Units. Unless specifically noted otherwise, references throughout this Memorandum to the Fund will include the Managing Member (as defined below) and any agent authorized to act on the Fund's behalf.

The Fund:	SP 10 Preferred Equity, LLC is a Delaware limited liability company.
Managing Member:	The Fund is managed by its managing member, Elliot & 51st Street Manager LLC, an Arizona limited liability company (the "Managing Member"), an affiliate of the Fund's sponsor. The Managing Member is responsible for all management decisions of the Fund. The Managing Member is not registered as an investment advisor.
Sponsor/Principal:	The sponsor of the Fund is Caliber – The Wealth Development Company, a trade name used to refer to a group of affiliated entities directly or indirectly controlled by CaliberCos, Inc., a Delaware corporation ("Caliber"). The Sponsor is a middle market alternative asset manager who is involved in acquiring, managing, and disposing of alternative assets.
Affiliates:	An affiliate with reference to the Fund or Managing Member includes such entity's officers, directors, members, partners, shareholders, managers, employees, and agents (collectively the "*Affiliates*").
The Property and Project:	The Fund's primary investment objective is to generate returns from its capital contributions from its Members by deploying the capital of the Fund into preferred equity securities issued by Elliot 10 MezzCo. Elliot 10 MezzCo, in turn, will own all of the issued and outstanding membership interests of the Property Owner, which will own fee simple title in approximately eight (8) acres of real property located on the southwest corner of Elliot Road and the 1-10 Freeway in Phoenix, Arizona (the "Property"). The Property Owner, as an adaptive re-use project involving the current hotel building and other existing features, will be developing the Property into an approximately 188-unit multi-family residential development (the "Project"). Additional details regarding the Project can be requested directly from Caliber. Please note that the above description of the structure is subject to change; provided that the key principles of the structure that are key to an investment into the Fund will be maintained.
Investment Conditions / Restrictions on the Fund's Investment Activity:	There are certain requirements that must be satisfied prior to the funding of any amounts raised under this offering into Elliot 10 MezzCo (and then subsequently into the Property Owner): (i) each of the Fund and Elliot 10 FundCo shall have executed the Amended and Restated Limited Liability

	Company of Elliot 10 MezzCo (a copy of which is enclosed herein as an appendix to this Memorandum) which contains the specific provisions concerning the preferred equity interests to be held by the Fund in connection with its contribution of capital to Elliot 10 MezzCo); (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 specified in further detail in this Memorandum, there is no minimum raise amount required prior to the Fund deploying capital in accordance with the Fund's stated purpose, which means that the Fund may commence using subscription proceeds to pay amounts related to furthering the development the Project, including, without limitation, using such amounts to pay termination fees to the existing franchisor of the hotel located on the First Property and also pay related party fees to the Manager, its co-developers or their respective Affiliates.
Investment Risks:	The Fund's investment program is speculative and entails substantial risks, including, among others: dependency on key individuals, risks associated with preferred equity investing, conflicts of interest (e.g., the Fund will be making an investment into entities that are controlled by Affiliates of the Managing Member), risks arising from the use of leverage, and the risk that exit strategies from positions may be unavailable and have limited liquidity. An Investor should not invest in the Fund unless: (1) it is fully able to bear the financial risks of its investment for an indefinite period of time; and (2) it can sustain the loss of all or a significant part of its investment and any related realized or unrealized profits. An Investor Member could lose some or all of its investment in the Fund. There can be no assurance that the investment objectives of the Fund will be achieved or that the Managing Member's investment strategy will be successful. Past results of the Fund, the Sponsor or their principals, affiliated entities, funds or investors, are not necessarily indicative of the future performance of the Fund.
The Units:	The Fund is offering two (2) classes of Units under this Memorandum—"Preferred Units" and "12% Current Pay Units". A general description of the rights, preferences, and restrictions associated with the Units is set forth below. Each Investor should carefully read this Memorandum and the LLC Agreement, a copy of which has been enclosed as Appendix A, to understand certain risks associated with acquiring Units and the rights, restrictions, and obligations associated with the Units. *Preferred Units* Please see below in the subsection in this table labeled "Fund Level Distributions" for a summary of the economic distribution rights associated with the Preferred Units. Please also note that (A) for any amounts paid by Elliot 10 MezzCo to the Fund, the Preferred Units are (i) subordinate to the

payment of the 12% Current Pay Preferred Return to the 12% Current Pay Members; (ii) following payment of the 12% Current Pay Preferred Return, entitled a total return of two times (2x) the capital contribution of such Preferred Member (i.e., the Preferred Member Total Return Amount), which will be paid *pari passu* with the 12% Current Pay Investor Members, pro rata based on each parties respective capital contributions; and (iii) will not participate in potential profits above the Preferred Member Total Return Amount; and (B) all Investor Members will have very limited voting rights, as set forth in the LLC Agreement.

12% Current Pay Units

Please see below in the subsection in this table labeled "Fund Level Distributions" for a summary of the economic distribution rights associated with the 12% Current Pay Units. The 12% Current Pay Units are entitled to a non-compounding, cumulative preferred return of 12%, subject to a maximum preferred return accrual equal to 50% of the capital contribution amount of such 12% Current Pay Investor Member. Please also note that (A) for any amounts paid by Elliot 10 MezzCo to the Fund, the 12% Current Pay Units are (i) entitled to a possible total return of up to one and one-half times (1.5x) the capital contribution of such 12% Current Pay Investor Member, inclusive of any 12% Current Pay Preferred Return that is paid; and (ii) will not participate in potential profits above the 12% Current Pay Member Total Return Amount; and (B) all Investor Members will have very limited voting rights, as set forth in the LLC Agreement.

The Offering:

The Units are being offered on a continuous, best-efforts basis and for a period of time equal to twelve (12) months from the date of this Memorandum. The Units are offered subject to acceptance, prior sale, and withdrawal, cancellation, or modification of the offer at any time without notice.

As noted above, the Units are being offered on a best-efforts basis with no minimum closing requirement and, assuming the Release Conditions have been satisfied, all proceeds from the offering will be immediately released to the Fund for deployment by the Fund consistent with the investment purpose listed in the LLC Agreement.

The Fund will not accept any additional subscriptions under this offering after the Fund accepts an aggregate of thirty million two hundred thousand dollars ($30,200,000) in subscriptions for the purchase of Units (the "*Maximum*"), including any Roll-Over Equity issued to the holders of the Second Property Unsecured Notes as well as any amounts already raised under the Initial Memorandum, subject to the Managing Member's right to increase the amount of the offering. Notwithstanding the above, the Fund reserves the right to increase the amount of the offering and, accordingly, the Proceeds that will be received by the Fund.

The Units are offered through Tobin & Company Securities LLC, a registered broker/dealer and member FINRA/SIPC (the "Managing Broker"). Upon receipt of the executed acceptance of the Subscription Agreement (the "Subscription Agreement"), the Investor will deposit, preferably via wire

transfer (though checks will be accepted), the subscription amount into the bank accounts of the Fund and available immediately to the Fund assuming all Release Conditions have been satisfied.

Use of Proceeds: The proceeds from this offering will be used to:

- fund the renovation and development of the Project;
- pay costs associated with the Project, including, without limitation, certain of the related-party fees (i.e. fees being paid to Caliber or its affiliates in connection with services to be performed);
- provide general working capital for the Project; and
- holdback reserves to cover the payment of any accrued 12% Current Pay Preferred Return.

Managing Member and Related Party Fees: The Investors understand and acknowledge that the Fund, and one or more Fund subsidiaries (and the Managing Member on behalf of Fund, the Fund subsidiaries, or Affiliates thereof) may be transacting business with the applicable Managing Member and its Affiliates (collectively, the "*Manager Related Party Transactions*"); provided, such Manager Related Party Transactions must be either: (i) expressly set forth herein, (ii) on such terms and conditions that are no more favorable to the applicable Managing Member or its affiliate than would be given to a third-party service provider providing similar services based on arms-length terms; or (iii) immaterial to the overall business or financial performance of the Fund (which the Investors acknowledge and agree that "immaterial" shall be deemed to mean no more than 0.05% of the total assets of the Fund (with "total assets" determined based on the total assets of the Fund as reported on its balance sheet from time to time (*i.e.*, total property, plant, and equipment as reported on the balance sheet) in the aggregate for all services performed that are deemed "immaterial")), with items (i) and (ii) immediately above being determined by the applicable Managing Member in its reasonable discretion. Such Manager Related Party Transactions may include but may not be limited to asset management, accounting, and reporting services, property management, construction, development, technical and pre-opening, renovation management, procurement, general contractor, legal, accounting, centralized services, media, advertising and signage, branding and outlet consulting, servicing, finance, origination, guaranty, sale or disposition fees payable to the respective Managing Member or any other affiliate of that Managing Member. To the extent such Manager Related Party Transactions have been described herein, or in the Subscription Agreement, such transactions are hereby deemed ratified and approved by the Members and may be provided by the applicable Managing Member or Affiliates of that Managing Member to or for the benefit of the applicable Fund, one or more Fund subsidiaries, or that Managing Member and paid for or reimbursed by the Fund or Fund subsidiary, as the case may be, which rates are deemed to be fair market rates as of the date hereof and performance of such services and the payment of such compensation shall be deemed approved by the Members. No professional or other service provider will be disqualified from providing services to the Fund, the Managing

Member, any Fund subsidiary by reason of the provision of services by such professional or service provider to the Managing Member or its Affiliates, whether or not related to the Company's business or other activities. Absent manifest abuse, the Managing Member will not be deemed to have breached any obligations it may have to the Fund or any subsidiary of Fund as a result of causing such Fund or such subsidiary to enter into such Manager Related Party Transactions. A Managing Member may, in its sole and absolute discretion, waive payment of any Manager Related Party Transaction fees for any Affiliates or pursuant to any Side Letter or other agreement.

Management Fee: The Management Fee is a re-occurring, annual fee, payable in arrears each month based on the aggregate capital contributions of the Members as of the last day of each such month and is equal to 1.5% of the aggregate capital contributions of the Members (without respect of any return of capital contributions, except for wholly or partially redeemed Members. It is anticipated that the source of funds used to pay this fee will initially be from the capital contributions of the Members and then, if available, from financing proceeds and/or operational cash flow. If any direct or indirect subsidiary of the Company pays to Caliber Services or its Affiliate any similar fee, the Management Fee described herein shall be reduced on a dollar-for-dollar basis with respect to the capital contributions made by the Company to such direct or indirect subsidiary.

Fund Administration Fee: The Fund Administration Fee is based on a calculation determined by Caliber Services in its reasonable discretion, with the calculation based on the lesser of:

(1) 1.00% of unreturned capital contributions; or

(2) generally evaluating each employee of Caliber Services and determine if any portion of services performed by such employee are devoted to fund administration (with that percentage of time multiplied by their base salary (plus 18% to account for employee taxes/benefits), with such aggregate amount calculated then allocated to each of the Caliber sponsored funds based on the unreturned capital contributions. The Fund Administration Fee is a re-occurring, annual fee, payable in arrears each month based on the aggregate capital contribution of the Members as of the last day of each such month. It is anticipated that the source of funds used to pay this fee will initially be from the capital contributions of the Members and then, if available, from financing proceeds and/or operational cash flow.

Loan Guaranty Fee (if applicable): The Loan Guaranty Fee is 0.25% of the gross value of a loan that is guaranteed by such grantor paid by the Property Owner to the entities or person guaranteeing the loan. The Loan Guaranty Fee is a re-occurring, annual fee, payable in arrears each month based on the aggregate gross amount guaranteed by the guarantor under the applicable loan. It is anticipated that the source of funds used to pay this fee will initially be from the capital contributions of the Members and then, if available, from financing proceeds and/or operational cash flow.

Development Fee (if applicable): Up to a maximum of 4% of the total gross

value of the project, including the cost of the land (based on the gross acquisition cost of the underlying property). The Development Fee is a one-time fee amortized over the term of the Development Agreement which shall be trued-up periodically from time to time for actual costs of the project and with a final true-up at the end of the development of the applicable project. The fee is paid by the Property Owner, with two percent (2%) paid to Caliber Development, LLC (an Affiliate of Caliber Services) and two percent (2%) paid to the co-developer or its or affiliate. It is anticipated that the source of funds used to pay this fee will be from the initial capital contributions of the Members or from proceeds received in connection with construction loan financing.

Construction Management Fee (if applicable): Up to a maximum of 4% of hard project costs (which, generally speaking, is intended to be based on the gross payments to the general contractor, plus at times certain other amounts paid (e.g. furniture, fixtures and equipment) ("*Construction Management Fee*"). The Property Owner will pay the Construction Management Fee, of which fifty percent (50%) is payable to Caliber Development, LLC (an Affiliate of Caliber Services) and the remaining fifty percent (50%) payable to the co-developer or Affiliate. The Construction Management Fee is typically paid to the payee on a monthly or quarterly basis as costs are incurred). It is anticipated that the source of funds used to pay this fee will be from the initial capital contributions of the Members or from proceeds received in connection with construction loan financing.

Real Estate Brokerage Fee (if applicable): A market-rate fee for real estate brokerage services, ranging from 2%-6% on the purchase or sale of any real property held by the Property Owner, depending on the asset class, representation (dual or single), and transaction size payable to Caliber Realty, LLC (an Affiliate of Caliber Services, LLC) by the Property Owner. The Real Estate Brokerage Fee may be reduced by any commissions paid by the Property Owner to any third party engaged by the Property Owner performing similar services.

Disposition Fee: One percent (1%) of price paid on the purchase or sale of any real property held by the applicable Property Owner. The Acquisition and Disposition Fee (as applicable) is a one-time fee payable upon the closing of any real estate acquisition or disposition by the Property Owner. Any such fee paid with respect to the disposition of any real property is anticipated to be paid from proceeds received from such sale transaction. If applicable, all or a portion of the Disposition fee may be waived if the sale of the asset does not result in a profitable disposition. If a Real Estate Brokerage Fee (described above) is paid to Caliber Realty, LLC, then no Acquisition / Disposition Fee (as applicable) will be paid.

Managing Broker; Private Placement Fees:

Subscriptions are subject to acceptance or rejection by the applicable Managing Member, in the Managing Member's sole and absolute discretion. Rejected subscriptions and subscription funds will be returned to subscribers without interest promptly following rejection.

The Company has an exclusive agreement with Tobin & Company Securities LLC, a registered broker/dealer and member FINRA/SIPC, pursuant to which the Units will be offered and sold. Reference herein to the Managing Broker means Tobin & Company Securities LLC. Please note that salespersons affiliated with CaliberCos Inc. (but who are licensed and managed through the Managing Broker) will receive selling commissions equal to 2% of the gross proceeds in the Offering. Other fees that will be paid to Tobin & Company Securities LLC include the following: (1) a non-refundable engagement fee of $10,000 that was or will be paid upon execution of a placement agreement between the Company and the Managing Broker; (2) monthly non-refundable retainer fee of $5,000 (which is reduced on a dollar-for-dollar basis by any amounts paid under the placement fee (as described in item no. 3 below); and (3) a placement fee equal to 1.00% of all sales of Units (based on the principal amount of the Units issued). Units may be purchased directly through the Company and not through the Managing Broker, in which case no commissions or other amounts will be paid for such sales.

Individual Minimum Investment Amount: The individual minimum subscription for Units is one hundred thousand dollars ($100,000.00), unless otherwise waived by the Managing Member. Subscriptions are subject to acceptance or rejection by the Managing Member, in the Managing Member's sole and absolute discretion, subject to the terms and conditions of the Subscription Agreement.

Term: The term of the Fund will continue perpetually until the Total Return Amount of the Investor Members has been achieved. Under the LLC Agreement, there is no required termination date of the Fund.

Fund Level Distributions: Investor Members may not unilaterally withdraw any amount of capital from the Fund without the consent of the Managing Member.

Distributions of the Fund will be made to the Investor Members in accordance with the following:

Net Cash Flow from Operations:

(a) first, 100% to the 12% Current Pay Members until any accrued 12% Current Pay Preferred Return (i.e., a non-compounding, cumulative preferred return of 12%, subject to a maximum preferred return accrual equal to 50% of the capital contribution amount of such 12% Current Pay Investor Member) has been paid in full (which, for clarification, is subject to a ceiling equal to 50% of the capital contribution amount by the 12% Current Pay Investor Member); and

(b) thereafter, 100% to the Investor Members pro rata based on their respective capital contributions – which means that the 12% Current Pay Members will receive a full return of their capital contributions before the

Preferred Members will achieve their target total return amount (2x).

Net Cash Flow from Capital Events (liquidation or cash-out refinancing transactions)—same as the distributions of Net Cash Flow from Capital Events:

(a) first, 100% to the 12% Current Pay Members until any accrued 12% Current Pay Preferred Return has been paid in full (which, for clarification, is subject to a ceiling equal to 50% of the capital contribution amount by the 12% Current Pay Investor Member); and

(b) thereafter, 100% to the Investor Members pro rata based on their respective capital contributions.

Elliot 10 Distributions and Carried Interest: Distributions of Elliot 10 MezzCo will be made to its members in accordance with the following:

Net Cash Flow from Operations:

(a) first, (i) 70% to the Fund, and (ii) 30% to the "Developer Members" (as defined in the LLC Agreement of Elliot 10 MezzCo, continuing until, as a general concept, the Fund has received distributions sufficient to distribute the Total Return Amount to the Investor Members (either under this level of the waterfall or from the first level of the waterfall relating to Net Cash Flow from Capital Events); and

(b) thereafter, 100% to Elliot 10 FundCo.

Net Cash Flow from Capital Events (liquidation or cash-out refinancing transactions)—same as the distributions of Net Cash Flow from Capital Events:

(a) first, (i) 70% to the Fund, and (ii) 30% to the "Developer Members" (as defined in the LLC Agreement of Elliot 10 MezzCo, continuing until, as a general concept, the Fund has received distributions sufficient to distribute the Total Return Amount to the Investor Members (either under this level of the waterfall or from the first level of the waterfall relating to Net Cash Flow from Operations); and

(b) thereafter, 100% to Elliot 10 FundCo.

Redemptions: Any Member may request redemption of its Units. In its sole and absolute discretion, the Managing Member may redeem Units from an Investor Member who has requested redemption in accordance with the terms set forth in the

LLC Agreement. Upon any such redemption, the requesting Member will only be entitled to receive an amount equal to its initial capital contribution less any distributions already received by the Fund.

Expenses: The Fund shall pay or reimburse the Managing Member for all expenses incurred or paid on behalf of the Fund prior to or after the formation of the Fund. Notwithstanding the above, the Property Owner or Elliot 10 MezzCo has agreed to cover any and all expenses of the Fund, including, without limitation, the asset management fee to be paid in connection with the management of the assets held by the Fund.

Reporting: The Fund anticipates it will provide quarterly reporting to the Investor Members, with such quarterly reports to include a detail of outstanding loans and other investments made by the Fund as well as such other information as determined appropriate to include by the Managing Member.

Fiscal Year: The fiscal year of the Fund shall end on December 31 of each year (each a "*Fiscal Year*"), which Fiscal Year may be changed by the Managing Member, in its sole and absolute discretion.

Transferability of Interests: There is no current market for the Units. The Fund and the Managing Member do not expect that a public market will ever develop, and the Fund's Certificate of Formation does not require a liquidity event at a fixed time in the future. Therefore, redemption of Units by the Fund, which must be agreed to by the Managing Member in its sole and absolute discretion, will likely be the only way for an investor to dispose of its Units. While the redemption program of the Fund is designed to allow investors to request redemptions of an investor's Units, the Funds ability to fulfill redemption requests is subject to a number of limitations. Most significantly, as of the date of this Memorandum, the vast majority of the Fund's assets consist, and will most likely consist in the future, of illiquid assets. Any redemption requests by an investor will require the approval of the Managing Member, which may be withheld in its sole and absolute discretion. As a result, an investor's ability to have its Units redeemed by the Fund may be limited, and the Units should be considered a potentially long-term investment with limited liquidity.

Advisory Board: The LLC Agreement permits the Managing Member to appoint an Advisory Board (the "Advisory Board") consisting of three (3) or more Investor Members of the Fund (or their Affiliates or representatives) to consult with the Managing Member as requested by the Managing Member from time to time.

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

ERISA and Other Employee Benefit Plans and Accounts:

Pension, profit-sharing or other employee benefit plans that are subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("*ERISA*"), individual retirement accounts, Keogh Plans or other plans covered by Section 4975 of the Internal Revenue Code of 1986, as amended (the "*Code*"), and entities deemed to hold the plan assets of each of the foregoing (each a "*Benefit Plan Investor*"), governmental plans, foreign employee benefit plans and certain church plans not subject to ERISA (such plans which are not Benefit Plan Investors are referred to herein as "*Other Benefit Plans*"), may generally purchase Units in the Fund subject to the considerations described in this Memorandum. The Managing Member intends to conduct the operations of the Fund so that the assets of the Fund will not be considered "plan assets" of any plan investor. Fiduciaries of Benefit Plan Investors and Other Benefit Plans are urged to review carefully the matters discussed in this Memorandum and consult with their own legal and financial advisors before making an investment decision.

If requested by any tax-exempt Investors that are ERISA or governmental pension funds, the Managing Member will facilitate the formation of a group trust through which those pension funds would invest in the Fund. The group trust, and not the Investors would be expected to report and pay the federal income taxes resulting from unrelated business taxable income generated by the Fund.

Investors subject to ERISA should consult their own advisors as to the effect of ERISA on an investment in the Fund. The Managing Member will make reasonable efforts to conduct the affairs and operations of the partnership in such a manner that the Fund will qualify as a venture capital operating company under ERISA.

Voting Rights and Amendments:

The voting rights of Investor Members are very limited. Other than as explicitly set forth in the LLC Agreement, Investor Members have no voting rights as to the Fund or its management.

Generally speaking, the LLC Agreement may only be amended by the consent of the Managing Member and the Investor Members holding a majority of the outstanding Units, provided however, the Managing Member may amend the LLC Agreement in certain circumstances.

Liability of Investor Members:

An Investor Member's liability to the Fund is limited to the amount it has contributed to the capital of the Fund and any continuing capital contribution obligations. Once a Unit has been paid for in full, the holder of that Unit will have no further obligation at any time to make any loans or additional capital contributions to the Fund. No Investor Member shall be personally liable for any debts or obligations of the Fund. Under Delaware law, when an Investor Member receives a return of all or any part of such Investor Member's capital contribution, the Investor Member may be liable to the Fund for any sum, not in excess of such return of capital (together with interest), if at the time of such distribution the Investor Member knew that the Fund was prohibited from making such distribution pursuant to the Delaware Revised Investor Membership Act, as amended (the "*Partnership Act*").

Other Activities of Managing Member and its Affiliates:	Neither the Managing Member nor its Affiliates is required to manage the Fund as their sole and exclusive function. Each may engage in other business activities, including competing ventures and/or other unrelated employment. In addition to managing the Fund, the Managing Member and its Affiliates may establish other private investment funds in the future which employ an investment strategy similar to that of the Fund.
Exculpation and Indemnification:	The Managing Member will be generally liable to third parties for all obligations of the Fund to the extent such obligations are not paid by the Fund or are not by their terms limited to recourse against specific assets. The Fund (but not the Investor Members individually) is obligated to indemnify the Managing Member and its managers and members from any claim, loss, damage or expense incurred by such persons relating to the business of the Fund, provided that such indemnity is otherwise not prohibited by law.
Termination:	Upon termination, the Fund shall be dissolved and wound-up. The Managing Member or, if there is no Managing Member, a liquidator or other representative (the "*Representative*"), appointed by a majority of the interest of the Investor Members shall proceed with the orderly sale or liquidation of the assets of the Fund and shall apply and distribute the proceeds of such sale or liquidation in the following order of priority, unless otherwise required by law: (i) first, to pay all expenses of liquidation; (ii) second, to pay all creditors of the Fund (including Partners who are creditors) in the order of priority provided by law or otherwise; (iii) third, to the establishment of any reserve which the Managing Member or the Representative may deem necessary; and (iv) fourth, to the Partners in accordance with the liquidation distribution provisions set forth above.
No Registration Rights:	The Units will not be registered under the Securities Act and the Partners will not have any registration rights associated with their respective Units.
How to Subscribe:	Prospective investors who would like to subscribe for the Units must carefully read this Memorandum. If, after carefully reading the entire Memorandum, obtaining any other information available and being fully satisfied with the results of pre-investment due diligence activities, a prospective investor would like to purchase Units, they must complete and sign a Subscription Agreement and any supporting documentation, as requested. An investor must purchase at least the minimum purchase amount of one hundred thousand dollars ($100,000) (subject to the other provisions contained in this Memorandum) and the full purchase price must be paid upon submission of the completed Subscription Agreement. Instructions for completing the Subscription Agreement are provided therein, along with detailed instructions for making payment via wire transfer. As part of the subscription process, prospective investors are required to provide a third-party verification of their accredited investor status. This is a regulatory requirement and therefore, if the investor fails to produce the necessary third-party verification, their subscription must be rejected. Acceptance of the prospective Investor's subscription by the Fund is in the Managing Member's sole and absolute discretion, and the Fund will notify each prospective Investor of receipt and acceptance of the subscription. In the event

the Fund does not accept a prospective Investor's subscription for the Units for any reason, the Fund will promptly return the funds to such subscriber in accordance with the terms of this Memorandum.

Eligible Investors: In order to invest in the Fund, an Investor must meet certain minimum eligibility requirements, including qualifying as an "Accredited Investor," as defined in Section 4(a)(2) of the Securities Act of 1933, as amended (the "*Securities Act*"), and Regulation D promulgated thereunder. The Subscription Agreement sets forth in detail the definitions of an Accredited Investor. An Investor must check the appropriate places in the Subscription Agreement to represent to the Fund that it is an Accredited Investor and submit to the Fund and the Managing Broker any third-party verification of such Accredited Investor status as determined needed by the Fund in order to be able to purchase Units. The Managing Member may reject any Investor's subscription for any reason or for no reason.

Inquiries: Each Investor is invited to, and it is highly recommended that an Investor, meet with the Managing Member for a further explanation of the terms and conditions of this offering and to obtain any additional information necessary to verify the information contained in this Memorandum, to the extent the Managing Member possesses such information or can acquire it without unreasonable effort or expense. Requests for such information should be directed to:

SP 10 PREFERRED EQUITY, LLC
Attention: Investor Services
c/o Caliber Services, LLC.
8901 E. Mountain View Road, Suite 150
Scottsdale, Arizona 85258
Telephone: 480-295-7600

GENERAL RISK FACTORS

Investment in the Units of the Fund offered hereby involves risk, including the risk of a complete loss of the investment and the general economic failure of the Fund. The following factors should be considered carefully in evaluating an investment in the Units offered hereby. The risks and uncertainties described below are not the only ones relevant to the Fund. The investment described herein is speculative, involves a high degree of risk and represents an illiquid investment. An investor should be able to bear the loss of the investor's entire investment. You are urged to read this Memorandum and the attached exhibits and consult with your own legal, tax, and financial advisors before investing in the Fund. In certain applicable circumstances, "Fund" may refer to or include the Fund's Affiliates, including any entities formed for the purpose of holding title to assets of the Fund.

GENERAL RISKS RELATED TO AN INVESTMENT IN THE FUND

The Fund has a non-diversified, limited purpose, which includes restructuring a currently distressed asset that has been owned and operated by Caliber (through the Property Owner and Elliot 10 FundCo) for several years.

Because the Fund is investing into a specific, single project, there are risks with this investment pursuant to which if the project is not successful, each investor may have an immediate negative result in their investment into the Fund. To be more specific, the existing project is distressed and additional capital is required to modify one of the properties to fit within the new investment strategy. There is no guaranty that Elliot 10 FundCo will secure the necessary member approvals from its investors to restructure the capital stack in a manner sufficient to accomplish the revised investment strategy. If the Managing Member is not successful in closing the take-out construction loan or otherwise getting the necessary consents and approvals, then the restructure project may not even commence, even though the Fund may have deployed capital into Elliot 10 MezzCo and there is not monies sufficient to return any invested capital. Evidence of the challenges of the current proposed project shows up in the current capital raising process by the Fund. The Fund has not been able to attract interest from potential investors by offering and selling the Preferred Units, and that is the primary reason that the 12% Current Pay Units have been created and are offered under this Memorandum.

To be successful, the Fund and its Managing Member (and its advisors) must, among other things:

- Raise sufficient capital to close on the construction loan;
- Close the construction loan;
- Restructure the existing debt and equity from the two projects being combined into this single project;
- rely on Affiliates and third parties to continue to build and expand the Fund's operations structure to support its business; and
- be continuously aware of, and interpret, market trends and conditions.

The Fund may not succeed in achieving these goals, and a failure to do so could cause the Fund's investors to lose a significant portion of their value.

An investment in the Units has limited liquidity. There is no public market for the Units and the Fund's limited redemption program may not have sufficient liquidity to redeem Units. As a result, an investor should purchase Units as a long-term investment.

There is no current market for the Units. The Fund and the Managing Member do not expect that a public market will develop in the near future, if ever, and the Fund's Certificate of Formation or LLC Agreement does not require a liquidity event at a fixed time in the future. Therefore, redemption of Units by the Fund, which must be agreed to by the Managing Member in its sole and absolute discretion, will likely be the only way for an investor to dispose of its Units. Further, the Funds ability to fulfill redemption requests is subject to a number of limitations. Most significantly, the vast majority of the Fund's assets will consist of illiquid promissory notes and other investment assets, which cannot generally be readily liquidated without impacting the Fund's ability to realize full value upon disposition of such assets. Any redemption requests by an investor will require the approval of the Managing Member, which may be withheld in its sole and absolute discretion. As a result, an investor's ability to have its Units redeemed by the Fund will be limited, and the Units should be considered a long-term investment with limited liquidity.

Redemption of Units is subject to Managing Member Approval.

No holder of Units shall have any right to require redemption of all or a portion of its Units. In that regard, the Units have a capped value and are not entitled to any value appreciation, and an investor will only receive its initial contributed capital in exchange for such redemption. If the Managing Member elects to redeem any Unit, whether unilaterally or pursuant to a redemption request by such Investor Member, such redemption shall be conducted at such time, in such manner and by such methodology as the Managing Member may determine in its sole and absolute discretion. As a result, an Investor Member's ability to have its Units redeemed by the Fund will be limited, and the Units should be considered a long-term investment with limited liquidity. The Managing Member may elect to redeem Units incrementally over time or by making a single redemption payment to the applicable Investor Member.

Source of redemption funds include operational and investment income as well as capital contributions.

The Managing Member may utilize any source of proceeds to effectuate a redemption of the Units, including, but not limited to, the use of contributions from the sale of Units or the Fund securing a line of credit or other debt financing as provided for in the LLC Agreement.

Economic events may adversely affect the Fund's cash flow and ability to achieve its investment objectives.

Economic events affecting the United States economy, including events occurring outside the United States, such as the general negative performance of the real estate sector or the negative performance of the U.S. economy as a whole, could depress the valuations of the Fund's assets or cause decreased cash flow. Such events may cause Investor Members to seek redemption of their Units

or prohibit the Fund from raising additional capital through the sale of additional Units.

Moreover, if the Fund decides to sell certain assets to increase the Fund's cash flow or redeem Units, such events may negatively impact the Fund's ability to achieve its investment objectives.

The Fund is structured as a "perpetual life" fund, and there is no anticipated target liquidation date.

The Fund is an investment vehicle of indefinite duration focused principally on making the preferred equity investment. Until the project is completed and there are cash flows available to repay the investors, the Fund will continue for an indefinite period of time.

The amount and source of distributions the Fund may make to its Investor Members is uncertain and the Fund may be unable to generate sufficient cash flows from its operations to make distributions to the Investor Members at any time in the future.

The Fund's ability to make distributions to its Investor Members may be adversely affected by a number of factors, including the risk factors described in this Memorandum. The Managing Member will make determinations regarding distributions based upon, among other factors, the Fund's financial performance, its debt service obligations, its debt covenants, and capital expenditure requirements. Among the factors that could impair the Fund's ability to make distributions to Investor Members are:

- the limited size of the Fund's portfolio;
- unanticipated expenses or reduced revenues that reduce cash flow or non-cash earnings;
- the fact that anticipated operating expense levels may not prove accurate, as actual results may vary from estimates.

As a result, the Fund may not be able to make distributions to the Investor Members at any time in the future, and the level of any distributions the Fund does make to the Investor Members may not increase or even be maintained over time.

The Preferred Units and 12% Current Pay Units have different, competing interests.

The 12% Current Pay Units are entitled, in priority to any other distributions, to distribution any accrued 12% Current Pay Preferred Return (subject to the 50% maximum accrued preferred return ceiling described elsewhere in this Agreement). As a trade-off, after payment of the 12% Current Pay Preferred Return, all additional distribution will be paid to all Investor Members, but with a high proportionate amount paid to the holders of the Preferred Units. Further, the Preferred Units have a high total return maximum amount (2x return, as compared to a max 1.5x return to the 12% Current Pay Members). Each Investor should carefully evaluate the relative rights and interests associated with the Units before making a subscription in either class of Units.

Purchases of Units by the Fund's Affiliates in this Offering should not influence investment decisions of independent, unaffiliated investors.

Affiliated persons of the Fund may purchase Units. There are no written or binding commitments with respect to the acquisition of Units by these parties, and there can be no assurance as to the amount, if any, of Units these parties may acquire in the Offering. Any Units purchased by Affiliates will be purchased for investment purposes only. However, the investment decisions made by Affiliates who

make such purchases should not influence an investor's decision to invest in the Units, and an investor should make its own independent investment decision.

The Managing Member has sole and absolute discretion of the Fund's investment policies.

Except as limited by the Certificate of Formation of the Fund and its LLC Agreement, the Managing Member has sole and absolute discretion of the Fund's investment and operational policies, including the Fund's policies with respect to investments, acquisitions, growth, operations, indebtedness, capitalization, and distributions, at any time without the consent of Investor Members, which could result in the Fund making investments that are differing from, and possibly riskier than, the types of investment described in this Memorandum. A change to the Fund's investment strategy may, among other things, increase the Fund's exposure to interest rate risk, default risk, and commercial real estate market fluctuations, all of which could affect the Fund's ability to achieve the Fund's investment objectives.

Tax Risks Associated with Owning Units.

This Memorandum is not intended to and does not provide potential investors with detailed advice related to how the purchase, ownership, and disposition of Units in the Fund will be treated for federal or state income tax purposes. The Fund urges potential investors to consult with their tax advisor for a detailed explanation of how their individual tax-related issues might affect an investment in Units.

Cybersecurity risks and cyber incidents may adversely affect the Fund's business by causing a disruption to its operations, a compromise or corruption of its confidential information, and/or damage to its business relationships, all of which could negatively impact the Fund's financial results.

A cyber incident is considered to be any adverse event that threatens the confidentiality, integrity, or availability of the Fund's information resources. These incidents may be an intentional attack or an unintentional event and could involve gaining unauthorized access to our information systems for purposes of misappropriating assets, stealing confidential information, corrupting data, or causing operational disruption. The result of these incidents may include disrupted operations, misstated or unreliable financial data, liability for stolen assets or information, increased cybersecurity protection, and insurance costs, litigation, and damage to the tenant and investor relationships.

The Fund may enter into Side Letters pursuant to which the Fund alters the rights and preferences of certain Investor Members, if agreed to by such Investor Members. Such terms may differ materially from the rights and preferences listed in this Memorandum and the LLC Agreement of the other Investor Members and

The Fund may enter into Side Letters pursuant to which the Fund alters the rights and preferences of certain Investor Members, if agreed to by such Investor Members. Such terms may differ materially from the rights and preferences listed in this Memorandum and the LLC Agreement of the other Investor Members and the Fund has no obligation to disclose such Side Letters to any person. The result of the Side Letters may be that a Investor Member has rights and preferences senior to those of your investment in the Fund and the Fund has no obligation to disclose such preferences and rights to you.

the Fund has no obligation to disclose such Side Letter to any person.

The offering of Units under this Memorandum is being done on a best-efforts basis, and the amounts invested by investor will be available for use by the Fund immediately upon receipt of such funds.

The offering of Units under this Memorandum is being done on a best-efforts basis, and the amounts invested by an investor will be available for use by the Fund immediately upon receipt of such funds. The Release Conditions are not reflective of the targeted entity, property and capitalization structures as described in this Memorandum being final and complete. This means that the Fund, Elliot 10 MezzCo, or the Property Owner may use the proceeds from this offering to pay expenses and fees of the Fund, Elliot 10 MezzCo, or the Property Owner with no guarantee that the restructuring will ever close, in which case the development of the proposed project may never occur. In that case, the Investor will most likely incur a complete loss of its investment in the Fund.

RISKS RELATED TO THE MANAGING MEMBER AND ITS ADVISORS AND AFFILIATES

The Managing Member's advisors and officers, including its key personnel and officers, face conflicts of interest related to the positions they hold with affiliated and unaffiliated entities, which could hinder the Fund's ability to successfully implement its business strategy and to generate returns to the Investor Members and distributions to the Investor Members.

The Managing Member is indirectly managed by certain key personnel. Such personnel may have other business interests as well that conflict with the interests of the Fund. As a result, key personnel may have duties to other entities and their stockholders, members and Investor Members, in addition to business interests in other entities. These duties to such other entities and persons may create conflicts with the duties that they owe indirectly to the Fund. There is a risk that their loyalties to these other entities could result in actions or inactions that are adverse to the Fund's business and violate their fiduciary duties to the Fund, which could harm the implementation of the Fund's investment strategy and its investment opportunities.

Conflicts with the Fund's business and interests are most likely to arise from involvement in activities related to (1) allocation of new lending investments and management time and services between the Fund and the other entities, (2) the timing and terms of the investment in or sale of an loan, and (3) compensation to the Managing Member and its Affiliates. If the Fund does not successfully implement its investment strategy, the Fund may be unable to maintain or increase the value of its assets and its operating cash flows and ability to pay distributions could be adversely affected.

The Fund's success depends to a significant degree upon certain key personnel of the Managing Member. If the Managing Member is unable to obtain key personnel, the Fund's ability to achieve its investment objectives could be delayed or hindered, which could adversely affect

The Fund's success depends to a significant degree upon the contributions of certain executive officers and other key personnel of the Managing Member, as described in detail in this Memorandum, each of whom would be difficult to replace. The Fund cannot guarantee that all of these key personnel, or any particular person, will remain affiliated with the Fund, its Sponsor, and/or advisors and Affiliates. If any of the Fund's key personnel were to cease their affiliation with the Managing Member, the Fund's operating results could suffer. Further, as of the date of this Memorandum the Fund does not separately maintain key person life insurance on any person

the Fund's ability to pay distributions to Investor Members.

and the Fund may not do so in the future. The Fund believes that its future success depends, in large part, upon the Managing Member's ability to hire and retain highly skilled managerial, operational, and marketing personnel. Competition for such personnel is intense, and the Fund cannot assure potential investors that the Fund's Sponsor, Managing Member, or advisors will be successful in attracting and retaining such skilled personnel. If the Managing Member or its Affiliates lose or are unable to obtain the services of key personnel, the Fund's ability to implement its investment strategies could be delayed or hindered, and the amount available for distribution to the Investor Members may decline.

The Fund's Sponsor is an affiliate of the Managing Member and, therefore, each investor will not have the benefit of an independent review of the Memorandum or of the Fund that customarily is performed.

The Fund's Sponsor is an affiliate of the Managing Member and, as a result, is not in a position to make an independent review of the Fund or of this Offering. Accordingly, each investor will have to rely on its own to make an independent review of the terms of this Offering.

RISKS RELATED TO THE FUND'S STRUCTURE

The LLC Agreement permits the Managing Member to issue Units with terms that may subordinate the rights of the holders of any class of Units.

The Managing Member may classify or reclassify any newly issued units or other equity securities in the Fund and establish the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends and other distributions, and qualifications, and terms and conditions of redemption of any such units without approval by the Investor Members. Thus, the Managing Member could authorize the issuance of preferred units with terms and conditions that could have priority as to distributions and amounts payable upon liquidation over the rights of the holders of any current class of Units.

The Fund has certain indemnification obligations, the triggering of which may have an adverse impact on the Fund and its cash available for distribution to its Investor Members.

The LLC Agreement expressly limits the Managing Member and its officers and advisors liability by providing that the Fund and its officers, directors, agents, and employees, will not be liable or accountable, except in limited circumstances, to the Fund for losses sustained, liabilities incurred, or benefits not derived. In addition, the LLC Agreement is required to indemnify such persons to the extent permitted by applicable law from and against any and all claims arising from operations of the Managing Member, unless it is established that: (1) the act or omission was committed in bad faith, was fraudulent or was the result of active and deliberate dishonesty; (2) the indemnified party received an improper personal benefit in money, property or services; or (3) in the case of a criminal proceeding, the indemnified person had reasonable cause to believe that the act or omission was unlawful.

The provisions of Delaware law that allow the fiduciary duties of a Managing Member to be modified by a partnership agreement have

not been tested in a court of law, and the Fund has not obtained an opinion of counsel covering the provisions set forth in the LLC Agreement that purport to waive or restrict such fiduciary duties.

The Fund's investment return may be reduced if the Fund is deemed to be an investment company under the Investment Company Act.

The Fund does not intend, or expect to be required, to register as an investment company under the Investment Company Act. Rule 3a-1 under the Investment Company Act generally provides that an issuer will not be deemed to be an "investment company" provided that, among other things, (1) it does not hold itself out as being engaged primarily, or propose to engage primarily, in the business of investing, reinvesting, or trading in securities and (2) it is not engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities and owns or proposes to acquire investment securities having a value exceeding 40% of the value of the issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis. If the Fund was obligated to register as an investment company the Fund would have to comply with a variety of substantive requirements under the Investment Company Act that impose significant restrictions.

If the Fund was required to register as an investment company but failed to do so, the Fund would be prohibited from engaging in its business, and criminal and civil actions could be brought against the Fund. In addition, its contracts would be unenforceable unless a court required enforcement, and a court could appoint a receiver to take control of the Fund and liquidate its business.

Registration with the SEC as an investment company would be costly, would subject the Fund to a host of complex regulations, and would divert the attention of management from the conduct of the Fund's business. In addition, the purchase of real estate that does not fit its investment guidelines and the purchase or sale of investment securities or other assets to preserve the Fund's status as a company not required to register as an investment company could adversely affect the amount of funds available for investment and the Fund's ability to pay distributions to the Investor Members.

RISKS RELATED TO REAL ESTATE DEBT ITEMS

The Property Owner is currently the borrower under a loan agreement and corresponding secured promissory note (the "Loan") that is secured by a first position deed of trust on the First Property. The Loan has matured and there is no written or other formal agreement in place between

The Property Owner is currently the borrower under a loan agreement and corresponding secured promissory note (the "Loan") that is secured by a first position deed of trust on the First Property. The Loan has matured and there is no written or other formal agreement in place between the Property Owner and the lender. Accordingly, the Loan is currently in default resulting in the lender having certain rights, including, without limitation, assessing penalties and fees as well as its right to commence a foreclosure process pursuant to which the lender would be entitled to foreclose on the First Property. Without any extension or forbearance agreement being executed between the Property Owner and the lender, the lender (or its successor or assign) may exercise its current rights under the Loan at

the Property Owner and the lender.

any time in its discretion. If the Lender exercised such rights, the investors may experience a complete loss of their investment. There is always heightened risk when investing into a current project that involves indebtedness currently in default. The principals of the Manager are in discussions with the lender regarding the current status and the proposed re-purposing of the First Property, there is no guaranty that the lender will continue to discuss such items with the Manager and may cease discussions at any time in its sole discretion.

Southpointe HoldCo, LLC, the current owner of the Second Property, is currently the borrower under a loan agreement and corresponding secured promissory note (the "Second Property Loan") that is secured by a first position deed of trust on the Second Property. If a default were to occur under the Second Property Loan, Investor returns may be harmed.

Southpointe HoldCo, LLC, the current owner of the Second Property, is currently the borrower under a loan agreement and corresponding secured promissory note (the "Second Property Loan") that is secured by a first position deed of trust on the Second Property. If Southpointe HoldCo, LLC were to default on any of its obligations under the above referenced note, then the lender under the Second Property Loan would have rights against Southpointe HoldCo, LLC and, if exercised, may ultimately jeopardize the Project and result in loss of returns (or even a complete loss of investment) for investors.

The Property Owner is in discussions with a new lender that would, if such financing closed, provide proceeds to pay-off the current first position lender on the First Property as well as pay off the secured debt that currently encumbers the Second Property.

The Manager believes that the current terms being offered by the lender are attractive given the current lending environment. To close on the current proposed loan, the Property Owner is required to raise new equity, which is the purpose and intent of this Offering. There is no guarantee that the Fund will be successful in raising sufficient equity capital to close the new proposed financing (which is a heightened risk in this Offering because the Fund may commence spending amounts raised upon receipt, even if the Fund and its Affiliates are not ultimately able to finalize the required debt and equity contributions required to develop the Project, in which case the Investors would most likely encounter a complete loss of their investment. If the Property Owner is not successful in closing the current proposed debt financing (for whatever reason), the current capital (debt and equity markets) are experiencing challenging head winds and the Property Owner may not be successful in attracting a different lender, or if such lender can be found, there is no guaranty that the terms and conditions of such potential debt will be on terms as attractive as currently proposed by the current potential lender.

RISKS RELATED TO EMPLOYEE BENEFIT PLANS AND INDIVIDUAL RETIREMENT ACCOUNTS

In some cases, if an investor fails to meet the fiduciary and other standards under ERISA, the Code or

There are special considerations that apply to investing in the Units on behalf of pension, profit sharing or 401(k) plans, health or welfare plans, individual retirement accounts, or Keogh plans. If an investor

common law as a result of an investment in the Units, an investor could be subject to liability for losses as well as civil penalties.

is investing the assets of any of the entities identified in the prior sentence in the Units, such investor should satisfy itself that:

- the investment is consistent with fiduciary obligations under applicable law, including common law, ERISA and the Code;
- the investment satisfies the prudence and diversification requirements of Sections 404(a)(1)(B) and 404(a)(1)(C) of ERISA, if applicable, and other applicable provisions of ERISA, and the Code;
- the investment will not impair the liquidity of the trust, plan or Individual Retirement Account ("IRA");
- an investor will be able to value the assets of the plan annually in accordance with ERISA requirements and applicable provisions of the applicable trust, plan or IRA document; and
- the investment will not constitute a prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

Failure to satisfy the fiduciary standards of conduct and other applicable requirements of ERISA, the Code, or other applicable statutory or common law may result in the imposition of civil penalties, and can subject the fiduciary to liability for any resulting losses as well as equitable remedies. In addition, if an investment in the Units constitutes a prohibited transaction under the Code, the "disqualified person" that engaged in the transaction may be subject to the imposition of excise taxes with respect to the amount invested.

Further, the Fund anticipates that it will generate "unrelated business taxable income" as that term is defined in Sections 511 through 514 of the U.S. Internal Revenue Code of 1986, as amended. The Fund therefore may not be a suitable investment for tax-exempt investors.

INDEMNIFICATION AND LIMITATION OF LIABILITY

The Fund is permitted to limit the liability of its Managing Member and officers, and to indemnify and advance expenses to its Managing Member, officers, and other agents, to the extent permitted by Delaware law.

Pursuant to the LLC Agreement, the Managing Member, officers, and agents of the Fund shall not be liable to the Fund or to any Investor Member for (i) any act or omission performed or failed to be performed by such person, 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 Fund; or (iii) any losses due to the misconduct, negligence, dishonesty, or bad faith of any agents of the Fund.

The Fund, its receiver, or its trustee (in the case of its receiver or trustee, to the extent of the portfolio properties of the Fund) shall indemnify, save harmless, and pay all judgments and claims against the Managing Member, officers, and agents relating to any liability or damage incurred by reason of any act performed or omitted to be performed by such person solely in connection with the business of the Fund, 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.

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

The Managing Member has authority to cause the Fund to acquire and maintain the equivalent of directors' and officers' insurance coverage insuring the actions of the Managing Member, officers, and agents in such amounts as it may determine appropriate and customary for a business of the type conducted by the Fund.

Notwithstanding the above, the Managing Member, officers, and agents shall not be indemnified from any liability for fraud, bad faith, gross negligence, or willful misconduct in its duties and responsibilities to the Fund.

As a result, the Fund and its Investor Members may be entitled to a more limited right of action than they and the Fund would otherwise have it these indemnification rights were not included in the LLC Agreement.

The general effect to Investor Members of any arrangement under which the Fund agrees to insure or indemnify any persons against liability is a potential reduction in distributions resulting from the Fund's payment of premiums associated with insurance or indemnification payments in excess of amounts covered by insurance. In addition, indemnification could reduce the legal remedies available to the Investor Members and the Fund against the Fund's Managing Member, officers, and agents. However, indemnification does not reduce the exposure of the Managing Member and officers to liability under federal or state securities laws, nor does it limit the Investor Members' ability to obtain injunctive relief or other equitable remedies for a violation of a partner's or an officer's duties to the Fund, although the equitable remedies may not be an effective remedy in some circumstances.

The SEC and some state securities commissions take the position that indemnification against liabilities arising under the Securities Act is against public policy and unenforceable.

CONFLICTS OF INTEREST

The Fund is subject to various conflicts of interest arising out of its relationship with its Managing Member, and the Managing Member's Affiliates, including conflicts related to the arrangements pursuant to which the Fund will compensate the Managing Member and its Affiliates. See the Management Compensation section of this Memorandum. Some of the potential conflicts of interest in the Funds transactions with the Managing Member and its Affiliates are described below. For a description of some of the risks related to these conflicts of interest, see the "Risk Factors — Risks Related to the Fund's Relationship with the Managing Member and its Affiliates, and Conflicts of Interest."

There are no independent oversight mechanisms of the Fund to monitor the conflicts of interest between the Fund and the Managing Member.

Affiliates

See the Risk Factors Section titled "Risks Related to the Managing Member".

Sponsor's Incentives

See the Risk Factors Section titled "Risks Related to the Managing Member".

Other Investment and Business Opportunities

The Fund relies on the Managing Member and its Affiliates and advisors to identify and select potential real estate investment opportunities on the Fund's behalf. At the same time, the Managing Member's Affiliates and advisor manage other real estate programs sponsored by the Fund's sponsor that may have investment objectives and investment strategies that are similar to the Fund's objectives and strategies. As a result, such Affiliates and advisors could face conflicts of interest in allocating real estate acquisition opportunities as they become available. By way of example, if one of these other real estate programs attracts a tenant that the Fund is competing for, the Fund could suffer a loss of revenue due to delays in locating another suitable tenant. Each investor will not have the opportunity to evaluate the manner in which these conflicts of interest are resolved before or after making the investment in Interests.

No Separate Representation

The Fund, Managing Member, and its principles and Affiliates have not been represented by separate counsel in connection with the formation of the Fund, Managing Member, or the other related entities, the drafting of this Memorandum and the LLC Agreement, any other of the various agreements and other documents or entities relevant to this Offering or the Offering of the Interests themselves. Accordingly, the Fund has not had the benefit of independent counsel advising it on its arrangements with the Managing Member. The attorneys, accountants and other experts who perform services for the Fund and the Managing Member may perform similar services for the Sponsor and its Affiliates and it is contemplated that those multiple representations will continue in the future. However, should the Company or the Managing Member become involved in disputes, the Managing Member will cause the disputing parties to retain separate counsel for those matters unless the respective parties consent.

AMENDMENTS TO LLC AGREEMENT

Amendment to LLC Agreement

The Managing Member under the LLC Agreement has broad authority to amend the LLC Agreement without the approval or consent of the Investor Members, including in connection with performing any of the Managing Member's management rights set forth in Section 5.1 of the LLC Agreement and in connection with the issuance of additional classes of units or other securities issued by the Fund. Pursuant to the LLC Agreement, each Investor Member has agreed to execute such amendments requested by the Managing Member from time to time to effectuate any amendment that the Managing Member is authorized to enter into that does not require the consent of the Investor Members.

MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS OF ACQUIRING AND HOLDING INVESTOR MEMBER INTERESTS

In General

The following is a summary of certain U.S. federal income tax consequences of an investor who is an individual citizen of the U.S. or resident alien (as defined in Treasury regulation section 301.7701(b)-1) for investing in the Investor Member Units in the Fund. This summary does not purport to address all material tax consequences of the ownership of the Investor Member Units and, except as otherwise specifically provided below, the discussion below assumes that a Investor Member is an individual citizen of the United States or resident alien (as defined in Treasury regulation section 301.7701(b)-1) and generally does not take into account the specific circumstances of any particular Investor Member, such as dealers in securities or currencies, traders in securities, banks, tax-exempt organizations, life insurance companies, trusts, corporations or non-resident alien individuals. In addition, very limited information regarding state and local taxes is provided. Although the Fund will furnish the Investor Members with such information regarding the Fund as is reasonably required for income tax purposes, each Investor Member will be responsible for preparing and filing such Investor Member's own tax returns. The following summary of the tax aspects is based on the Code, on existing Treasury regulations, and on administrative rulings and judicial decisions interpreting the Code as in effect at the time this Memorandum was drafted. Significant uncertainty exists regarding certain tax aspects of partnerships. Such uncertainty is due, in part, to continuing changes in U.S. federal tax laws that have not fully been interpreted through regulations or judicial decisions. Tax legislation may be enacted in the future that will affect the Fund and a Investor Member's investment in the Fund. Because the tax aspects of this offering are complex and certain of the tax consequences may differ depending on individual tax circumstances, each Investor Member is urged to consult with and rely on its own tax advisor about this offering's tax aspects and its individual situation.

The Fund has not obtained and does not intend to obtain an opinion of counsel with respect to this summary of tax matters. In addition, no rulings have been or will be requested from the Internal Revenue Service (the "*IRS*") with respect to the matters discussed herein. Therefore, there can be no assurances that the IRS or any other governmental agency or taxing jurisdiction will agree with the statements set forth below.

Investors should consult their own tax advisors concerning their situations and the impact which their participation in the Fund may have on their federal income tax liability as well as how state, local and foreign income, and other tax laws may apply to their participation and the implications those laws may have. In evaluating an investment in the Fund, a Investor Member should take into account the cost of obtaining such advice.

Tax benefits to our Investor Members are not anticipated to constitute a significant aspect of an investment in the Fund. The Fund is not structured with the intent of generating tax losses and no Investor Member should invest in the Fund with the expectation of using losses from the Fund's activities to offset income from any other source.

The following discussion does not specifically discuss the tax consequences to the Investor Members of the Fund's investment in other partnerships. Investors should consult their tax advisors with respect to such tax considerations.

TAX STATUS OF FUND

Classification of the Fund as a Partnership

Subject to certain exceptions, a partnership generally incurs no U.S. federal income tax liability. Instead, the partners are required to take into account their respective distributive shares of the partnership's net income or loss, as well as their respective distributive shares of certain specially characterized items (e.g., capital gains and losses), in computing their respective income tax liability. In such a case, distributions by a partnership to a partner generally are not taxable unless the distributions exceed the partner's adjusted basis in such partner's interest in the partnership. The availability to the Investor Members of most of the tax treatment described in this summary requires that the Fund be classified as a partnership for U.S. federal income tax purposes rather than an association, which is taxed as a corporation under the U.S. federal income tax laws.

Although our Managing Member does not plan to request a ruling from the IRS regarding our status, it is anticipated that the Fund will be treated as a partnership for U.S. federal income tax purposes. Still, there is no assurance that the IRS will not challenge such classification.

If a partnership were to be treated as a corporation for U.S. federal income tax purposes, its partners would be treated as shareholders of a corporation, with the result, among other things, that (i) items of income, gain, loss, deduction and credit of the partnership would not flow through to its partners for reporting on their individual U.S. federal income tax returns, (ii) cash distributions, if any, would be treated as distributions by a corporation in respect of its stock, and such distributions would be taxable to the partners as dividends to the extent of current and accumulated earnings and profits of the partnership, and (iii) the taxable income of the partnership would be subject to U.S. federal income tax on corporations (thereby reducing the cash available for distribution).

The discussion that follows is based on the assumption that the Fund will be classified as a partnership and not as a corporation for U.S. federal income tax purposes.

Classification of the Fund as a Publicly Traded Partnership

Code section 7704 treats certain so-called "publicly traded partnerships" ("*PTPs*") as corporations for U.S. federal tax purposes. Consequently, the treatment of an entity as a partnership for U.S. federal income tax purposes is dependent on that entity not being classified as a PTP.

A partnership is treated as a PTP if the partnership's equity interests are traded on an established securities market or are readily tradable on a secondary market (or the substantial equivalent thereof). An established securities market includes a securities exchange as well as a regular over-the-counter market. Treasury regulations under Code section 7704 (the "*PTP Regulations*") state that a secondary market is generally indicated by the existence of a person standing ready to make a market in the interests of the entity, or where the holder of an interest in the entity has a readily available, regular and ongoing opportunity to sell or exchange its interest through a public means of obtaining or providing information on offers to buy, sell, or exchange interests. Complicity or participation of the entity is relevant in determining whether there is public trading of its equity interests. A partnership will be considered as participating in public trading where trading in its equity interests is in fact taking place and the partnership's governing documents impose no meaningful limitation on the partners' ability to readily transfer their equity interests. A partnership's right to refuse to recognize transfers generally is not a meaningful limitation unless such right is exercised (except in the case of transfers by reason of death, divorce, or gift).

Whether equity interests in the Fund will become readily tradable on a secondary market (or the substantial equivalent thereof) cannot be predicted with certainty. However, equity interests in the Fund will not be deemed readily tradable on a secondary market (or the substantial equivalent thereof) if any of the safe harbors provided for in the PTP Regulations are satisfied.

The PTP Regulations provide limited safe harbors from the definition of a publicly traded partnership. One of these safe harbors is the so-called "2% safe harbor." It provides that a secondary market (or its equivalent) will not exist if the sum of the interests in capital or profits attributable to those interests that are sold or otherwise transferred during a partnership's taxable year does not exceed 2% of the total interests in capital or profits.

Another of these safe harbors is the so-called "private placement safe harbor." Pursuant to the "private placement exclusion", interests in a partnership will not be treated as readily tradable on a secondary market or the substantial equivalent thereof if (1) all interests in the partnership were issued in a transaction or transactions that were not required to be registered under the Securities Act of 1933, as amended, and (2) the partnership does not have more than 100 partners at any time during the partnership's taxable year. In determining the number of partners in a partnership, a person owning an interest in a partnership, grantor trust, or S corporation that owns an interest in the partnership is treated as a partner in such partnership only if (1) substantially all of the value of the owner's interest in the entity is attributable to the entity's direct or indirect interest in the partnership, and (2) a principal purpose of the use of the entity is to permit the partnership to satisfy the 100-partner limitation. The Managing Member could if it chooses to limit the number of partners of the Fund to fewer than 100, taking into consideration, to the extent necessary, the presence of any flow-through entities.

The Investor Membership Agreement does not permit any transfer of Investor Member Units if such transfer would cause the Fund to be considered a PTP. Further, the Managing Member does not intend to cause the Fund to redeem any Investor Member Units if the redemption could cause the Fund to become a PTP. Even with such safeguards, should the aforementioned facts, assumptions and representations fail to be accurate for any reason, the IRS may take the position that the Fund should be treated as an association taxable as a corporation for U.S. federal income tax purposes. The Fund does not plan to request a ruling from the IRS regarding whether the Fund may be treated as a PTP. Consequently, it is not possible to state with complete assurance that the Fund will be treated as a partnership and not as an association taxable as a corporation for U.S. federal income tax purposes.

TAXATION OF INVESTORS

Tax Consequence of Investor Member Unit Ownership

No U.S. federal income tax is generally paid by a partnership as an entity. Instead, each partner is required to report on its income tax return its distributive share of a partnership's income, gain, loss, deduction or credit (and items of tax preference), regardless of whether any actual distribution is made to that partner during the taxable year. Thus, a prospective Investor Member may be liable for income taxes with respect to ownership of Investor Member Units in the Fund without receiving a corresponding distribution from the Fund. Although the operating agreement provides for a tax distribution to the partners, there is no guarantee that the Fund will have net available cash flow to make such distributions. Therefore, the Investor Members may be required to recognize tax from taxable income in excess of cash distributions from the Fund, causing such Investor Members to pay "out-of-pocket" any related tax liability. Accordingly, each Investor Member should consult with the Investor Member's tax advisor regarding the impact of an investment in the Fund, specifically including the possibility that such Investor Member may incur a tax liability with respect to such investment but may not receive corresponding distributions from the Fund with which to pay such tax liability.

Conversely, as discussed below with respect to cash distributions, actual (or constructive) distributions of money from a partnership will be taxable only to the extent that such distributions exceed the adjusted basis of the partner's interest in the Fund, regardless of whether the Fund has current income. The characterization of an item of income or loss generally will be the same for the partners as it is for the Fund.

Tax Basis of Investor Member Units

A Investor Member's basis in its Investor Member Units initially will be equal to the amount of cash or the tax basis of property contributed to the Fund by such Investor Member. Subsequently, a Investor Member must adjust its basis to reflect certain Fund transactions. A Investor Member's basis will generally be increased by (i) any cash or the tax basis of property contributed to the Fund by that Investor Member; (ii) that Investor Member's distributive share of the Fund's taxable income; (iii) that Investor Member's share of the Fund's recourse debt, if any, with respect to which that Investor Member bears the economic risk of loss; and (iv) that Investor Member's distributive share (based on that Investor Member's ongoing interest in the Fund profits) of any Fund indebtedness with respect to which no partner, including the Managing Member, bears the economic risk of loss ("*non-recourse debt*"), but which increase will be limited to the fair market value of the property securing such indebtedness. A Investor Member's basis will be decreased, but not below zero, by (i) the amount of that Investor Member's distributive share of items of Fund loss and deduction; (ii) the amount of any money distributed, or constructively distributed, to that Investor Member; and (iii) the adjusted basis of distributed property other than money, to that Investor Member. A reduction in the amount of a Investor Member's share of Fund debt will be treated as a constructive cash distribution to that Investor Member and will reduce the basis of that Investor Member's interest in the Fund.

Cash Distributions

Under Code section 731, cash distributions by the Fund to a Investor Member will not result in taxable gain to that Investor Member unless the distributions exceed the Investor Member's adjusted basis for its membership interest, in which case the Investor Member will recognize gain in the amount of such excess.

A reduction in a Investor Member's share of the Fund's non-recourse debt or of any Fund recourse debt for which such Investor Member may bear ultimate liability will be treated as a cash distribution to such Investor Member to the extent of such reduction. If a constructive distribution exceeds a Investor Member's adjusted basis in such Investor Member's membership interest at that time, such Investor Member will recognize gain as described above.

If a distribution to a Investor Member, or the amount of any decrease in the Investor Member's share of the Fund's indebtedness (any such decrease being considered a constructive cash distribution), exceeds the Investor Member's adjusted tax basis in the Investor Member's interest in the Fund, such income would normally be characterized as a capital gain. If the Investor Member's interest in the Fund has been held for longer than one year, any such gain would generally constitute long-term capital gain. However, a Investor Member may recognize ordinary income under Code section 751 under certain circumstances. Such ordinary income would generally equal the amount of ordinary income (if any) that would have been allocated to the Investor Member in respect of the Investor Member's Investor Member Units if the Fund had sold all of its assets.

Income and Losses from Passive Activities

A Investor Member's ability to deduct losses derived from so called "passive activities" is substantially restricted by Code section 469. Passive activities generally include any activity involving the conduct of a trade or business in which the taxpayer does not materially participate.

Subject to certain exceptions that may be applicable, the Investor Members' investment in the Fund will be treated as a passive activity. Accordingly, income and loss of the Fund will likely constitute passive activity income and passive activity loss, as the case may be, to Investor Members. However, the Fund has not and will not obtain an opinion from counsel, nor will a ruling from the IRS be sought, with respect to this issue. Therefore, there is no assurance that the IRS will not challenge a Investor Member's investment as "passive."

Losses from passive activities are generally deductible only to the extent of a taxpayer's income or gains from passive activities and will not be allowed as an offset against other income, including salary or other compensation for personal services, active business income or "portfolio income," which includes non-business income derived from dividends, interest, royalties, annuities and gains from the sale of property held for investment. Passive activity losses that are not allowed in any taxable year are suspended and carried forward indefinitely and allowed in subsequent years as an offset against passive activity income in future years. Suspended losses from a passive activity are allowed in full when the taxpayer disposes of its entire interest in the passive activity in a taxable transaction.

Application of At-Risk Limitations

Generally, the losses that a taxpayer can claim in certain activities are limited by Code section 465 to the amount that the taxpayer has at risk with respect to such activities. Losses that are disallowed in any year because of the at-risk limitations are carried over to succeeding years and can be used in those years to the extent that the Investor Member's at-risk amount has increased. A taxpayer is considered at risk in any activity with respect to (i) the net amount of money and the adjusted basis of property contributed by the taxpayer to the activity; (ii) any amount with respect to the activity if the taxpayer is considered personally liable for the repayment of that amount or amount of taxpayer's assets which he has pledged that are not used in the activity as security for borrowed amounts; and (iii) the taxpayer's proportionate share of any amount borrowed with respect to the activity if the lender is an institutional lender and the loan is secured by the real property used in the activity ("*Qualified Non-Recourse Financing*"). A taxpayer's at-risk amount is increased by profits earned in the activity and decreased by losses occurring in the activity. It is unclear the extent to which any indebtedness that the Fund will incur would be Qualified Non-Recourse Financing.

U.S. Federal Income Tax Rates

The Code contains a progressive tax rate structure. The maximum U.S. federal effective income tax rate applicable to individuals for ordinary income and short-term capital gains is currently 37%. Itemized deductions and personal exemptions are also phased out for higher income taxpayers. Long-term capital gains of certain non-corporate Investor Members (including individuals) is currently subject to U.S. federal income taxation at a maximum rate of 20%.

Tax rates are adjusted from time to time and may vary over the life of the Fund.

Allocations of Income and Losses

Under Code section 704(b), a partner's distributive share of income, gain, loss, deduction, or credit (or any item thereof) will be determined in accordance with the operating agreement only if such allocation has "substantial economic effect." In determining whether an allocation has substantial economic effect,

the principal considerations are (i) whether the allocation actually affects the eventual amount of money or other property allocable to a partner, (i.e., it has economic effect), without regard to tax consequences, and (ii) whether the effect described in (i) is substantial. Further, the test for determining whether economic effect of an allocation is substantial is extremely complicated. There are a couple of alternatives for an allocation to meet the test for economic effect. An allocation to a Investor Member will meet the economic effect test when (i) the Investor Members' capital accounts are maintained in accordance with the requirements of the Treasury regulations; (ii) liquidating distributions are made in accordance with positive capital account balances; (iii) the Investor Member which receives the allocation is not obligated to restore the deficit balance in its capital account or only needs to restore a limited dollar amount of such deficit balance; and (iv) the operating agreement has a qualified income offset. If an allocation under the operating agreement does not have substantial economic effect, then the IRS will reallocate profits and losses among the partners in accordance with their interests in the Fund, determined by taking into consideration all facts and circumstances.

The Treasury regulations require special rules for allocations of deductions and losses attributable to non-recourse liabilities. The Investor Members should consult with their own independent tax advisors relating to the special rules for allocations of deductions and losses attributable to non-recourse liabilities.

The Fund's liquidating distributions will not be made in accordance with positive capital account balances, but rather based on the distribution as set forth in the Investor Membership Agreement. Thus, the Investor Membership Agreement does not comply with the substantial economic effect requirements. As such, it is intended that allocations will be consistent with the Investor Members' interest in the Fund. There is no assurance that the IRS will not set aside the allocations of income and loss by the Fund for U.S. federal income tax purposes.

In cases where the allocations of income, gain, loss, deduction, and credit do not satisfy the substantial economic effect test of the Treasury regulations promulgated under Code section 704(b), such items will be re-determined in accordance with the overall economic interests of the Investor Members (i.e., the "partners' interest in the partnership") -- taking into account all facts and circumstances. In such a case, the IRS will consider (i) the Investor Members' relative contributions to the Fund; (ii) the interests of the Investor Members in economic profits and losses if different than that in taxable income or loss; (iii) the interests of the Investor Members in cash flow and other non-liquidating distributions; and (iv) the rights of the Investor Members to distributions of capital upon liquidation.

Tax Liability Relating to a Sale of Assets to Fund Redemptions

The operating agreement provides that the Investor Member Units of the Partners may be redeemed under certain circumstances. If the Fund, in the Managing Member' discretion, were to liquidate a sell any assets to fund such redemption, gain may be recognized from such liquidation or sale. Such gain may be allocated to all of the Partners, not just the partner being redeemed. Thus, unless the Fund has net available cash flow to make a tax distribution with respect to such period, the partners may have to pay "out-of-pocket" any related tax liability. Accordingly, each Investor Member should consult with the Investor Member's tax advisor regarding the impact of an investment in the Fund, specifically including the possibility that such Investor Member may incur a tax liability with respect to such investment but may not receive corresponding distributions from the Fund with which to pay such tax liability.

Sale or Redemption of Investor Member Units

The sale or redemption of Investor Member Units by a Investor Member, who has held such Units for more than 12 months, generally should result in long-term capital gain or loss. In certain circumstances, a portion of the gain may be treated as short-term capital gain or loss. This may occur, for instance, if the

Investor Member has made additional capital contributions to the Fund during the preceding 12-month period. Also, a portion of the gain may be treated as ordinary income where, for example, it is attributable to any unrealized receivables (including any property with depreciation recapture under Code section 1245 and excess depreciation recapture under Code section 1250) or inventory items of the Fund as defined in Code section 751. The amount of gain realized on the sale or redemption of Investor Member Units will be the amount received by the Investor Member, plus that Investor Member's allocable share of Fund debt relieved, less the adjusted basis of the Investor Member Units in the Investor Member's hands.

Under Code section 706(d), "retroactive allocations," i.e., allocations of items to partners before they became partners, are prohibited. Code section 706(d) and the Treasury regulations accomplish this prohibition by providing that if there is a change in any partner's interest in any taxable year of the partnership, each partner's distributive share of a partnership's tax items is to be determined by use of any method prescribed by the Secretary of the Treasury in Treasury regulations which take into account the varying interests of the partners in the partnership during such taxable year. The Investor Membership Agreement provides that income or loss allocable to the Investor Members will be allocated in accordance with Code section 706, using any convention permitted by law selected by the Managing Member. The Managing Member may choose to allocate the distributive share of Fund income, gain, loss, deduction or credit for the entire year with respect to such Investor Member Units between the transferor and the transferee, based either (i) upon the period of time during the taxable year that each owned such Investor Member Units, notwithstanding the timing or amounts of any Fund distributions, or (ii) by a closing of the books of the Fund immediately after the transfer of the interest. Thus, if a Investor Member transfers Investor Member Units during a taxable year, the Investor Member may be allocated net profits for a period for which such Investor Member will not receive a corresponding cash distribution.

The Investor Members may not be able to sell their Investor Member Units as it is not anticipated that a market will develop for the Investor Member Units and the Investor Membership Agreement contains restrictions on their sale and redemption. However, if a Investor Member is able to sell its Investor Member Unit(s), such Investor Member must comply with the reporting requirements of Code section 6050K and provide the Fund with sufficient information, if the Investor Member has not already done so, so that the Fund may file IRS Form 8308 with respect to such transfer.

Gift of Investor Member Units

Generally, no gain or loss is recognized for income tax purposes as a result of a gift of property. However, if a gift of Investor Member Units is made at a time when a Investor Member's allocable share of Fund indebtedness exceeds the adjusted basis of the Investor Member Units in the Investor Member's hands, then that Investor Member may realize a gain for income tax purposes to the extent of such excess. Such gain generally should be treated as capital gain, except to the extent it is attributable to any unrealized receivables or appreciated inventory items of the Fund as defined in Code section 751, which items generally will be treated as ordinary income. Gifts of Investor Member Units also may be subject to a gift tax. Gifts of Investor Member Units may only be made subject to the transfer restrictions set forth in the Investor Membership Agreement.

Taxable Year and Method of Accounting

The Fund will report its operations on a calendar-year basis unless otherwise required by law. To the extent permitted by law, the Fund will use the same method of accounting for tax purposes that the Managing Member chooses for the financial books and records of the Fund. If the accrual method of accounting is used, then income is included for the taxable year when "all events" have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy. Consequently, taxable income is required to be recognized as it is earned, notwithstanding the fact that the

cash associated with such income may have not been received. Thus, if the accrual method of accounting is chosen, then a Investor Member's share of the Fund's taxable income for a period may be in excess of the cash actually received by that Investor Member.

Code Section 704(c) Allocations

The IRS rules require allocations of taxable income that are referred to as section 704(c) allocations and reverse Code section 704(c) allocations. These allocations reduce or eliminate the disparity between a Investor Member's tax basis in its Fund interest and its capital account. These allocations are made solely for tax purposes, and they will differ from a partner's share of profits or losses for capital account maintenance purposes. Code section 704(c) allocations are made when a partner contributes property having a tax basis that is different from the property's book value or when adjustments are made to the book value of the assets, which adjustments may be made under certain circumstances set forth in the Treasury regulations, such as the issuance of new Investor Member Units. Code section 704(c) principles set forth in Treasury regulations require that subsequent allocations of depreciation, gain, loss and similar items with respect to the asset take into account, among other things, the difference between the "book" and tax basis of the asset using one of a number of different methodologies. The Investor Membership Agreement gives the Managing Member the flexibility to use any such methodology as determined by the Managing Member in its sole and absolute discretion, and the choice of such methodology might negatively impact certain Investor Members, while benefitting the other Investor Members each Investor Member should consult with the Investor Member's tax advisor regarding the impact that the Managing Member's choice of methodology for section 704(c) allocations and reverse Code section 704(c) allocations may have upon such Investor Member before making an investment in Investor Member Units.

Self-Employment Tax

Code section 1402 of the Code imposes a self-employment tax on the distributive share of a Managing Member of a limited or Managing Memberhip. Code section 1402(a)(13) provides an exception for Investor Members -- excluding a Investor Member's distributive share of profits from the self-employment tax. The tax rules relating to who may be treated as a Investor Member for tax purposes are not clear. If a Investor Member is not deemed to be a Investor Member for tax purposes, such Investor Member's distributive share of the Fund's profits may be subject to the self-employment tax. The Managing Member has not and will not obtain an opinion of counsel, nor will a ruling from the IRS be sought with respect to the application of the self-employment tax on a Investor Member's distributive share of profits of the Fund, or with respect to the application of the "Investor Member" exception to Investor Members.

Tax on Net Investment Income

Under current law, the Investor Members will generally be subject to a 3.8 percent (3.8%) Medicare tax, in addition to regular tax on income and gains, on some or all of their "net investment income" to the extent they meet certain requirements. Investor Members should consult their tax advisors regarding the applicability of this tax in respect of their ownership of Investor Member Units in the Fund. However, to the extent that a Investor Member is subject to self-employment tax discussed above, the tax on net investment income will not apply.

Organizational and Syndication Costs

Expenses of organizing the Fund ("*Organization Expenses*") and of promoting the sale of Investor Member Units in the Fund (i.e., "*Syndication Expenses*," which include sales commissions (including to

the Managing Member or its affiliates and broker-dealers), professional fees for preparing the placement memorandum, and printing costs) must be capitalized, and not deducted, by the Fund.

Admission of New Investor Members

A decrease in a Investor Member's percentage interest in the Fund because of the Fund's issuance of additional Investor Member Units will decrease the Investor Member's share of any nonrecourse liabilities, if any, and thus may result in a corresponding deemed distribution of cash. A non-pro rata distribution of money or property may result in ordinary income to a Investor Member, regardless of the Investor Member's tax basis in the Investor Member's Investor Member Units, if the distribution reduces the Investor Member's share of our "unrealized receivables," including depreciation recapture, and/or substantially appreciated "inventory items," both as defined in the Code section 751, and collectively referred to as "Section 751 Assets." To that extent, the Investor Member will be treated as having been distributed the Investor Member's proportionate share of the Section 751 Assets and having exchanged those assets with the Fund in return for the non-pro rata portion of the actual distribution made to the Investor Member. This latter deemed exchange will generally result in the Investor Member's realization of ordinary income, which will equal the excess of (i) the non-pro rata portion of that distribution over (ii) the Investor Member's tax basis for the share of Section 751 Assets deemed relinquished in the exchange.

As stated above, under Code section 706(d), "retroactive allocations," i.e., allocations of items to partners before they became partners, are prohibited. Code section 706(d) and the Treasury regulations accomplish this prohibition by providing that if there is a change in any partner's interest in any taxable year of the partnership, each partner's distributive share of a partnership's tax items is to be determined by use of any method prescribed by the Secretary of the Treasury in Treasury regulations which take into account the varying interests of the partners in the partnership during such taxable year. The Investor Membership Agreement provides that income or loss allocable to our Investor Members will be allocated among our Investor Members during the course of the year, in accordance with Code section 706, using any convention permitted by law selected by the Managing Member. The Managing Member may choose to allocate the distributive share of Fund income, gain, loss, deduction or credit for the entire year with respect to such Investor Member Unit between the existing Investor Members and the newly admitted Investor Members based either (i) upon the period of time during the taxable year that each owned such Investor Member Unit, notwithstanding the timing or amounts of any Fund distributions, or (ii) by a closing of the books of the Fund immediately after the transfer of the interest. Although the Managing Member has the option to use a closing of the book's method, the Fund may incur substantial costs in closing its books for the purposes of making the Code section 706 allocations.

Dissolution and Liquidation of the Fund

Generally, upon dissolution and liquidation of the Fund, a Investor Member will recognize, in addition to any gain that may be allocated to such Investor Member upon the sale or other disposition of Fund property during the taxable year of liquidation, income to the extent that the sum of the cash which is distributed to the Investor Member and its proportionate share of any then-existing Fund non-recourse liabilities exceeds its adjusted basis in its Investor Member Units at the time of distribution. If any Fund property other than cash is distributed to the Investor Member at such time then its basis in such property will be an amount equal to the adjusted basis of its Investor Member Units reduced by any cash distributed to the Investor Member in the same transaction and reduced by any decrease in its proportionate share of non-recourse liabilities of the Fund, if any.

Code Section 754 Election

A partnership is permitted to make an election under Code section 754, which results in various items of partnership income, gain, loss, deduction and credit being treated differently for tax purposes than for accounting purposes. In certain circumstances, the Code requires the election to be automatically made. Under that election, the Code provides for adjustments to the basis of partnership property for measuring gain upon distributions of partnership property and transfers of any partnership interests. The general effect of such an election is that, for purposes of computing depreciation and gain, (i) transferees of a partnership interest are treated as though they had acquired a direct interest in the partnership assets, and (ii) the partnership is treated, upon certain distributions to partners, as though the partnership had acquired a new cost basis for such assets. Any such election, once made, cannot be revoked without the IRS's consent.

The Managing Member may, in its discretion, make an election for the Fund under Code section 754, as well as various other elections, in accordance with the terms of the Investor Membership Agreement. As a result of the complexities and added expense of the tax accounting required to implement such an election, the Managing Member may decide not to make a Code section 754 election. As a consequence, even assuming that the Managing Member consents to a sale of Investor Member Units, a Investor Member may have greater difficulty in selling its Investor Member Units since the Investor Member will obtain no current tax benefits from the investment to the extent that the Investor Member's cost of such Investor Member Units exceeds the Investor Member's allocable share of the Fund's basis in the assets.

Limitations on Interest Deductions

Code section 163(d), applicable to non-corporate taxpayers and S corporation shareholders, limits the deductibility of interest incurred on loans used to acquire or carry property held for investment ("*Investment Interest Expense*"). Property held for investment includes all investments held for the production of taxable income or gain but does not include trade or business property or interest incurred to construct trade or business property. Investment Interest Expense is deductible by non-corporate taxpayers and S corporation shareholders only to the extent it does not exceed net investment income for the taxable year. Net investment income is the excess of investment income over the sum of investment expenses. Investor Members should consider the effect of investment interest limitations on using debt financing for the Investor Member's purchase of the Investor Member Units. Each Investor Member is advised to consult with its own tax advisors with respect to the application of the investment interest limitation in such Investor Member's particular tax situation.

Alternative Minimum Tax

Individual taxpayers are subject to an "alternative minimum tax" if such tax exceeds the individual's regular income tax. Generally, alternative minimum taxable income is the taxpayer's adjusted gross income increased by the amount of certain preference items less certain itemized deductions. The Fund may generate certain preference items. Depending on a Investor Member's other items of income, gain, loss, deduction and credit, the impact of the alternative minimum tax on a Investor Member's overall U.S. federal income tax liability may vary from no impact to a substantial increase in income tax. Accordingly, each Investor Member should consult with its tax advisor regarding the impact of an investment in the Fund on the calculation of its alternative minimum tax, as well as on its overall U.S. federal income tax liability.

Floor on Miscellaneous Itemized Deductions

Under current law, for years before 2026, individuals are not able to deduct any "miscellaneous itemized deductions" and thus, to the extent any expenses of the Fund are treated as miscellaneous itemized

deductions, such expenses will not be deductible in any tax year before 2026. For tax years starting in 2026, individuals are able to deduct certain "miscellaneous itemized deductions" only to the extent the deductions cumulatively exceed 2% of the taxpayer's adjusted gross income. Miscellaneous itemized deductions include all itemized deductions other than those for interest, taxes, casualty losses, charitable donations, medical expenses and certain other deductions. The legislative history of this provision makes it clear that the floor applies with respect to indirect non-business deductions through partnerships and other pass-through entities. The application of the rules with respect to miscellaneous itemized deductions to the Fund will depend on whether it is characterized as being from an active trade or business. To the extent the activities of the Fund do not constitute an active trade or business, each individual Investor Member's share of any "miscellaneous itemized deductions," would likely be subject to the 2% floor.

Fees Payable to the Managing Member and Affiliates

The Managing Member and its directors, officers, shareholders, and affiliates will receive certain compensation for services to be rendered in administering the Fund's business and the Fund may or may not treat such fees as being deductible. If questioned, any income tax deduction taken for the fees would depend, in part, on a factual determination as to the nature of the services actually performed, an inquiry which cannot be predicted with certainty. As a consequence of the factual nature of this question, neither the Managing Member nor the Fund has obtained or will obtain an opinion from legal counsel with respect to any income tax deduction taken with respect to these payments. Although the Managing Member believes that the amount of the fees charged is reasonable based on the services and intends to cause the Fund to deduct some or all of these fees, no assurance can be given that the IRS will not seek to treat the various deducted fees as constituting an allocation of income or a distribution of capital, rather than as a capitalizable or deductible expense. If a challenge by the IRS to the deductibility of certain fees were successful, this could result in a proportionate increase in the taxable income, or decrease in tax loss, of the Investor Members, potentially resulting in the Investor Members being required to pay additional tax.

In addition, the IRS has taken the position in a revenue ruling that a management fee incurred by a partnership that is not directly involved in a trade or business is not deductible as an ordinary and necessary expense under Code section 162 but is rather an expense described in Code section 212. If the IRS were to determine that such revenue ruling applies to the Fund, some or all of the management fees may be treated as an expense described in Code section 212. As such, the expense must be separately stated by the Fund and separately taken into account by the Investor Member. In addition, revenue ruling effectively reduces a Investor Member's share of the deduction for management fees because an individual's investment expenses can be claimed only as miscellaneous itemized deductions, which are non-deductible before 2026 and which are subject to the 2%-floor for years beginning in 2026. Further, this treatment may also result in alternative minimum tax as miscellaneous itemized deductions are not allowed for alternative minimum tax purposes.

Returns and Consistency

Although no U.S. federal income tax is generally paid by an entity treated as a partnership for U.S. federal income tax purposes, the Fund will nevertheless be required to file annual U.S. federal informational tax returns.

Investor Members are required to file their tax returns timely. In addition, Investor Members are required to file their tax returns consistently with the information provided on the Fund's informational return or notify the Fund and the IRS of any inconsistency. If a Investor Member reports an item on such Investor Member's income tax return in a manner inconsistent with the Fund's tax return, the Investor Member must (i) file a statement with the IRS identifying the treatment of any item on the Investor Member's U.S. federal income tax return that is not consistent with the treatment of the item on an

informational return that the Fund files, and (ii) notify the Managing Member of such treatment before filing such Investor Member's income tax return. Failure to notify the IRS will subject a Investor Member to tax and may result in substantial penalties and other negative tax consequences. Failure to comply with the timely filing and consistent filing requirements of the Investor Membership Agreement will cause the Investor Member to become liable to the Fund 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.

Tax Shelter Reporting

Under Treasury regulations designed to help the IRS discover tax shelter type transactions, the Fund or the Managing Member may be required to report certain transactions to the IRS. Such transactions include, but are not limited to, certain transactions listed by the IRS as potential tax shelter transactions and transactions substantially similar to such transactions. If the Fund or the Managing Member is required to report such a transaction, a Investor Member also may have to report such transaction by filing a form with its tax return, which could raise the risk that such Investor Member would be audited by the IRS and that the IRS would challenge the tax treatment of such transaction, and of other items, on such Investor Member's return. Failure to report such transactions could result in significant penalties for the Fund and for Investor Members. Although the Fund is not intended as a tax shelter and does not intend to engage in any reportable transactions, the Fund cannot assure Investor Members that any joint venture in which it invests will not engage in any such reportable transactions. Potential Investor Members must be aware that an investment in the Fund could cause that Investor Member to have to file such a form with its tax return with respect to its investment. In addition, the Treasury regulations provide that if a partnership engages in any such potential tax shelter transactions, it or the Managing Member has to maintain certain documentation for the IRS, including Investor Member lists.

Audit Risk and Resolution of Disputes Involving Fund Items and Tax Liability Resulting from an Audit

The IRS has adopted a policy of auditing, selectively, a large number of partnership information returns. In view of the IRS's audit programs, the Fund's information return may be selected for audit. I

Partnership audit procedures currently in effect require a partnership to pay tax (including interest and penalties) on any adjustments to taxable income made as a result of an audit. The amount of tax paid by the partnership will be determined without the benefit of partner level tax items that could otherwise reduce tax due on any adjustment. Because the audit adjustment tax is paid by the partnership, the economic burden of any such tax on the Fund would fall on the Partners at the time the audit adjustment tax is paid. However, the partnership may instead elect to pass through any audit adjustments to those who were Partners of the Fund in "reviewed year" to which the audit adjustment relates. If the Fund were to make such election with respect to an audit adjustment, tax burden associated with such adjustment would fall on those Partners who held Investor Member Units in the reviewed year to which the audit adjustment relates. Several changes and clarifications have been made to these rules and the IRS and the Treasury Department anticipate issuing additional Treasury regulations to provide additional guidance relating to such rules. As such, no assurance can be given that the law will not change prior to the date on which the new audit procedures first apply.

The Code provides for one person to be designated as the "Partnership Representative" for these purposes, who is generally the person that will be responsible for handling the audit. The Investor Membership Agreement appoints the Managing Member as the Partnership Representative for the Fund.

If the IRS (or any state or local taxing authority, to the extent similar audit procedures are followed by such taxing authority) audits the Fund's tax return and makes any adjustments to taxable income as a result of such audit, the Partnership Representative will, at the direction of the Managing Member in the Managing Member's sole and absolute discretion, determine whether to elect to pass through any audit adjustments to those who were Partners of the Fund in the year that was audited. If the tax liability is passed on to the partners, the Fund may not cash distributions to Investor Members to assist them in paying a tax liability resulting from an audit unless otherwise determined by the Managing Member in its sole and absolute discretion. Each Partner is required to cooperate with the Partnership Representative and to take such actions as requested by the Managing Member in connection with such audit.

Further, if the Fund is required to pay any audit adjustments assessed by the IRS or any state and local taxing authorities resulting from an audit, the Fund may allocate any such tax liability among the current or former Partners of the Fund for the reviewed year to which the assessment relates in a manner that reflects the current or former Partners' respective interests in the Fund for that reviewed year based on such Partner's share of such assessment as would have occurred if the Fund had amended the tax returns for such reviewed year and such Partner incurred the tax liability directly (using the tax rates applicable to the Fund under Code section 6225(b)). To the extent the Fund is assessed amounts, the current or former Partner(s) to which this audit adjustment relates are required under the Investor Membership Agreement to pay to the Fund such Partner's share of the audit adjustments including such Partner's share of any additional accrued penalties and interest assessed against the Fund relating to such Partner's share of the audit adjustments, and such amounts shall be considered a capital contribution to the Fund. If a Partner does not timely pay to the Fund the full amount of its share of the audit adjustment, then the shortfall will be treated as a loan by the Fund to the defaulting Partner, bearing interest at the rate of ten percent (10%) per annum, compounded annually, and the Fund may pursue several remedies as set forth in the Investor Membership Agreement. These provisions survive the dissolution of the Fund and the withdrawal of any Partner or the transfer or redemption of any Partner's Partnership Units.

Penalties

A penalty is imposed on any portion of an underpayment of tax attributable to a "substantial understatement of income tax." In general, a "substantial understatement of income tax" will exist if the actual income tax liability of the taxpayer exceeds the income tax liability shown on such taxpayer's return by the greater of 10% of the actual income tax liability or $5,000 (which limits may be increased for Investor Members who are corporations).

In addition to the substantial understatement penalty, described above, the Code also imposes a penalty on any portion of an underpayment of tax attributable to (i) any substantial valuation misstatement of the correct value or adjusted basis of property, or (ii) negligence, defined as any failure to make a reasonable attempt to comply with the Code, or a careless, reckless or intentional disregard of U.S. federal income tax rules or Treasury regulations. A number of other penalties may also apply in other circumstances, for instance if the Investor Member is deemed to have participated in a "reportable transaction" as defined in Code section 6707A(c). All Investor Members should discuss the application of any penalties and possible ways to avoid such penalties (for instance, through proper disclosure to the IRS) with each Investor Member's tax advisor.

Further, under Code section 6662A, there is a 20% penalty for reportable transaction understatements of federal income taxes on a taxpayer's individual federal income tax return for any year. However, if the disclosure rules for reportable transactions under the Code and the Treasury regulations are not met by the taxpayer, this penalty is increased from 20% to 30%, and a "reasonable cause" exception to the penalty which is set forth in Code section 6664(d) will not be available to the taxpayer. Under Treasury regulations section 1.6011-4, a taxpayer who participates in a reportable transaction in any taxable year

must attach to its individual federal income tax return IRS Form 8886 "Reportable Transaction Disclosure Statement," and file it with the IRS as directed in the Treasury regulation, in order to comply with the disclosure rules. The Fund does not anticipate being involved in a reportable transaction. However, the Fund strongly urges all Investor Members to discuss the application of any penalties and possible ways to avoid such penalties (for instance, through proper disclosure to the IRS) with each Investor Member's tax advisor.

Investment by Foreign Person

The rules governing the U.S. federal income taxation of nonresident alien individuals, foreign corporations, foreign partnerships, and other foreign Investor Members ("Foreign Persons") are complex, and no attempt has been made herein to provide a detailed discussion of those rules. A Foreign Person in a U.S. partnership that is engaged in a trade or business in the United States will be considered, or deemed, to be engaged in that trade or business, even if the Foreign Person is only a Investor Member. A non-U.S. partner that is deemed to be engaged in a U.S. trade or business who has income that is effectively connected to that trade or business will be subject to regular U.S. income tax, at graduated rates, thereon. We believe that the Fund's activities, generally will be deemed a U.S. trade or business, and that the income derived therefrom will be deemed to be effectively connected to a U.S. trade or business. Therefore, a Investor Member that is a Foreign Person will generally be required to file a U.S. income tax return, and pay U.S. income taxes, at graduated rates, on such Foreign Partner's distributive share of our taxable income. In addition, it is likely that the Fund will have various withholding requirements with respect to income allocated or amounts distributed to Investor Members that are Foreign Persons. Any withholding tax paid by the Fund to a taxing jurisdiction in respect of an allocation or distribution made by the Fund to a Investor Member generally will be treated as a distribution and will reduce any other distribution to which the Investor Member is entitled under the Investor Membership Agreement. Investor Members that are Foreign Persons should consult with their own tax advisors to fully determine the impact on them of U.S. federal, state and local income tax laws.

Possible Changes in U.S. Federal Tax Laws

Significant changes have been made in the Code in recent years and it is anticipated that significant changes will be made in the Code in the near future. The Treasury Department's position regarding many of those changes must await publication of interpretive and legislative regulations, some of which may not be forthcoming for some time. Generally, those interpretations then will be subject to review by the courts, if taxpayers and their representatives believe the interpretations do not conform to the Code. Some Treasury regulations, however, may have the force and effect of law, and as a result, may be beyond judicial review powers of federal courts.

The Code is also subject to further change by Congress (and interpretations of the Code may be modified or affected by judicial decisions), by the Treasury Department through changes in Treasury regulations, and by the IRS through its audit policy, announcements, and published and private rulings. Significant tax law changes affecting the Fund may be enacted by Congress. Although significant changes historically have been given prospective application, no assurance can be given that any changes made in the tax law affecting an investment in the Investor Member Units would be limited to prospective effect. Accordingly, the ultimate effect on a Investor Member's tax situation may be governed by laws, regulations or interpretations of laws or regulations which have not yet been proposed, passed or made, as the case may be.

State and Local Taxes

In addition to the U.S. federal income tax consequences described above, Investor Members should consider state and local tax consequences of an investment in the Fund. The states that the Fund owns property and undertakes business may impose a tax on its assets or income, or on each Investor Member based on its share of any income derived from the Fund's activities and properties in those states. Each Partner will likely have an obligation to file a tax return in a state which imposes such taxes. In addition, the Fund may be required to file information returns in such states or to withhold taxes on your share of the Fund's profits. Also, a Investor Member's distributive share of taxable income or loss generally will be required to be included in determining its reportable income for state and local tax purposes in the jurisdiction in which he is a resident. Certain tax benefits which are available to Investor Members for U.S. federal income tax purposes may not be available to Investor Members for state and local tax purposes, and in this regard, Investor Members are urged to consult their own tax advisors. Each Investor Member should consult with such Partner's own tax advisors concerning the applicability and impact of any state and local tax laws in such Partner's state of residence and in any states for which the Fund has activities and owns property.

Importance of Obtaining Professional Advice

No rulings have been required from the IRS and no opinions from counsel have been obtained. No assurances can be given that the IRS will agree with the U.S. federal income tax consequences described above. Furthermore, any changes in the Fund's Investor Membership Agreement or its operations could affect the conclusions set forth above.

The foregoing analysis is not intended as a substitute for careful tax planning. The tax matters relating to the Fund and its operations are complex and subject to varying interpretations. Moreover, the effect of existing income tax laws and probable changes in such laws will vary with the particular circumstances of each Investor Member. Accordingly, each Investor Member should consult with and rely on its own advisors with respect to the possible tax consequences of an investment in the Fund.

Investment by Tax-Exempt Investors

If a Tax-Exempt Investor (as defined below) is a partner in a partnership (a "*Tax-Exempt Partner*") that is engaged in a trade or business not substantially related to the Tax-Exempt Partner's exempt function (or if that partnership invests in a pass-through entity engaged in such trade or business), the Tax-Exempt Partner will be subject to unrelated business income tax ("*UBIT*") (at graduated rates applicable to taxable investors) on its distributive share of partnership income, other than dividends, interest, royalties, certain rents, capital gains and certain other items not classified as unrelated business taxable income ("*UBTI*"). In addition, if a Tax-Exempt Investor is a partner in a partnership that owns property acquired with borrowed funds (or if that partnership invests in a pass-through entity that owns property acquired with borrowed funds), or if the Tax-Exempt Partner borrows to fund its investment in the partnership, the Tax-Exempt Partner's share of partnership income, including dividends, interest, royalties, rents and capital gains, and any gain realized on the Tax-Exempt Partner's investment in the partnership, may constitute unrelated debt-financed income, all or a portion of which may be subject to UBIT. The characterization of the Fund's income as UBTI may have a significant effect on an investment by a tax-exempt entity in the Fund and may make investment in the Fund inappropriate for certain tax-exempt entities.

The Fund anticipates that its investments will generate UBTI, including from leverage. If the Fund recognizes UBTI, Tax-Exempt Partners may be required to file tax returns and may incur tax liability on that UBTI. Moreover, a charitable remainder trust, as defined in Section 664 of the Code, that

realizes UBTI during a taxable year must pay an excise tax annually of an amount equal to 100% of such UBTI.

For purposes of this discussion a "Tax-Exempt Investor" is a United States investor that is a pension, profit-sharing, or stock bonus plan described in Section 401(a) of the Code, an individual retirement account exempts from United States federal income tax under Section 408(e) of the Code, or an investor which is otherwise exempt from United States federal income tax under Section 501(a) of the Code.

If the Fund (or, in certain cases, any underlying portfolio partnership in which the Fund directly or indirectly invests) engages in certain tax shelter transactions certain Tax-Exempt Partners could be subject to an excise tax equal to the highest corporate tax rate times the greater of (i) such Partners' net income from the transactions or (ii) 75% of the proceeds attributable to such Partners from the transactions. The excise tax is not imposed on Tax-Exempt Partners that are pension plans, although certain penalties applicable to "entity managers" (as defined in Section 4965(d) of the Code) might still apply. A higher excise tax could be applicable if the Tax-Exempt Partners knew or had reason to know that a transaction was a prohibited tax shelter transaction. In addition, such Tax-Exempt Partners could be subject to certain disclosure requirements and penalties could apply if such Tax-Exempt Partners do not comply with such disclosure requirements. There can be no assurance that the Fund (or any underlying portfolio partnership in which the Fund directly or indirectly invests) will not engage in prohibited tax shelter transactions.

Each prospective Tax-Exempt Partner is urged to consult its own tax advisors concerning the possible effects of UBTI based on its own tax situation as well as the general implication of an investment in the Fund.

"FBAR" Reporting

Partners may be required to annually file FinCen Form 114, Report of Foreign Bank and Financial Accounts ("*FBAR*") with the IRS to report a Partner's "financial interest" in (or signature authority over) the Fund's "foreign financial accounts" (if any). Partners should consult applicable guidance, including the FBAR Treasury Regulations, the instructions to the FinCen Form 114 and IRS Notices and other guidance, regarding any FBAR filing obligation that may arise from an investment in the Fund.

Partners could be subject to substantial civil and criminal penalties for failure to comply with these reporting requirements. Partners should consult their tax advisors to determine the applicability of these FBAR and other reporting requirements in light of their individual circumstances.

FATCA

Under 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) ("*FATCA*") certain foreign entities and foreign financial institutions *(e.g.*, foreign entities acting as intermediaries for investors, most hedge funds, private equity funds, mutual funds, securitization vehicles and any other investment vehicles regardless of size) (collectively "*Foreign Payees*") must comply with information reporting rules with respect to their U.S. account holders and investors. These information reporting rules require Foreign Payees to provide extensive information to the IRS regarding all U.S. persons who have accounts in (or in some instances, who own debt or equity interest in) such Foreign Payees and in certain cases enter into an agreement with

the IRS. Failure of such Foreign Payees to comply with these information reporting rules will result in a U.S. federal withholding tax on U.S. source payments made to such Foreign Payees.

A Foreign Payee that does not comply with the FATCA reporting requirements generally will be subject to a 30% U.S. federal withholding tax with respect to "withholdable payments" made after certain applicable dates. For these purposes, "withholdable payments" includes, by way of example only, current and future payments of interest, and payments of gross proceeds arising from the sale (including a retirement or redemption) of securities, for a sale occurring after December 31, 2016. This withholding tax generally applies to withholdable payments to non-compliant Foreign Payees even if such payments would not have been subject to the withholding tax rules otherwise applicable to certain payments to Investor Members.

ERISA CONSIDERATIONS

The Employee Retirement Income Security Act of 1974, as amended ("ERISA"), is a broad statutory framework that governs most U.S. retirement and other U.S. employee benefit plans. ERISA and the rules and regulations of the Department of Labor (the "DOL") under ERISA contain provisions that should be considered by fiduciaries of employee benefit plans subject to the provisions or Title I of ERISA ("ERISA Plans") and their legal advisors. In particular, a fiduciary of an ERISA Plan should consider whether an investment in the Units (or, in the case of a participant-directed defined contribution plan (a "Participant-Directed Plan"), making the Units available for investment under the Participant-Directed Plan) satisfies the requirements set forth in Part 4 of Title I of ERISA, including the requirements that (1) the investment satisfy the prudence and diversification standards of ERISA, (2) the investment be in the best interests of the participants and beneficiaries of the ERISA Plan, (3) the investment be permissible under the terms of the ERISA Plan's investment policies and governing instruments and (4) the investment does not give rise to a non-exempt prohibited transaction under ERISA.

In determining whether an investment in the Units (or making the Units available as an investment option under a Participant-Directed Plan) is prudent for ERISA purposes, a fiduciary of an ERISA Plan should consider all relevant facts and circumstances including, without limitation, possible limitations on the transferability of shares of the Units, whether the investment provides sufficient liquidity in light of the foreseeable needs of the ERISA Plan (or the participant account in a Participant-Directed Plan), and whether the investment is reasonably designed, as part of the ERISA Plan's portfolio, to further the ERISA Plan's purposes, taking into consideration the risk of loss and the opportunity for gain (or other return) associated with the investment. It should be noted that the Fund will invest its assets in accordance with the investment objectives and guidelines described herein, and that neither Managing Member nor any of its Affiliates has any responsibility for developing any overall investment strategy for any ERISA Plan (or the participant account in a Participant-Directed Plan) or for advising any ERISA Plan (or participant in a Participant-Directed Plan) as to the advisability or prudence of an investment in the Fund. Rather, it is the obligation of the appropriate fiduciary for each ERISA Plan (or participant in a Participant-Directed Plan) to consider whether an investment in the Units by the ERISA Plan (or making the Units available for investment under a Participant-Directed Plan in which event it is the obligation of the participant to consider whether an investment in shares of the Units is advisable), when judged in light of the overall portfolio of the ERISA Plan, will meet the prudence, diversification and other applicable requirements of ERISA.

Section 406 of ERISA and Section 4975 of the Code prohibit certain transactions involving the assets of an ERISA Plan, as well as those plans that are not subject to ERISA but that are subject to Section 4975 of the Code, such as individual retirement accounts ("IRAs") and non-ERISA Keogh plans (collectively with ERISA Plans, "Plans"), and certain persons (referred to as "parties in interest" for purposes of ERISA or "disqualified persons" for purposes of the Code) having certain relationships to Plans, unless a statutory or administrative exemption is applicable to the transaction. A party in interest or disqualified person who engages in a non-exempt prohibited transaction may be subject to non-deductible excise taxes and other penalties and liabilities under ERISA and the Code, and the transaction might have to be rescinded. In addition, a fiduciary that causes an ERISA Plan to engage in a non-exempt prohibited transaction may be personally liable for any resultant loss incurred by the ERISA Plan and may be subject to other potential remedies.

A Plan that proposes to invest in the Units (or to make the Units available for investment under a Participant-Directed Plan) may already maintain a relationship with the Managing Member or one or more of its Affiliates, as a result of which the Managing Member or such affiliate may be a "party in interest" under ERISA or a "disqualified person" under the Code, with respect to such Plan (e.g., if the Managing Member

or such affiliate provides investment management, investment advisory or other services to that Plan). ERISA (and the Code) prohibits plan assets from being used for the benefit of a party in interest (or disqualified person). This prohibition is not triggered by "incidental" benefits to a party in interest (or disqualified person) that result from a transaction involving the Plan that is motivated solely by the interests of the Plan. ERISA (and the Code) also prohibits a fiduciary from using its position to cause the Plan to make an investment from which the fiduciary, its Affiliates or certain parties in which it has an interest would receive a fee or other consideration or benefit. In this circumstance, Plans that propose to invest in the Units should consult with their counsel to determine whether an investment in the Units would result in a transaction that is prohibited by ERISA or the Code.

If the Fund's assets were considered to be assets of a Plan (referred to herein as "Plan Assets"), the Fund's management might be deemed to be fiduciaries of the investing Plan. In this event, the operation of the Fund could become subject to the restrictions of the fiduciary responsibility and prohibited transaction provisions of Title I of ERISA and/or the prohibited transaction rules of the Code.

Neither ERISA nor the Code contains a definition of Plan Assets. The DOL has promulgated a final regulation under ERISA, 29 C.F.R. §2510.3-101 (as amended by Section 3(42) of ERISA, the "Plan Assets Regulation"), that provides guidelines as to whether, and under what circumstances, the underlying assets of an entity will be deemed to constitute Plan Assets for purposes of applying the fiduciary requirements of Title I of ERISA (including the prohibited transaction rules of Section 406 of ERISA) and the prohibited transaction provisions of Code Section 4975.

Under the Plan Assets Regulation, the assets of an entity in which a Plan or IRA makes an equity investment will generally be deemed to be assets of such Plan or IRA unless the entity satisfies one of the exceptions to this general rule. Generally, the exceptions require that the investment in the entity be one of the following:

(a) in securities issued by an investment company registered under the Investment Company Act;

(b) in "publicly offered securities," defined generally as interests that are "freely transferable," "widely held" and registered with the SEC;

(c) in an "operating company" which includes "venture capital operating companies" and "real estate operating companies;" or

(d) in which equity participation by "benefit plan investors" is not significant.

The Units offered hereunder will not be issued by a registered investment company. In addition, the Plan Assets Regulation provides that equity participation in an entity by benefit plan investors is "significant" if at any time 25% or more of the value of any class of equity interest is held by "benefit plan investors." The term "benefit plan investors" is defined for this purpose under ERISA Section 3(42), and in calculating the value of a class of equity interests, the value of any equity interests held by the Managing Member or any of its Affiliates must be excluded. Less than 25% of the total number of Units sold will be sold to Qualified Plans, and transfer of the Units to Qualified Plans will be restricted so that less than 25% of the Units outstanding at any time will be owned by Qualified Plans.

As noted above, the Plan Assets Regulation provides an exception with respect to securities issued by an "operating company," which includes a "venture capital operating company" (a "VCOC") and a "real estate operating company" (a "REOC"). Under the Plan Assets Regulation, an entity will qualify as a VCOC if (a) on certain specified testing dates, at least 50% of the entity's assets, valued at cost, are invested in

"venture capital investments," which are investments in operating companies (other than VCOCs) with respect to which the entity has or obtains direct contractual rights to substantially participate in the management of such operating company and (b) the entity in the ordinary course of its business actually exercises such management rights. Under the Plan Assets Regulation, an entity will constitute a REOC if (i) on certain specified testing dates, at least 50% of the entity's assets, valued at cost, are invested in real estate that is managed or developed and with respect to which the entity has the right to substantially participate directly in the management or development of the real estate and (ii) the entity in the ordinary course of its business is engaged directly in real estate management or development activities. A REOC can be a venture capital investment. Because the Fund intends to invest primarily in single tenant, triple-net lease industrial and office buildings, the operating partnership may not be able to qualify as a REOC because such properties are typically not subject to sufficient ongoing management to qualify as a good REOC asset for testing purposes. In such event, the Fund would not be able to qualify as a VCOC.

However, as noted above, if a Plan acquires "publicly offered securities," (the assets of the issuer of the securities will not be deemed to be Plan Assets under the Plan Assets Regulation. The definition of publicly offered securities requires that such securities be "widely held," "freely transferable" and satisfy certain registration requirements under federal securities laws.

Under the Plan Assets Regulation, a class of securities will meet the registration requirements under federal securities laws if they are (i) part of a class of securities registered under section 12(b) or 12(g) of the Exchange Act or (ii) part of an offering of securities to the public pursuant to an effective registration statement under the Securities Act and the class of securities of which such security is a part is registered under the Exchange Act within 120 days (or such later time as may be allowed by the SEC) after the end of the fiscal year of the issuer during which the offering of such securities to the public occurred. The Fund will not meet the registration requirements under the Plan Assets Regulation. Also under the Plan Assets Regulation, a class of securities will be "widely held" if it is held by 100 or more persons independent of the issuer. The requirement will not be met by the Fund in the near future, if ever.

Prospective investors that are subject to the provisions of Title I of ERISA and/or Code Section 4975 should consult with their counsel and advisors as to the provisions of Title I of ERISA and/or Code Section 4975 relevant to an investment in the Units.

As discussed above, although IRAs and non-ERISA Keogh plans are not subject to ERISA, they are subject to the provisions of Section 4975 of the Code prohibiting transactions with "disqualified persons" and investments and transactions involving certain fiduciary conflicts. A prohibited transaction or conflict of interest could arise if the fiduciary making the decision to invest has a personal interest in or affiliation with our company or any of its respective Affiliates. In the case of an IRA, a prohibited transaction or conflict of interest that involves the beneficiary of the IRA could result in disqualification of the IRA. A fiduciary for an IRA who has any personal interest in or affiliation with the Fund or any of its respective Affiliates, should consult with his or her tax and legal advisors regarding the impact such interest may have on an investment in the Units with assets of the IRA.

Units sold by the Fund may be purchased or owned by investors who are investing Plan assets. The Fund's acceptance of an investment by a Plan should not be considered to be a determination or representation by the Fund or any of its respective Affiliates that such an investment is appropriate for a Plan. In consultation with its advisors, each prospective Plan investor should carefully consider whether an investment in the Units is appropriate for, and permissible under, the terms of the Plan's governing documents.

Governmental plans, foreign plans and most church plans, while not subject to the fiduciary responsibility provisions of ERISA or the provisions of Code Section 4975, may nevertheless be subject to local, foreign, state or other federal laws that are substantially similar to the foregoing provisions of ERISA and the Code.

Fiduciaries of any such plans should consult with their counsel and advisors before deciding to invest in the Units.

SUPPLEMENTAL SALES MATERIALS

In addition to this Memorandum, the Fund may utilize certain sales material in connection with the Offering, although only when accompanied by or preceded by the delivery of this Memorandum. The sales materials may include information relating to this Offering, the past performance of the Sponsor and its Affiliates, commercial real estate indices, the performance of this Offering, and as it compares to a benchmark, the performance of an investment in commercial real estate as compared to other asset classes and industry trends. The sales material may be in the form of property brochures and articles and publications concerning real estate. In certain jurisdictions, some or all of our sales material may not be permitted and will not be used in those jurisdictions.

The Offering is made only by means of this Memorandum. Although the information contained in the supplemental sales material will not conflict with any of the information contained in this Memorandum, the supplemental materials do not purport to be complete, and should not be considered a part of this Memorandum.

APPENDIX A

Amended and Restated Limited Liability Company Agreement of SP 10 Preferred Equity, LLC

[attached]

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: _____

APPENDIX B

Amended and Restated Limited Liability Company Agreement of Elliot 10 MezzCo, LLC

[attached]

FIRST AMENDMENT
TO
AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
ELLIOT 10 MEZZCO, LLC
A DELAWARE LIMITED LIABILITY COMPANY

THIS FIRST AMENDMENT TO AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Amendment") is effective as of February 14, 2024 (the "Effective Date"), by and between Elliot 10 MezzCo, LLC, a Delaware limited liability company (the "Company"), Elliot & 51st Street Manager LLC, an Arizona limited liability company (the "Managing Member"), and the undersigned Members of the Company (the "Members"), with reference to the following facts:

A. The Members previously adopted that certain Amended and Restated Limited Liability Company Agreement, effective as of November 30, 2023 (the "A&R LLC Agreement"), as amended.

B. In accordance with Section 13.20 of the A&R LLC Agreement, the Company, undersigned Members, and the Managing Member now desire to amend the A&R LLC Agreement to incorporate the terms set forth in this Amendment.

NOW, THEREFORE, the Company, undersigned Members, and the Managing Member hereby amend the A&R LLC Agreement as follows:

1. Definitions. The following definitions are hereby added to (or, in the case of "Covered Person," deleted and replaced in its entirety in) Section 1.1 of the A&R LLC Agreement:

> *"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.*
>
> *"SP 10 12% Current Pay Capital Contributions" means that portion of Capital Contributions contributed by SP 10 Preferred Equity to the Company and that the source of such amounts derives from capital contributions by the holders of the 12% Current Pay Investor Units (as defined in the Amended and Restated Limited Liability Company Agreement of SP 10 Preferred Equity, as amended) of SP 10 Preferred Equity, as reasonably determined in good faith by the Managing Member.*

"SP 10 Preferred Capital Contributions" means that portion of Capital Contributions contributed by SP 10 Preferred Equity to the Company and that the source of such amounts derives from capital contributions by the holders of the Preferred Investor Units (as defined in the Amended and Restated Limited Liability Company Agreement of SP 10 Preferred Equity, as amended) of SP 10 Preferred Equity, as reasonably determined in good faith by the Managing Member.

2. Section 4.1.1.1. Section 4.1.1.1 of the A&R LLC Agreement is hereby deleted in its entirety and replaced with the following:

"First, (i) seventy percent (70%) to the holder of the SP 10 Preferred Equity Units; and (ii) thirty percent (30%) to the Developer Members pro rata based on their respective ownership percentages of the Developer Units, which shall continue until the holder of the SP 10 Preferred Equity Units has received aggregate distributions under this Section 4.1.1.1 and Section 4.1.2.1 equal to the sum of (a) two (2) times the aggregate SP 10 Preferred Capital Contributions, and (b) one and one-half (1.5) times the aggregate SP 10 12% Current Pay Capital Contributions; and"

3. Section 4.1.2.1. Section 4.1.2.1 of the A&R LLC Agreement is hereby deleted in its entirety and replaced with the following:

"First, one hundred percent (100%) to the holder of the SP 10 Preferred Equity Units until the holder(s) of the SP 10 Preferred Equity Units has received aggregate distributions under Section 4.1.1.1 and this Section 4.1.2.1 equal to the sum of (a) two (2) times the aggregate SP 10 Preferred Capital Contributions, and (b) one and one-half (1.5) times the aggregate SP 10 12% Current Pay Capital Contributions; and"

4. Delaware Law. This Amendment is made and entered into in the State of Delaware and shall be interpreted, construed and enforced in accordance with the laws of the State of Delaware without giving effect to its conflict of laws principles.

5. Interpretation. Except as and to the extent expressly set forth herein, each provision of the A&R LLC Agreement is and remains in full force and effect, notwithstanding this Amendment. All references in the A&R LLC Agreement to "the Agreement" or "this Agreement" shall hereafter be deemed to refer to the A&R LLC Agreement, as amended by this Amendment. If there is any conflict between the terms, conditions and provisions of this Amendment and the terms and conditions of the A&R LLC Agreement, the terms, conditions and provisions of this Amendment shall prevail.

6. Further Assurances. Each of the parties hereto shall execute and deliver, at the reasonable request of the Company, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Amendment.

7. Multiple Counterparts. This Amendment may be executed in two or more counterparts and delivered by facsimile or e-mail transmission, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[*Remainder of Page Intentionally Left Blank; Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the Effective Date first set forth above.

COMPANY:

ELLIOT 10 MEZZCO, LLC
a Delaware limited liability company

By: Elliot & 51st Street Manager, LLC
an Arizona limited liability company
Its: Managing Member

DocuSigned by:
By: Jennifer Schrader
55B0A4643A0A4A6...
Name: Jennifer Schrader
Its: Authorized Person

MANAGING MEMBER:

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

DocuSigned by:
By: Jennifer Schrader
55B0A4643A0A4A6...
Name: Jennifer Schrader
Its: Authorized Person

MEMBERS:

SP 10 PREFERRED EQUITY, LLC
a Delaware limited liability company

By: Elliot & 51st Street Manager, LLC
an Arizona limited liability company
Its: Managing Member

By: DocuSigned by: Jennifer Schrader
55B0A464A0A4A6...
Name: Jennifer Schrader
Its: Authorized Person

ELLIOT 10 FUNDCO, LLC
a Delaware limited liability company

By: Elliot & 51st Street Manager, LLC
an Arizona limited liability company
Its: Managing Member

By: DocuSigned by: Jennifer Schrader
55B0A464A0A4A6...
Name: Jennifer Schrader
Its: Authorized Person

CAMELBACK CONSOLIDATED INVESTMENTS, LLC
a Wyoming limited liability company

By: DocuSigned by: Brian Snider
Name: Brian Snider
Its: SVP, Asset Services

TRIDEV, LLC
an Arizona limited liability company

By: DocuSigned by: Sebastian Losch
Name: Sebastian Losch
Its: Manager

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

OF

ELLIOT 10 MEZZCO, LLC

A DELAWARE LIMITED LIABILITY COMPANY

November 30, 2023

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 MANAGING MEMBER 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 ELLIOT 10 MEZZCO, LLC

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF ELLIOT 10 MEZZCO, LLC (this "Agreement"), is entered into to be effective as of the 30th day of November, 2023 by and among Elliot & 51st Street Manager LLC, an Arizona limited liability company, as the "Managing Member," and those Persons executing this Agreement as an additional 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, with respect to each Member, the Capital Account established and maintained pursuant to the Tax Matters Schedule of this Agreement. The Capital Account of each Member shall be subject to adjustment as provided elsewhere in this Agreement.

1.1.12 "Capital Contribution" means, with respect to each Member, the amount of money and the fair market value (as agreed by the Company and the contributing Member) of any property contributed to the Company with respect to the Units in the Company held by such Member, whether directly or indirectly.

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

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

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

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

1.1.17 "Company" means Elliot 10 MezzCo, LLC.

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

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

1.1.20 "Company Property" means the Company's ownership of membership interests in the Property Owner.

1.1.21 "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.

1.1.22 "Covered Person" means the Managing Member, the Company Representative, 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 Managing Member, the Company Representative, an Advisory Board Member or an Affiliate of any of them.

1.1.23 "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.

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

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

1.1.26 "Developer Member" means any Person who (i) executes this Agreement as a Developer Member or who has been admitted as an additional or substitute Developer Member pursuant to the terms of this Agreement and (ii) is the owner of a Developer Unit. "Developer Members" means all such Persons. For the avoidance of doubt, No Developer Member is a manager of the entity (and entitled to act as such) except for the Managing Member and the non-Managing Member Developer Members do not constitute sponsors of the offering of the interests issued and sold by SP 10 Preferred Equity.

1.1.27 "Developer Units" means all of the Developer Units of a Developer Member in the Company at any particular time, including the right of such Developer Member to any and all benefits to which such Developer Member may be entitled as provided in this Agreement, together with the obligations of such Developer Member to comply with all of the terms and provisions of this Agreement. The Company shall maintain at all times a digital registry of Developer Units held by the Developer Members.

1.1.28 "Disabled" and "Disability" means, with respect to any Member or the Managing Member:

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

1.1.28.2 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

1.1.28.3 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.

1.1.29 "Elliot 10 Fund" means Elliot 10 Fund, LLC, a Delaware limited liability company.

1.1.30 "Elliot 10 Fund Units" means those Units of the Company held by Elliot 10 Fund or its successors and assigns and which represent the rights and interests in the Company held by Elliot 10 Fund or its successors and assigns.

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

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

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

1.1.34 "Managing Member" means Elliot & 51st Street Manager LLC, an Arizona limited liability company, and includes any Person who becomes an additional or successor Managing Member of the Company pursuant to the provisions of this Agreement, each in such Person's capacity as a Managing Member of the Company.

1.1.35 "Member" means each Developer Member, SP Preferred Equity, Elliot 10 Fund, and each other Person or Substitute Member who may be admitted as a Member by the Company.

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

1.1.37 "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 Managing Member, 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 Managing Member, in its reasonable discretion, determines to set aside for investment.

1.1.38 "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 Managing Member, 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 Managing Member, 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 Managing Member, in its reasonable discretion, determines to set aside for investment.

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

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

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

1.1.42 "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.

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

1.1.43.1 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;

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

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

1.1.44 "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.

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

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

1.1.47 "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.

1.1.48 "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.

1.1.49 "SP 10 Preferred Equity" means SP 10 Preferred Equity, LLC, a Delaware limited liability company.

1.1.50 "SP 10 Preferred Equity Units" means those Units of the Company held by SP 10 Preferred Equity or its successors and assigns and which represent the rights and interests in the Company held by SP 10 Preferred Equity or its successors and assigns.

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

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

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

1.1.54 "Tax Member" means each of the Managing Member.

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

1.1.56 "UCC" means the Uniform Commercial Code.

1.1.57 "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.

1.1.58 "Units" shall mean the Developer Units, the SP 10 Preferred Equity Units, and the Elliot 10 Fund Units.

1.1.59 "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 "Elliot 10 MezzCo, 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 membership interests of Elliot & 51st Street, LLC, a Delaware limited liability company ("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 Managing Member 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 Managing Member 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 Managing Member 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 Managing Member 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 Managing Member 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 Managing Member 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 Managing Member 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 Managing Member, and only in connection with goods or services adhering to such standards, specifications, and instructions as are developed by the Managing Member and its Affiliates (other than the Company). If the Managing Member 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 Managing Member determines that the Company cannot or should not cure such failure, discontinue such non-conforming use. The Managing Member 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. The Managing Member will maintain records showing the Capital Contributions made from time to time by each Member.

3.2 **Member Loans**. Subject to the terms of this Agreement, any Member may, with the approval of the Managing Member, 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.

3.3 **Managing Member Loans**. Subject to the terms of this Agreement, the Managing Member may lend or advance money to the Company; provided, however, the Managing Member shall not be obligated to make any loans to the Company. If the Managing 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 the Managing Member. The amount of any such loan or advance by the Managing Member shall be repayable out of the Company's cash and shall bear interest at the Stated Rate of Interest.

3.4 **Other Matters**.

3.4.1 Except as specifically provided in this Agreement, or as otherwise approved by the Managing Member, 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 Managing Member's discretion, be entitled to receive a salary for services rendered on behalf of the Company or otherwise in their respective capacities as Members.

3.4.2 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 Managing Member shall be liable for the debts, liabilities, contracts or any other obligations of the Company beyond the Managing Member Capital Contribution.

3.4.3 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 Managing Member in its sole discretion, shall be distributed to the Members in the following order and priority:

4.1.1.1 First, (i) seventy percent (70%) to the holder of the SP 10 Preferred Equity Units; and (ii) thirty percent (30%) to the Developer Members *pro rata* based on their respective ownership percentages of the Developer Units, which shall continue until the holder of the SP 10 Preferred Equity Units has received aggregate distributions under this Section 4.1.1.1 and Section 4.1.2.1 equal to the aggregate amount of Capital Contributions made by SP 10 Preferred Equity multiplied by two (2); and

4.1.1.2 Thereafter, one hundred percent (100%) to the holder of the Elliot 10 Fund Units.

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 at such times as the Managing Member may determine to the Members in the following order and priority:

4.1.2.1 First, one hundred percent (100%) to the holder of the SP 10 Preferred Equity Units until the holder(s) of the SP 10 Preferred Equity Units has received aggregate distributions under Section 4.1.1.1 and this Section 4.1.2.1 equal to the aggregate amount of Capital Contributions made by SP 10 Preferred Equity multiplied by two (2); and

4.1.2.2 Thereafter, one hundred percent (100%) to the holder of the Elliot 10 Fund Units.

4.1.3 Distributions, Generally.

4.1.3.1 Notwithstanding any other provision of this Agreement, the Company shall not be required to make a distribution to the Members or the Managing Member in violation of the Act and other applicable law. Further, the Managing Member 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 Managing Member 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 Notwithstanding Section 4.1.1 through Section 4.1.2, within 75 days of the end of each taxable Fiscal Year, the Managing Member may distribute to each Tax Member, to the extent cash is available to the Company, as determined by the Managing Member, 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 Managing Member) 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.

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.

SECTION 5
MANAGING MEMBER

5.1 Management Powers. The Managing Member 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 Managing Member 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 Managing Member, 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 Managing Members, attorneys, accountants, securities broker-dealers, consultants or any other Persons (including Affiliates of the Managing Member), as the Managing Member, 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 Managing Member, in its sole discretion, deems proper and to replace any such employees, agents, contractors, property Managing Members, attorneys, accountants, securities broker-dealers, consultants, or any other Persons, in the sole discretion of the Managing Member;

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 Managing Member 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 Managing Member 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 Managing Member'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 Managing Member'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 Managing Member 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 Managing Member may determine in its sole and absolute discretion;

5.1.21 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 Managing Member, as the Managing Member 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 Managing Member 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 To issue Member 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 Managing Member may determine in its sole discretion;

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

5.1.28 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;

5.1.29 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 Managing Member provides each Member hereof with a written statement verifying that the agreement is being amended per the terms of this Agreement;

5.1.30 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.

5.2 [Reserved].

5.3 **Selection of the Managing Member**. The Managing Member shall consist of one Person. The initial Managing Member shall be Elliot & 51st Street Manager LLC, an Arizona limited liability company. Any Managing Member can be removed for Cause upon the approval of the then current Managing Member. "Cause" shall mean the determination of a court of competent jurisdiction that one of the following events occurred: (i) the Managing Member willfully or intentionally violated, or recklessly disregarded, the Managing Member's duties to the Company; or (ii) the Managing Member committed any act involving fraud, bad faith, gross negligence, dishonesty, or moral turpitude in its duties and responsibilities to the Company. The Managing Member may also withdraw as Managing Member by providing written notice to the Members. In either event, a new Managing Member shall be elected by the approval of the prior Managing Member, and such prior

Managing Member shall vote to continue the business of the Company. The Members hereby specifically authorize the Managing Member 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 Managing Member as having authority to bind the Company.

5.4 Duties and Obligations of the Managing Member and Expense Reimbursement.

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

5.4.3 The Company (either directly or through its subsidiaries) shall pay or reimburse the Managing Member 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 Managing Member, its affiliates and agents); (iv) technology processing platforms; (v) filing fees; (vi) marketing due diligence fees including third party due diligence reports; and (vii) all costs and expenses incurred by or relating to SP 10 Preferred Equity, including formation and legal fees, offering costs and expenses associated with the offer and sale of membership interests in SP 10 Preferred Equity (including sales commissions and other related expenses), and any other expenses or costs associated with SP 10 Preferred Equity, including any indemnification claims or expenses payable by SP 10 Preferred Equity.

5.5 Exculpation/Indemnification of the Managing Member.

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 Managing Member 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 Managing Member, have an "Advisory Board" consisting of at least three (3) members (the "Advisory Board Members") appointed by the Managing Member; 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 Managing Member 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 Managing Member. All such appointments, designations, resignations, and removals shall be effective upon notice to the Company.

5.6.2 The Managing Member may consult with the Advisory Board with respect to such matters as determined by the Managing Member 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 Managing Member's ability to demonstrate that it has acted in good faith, the Managing Member shall be deemed to have acted in good faith when acting in accordance with the approval of the Advisory Board, provided that the Managing Member 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 Managing Member or any Advisory Board Member. The Managing Member 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 Managing Member, the costs of such meeting (including the reasonable out-of-pocket costs incurred by the Managing Member and the Advisory Board members in attending such meeting) shall be a Company Expense, reimbursable to the Managing Member 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 Managing Member or any Affiliate of the Managing Member 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 Managing Member 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 Managing Member 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 Managing Member 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, Managing Members, 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 Managing Member 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 Managing Member on all inquiries such party has asked of the Managing Member concerning the Company;

6.5.7 Reliance by Company and Managing Member. Understands that the Company and the Managing Member 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 Managing Member 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 Managing Member 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 Managing Member and neither any Member (other than the Managing Member) 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 Managing Member 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 Managing Member, 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 Managing Member 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 Managing Member 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 Managing Member); (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 Managing Member. 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 Managing Member 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 Managing Member in its reasonable discretion), the Company and the Managing Member 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 Managing Member may, in its reasonable discretion, keep confidential from any Member information to the extent the Managing Member 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 Managing Member 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 Managing Member 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 Managing Member'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 Managing Member 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 Managing Member 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 Managing Member 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 Managing Member 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 Managing Member 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 overwithholding 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 Members, or a vote of the Members without a meeting, may be called by the Managing Member upon the written request of any one or more of the Members holding 10% or more of the Member 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 Managing Member and all Members not less than 10 Business Days or more than 30 days prior to the date of such meeting unless waived in writing. Whenever the vote or consent of Members is permitted or required under this Agreement, such vote or consent may be given at a meeting of 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 Members entitled to vote on a matter, or to vote at any meeting of the Members or any adjournment thereof, the 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 Member may cast the number of votes equal to such Member's number of Units held by such Member. A Member may vote in person at a meeting, by written proxy or by a signed writing directing the manner in which such Member desires its vote to be cast, which writing must be received by the other Member(s) prior to the date on which votes are to be counted. The proxy of a Member may authorize any Person or Persons to act for it on all matters in which a 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 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 Member executing it.

7.4 Meetings. Each meeting of Members shall be conducted by the Managing Member.

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 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 Managing Member's reasonable discretion.

8.2 Tax Information. Necessary tax information shall be delivered to each 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 Managing Member. 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 Managing Member 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 Managing Member) 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 Managing Member) 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 Managing Member 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 Managing Member 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 Member 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 Member 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 Managing Member 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 (excluding Member Units) 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 Managing Member is hereby authorized to cause the Company to issue Units as the Managing Member may determine in its sole discretion.

9.8.2 In addition, notwithstanding anything to the contrary contained in this Agreement, the Managing Member is hereby authorized to cause the Company to issue Units and such other Limited Liability Company units in the Company, and to create such additional classes or groups of Members, and to amend this Agreement in connection therewith, as the Managing Member may determine in its sole discretion. Additional Limited Liability Company units in the Company and additional classes or groups of Members may have such relative rights, power and duties as the Managing Member 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 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 Members, and/or providing for such other rights, powers and duties as the Managing Member 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 Managing Member, 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 Managing Member, unless at the time there is at least one other Managing Member 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 Managing Member (unless at the time there is at least one other Managing Member, 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 Managing Member, 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 Managing Members 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 Managing Member 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 Managing Member shall not cause said Member or Managing Member to cease to be, or to withdraw as a Member or Managing Member 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 Managing Member waives any right it might have to agree in writing to dissolve the Company upon the Bankruptcy of a Member or Managing Member 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 Managing Member 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 Managing Member 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 Managing Member;

11.2.2 Second, to the payment and discharge of all of the Company's debts and liabilities to Members and/or the Managing Member; 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 Managing Member, 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 Managing Member, 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 Managing Member 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 Managing Member, 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 Managing Member, 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 Member 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 Member Units in violation of this Agreement;

12.3.2 Such party authorizes the Company to file a UCC Financing Statement covering the Member 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 Member 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 Managing Member 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 Managing Member 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 Managing Member, 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 Managing Member 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 Managing Member, or of Members or the Managing Member of the Company, or among Members, (C) the rights or powers of, or restrictions on, the Company, the Members or the Managing Member, (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 Managing Member and any Member, this Agreement and the documents referenced herein contain the entire understanding amongst the Company, the Managing Member 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 Managing Member.

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 Managing Member 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 Managing Member 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 Managing Member without the express written consent of the Managing Member.

13.20 Amendment. The Managing Member 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.

SIGNATURE PAGE TO FOLLOW

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

MANAGING MEMBER (and as a Developer Member):

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

DocuSigned by:
By: Jennifer Schrader
Name: Jennifer Schrader
Its: Authorized Signatory

SP 10 PREFERRED EQUITY:

SP 10 PREFERRED EQUITY, LLC
a Delaware limited liability company

DocuSigned by:
By: Jennifer Schrader
Name: Jennifer Schrader
Its: Authorized Signatory

ELLIOT 10 FUNDCO:

ELLIOT 10 FUNDCO, LLC
a Delaware limited liability company

DocuSigned by:
By: Jennifer Schrader
Name: Jennifer Schrader
Its: Authorized Signatory

ADDITIONAL DEVELOPER MEMBERS:

CAMELBACK CONSOLIDATED INVESTMENTS, LLC
a Wyoming limited liability company

DocuSigned by:
By: Brian Snider
Name: Brian Snider
Its: Manager

TRIDEV, LLC
an Arizona limited liability company

DocuSigned by:
By: Sebastean Losch
Name: Sebastean Losch
Its: Manager

MEMBER REGISTER

Member	**Developer Units**	**SP 10 Preferred Equity Units**	**Elliot 10 Fund Units**
Elliot & 51st Street Manager LLC	5,000		
Camelback Consolidated Investments, LLC	1,670		
TriDev, LLC	3,330		
SP 10 Preferred Equity, LLC	-	10,000	-
Elliot 10 Fund, LLC	-	-	10,000
Total:	**10,000**	**10,000**	**10,000**

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 Managing Member 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 Managing Member;

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 Managing Member.

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 Managing Member. 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 Managing Member 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 Managing Member 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 Managing Member.

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 Managing Member. 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 Managing Member.

1.7 Company Representative.

1.7.1 The Managing Member shall designate the Company's "Company Representative", as defined under Code Section 6223. The Managing Member 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 Managing Member 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 Managing Member, in the Managing Member'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 Managing Member in the Managing Member'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 Managing Member determines to be appropriate and any decision made by the Company Representative at the direction of the Managing Member shall be binding on all Members. The Members acknowledge and agree that, if directed by the Managing Member, 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 Managing Member in the Managing Member's sole and absolute discretion. Further, to the extent requested to do so by the Company Representative at the direction of the Managing Member, 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 Managing Member 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 Managing Member 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 Managing Member, 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 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 Managing Member 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 Managing Member, 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 Managing Member 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 Managing Member 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 Managing Member 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 Managing Member may amend this Tax Matters Schedule, as the Managing Member deems necessary in the Managing Member'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 Member 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.

SP 10 Preferred Equity, LLC

Confidential Investment Overview & Executive Summary

This offering is for a preferred equity investment into a planned multi-family residential development and the adaptive reuse of a former hotel which will be converted into a multi-family apartment complex. The site consists of ±8.04 acres and is located on the southwest corner of the I-10 Freeway and Elliot Road in Phoenix, Arizona. It is identified by Maricopa County Assessor's Office as Parcel #'s 301-54-787A, 301-54-787B, 301-54-787C, and 301-54-787F.

The Project will consist of 188 units total, with an overall density of 23.38 dwelling units per acre and 320 parking spaces. The unit mix will have three different types of units - 16 three-story townhouse style units with attached garages, 68 two-story single family duplex style units with small yards and patios, and the tower will have 104 units, consisting of studios, one bedroom and two bedroom units.

New amenities available to residents include a resort style pool, clubhouse, ramada, cabana, BBQ area, passive lawn area, fitness center, package lockers, and dog run.

The development will benefit from increased visibility, having ±340 feet of I-10 Freeway frontage. This project will provide value by bringing residents to the area and helping patronize nearby retailers and offices. It will provide much needed housing density as well as provide alternative housing options because of its mix of unit sizes, upgraded interior finishes and high-level common area amenities. The development will attract individuals with expendable income to spend at the surrounding businesses.

The Phoenix MSA has outpaced national averages in a variety of economic indicators. Industry payrolls are 7% higher than February 2020 levels and the unemployment rate is a full percentage point below the previous cyclical low.

The Project is proximate to a variety of large employers but most notable is Intel's Chandler campus located just six miles away. Phoenix's semiconductor industry continues to expand rapidly, and Intel is currently underway on a $20 billion expansion at their Chandler campus which is expected to bring around 3,000 Intel jobs once complete and another 3,000 construction jobs in the interim.

Strong demographic tailwinds will continue to drive expansion and economic growth in Phoenix, with the population expected to grow at three times the national average. Job growth is focused in the advanced manufacturing, finance, and tech industries, promoting further wage growth and the support of increasing multifamily rental rates.

Project Summary

Location:	Southwest of I-10 and Elliot Road in Phoenix, Arizona
Parcel Size:	±8.04 Acres
Units:	188 Units
Parcel #s:	301-54-787A, 301-54-787B, 301-54-787C, & 301-54-787F

Estimated Project RezoningTimeline

Stage	Estimated Timing
Close Existing Hotel	Q2 2023
Completion of Demolition	Q1 2024
Completion of Construction	Q1 2025
Certificate of Occupancy	Q1 2025
Stabilization	Q3 2025
Disposition	Q4 2028

Sources and Use of Proceeds

Sources		Uses	
Equity Offering Raise	$30,200,000	Acquisition Costs	($13,900,000)
Construction Loan	$39,200,000	Pre Development & Soft Costs	($13,400,000)
		Hard Costs	($25,500,000)
		Financing Costs	($5,700,000)
		Fee Reserves	($10,800,000)
Total	**$69,400,000**	**Total**	**($69,400,000)**

Offering Highlights

Maximum Raise Amount:	$30,200,000
Minimum Investment Amount:	$100,000
Targeted Maximum Return Threshold:	1.5x - 2.0x
Projected Investment Period:	5 Years

This Offering is for 12% Current Pay Units and Preferred Units and. The Units are being offered on a continuous, best-efforts basis and for twelve (12) months from the date of this Memorandum. The 12% Current Pay Units are entitled to a 12% annualized, preferred return, paid quarterly and a pro rata share of any amounts distributed by Elliot 10 MezzCo LLC to the Fund up to a maximum of 1.5x their contributed capital but will not participate in potential profits above the 1.5x. The Preferred Units are entitled to a pro rata share of any amounts distributed by Elliot 10 MezzCo LLC to the Fund up to a maximum of 2x their contributed capital but will not participate in potential profits above the 2x.

The Fund will accept up to $30,200,000 in subscriptions for the purchase of Units, subject to the Managing Member's right to increase the amount of the offering. Notwithstanding the above, the Fund reserves the right to increase the amount of the offering and, accordingly, the Proceeds to the Fund.

The Fund will receive distributions in either operating distributions (which will be distributed 70% to the Fund and 30% to certain developer related parties (including the Managing Member) or upon liquidation or in a debt cash refinancing that, collectively with all distributions to be paid to the Fund, results in satisfaction of the Return Threshold requirements.

Project Renderings and Proposed Site Plan

Three-story single-family townhouse units

Front Elevation

Three-story single-family residential building townhouse units

Rear Elevation

Three-story single-family residential building townhouse units

Left Elevation

Right Elevation

Project Renderings and Proposed Site Plan

Two-story single-family residential building duplex units

Left Elevation

Front Elevation

Two-story single-family residential building duplex units

Left Elevation

Front Elevation

Two-story single-family residential building duplex units

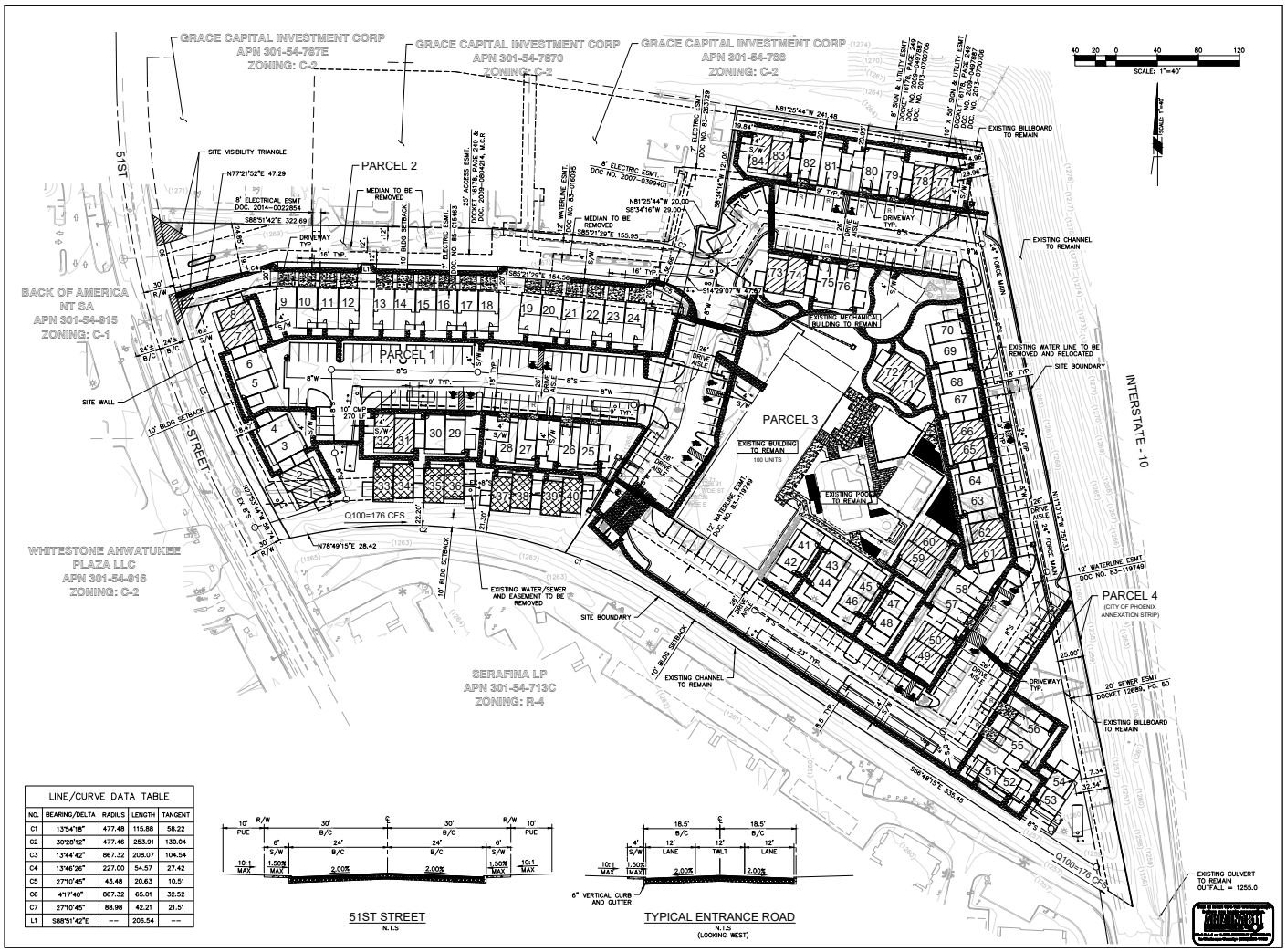
Left Elevation

Front Elevation

Project Renderings and Proposed Site Plan

Existing tower proposed renovations

Project Renderings and Proposed Site Plan



LINE/CURVE DATA TABLE				
NO.	BEARING/DELTA	RADIUS	LENGTH	TANGENT
C1	13°54'18"	477.48	115.88	58.22
C2	30°28'12"	477.46	253.91	130.04
C3	13°44'42"	867.32	208.07	104.54
C4	13°46'26"	227.00	54.57	27.42
C5	27°10'45"	43.48	20.63	10.51
C6	41°7'40"	867.32	65.01	32.52
C7	27°10'45"	88.98	42.21	21.51
L1	S88°51'42"E	--	206.54	--